

COCOA FIREFIGHTERS ORDINANCES

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ARTICLE VIII. FIREFIGHTERS' RETIREMENT PLAN*

***Editor's note:** Section 1 of Ord. No. 9-93, adopted Sept. 28, 1993, amended Art. VIII, §§ 2-271--2-276, 2-281--2-286, 2-288--2-292, 2-301, 2-302, 2-306--2-310, 2-321--2-330, 2-341--2-344, to read as herein set out. Formerly, this article pertained to similar subject matter and was derived from Ord. No. 14-81, adopted April 26, 1981; Ord. No. 19-86, adopted Sept. 23, 1986; Ord. No. 3-87, adopted Feb. 24, 1987; Ord. No. 8-87, adopted April 14, 1987; Ord. No. 11-88, adopted May 24, 1988; Ord. No. 21-90, adopted Sept. 11, 1990.

Cross references: Property insurance premium tax for firefighters' pension trust fund, § 19-1.

State law references: Municipal firefighters' pension trust fund, F.S. Ch. 175.

DIVISION 1. GENERALLY

Sec. 2-271. Definitions.

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

Accumulated contributions means a member's own contributions, including interest at the rate of four and one-half percent (4 1/2%) per annum compounded annually as of each October first.

Agreement means this written instrument setting forth the provisions of the system.

Average monthly earnings means one-twelfth of the arithmetical average of annual earnings for the three (3) highest consecutive years of service of the ten (10) years immediately preceding the retirement, termination, or death of a member.

Beneficiary means the person or persons entitled to receive benefits hereunder at the death of a member who has or have been designated in writing by the member and filed with the board. If no such designation is in effect at the time of death of the member, or if no person so designated is living at the time, the beneficiary shall be the estate of the member.

Board means the board of trustees, which shall administer and manage the system herein provided and serve as trustees of the fund.

City means City of Cocoa, Florida.

Credited service means the total number of years and completed months of actual service with the city as an employee, omitting intervening years and completed months when such employee was not so employed by the city except as provided herein. No credit will be given toward credited service for service for which the employee has withdrawn his contributions to the fund. An employee may voluntarily leave his contributions in the fund for a period of five (5) years after leaving the employment of the city, pending the possibility of his being rehired by the city, without losing credit for the time he has participated in the fund. In the event that the employee is not reemployed with the city within five (5) years, the employee's accumulated contributions will be

returned to the employee. A member may receive credit for military service as provided herein.

Earnings means that W-2 earnings paid to a member from the city plus tax deferred and tax exempt items of income.

Effective date means August 1, 1981.

Employee means any person who is employed solely in the constituted fire department of the city, who is certified as a firefighter as a condition of employment in accordance with the provisions of Section 633.35, Florida Statutes and whose duty it is to extinguish fires, to protect life and to protect property.

Fund means the trust fund established herein as part of the system.

Member means an employee who fulfills the prescribed participation requirements and all terminated employees who are receiving or entitled to receive benefits hereunder.

Property insurance means property insurance as defined in § 624.604, Florida Statutes and covers real and personal property within the corporate limits of the city. "Multiple peril" means a combination or package policy which includes both property and casualty coverage for a single premium.

Regular base salary means the total W-2 earnings, excluding clothing allowance and supplemental compensation in accordance with Section 633.382, Florida Statutes (1991), paid to the member during the preceding twelve (12) months from the date of the injury that lead to disability.

Retirement means a member's separation from city employment with eligibility for immediate receipt of retirement benefits under the system, or entry into the deferred retirement option plan (DROP).

Spouse means the lawful wife or husband of a member at the time of preretirement, death or retirement.

System means the city firefighters' retirement system as contained herein and all amendments hereto.

(Ord. No. 9-93, § 1, 9-28-93; Ord. No. 20-98, §§ 1, 2, 7-28-98; Ord. No. 18-99, § 1, 9-21-99; Ord. No. 8-00, § 1, 6-27-00; Ord. No. 15-02, § 1, 7-9-02)

Sec. 2-272. Conditions and eligibility for membership.

All eligible employees as of the effective date, and all future new employees, shall become members of this system as a condition of employment.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-273. Application for membership.

Each eligible employee shall complete an application form covering the following items, as well as such other items as may be prescribed by the board:

- (a) Acceptance of the terms and conditions of the system, and,
- (b) Designation of a beneficiary or beneficiaries.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-274. Eligibility of discharged members.

Members entitled to a pension shall not forfeit the same upon dismissal from employment as an employee, but shall be retired as herein described.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-275. Credit for military service.

