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DIVISION 1. - FIREFIGHTERS TRUST FUND

[501]

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Sec. 16-63. - Created in compliance with state law.

- (a) It is deemed to be to the best interests of the city and the citizens, residents, inhabitants and taxpayers thereof that the city comply with the provisions of Chapter 175, Florida Statutes, to the end that the same may be effective in the city. There is hereby created and authorized in accord with such law the Lake Worth Firefighters' Pension Trust Fund.
- (b) All firefighters shall be members of the pension fund.

(Ord. No. 88-25, § 1, 10-17-88)

Sec. 16-64. - Definitions.

For the purpose of this article, the following terms shall have the meanings hereinafter set forth:

- (a) *Average final compensation* means the average annual compensation of the highest two (2) years of annual pay received by a member in the last five (5) years immediately preceding retirement, termination, or death. A member must, however, have been in his or her present pay grade for a minimum of six (6) months prior to retirement before the annual pay for that pay grade is used in calculating final compensation for accumulated leave. If a member has not been in his [or her] present pay grade for a minimum of six (6) months as stated above, final compensation for accumulated leave shall be calculated at the annual rate of pay said member was receiving before advancement to present pay grade. For persons who first become members of the retirement system on or after October 1, 1979, "annual pay" shall exclude payments for all accumulated leave, compensatory time and overtime. Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for "eligible employees" shall be not less than the amount which was allowed to be taken into account under the system as in effect on July 1, 1993. For this purpose, an eligible employee is an individual who is a member of the retirement system before September 30, 1996. The effective date of this section shall be October 1, 1995.
- (b) *Actuarial equivalence* or *actuarially equivalent* shall mean that any benefit payable under the terms of the pension fund in a form other than the normal retirement pension shall have the same actuarial present value on the date payment commences as the normal retirement pension. For purposes of establishing the actuarial present value of any form of payment, all future payments shall be discounted for interest and mortality by using six-per-cent interest and the 1951 Group Annuity Mortality Table for Males, projected to 1970, with ages set ahead five (5) years in the case of disability retirees.
- (c) *Board of trustees* or *board* means the board of trustees of the Lake Worth Firefighters Pension Trust Fund.
- (d) *City* means the City of Lake Worth.
- (e) *City commission* means the city commission of the City of Lake Worth.
- (f) (1) *Credited service* means the total number of years, and fractional parts of years, of service expressed as years and completed months, during which a person serves as a duly appointed and enrolled firefighter in any rank or capacity whatever in said city, omitting intervening years and fractional parts of years, when such firefighter may not be employed by the city, but including all service as a "paid volunteer" firefighter for the city; provided, however, such person may have without interrupting his or her years of credited service, up to one (1) year's leave of absence.

- (2) Notwithstanding the foregoing, no firefighter will receive credit for years or fractional parts of years of service for which he or she has withdrawn his or her contributions to the pension fund for those years or fractional parts of years of service unless the firefighter repays into the pension fund the contributions he or she has withdrawn, with interest.
- (3) Further, a firefighter may voluntarily leave his or her contributions in the pension fund after leaving the employ of the fire department, pending the possibility of his or her being rehired by the fire department without losing credit for the time he or she has participated actively as a firefighter. If he or she does not become reemployed as a firefighter his or her contributions shall be returned to him or her without interest, unless the member is otherwise vested in the plan.
- (4) It is provided further, that any service, voluntary or involuntary, in the armed forces of the United States during a period of national emergency, provided the firefighter is legally entitled to reemployment under the provisions of the universal training and service act or any similar law; and provided further that said firefighter shall apply for reemployment within the time prescribed by law and in the manner and under the conditions prescribed, shall not interrupt his or her years of credited service, and all years of such military service shall count as credited service for purposes of retirement. For any person who becomes a member of the retirement system on or after October 1, 1978, such military service shall not be credited if he or she is receiving or will receive in the future a retirement benefit from the federal government based in whole or in part on such military service.
- (5) Credited service may include any prior service as a temporary employee of the city subsequent to November 1, 1967, upon:
 - (i) The board's determination that such time spent as a temporary employee is creditable service, but in no case shall less than ten (10) days' service in a calendar month constitute a month of service, nor shall less than nine (9) months' service in a calendar year constitute a year of service, nor shall more than one (1) year of service be creditable for all service rendered in one (1) calendar year; and
 - (ii) For temporary service prior to October 3, 1976, a deposit into the pension fund of a sum equal to five (5) percent of the employee's earnings as a temporary employee during that period for which credit is sought, plus interest thereon at the rate of five (5) percent compounded annually from the date of temporary service until the date of deposit into the pension fund. For temporary service after October 3, 1976, a deposit into the pension fund of a sum equal to six (6) percent of the employee's earnings as a temporary employee, plus interest thereon at the rate of five (5) percent compounded annually from the period of temporary service until the date of deposit into the pension fund.
- (6) Notwithstanding any of the foregoing, a maximum of five (5) members who, as of October 15, 1993, lack eighteen (18) or fewer months of credited service in order to be eligible for normal retirement under [section 16-74](#) hereof, may apply to purchase up to eighteen (18) months of additional credited service under the following terms and conditions:
 - (i) The application must be received by the city clerk no later than 5:00 p.m. on October 15, 1993;