Credit may be given for military service in the Armed Forces of the United States:

(a) For actual wartime service in the Armed Forces of the United States, not to exceed four (4) years, if credit for such service has not been granted under any other federal or state system, and provided such service is not used in any other retirement system; however, this paragraph does not prohibit the use of such service as creditable service if granted and used in a pension system under chapter 67 of the Title 10 of the United States Code. To receive credit, the member must:

(1) Have completed a minimum of ten (10) years of creditable service;

(2) Pay into the proper fund four percent (4%) of gross salary, based upon his first year of salary subsequent to July 1, 1945, that he has credit for under this system, plus four percent (4%) interest thereon compounded annually from the date of first creditable service under this chapter until July 1, 1975, and six and one-half percent (6.5%) interest compounded annually thereafter, until payment is made to the proper fund.

(b) For non wartime service if:

(1) The member is in active employ of the city immediately prior to such service and leaves a position, other than a temporary position, for the purpose of induction into the Armed Forces of the United States or entry up178on duty in the Armed Forces of the United States; and

(2) The member is entitled to reemployment under the provisions of the Veterans' Reemployment Rights Act (38 U.S.C. ss. 2021 et seq.); and

(3) The member applies for reemployment with the same employer within the time set forth in § 2021 or § 2024 of the Veterans' Reemployment Rights Act, whichever is applicable, and is reemployed by such employer; and

(4) The member makes the required employee and employer contributions for his membership class for each month of service credit during such period of military service, based upon his rate of monthly compensation as of the date that he left his position, plus 4 percent (4%) interest on such contributions compounded annually until the due date of the contribution until July 1, 1975, and 6.5 percent (6.5%) interest compounded annually thereafter, until the payment is made to the fund; and

(5) The period of service claimed pursuant to the subsection does not exceed the periods specified by the provisions of §§ 2021 and 2024 of the Veterans' Reemployment Rights Act which are applicable in the member's case.

(Ord. No. 9-93, § 1, 9-28-93)

Secs. 2-276--2-280. Reserved.

Editor's note: Ord. No. 8-00, § 2, adopted June 27, 2000 repealed section 2-276 in its entirety. Former section 2-276 pertained to purchase of credits for previous employment with the city and derived from Ord. No. 18-99, § 3, adopted Sept. 21, 1999.

DIVISION 2. BOARD OF TRUSTEES

Sec. 2-281. Board designated as administrator; composition.

The sole and exclusive administration and responsibility for the proper operation of the system and for making effective the provisions of this article are hereby vested in the board which shall be designated as the plan administrator for the system. The board shall consist of five (5) persons as follows:

(1) Two (2) legal residents of the city who shall be appointed by the city council to serve for a period of two (2) years unless sooner replaced by the city council. The city council may appoint the city manager to serve as one (1) of the two (2) legal residents of

the city and such appointment shall constitute ex officio duties on the city manager. An appointed board member may succeed himself or herself;

(2) Two (2) employee members, each to be elected by the actively employed members for a two-year term in a manner to be determined by the board; and

(3) A fifth member, elected by the other four (4) members of the board, to be appointed by the city council as a ministerial duty for a two (2) year term. Such fifth member shall be allowed to succeed himself or herself in office if reelected.

(Ord. No. 9-93, § 1, 9-28-93; Ord. No. 16-04, § 2, 4-13-04)

Sec. 2-282. Duties and responsibilities.

The board shall be independent of the city to the extent required to accomplish the intent, requirements and responsibilities of this article.

The duties and responsibilities of the board shall include, but not be limited to, the following:

(a) To construe the provisions of the system and determine all questions arising thereunder.

(b) To determine all questions relating to eligibility and participation.

(c) To determine and certify the amount of all retirement allowances or other benefits hereunder.

(d) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matter required to administer the system.

(e) To distribute to members annually pertinent financial information concerning the system.

(f) To receive and process all applications for participation and benefits.

(g) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund.

(h) To have performed actuarial studies and annual actuarial valuations, and make recommendations regarding any and all changes in the provisions of the system.

(i) To invest and reinvest the fund's assets as more fully described in section 2-308, Investment Powers of the Board.

(j) To adjust any overpayment or underpayments from the fund to a member of beneficiary caused by errors of computation. Such adjustments shall be adjusted with interest at a rate per annum approved by the board. Overpayments shall be charged against payments next succeeding the correction. Underpayments shall be made up from the fund.

(k) To examine into the facts whenever it is alleged that any pension was heretofore granted or shall have been granted or obtained erroneously, fraudulently, or illegally for any reason. The board is empowered to purge the pension rolls of any person, member, or beneficiary granted a pension under prior or existing law or under this article if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any pensioner who has under any prior or existing law or who shall under this article be erroneously, improperly or illegally classified.

(l) To perform such other duties as are specified in this article, or are necessary or appropriate to fulfill their obligations as trustees.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-283. Miscellaneous.

(a) Payment to incompetents. If any member or beneficiary is, in the judgment of the board, incapable of personally receiving and giving a valid receipt for any payment due under the system, the board may, unless and until claims shall have been made by a duly appointed guardian or committee of such person, make such payments or any part thereof to such person's spouse, children or other person that the board determines to be the guardian of such person. Any payment so made shall be a complete discharge of any liability under the system for such payment.

(b) Where any action which the board is required to take or any duty or function which it is required to perform, either under the terms herein or under the general law applicable to it as trustee under this article, can reasonably be taken or performed only after receipt by it from a member, the city, or any other entity, of specific information, certification, direction or instructions, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by the board.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-284. Election of trustees.

Employee trustees shall be elected by a majority of firefighters who are members of the system. The board shall establish and administer the nominating and election procedure for each election. The board shall elect from among its members a chairman, vice-chairman, and secretary within ten (10) days after a new trustee is elected or appointed.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-285. Vacancy in office.

If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-286. Removal of board trustee.

Any elected or appointed trustee may be removed by the unanimous consent of the other members of the board for such trustee's failure to discharge his duties pursuant to this article.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-287. Reserved.

Sec. 2-288. Rules of procedure.

Subject to the limitations of this article the board shall from time to time establish uniform rules and regulations for the administration of fund and for transactions of the board's business.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-289. Voting.

Each board trustee shall be entitled to one vote on the board. Three (3) affirmative votes shall be necessary for a decision by the board trustees at any meeting of the board. The chairman shall have the right to one vote only and no trustees may cast proxy votes. No trustee shall take part in any action in connection with his own participation in the fund, and no discrimination shall be shown to any individual firefighter participating in the fund.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-290. Minutes.

For all acts and determinations of the board, the secretary shall prepare minutes which shall be filed with the city clerk within a reasonable period of time following the meeting at which such acts and determinations are made.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-291. Compensation, reimbursement of the board.

The trustees shall serve without compensation, but they may be reimbursed from the fund for any necessary and reasonable expenses, including any per diem permitted by applicable law.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-292. Compensation of board employees; disbursal agent.

(a) The board shall engage such actuarial, accounting and other services as shall be necessary and appropriate required to transact the business of the system. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the system shall be paid from the fund at such rates and in such amounts as the board shall agree. Funds may be distributed by a disbursing agent as determined by the board, but only upon written authorization by the board.

(b) An actuarial valuation will be done at least once every three (3) years. Such valuation shall be prepared by an enrolled actuary, and shall comply with the requirements of Chapter 175, Florida Statutes, as may be amended from time to time.

(c) An independent audit of the fund by a certified public accountant shall be prepared annually.

(d) At least once every three (3) years, the board shall retain a professionally qualified independent consultant who shall evaluate the performance of its professional money managers. The independent consultant shall make recommendations to the board regarding the selection of money managers for the next investment term. These recommendations shall be considered by the board at its next regularly scheduled meeting. The date, time, place and subject of this meeting shall be advertised in the same manner as for any meeting of the board.

(Ord. No. 9-93, § 1, 9-28-93; Ord. No. 8-00, § 3, 6-27-00)

Secs. 2-293--2-300. Reserved.

DIVISION 3. CONTRIBUTIONS AND FUNDING

Sec. 2-301. Funds established.

There is hereby created a special pension fund ("fund") for the firefighters of the city. All assets of every description shall be held in the name of the fund. The fund shall be funded in the following manner:

(a) By the payment to the fund of the net proceeds of the 1.85 percent (1.85%) excise or other similar tax, which may be imposed by the city upon the fire insurance companies, fire insurance associations, or other property insurers on their gross receipts on premiums from holders of policies, which policies cover real or personal property within the corporate limits of the city as authorized in Chapter 175, Florida Statutes, as may be amended from time to time. The city shall make payment of such money to the fund within five (5) days of receipt from the State of Florida.

(b) By the payment to the fund of six and one-half percent (6.5%) of the salary of each employee who is a member, which six and one-half percent (6.5%) shall be deducted by the city from the compensation due to the members and paid over to the board on a monthly basis. The percentage deducted from the members' salaries and deposited into the fund may be amended from time to time.

(c) By all fines and forfeitures imposed and collected from any member because of the violation of any rule and regulation promulgated by the board.

(d) By mandatory payment annually from the city of a sum which, together with the contributions from the members and the amount derived from the premium tax provided at Section 175.101, Florida Statutes, and other income sources as authorized by law, will be sufficient to meet the normal cost and the amount required to fund over a period of forty (40) years or on a forty (40) year basis, any actuarial deficiency shown on a triennial actuarial valuation. The first such actuarial valuation shall be conducted for the fiscal year ending September 30, 1982. Such payment shall be made on at least a quarterly basis.

(e) By all gifts, bequests, and devises donated to the fund.

(f) By all accretions to the fund by way of interest or dividends on bank deposits, or otherwise.

(g) By all other sources of income now or hereafter authorized by law for the augmentation of the fund.

(h) Under no circumstances may the city reduce the member contribution to less than one-half of one percent of salary.