- (ii) The purchase price for such additional creditable service shall be based upon the employee contribution rate and the member's compensation as of August 31, 1993;
 - (iii) The purchase price shall be paid in full by the member to the retirement system by the date on which the member retires;
 - (iv) As a condition of purchasing the additional creditable service, the member shall make an irrevocable application to the retirement system for regular retirement on a date designated by the city manager which must be between October 15, 1993 and March 31, 1994 and shall retire on the date so designated unless the retirement date is extended by the mutual agreement of the member and the city manager; and
 - (v) If more than five (5) members timely apply for early retirement incentives, then only the applications of the five (5) applying members with the highest ranks within the fire department shall be granted; should members of the same rank or job classification apply, then eligibility shall be determined first by the highest base pay, and second by the greatest amount of creditable service (before the purchase of additional creditable service).
- (7) Notwithstanding any of the foregoing, credited service may include the years or fractional parts of years that a member serves or has served in full-time, active duty in the military service of the Armed Forces of the United States of America (Army, Navy, Air Force, Marines, Coast Guard, National Guard, Reserves, U. S. Public Health Service), voluntarily or involuntarily, prior to first or initial employment with the city, provided that:
 - (i) The member did not receive a dishonorable discharge from the armed forces; and
 - (ii) The member did not receive credited service for the time spent in the armed forces from any other governmental or military retirement or pension system; and
 - (iii) The member contributes to the fund the full actuarial cost of all service credits purchased; and
 - (iv) The purchase of credited service under this section by a member shall be paid in full prior to the member's retirement date, and in accordance with all terms, rules, procedures or regulations established by the board of trustees; and
 - (v) The maximum credit which may be purchased by a member for any military service in the Armed Forces of the United States of America, under this section shall be four (4) years.
 - (vi) All credited service purchased pursuant to this section shall count toward vesting.
- (8) Payment by rollover. The member contribution for military buy-back may be made by rollover from another qualified plan or individual retirement account.
- (9) Purchase of prior fire service credit. At any time prior to retirement or entry into the DROP, members shall be permitted to purchase all prior years of creditable service as a full-time firefighter employed by another city, county, state, federal or other public agency. Members purchasing service credit shall provide the board of trustees with proof of the prior service. No service credit may be purchased if the member is receiving or will receive any other retirement

benefit based on this service. The board shall establish a uniform rule for the implementation of this provision.

Prior service shall not be granted until the member has paid to the pension fund the full actuarial cost, as determined by the actuary for the plan.

The contribution by the member of the actuarially determined cost of the buyback may be made by rollover, by lump sum cash payment, or may be made by payroll deductions in installments for a period of time which shall not exceed the number of years being purchased. A member electing to make installment payments shall be charged interest based on the actuarially assumed rate of return for the plan. A member taking installment payments shall complete all required payments prior to payment of any benefit under this section. A member who terminates service prior to vesting in the plan shall be entitled to a refund, without interest, of all money paid to buyback prior fire service.

- (g) *Fire department* means the fire department of the city.
- (h) *Firefighter* means any person employed in the fire department 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. Firefighter shall not include any person hired by an individual contract of employment.
- (i) *Pension fund or retirement system* means the Lake Worth Firefighters Pension Trust Fund.
- (j) *Plan year or limitation year* means each twelve-month period ending on September 30th.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 89-9, § 1, 5-15-89; Ord. No. 93-11, § 1, 6-1-93; Ord. No. 93-23, § 1, 10-5-93; Ord. No. 96-2, § 1, 2-6-96; Ord. No. 96-20, § 1, 7-2-96; Ord. No. 99-7, § 1, 3-16-99; Ord. No. 99-30, § 1, 11-16-99; Ord. No. 2002-10, § 1, 4-16-02; Ord. No. 2003-31, § 1, 9-16-03)

Sec. 16-65. - Board of trustees created; organization; composition; compensation.