(Ord. No. 9-93, § 1, 9-28-93; Ord. No. 20-98, § 3, 7-28-98; Ord. No. 8-00, § 4, 6-27-00)

Sec. 2-302. Special provisions relating to member contributions.

(a) *Amount.* As stated in Code section 2-301, members of the system shall make regular contributions to the fund at a rate equal to six and one-half percent (6.5%) of their respective earnings. Such member contributions shall be collected and deposited to the fund no less frequently than monthly.

(b) *Guaranteed refund.* All benefits payable under the system are in lieu of a refund of accumulated contributions. In any event, however, each member shall be guaranteed the payment of benefits on his behalf at least equal in total amount of the member's accumulated contributions.

(c) *Pick up of employee contributions.* The city shall pick up the member contribution required by this section. The contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code. The city shall pick up the member contributions from funds established and available for salaries, which funds would have otherwise been designated as member contributions and paid to the fund. Member contributions picked up by the city pursuant to this subsection shall be treated for purposes of making a refund of member's contributions, and for all other purposes of this and other laws, in the same manner and

to the same extent as member contributions made prior to the effective date of this subsection. The intent of this subsection is to comply with section 414(h)(2) of the Internal Revenue Code.

(Ord. No. 9-93, § 1, 9-28-93; Ord. No. 20-98, §§ 4, 5, 7-28-98)

Secs. 2-303--2-305. Reserved.

Sec. 2-306. Custody of fund.

The actual custody and supervision of the fund (and assets thereof) shall be vested in the board. Payment of benefits and disbursements from the fund shall be made by the disbursing agent but only upon written authorization from the board.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-307. Custodian bank.

The board shall deposit all assets of the fund in a qualified public depository, as defined in Section 280.02, Florida Statutes as may be amended from time to time.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-308. Investment powers of the board.

The board shall have the following investment powers and authority:

(a) The board shall be vested with full legal title to the fund, subject, however, and in any event to the authority and power of the city to amend or terminate this trust, pursuant to section 2-341. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund.

(b) The board may:

(i) Invest and reinvest the assets of the fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the members in the fund shall be entitled under the provisions of this article and pay the initial and subsequent premiums thereon.

(ii) Invest and reinvest the assets of the fund in:

(1) Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings, building and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered Credit Union whose share accounts are insured by the National Credit Union Share Insurance Fund.

(2) Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.

(3) Bonds issued by the State of Israel.

(4) Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided:

(a) The corporation is listed on any one or more of the recognized national stock exchanges and, in the case of bonds only, holds a rating in one of the three (3) highest classifications by a major rating service; and

(b) The board shall not invest more than five percent (5%) of the assets of the fund in the common stock or capital stock of any issuing company nor shall the aggregate investment in any one issuing company exceed five percent (5%) of the outstanding capital stock of that company; nor shall the aggregate of its investments under the

subparagraph at cost exceed at any time seventy percent (70%) of the assets of the fund.

(5) The board may invest up to ten percent (10%) of plan assets in foreign securities.

(iii) Issue drafts upon the fund pursuant to this section and rules and regulations prescribed by the board. All such drafts shall be consecutively numbered, be signed by the chairman and secretary, and state upon their faces the purpose for which the drafts were drawn. The treasurer or depository of each municipality shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money shall be otherwise drawn from the fund.

(iv) Convert into cash any securities of the fund.

(v) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

(Ord. No. 9-93, § 1, 9-28-93; Ord. No. 3-95, § 1, 2-28-95; Ord. No. 20-98, § 6, 7-28-98; Ord. No. 8-00, § 5, 6-27-00)

Sec. 2-309. Same--Allowed to agents.

Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to the fund shall always remain in the board.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-310. Accounting records.

All funds and securities of the system may be commingled in the fund, provided that the board maintains accurate records at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:

(a) Current amounts of accumulated contributions of members on both an individual and aggregate account basis; and

(b) Receipts and disbursements; and

(c) Benefits payments; and

(d) Current amounts clearly reflecting all moneys, funds and assets whatsoever attributable to contributions and deposits from the city; and

(e) All interest, dividends and gains (or losses) whatsoever; and

(f) Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.

(Ord. No. 9-93, § 1, 9-28-93)

Secs. 2-311--2-320. Reserved.

DIVISION 4. BENEFITS

Sec. 2-321. Retirement dates.

(a) *Normal retirement.* A member's normal retirement date shall be the first day of the month coincident with or next following the earlier of the attainment of the member's fifty-second birthday or the completion of twenty-five (25) years of credited service. The normal retirement date for a member hired on or after January 1, 1999 shall be the first day of the month coincident with or next following the earlier of the attainment of the member's fifty-second (52) birthday with at least ten (10) years of credited service or the completion of twenty-five (25) years of credited service. A member may retire on the member's normal retirement date or on the first day of any month thereafter. Each

member shall become one hundred percent (100%) vested in the accrued benefit on the member's normal retirement date.

(b) *Early retirement.* A member may retire on an early retirement date the first day of any month coincident with or next following both the attainment of the fiftieth birthday and completion of ten (10) years of credited service.

(c) *Delayed retirement.* Retirement shall not be mandatory solely by reason of age prior to the member's seventieth birthday. At the option of the employee, the employee may remain in active employ of the city beyond the normal retirement date provided, however, that all employees shall begin to receive a pension distribution after age seventy and a half in accordance with §401(a)(9)(C), Internal Revenue Code of 1986, as amended. No employee shall be entitled to remain in employment of the city, regardless of age, if such person is incapable or fails to perform such employee's assigned job functions satisfactorily, for reasons of physical infirmity, emotional or mental impairment, lack of aptitude for the position held or for other cause. However, discharge, forced retirement, refusal to hire or denial of promotion may not be determined solely on the basis of age. The delayed retirement date shall be the first day of the month coincident with, or next following, actual retirement. Nothing herein contained shall be construed to give any employee the right to be retained in the employ of the city or to interfere with the right of the city to terminate the employment of any employee at any time, nor upon dismissal or upon such employee's voluntary termination of employment to have any right or interest in the fund other than as is herein provided.

(Ord. No. 9-93, § 1, 9-28-93; Ord. No. 18-99, § 4, 9-21-99)

Sec. 2-322. Retirement benefits.

(a) *Normal or delayed.* A member retiring hereunder on or after the member's normal retirement date shall receive a monthly benefit which shall commence on the member's retirement date and be continued thereafter during the member's lifetime, ceasing upon death. If, after payment commences, the member should become deceased before one hundred twenty (120) monthly payments have been made, payment will then continue to the beneficiary until such one hundred twenty (120) payments have been made in total, at which time benefits shall cease. The monthly retirement benefit shall equal three percent (3%) of average monthly earnings for each year of continuous service.

(b) *Early.* A member retiring hereunder on the member's early retirement date may receive either a deferred or an immediate monthly retirement benefit payable for life, but with one hundred twenty (120) monthly payments guaranteed in any event, as follows:

(1) A deferred monthly retirement benefit which shall commence on what would have been the member's normal retirement date had the member remained as an employee shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement at this normal retirement date except that continuous service and average monthly earnings shall be determined as of the member's early retirement date; or

(2) An immediate monthly retirement benefit shall commence on the member's early retirement date and shall be continued on the first day of each month thereafter. Effective December 31, 1999, the benefit payable shall be determined in subparagraph (1) above, reduced by three percent (3%) for each year by which the member's age at retirement precedes the normal retirement date.

(c) *Benefit increase for members retired on or before October 1, 1998.* All service retirees, disability retirees, and beneficiaries of deceased members who were receiving benefits under this retirement plan on or before October 1, 1998, shall be entitled to a one-time fifteen percent (15%) across-the-board increase in the benefits they were receiving under this retirement plan, commencing April 1, 1999. Nothing contained

herein shall be construed so as to alter the form and/or method of payment in effect prior to the effective date of this ordinance.

(Ord. No. 9-93, § 1, 9-28-93; Ord. No. 20-98, § 7, 7-28-98; Ord. No. 18-99, § 5, 9-21-99; Ord. No. 8-00, § 6, 6-27-00)

Sec. 2-323. Optional forms of benefits.

Each member entitled to an early, normal, or delayed retirement benefit shall have the right at any time prior to the date on which benefit payments being to elect to have such member's benefit payable under any of the options hereinafter set forth in lieu of the benefits herein, and to revoke any such elections and make a new election at any time prior to actual beginning of payments. The value of optional benefits shall be actuarially equivalent to the value of benefits otherwise payable, and the present value of payments to the retiring member must be at least equal to fifty percent (50%) of the total present value of payments to the retiring member and such member's beneficiary. The member shall make such an election by written request to the board, such request being retained in the board's records.

(a) *Option 1.* Joint and last survivor option. The member may elect to receive a benefit during the member's lifetime and have such benefit (or a designated fraction thereof) continued after the member's death to and during the lifetime of the member's spouse or a relative other than the member's spouse. The election of option 1 shall be null and void if the designated beneficiary dies before the member's benefit payments commence.

(b) *Option 2.* Life annuity. The member may elect to receive an increased benefit payable for life only, and ceasing upon the member's death.

(c) *Option 3.* Social security option. If a member retires prior to the time at which social security benefits are payable, the member may elect to receive an increased retirement benefit until such time as social security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of retirement. The amounts payable shall be as recommended by the actuaries for the system, based upon the social security law in effect at the time of the member's retirement.

(d) *Option 4.* Other. In lieu of the other optional forms enumerated in this section, benefits may be paid in any form that the board may approve so long as actuarial equivalence with the benefits otherwise payable is maintained.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-324. Disability.