There is hereby created a board of trustees of the Lake Worth Firefighters Pension Trust Fund. The board shall consist of five (5) members; two (2) firefighters of the city, to be elected by a majority of the firefighters whose names appear on the rolls as members of the fire department; two (2) legal residents of the city, to be appointed by the city commission; and a fifth member, to be chosen by a majority of the previous four (4) members provided for herein. The name of the person chosen as the fifth member shall be submitted to the city commission, which shall, as a ministerial duty, appoint such person to the board as its fifth member. Each of the firefighters shall be a trustee, appointed for a period of two (2) years, unless he or she sooner leaves the employment of the city as a firefighter, or forfeits membership on the board, whereupon a successor shall be elected by a majority of the firefighters in the city. Each of the firefighters may succeed himself or herself in office. The resident members shall be trustees for terms of two (2) years unless they forfeit membership on the board, and they may succeed themselves in office. The resident members shall hold office at the pleasure of the city commission. If any resident member of the board shall fail to be present at three (3) consecutive regularly scheduled meetings or at twenty (20) percent of the regularly scheduled meetings of the board held within any twelve-month period, the city clerk shall declare the member's office vacant, and the city commission shall promptly fill such vacancy. The fifth member shall have the same rights as each of the other four (4) members appointed or elected as herein provided and may succeed himself or herself in office. The board of

trustees shall by a majority vote elect one (1) of its members as chairman and another as secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 2003-44, § 4, 11-18-03; Ord. No. 2008-14, § 4, 7-1-08)

Sec. 16-65.1. - Records, tables; fiscal year.

- (a) *Reports and records.* The secretary of the board shall keep, or cause to be kept, in convenient form, such data as shall be necessary for an actuarial evaluation of the assets and liabilities of the retirement system. The fiscal year for the keeping of records shall be from October first through September thirtieth.
- (b) *Mortality and other tables.* The board shall adopt such mortality and other tables of experience as are necessary in the operation of the retirement system on an actuarial basis.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 90-26, § 1, 7-16-90)

Editor's note—

Section 1 of Ord. No. 90-26, adopted July 16, 1990, deleted former § 16-65.1, renumbered §§ 16-65.2—16-65.4 as §§ 16-65.1—16-65.3 and amended the new § 16-65.1 to read as herein set out.

Sec. 16-65.2. - Board meetings.

The board shall meet at least quarterly each year. At any meeting of the board, three (3) trustees shall constitute a quorum. Any and all acts and decisions shall be by at least three (3) members of the board; however, no trustee shall take part in any action in connection with his or her own participation in the pension fund, and no unfair discrimination shall be shown to any individual firefighter participating in the pension fund.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 90-26, § 1, 7-16-90)

Note—See the editor's note following § 16-65.1

Sec. 16-65.3. - Power to bring and defend lawsuits.

The board shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature and description. The board shall be independent of the city to the extent required to accomplish the intent, requirements, and responsibilities provided for in this article and applicable law.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 90-26, § 1, 7-16-90)

Note—See the editor's note following § 16-65.1

Sec. 16-66. - Power and authority of board.

The board shall be the administrator of the retirement system and, as such, it shall be solely responsible for administering the pension fund. The board shall have the power and authority:

- (a) To invest and reinvest the assets of the pension in annuity and life insurance contracts to life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the pension fund shall be entitled

- under the provisions of division 1 and pay the initial and subsequent premiums thereon.
- (b) To invest and reinvest the assets of the pension fund in:
- (1) Time or savings accounts of a national bank, a state bank insured by the Federal Deposit Insurance Corporation, or a savings, building and loan association insured by the Federal Savings and Loan Insurance Corporation.
 - (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:
 - (i) The corporation is listed on any one (1) or more of the recognized national stock exchanges and, in the case of bonds only, holds a rating in one (1) of the three (3) highest classifications by a major rating service, provided that investment grade bonds shall be permitted as long as no more than ten (10) percent of the fixed income portfolio shall hold an investment rating of Baa; and
 - (ii) The board of trustees shall not invest more than five (5) percent of its assets in the common stock or capital stock of any one (1) issuing company, nor shall the aggregate investment in any one (1) issuing company exceed five (5) percent of the outstanding capital stock of that company, nor shall the aggregate of its investments in equities at cost exceed seventy (70) percent of the pension fund's assets.
- (c) To issue drafts upon the pension fund pursuant to this article 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 are drawn. The city finance director or other depository of the city shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money shall be otherwise drawn from the pension fund.
- (d) To finally decide all claims to relief under this article and under the board's rules and regulations.
- (e) To convert into cash any securities of the pension fund.
- (f) To keep a complete record of all receipts and disbursements and of the board's acts and proceedings.
- (g) To recommend an increase or decrease in the benefits payable hereunder, through the adoption of an amendment to this article, but provided such action is based on an actuarial review by an enrolled actuary who is a member of the Society of Actuaries.
- (h) To retain, at least once every three (3) years, an independent consultant professionally qualified to evaluate the performance of professional money managers. The independent consultant shall make recommendations to the board of trustees regarding the selection of money managers for the next investment term. These recommendations shall be considered by the board of trustees at its next regularly scheduled meeting. The date, time, place and subject of this meeting shall be advertised in a newspaper of general circulation in the municipality at least ten (10) days prior to the date of the hearing.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 92-8, § 1, 4-6-92; Ord. No. 94-25, § 1, 11-15-94; Ord. No. 2006-14, § 1, 5-2-06)

Sec. 16-67. - Tax on property insurance premiums.

- (a) There is hereby levied and imposed an excise tax upon every insurance company, corporation or other insurer now engaged in or carrying on, or who shall hereinafter engage in or carry on, the business of property insurance as shown by the records of the Florida Department of Insurance. Such excise tax and license shall be in an amount equal to one and eighty-five hundredths (1.85) percent of the gross receipts of premiums from holders of property insurance policies, which policies shall be upon property within the corporate limits of the city; such excise tax shall be in addition to any and all license or excise taxes now levied or required by the city.
- (b) The proceeds of all monies received under this excise tax shall be received annually from the State of Florida by the city; shall be deposited no more than five (5) day after receipt; and shall be used for the exclusive benefit of members of the fire department to provide pension benefits. The moneys so received from the State of Florida pursuant to Chapter 175, Florida Statutes, shall, upon its receipt each fiscal year, be made available by the finance director for the use of the members of the fire department to provide a funding of a pension plan to be established and maintained by the members.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 91-32, § 1, 12-16-91)

Sec. 16-68. - Salary deductions for fund.

- (a) Eleven and one quarter (11.25) percent of the salary of each of the duly appointed and enrolled members of the fire department shall be picked up by the city as provided for in section 414(h)(2) of the Internal Revenue Code and the same shall be placed immediately after each pay period in the pension fund to be administered under the terms of this article. No contribution shall be required from retirees. For persons who first become members of the retirement system on or after October 1, 1979, "salary" shall exclude payments for all accumulated leave, compensatory time and overtime.
- (b) Effective October 1, 1991, the city shall pick up the member contribution required by subsection (a) of 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 in the salaries account, which funds would have otherwise been designated as member contributions and paid to the pension fund. Members contributions picked up by the city pursuant to this subsection shall be treated for purposes of making a refund of members 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. 88-25, § 1, 10-17-88; Ord. No. 89-9, § 1, 5-15-89; Ord. No. 91-17, § 1, 8-19-91; Ord. No. 98-8, § 1, 3-17-98; Ord. No. 2002-9, § 1, 4-16-02; Ord. No. 2006-23, § 2, 8-15-06)

Sec. 16-69. - City contributions to fund.

The city shall contribute to the pension fund annually an amount which, together with the contributions from the firefighters and other income sources as authorized by the law, will be sufficient to meet the normal cost of the pension fund and to fund the actuarial deficiency over a period of not more than forty (40) years. City contributions shall be deposited to the pension fund at least quarterly.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 91-32, § 1, 12-16-91)

Sec. 16-70. - Gifts, bequests, devises and donations to fund.

All gifts, bequests, devises and donations for and to the pension fund shall be placed in the pension fund to be administered under the terms of this article.

(Ord. No. 88-25, § 1, 10-17-88)

Sec. 16-71. - Accruals to fund by way of interest, etc.

All accretions to the pension fund by way of interest or dividends on bank deposits, or otherwise shall be placed in the pension fund to be administered under the terms of this article.