(a) *Service incurred.* Any member who receives a service-connected injury, disease or disability, which, in the opinion of the board in accordance with Section 175.191, Florida Statutes permanently incapacitates the member, physically or mentally from rendering useful and efficient service as a firefighter, shall, effective December 31, 1999, receive monthly, a disability benefit in an amount equal to the member's accrued retirement benefit (accrued at the statutory two percent (2%) minimum; provided such amount is not less than forty-two percent (42%) of the member's average monthly salary at the time of disability. The benefit shall be paid beginning when the member's sick pay and accrued vacation have expired and will continue until the payment due next preceding the date of recovery, as determined by the board, or if the member dies without recovery from the disability, the payment due next preceding the member's death or the one hundred twentieth (120th) monthly payment, whichever is later. An optional form of benefit providing death benefits, may be elected.

(b) *Non service incurred.* Any member who receives a non service connected injury, disease or disability, which, in the opinion of the board in accordance with Section 175.191, Florida Statutes permanently incapacitates the member, physically or mentally, from useful and efficient service as a firefighter, shall receive monthly, a disability benefit in an amount equal to one-twelfth (1/12) of twenty-five percent (25%) of the member's rate of regular base salary in effect as of the date of disability. The benefit shall be paid beginning six (6) months from the date of disability until the earlier of recovery, as determined by the board, or death. An optional form of benefit, providing death benefits may be elected.

(c) *Determination of disability.* All questions relating to eligibility for initial payment or continuance of disability benefits shall be determined by the board taking into consideration the recommendations of the duly qualified physician or surgeon selected by the board to examine the member and based upon the methods and procedures established by the board. In the event that any disabled member could otherwise still be employed, or be reemployed as an employee except that the position for which the member is qualified is not available due to being currently filled, the benefit shall be payable only until such position again becomes available. The board may require, at its expense, periodic medical reexamination of disabled members.

(d) *Exclusions.* Disability benefits shall not be payable in cases where the disability is a result of:

- (1) Excessive and habitual use of drugs, intoxicants, or narcotics;
- (2) Injury or disease sustained while willfully and illegally participating in fights, riots, civil insurrections or while committing a felony;
- (3) Injury or disease sustained while serving in the armed forces;
- (4) Injury or disease sustained after employment as a firefighter has terminated, whether voluntarily or involuntarily.
- (5) Injury or disease sustained while working for anyone other than the city and arising out of such employment during the first ten (10) years of credited service.

(e) *Recovery.* In the event of recovery from disability as determined by the board and immediate reemployment by the city as an employee, the period of time while disabled shall be included as credited service. In the event of recovery, or the refusal by the member to submit to medical reexamination, but without immediate reemployment as an employee, the member's future benefits shall be determined as though the member initially terminated employment on the member's date of disability.

(Ord. No. 9-93, § 1, 9-28-93; Ord. No. 18-99, §§ 6, 7, 9-21-99; Ord. No. 8-00, § 7, 6-27-00)

Sec. 2-325. Preretirement death.

(a) Prior to eligibility for retirement. The death benefit payable on behalf of a member who dies prior to being eligible for early, normal, or delayed retirement shall equal the member's accumulated contributions with interest.

(b) Deceased employees eligible for retirement. The beneficiary of any actively employed member who is eligible for but dies prior to early, normal, or delayed retirement, shall, effective December 31, 1999, be entitled to the benefits otherwise payable to the member at early or normal retirement age, accrued at the statutory two percent (2%) minimum.

(Ord. No. 9-93, § 1, 9-28-93; Ord. No. 8-00, § 8, 6-27-00)

Sec. 2-326. Cost of living increase.

As of each October first, retirees and disabled members who have attained their sixty-fifth birthday, and beneficiaries receiving monthly benefits on behalf of deceased members who would have attained their sixty-fifth birthday, shall have their benefits adjusted for changes in the cost-of-living as measured by the consumer price index for the one-year period ended on the preceding June thirtieth. The percentage increase or decrease in benefits shall be limited to 3 percent (3%) with regard to any such one-year period, and at no time shall the resulting benefit amount be less than that amount which was payable initially at the time of retirement, or in the case of deceased members, at the time payments to the beneficiary began.
(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-327. Vesting.

(a) If a member terminated his employment, either voluntarily or by discharge, and is not eligible for any other benefits under the system, the member shall be entitled to the following:

(1) With less than ten (10) years of credited service: Refund of accumulated contributions with interest.

(2) With ten (10) or more years of credited service: The pension benefit accrued to the member's date of termination payable for life, commencing at the member's early retirement date or later, and provided the member survives until benefit payments actually begin. The benefit rate per year of service shall be the same as determined for early or normal retirement, and shall depend upon the time of commencement of benefit payments. In the event that the member dies prior to the commencing of the benefit, the member's beneficiary will receive the member's accrued vested benefit payable for ten (10) years beginning at what would otherwise have been the member's normal retirement date.

(b) Forfeitures arising from terminations of employment shall remain as a part of the assets of the fund.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-328. Not assignable.

No benefit provided for herein shall be assignable or subject to garnishment for debt or for other legal process, except for a domestic relations order under Chapter 61, Florida Statutes as may be amended from time to time, providing for alimony or child support, which the board determines is a qualified domestic relations order, in accordance with procedures it adopts.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-329. Change in designation of beneficiary.

A member may from time to time change his designated beneficiary by written notice to the board upon forms provided by the board. Upon such change, the rights of all previously designated beneficiaries to receive any benefits under the system shall cease.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-330. Reemployment.

(a) Any member who is retired under the system, may be reemployed by any public or private employer that does not participate in any city retirement system and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this system.

(b) Any member who is retired under the system and is reemployed by any employer participating in any city retirement system within twelve (12) months immediately subsequent to the date of retirement shall terminate his or her retirement and shall become a member of the retirement system provided for employees of such employer.

(c) Any member who is retired under the system and is reemployed more than twelve (12) months after that retirement by an employer participating in the particular city retirement plan which the member is retired under, shall upon being reemployed select one of the following options:

(1) The member may terminate his or her retirement and have the additional service used in computing the member's benefits upon retirement as though there had been no prior retirement; or

(2) The member may continue to receive retirement benefits previously earned and not be an active member of the system. If this option is selected, reemployment shall have no effect upon final compensation, years of creditable service or retirement benefits. Regardless of any other provision of this section, any retired and reemployed member electing to continue to receive retirement benefits shall not be required to be an active member of the system.

(3) A member who is retired under the disability provisions of this section may not be reemployed as a firefighter.

(d) Any member who is retired under the system and is reemployed more than twelve (12) months after that retirement by an employer participating in a city retirement plan other than the plan the member retired under shall upon being reemployed select one of the following options.

(1) The member may terminate his or her employment and become a new member of the different plan. Any benefits available under the new plan will be based only upon the member's service under that plan; or

(2) The member may continue to receive retirement benefits previously earned and not be an active member of the system. If this option is selected, reemployment shall have no effect upon final compensation, years of credited service or retirement benefits. Regardless of any provision of this section, any retired and reemployed member electing to continue to receive retirement benefits shall not be required to be an active member of the system.

(e) This section shall have no application to a member who participates in the deferred retirement option plan (DROP) during the DROP period.

(Ord. No. 9-93, § 1, 9-28-93; Ord. No. 15-02, § 2, 7-9-02)

Sec. 2-331. Deferred retirement option plan.

(a) *Definitions.* For the purpose of this section, the following terms shall be defined as indicated below:

DROP means the deferred retirement option plan established pursuant to this section.

DROP account means the account established for each DROP participant, which shall be part of the fund, and which shall consist of the amount credited to an individual DROP participant in accordance with this section.

DROP entry date means the date an eligible member begins to participate in the DROP.

DROP participant means an eligible member who is participating in the DROP.

DROP period means the duration of a member's participation in the DROP, from the DROP entry date to the date a participant ceases to participate in the DROP and separates from city employment. The maximum DROP period may not be longer than sixty (60) months.

(b) *Eligibility.* A member who reaches the earliest normal retirement date under the plan shall be eligible to participate in the DROP.

(c) *Written election.* To participate in the DROP, a member must complete and execute the forms supplied by the city, together with a letter of resignation from city employment effective upon the last day of the member's participation in the DROP. A member's written election to participate in the DROP and letter of resignation shall be irrevocable.

(d) *Accrued leave payment.* Upon electing to participate in the DROP, an eligible member may elect to receive payment for accrued unused sick and annual leave in accordance with city policy, as follows:

(1) In a lump sum prior to the DROP entry date; or

(2) In a lump sum upon termination of employment.

(e) *Participation in the DROP.*

(1) An eligible member may participate in the DROP for a maximum of sixty (60) months. An eligible member must elect to participate in the DROP and may begin participating in the DROP after reaching the earliest normal retirement date.

(2) A member who elects to participate in the DROP can elect to terminate DROP participation and city employment sooner than the maximum DROP period, with thirty (30) days advance written notice to the city and the board of trustees.

(3) An eligible member who elects to participate in the DROP will be considered to have retired for purposes of the retirement plan. The member's monthly retirement benefit, determined in accordance with the plan based on years of credited service and average final compensation at the time the member enters the DROP, will be paid into his or her DROP account every month during the DROP period. No member or city contributions shall be required after a member enters the DROP, and the member will not accrue any additional credited service or any additional benefits, other than cost-of-living increases if applicable, under the retirement plan after entering the DROP.

(4) A member who elects to participate in the DROP shall not be eligible for disability or preretirement death benefits under the retirement plan.

(5) Participation in the DROP is not a guarantee of employment, and DROP participants will be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

(6) During a member's participation in the DROP, the member's monthly retirement benefit will be paid into the DROP account. The member's DROP account will be credited (or debited) with the actual net investment rate of return on the actuarial value of plan assets, on an annual basis, as determined by the board. The board shall review the stated rate of return on an annual basis, and reserves the right to adjust the amount to be credited or debited to a participant's account.

(7) The fund shall be responsible for any and all expenses related to administering the DROP.

(8) As a condition of participating in the DROP, each participant must agree that his or her city employment shall terminate on the last day of the DROP period, determined in accordance with this section.

(f) *Payout of DROP account.* Within thirty (30) days after the end of the calendar quarter following the end of a participant's DROP period, the participant's DROP account shall be payable, at the participant's option, in full in a single lump sum payment, less withholding taxes; or as a direct rollover, paid directly to the custodian of an eligible retirement plan; or as a partial lump sum paid to the participant or to the designated beneficiary, with the remaining accrued benefit transferred directly to the custodian of an eligible retirement plan. The DROP participant or designated beneficiary shall specify in writing the payee(s) and amounts to be paid to each. If a DROP participant dies before his or her DROP account is distributed, the participant's designated beneficiary shall

have the same rights as the participant with respect to the distribution of the DROP account. If the member has not designated a beneficiary, the DROP account balance shall be paid to the member's estate. Regardless of the payment option selected by the participant or beneficiary, the board of trustees may take whatever action is necessary to comply with the Internal Revenue Code.

(g) *Rules and procedures.* The board of trustees may adopt rules and procedures for participation and administration of the DROP that are not in conflict with this section. The DROP is intended to comply with all the applicable provisions of the Internal Revenue Code and F.S. ch. 175.

(Ord. No. 15-02, § 3, 7-9-02)

Secs. 2-332--2-340. Reserved.

DIVISION 5. TERMINATION OF SYSTEM

Sec. 2-341. Benefits accrued not to be affected.

This article establishing the system and the fund, and subsequent ordinances pertaining to the system and the fund, may be modified, terminated, or amended, in whole or in part; provided that if this article or any subsequent ordinance shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the member or beneficiary shall not be affected thereby, except to the extent that the assets of the fund may be determined to be inadequate.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-342. Administration after repeal.

If this article shall be repealed, or if contributions to the system are discontinued, the board shall continue to administer the system in accordance with the provisions of this article, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this article who are designated by any of the members. In the event of repeal, or if contributions to the system are discontinued, there shall be full vesting 100 percent (100%) of benefits accrued to the date of repeal and the assets of the system shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled to benefits in accordance with the provisions thereof.

(Ord. No. 9-93, § 1, 9-28-93)

Sec. 2-343. Priority of asset location.

(a) The following shall be the order of priority for purposes of allocating the assets of the system upon repeal of this article or if contributions to the system are discontinued:

(1) Members already retired under the early, normal or delayed retirement provisions of the system and those eligible for such retirement, active or deceased, but not actually retired, and their beneficiaries, in proportion to and to the extent of the then actuarially determined present value of the benefits payable less amounts received. If any funds remain, then

(2) Members retired under the disability provisions of the system, and their beneficiaries, in the same manner as in (1) above. If any funds remain, then

(3) Other members with accumulated contributions and other vested benefits, and their beneficiaries, in the same manner as in (1) above. If any funds remain, then

(4) All other members and their beneficiaries in the same manner as in (1) but based upon continuous service and average monthly earnings as of the date of termination of the system.

(b) The allocation of the funds provided for in this section may, as decided by the board, be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this section. The fund may be distributed in one sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the board may direct. The trust may be continued in existence for purposes of subsequent distributions.

(c) If, at any time during the first ten (10) years after the effective date, the system shall be terminated or the full current costs of the system shall not have been met, any thing in this article to the contrary notwithstanding, city contributions which may be used for the benefit of any one of the twenty-five (25) highest paid employees of the city on such effective date, whose anticipated annual retirement allowance provided by the city's contributions at the employee's normal retirement date would exceed the greater of either (a) twenty thousand dollars (\$20,000.00) or (b) an amount computed by multiplying the smaller of ten thousand dollars (\$10,000.00) or twenty percentum (20%) of such employee's average annual earnings during the employee's last five (5) years of service by the number of years of service since the effective date. In the event that it shall hereafter be determined by statute, court decision, ruling by the commissioner of internal revenue, or otherwise, that the provisions of this subsection are not then necessary to qualify the system under the applicable provisions of the Internal Revenue Code of 1986, as amended, this subsection shall be ineffective without the necessity of further amendment of this article.

Sec. 2-344. Revision of assets to general fund.

After all the vested and accrued benefits provided hereunder have been paid and after all other liabilities have been satisfied, including a return to the state of funds as required under chapter 175, Florida Statutes as may be amended from time to time, then and only then shall any remaining funds revert to the general fund of the city.

(Ord. No. 9-93, § 1, 9-28-93)

Secs. 2-345--2-349. Reserved.