(Ord. No. 88-25, § 1, 10-17-88)

Sec. 16-72. - Income now or hereafter authorized by law for augmentation of fund.

All other sources of income now or hereafter authorized by law for the augmentation of the pension fund shall be placed in the pension fund to be administered under the terms of this article.

(Ord. No. 88-25, § 1, 10-17-88)

Sec. 16-73. - Retirement pension formula.

- (a) *Normal retirement.* For all members employed on January 1, 2006, the benefit accrual rate (multiplier) shall increase to three and one-half (3.5) percent of average final compensation for all years of service, including prior fire service and military service purchased by the member. For all members retiring or entering the DROP on or after April 1, 2006, the benefit accrual rate (multiplier) shall increase to three and three-quarters (3.75) percent of average final compensation for all years of service, including prior fire service and military service purchased by the member. Upon normal retirement a member shall receive an annual normal retirement pension equal to two and sixty-five one hundredths (2.65) percent of his or her average final compensation for each year of credited service, for all years and months of credited service up through and including September 30, 1997. For all years and months of credited service earned on or after October 1, 1997, a member shall receive an annual normal retirement pension equal to three (3) percent of his or her average final compensation. Effective October 1, 2002, the pension multiplier shall be increased to three (3) percent per year for all years of service prior to October 1, 1997, provided that the member was employed as a firefighter by the city on October 1, 2002 and was not a participant in the DROP plan on October 1, 2002.

The higher multiplier shall be funded as follows:

- (1) Member contributions shall increase from six and one-half (6.5) percent of pension payroll to eleven and one-fourth (11.25) percent of pension payroll.
- (2) An amount equal to three hundred forty-three thousand eight hundred eighty-two dollars (\$343,882.00) of chapter 175 premium tax money will be paid annually into the division I plan to fund the multiplier increase using the annual chapter 175 premium tax distribution, including the regular and supplemental distributions if any; for 2006, the first three hundred forty-three thousand eight hundred eighty-two dollars (\$343,882.00) of the chapter 175 premium tax receipts will be used to fund the

- multiplier increase. Premium tax receipts above three hundred forty-three thousand eight hundred eighty-two dollars (\$343,882.00) each year will be allocated to the division II share accounts according to the methodology in effect prior to April 1, 2006.
- (3) If the division I plan does not receive state premium tax receipts of at least three hundred forty-three thousand eight hundred eighty-two dollars (\$343,882.00) in any given year, then the available division II forfeitures from terminations by non-vested members will be paid to the division I plan to fund the benefit increase. Any forfeitures not paid to the division I plan will be reallocated to the division II share accounts according to the methodology in effect prior to April 1, 2006. If the division I plan does not receive premium tax receipts of at least three hundred forty-three thousand eight hundred eighty-two dollars (\$343,882.00) along with sufficient forfeitures, then earnings on the division II plan assets of up to three hundred forty-three thousand eight hundred eighty-two dollars (\$343,882.00) will be paid to the division I plan prior to allocation to the individual division II share accounts. If the division I plan does not receive premium tax monies of at least three hundred forty-three thousand eight hundred eighty-two dollars (\$343,882.00) with sufficient forfeitures or earnings, then members will pay a portion of the division II share accounts to the division I plan pro-rata based on the account balances at the beginning of the fiscal year. If the division II plan receives no money and has no remaining assets, then members must pay for the multiplier increase through payroll contributions. The cost for the higher multiplier is fifteen and thirty-nine one hundredths (15.39) percent of covered pension payroll, which means that the maximum member contribution is limited to twenty-one and eighty-nine one hundredths (21.89) percent of pension payroll.
- (4) In order to guarantee cost neutrality to the city, the actuary for the division I plan shall evaluate the impact of the higher multiplier set forth in [section 16-73\(a\)](#) on an annual basis. If in any year the actuary determines that the sum of three hundred forty-three thousand eight hundred eighty-two dollars (\$343,882.00) is inadequate to fund the higher multiplier, the cost shall be paid from the following funding sources in the order set forth below:
- a. Forfeitures from division II,
 - b. Investment earnings from division II,
 - c. Payment by members of division II share accounts balances to the division I plan pro-rata based on the account balances at the beginning of the fiscal year, and
 - d. Increased member contributions.
- (b) *Early retirement.* Upon early retirement a member shall receive the amount computed for normal retirement as described in subsection (a), taking into account his or her credited service to his or her date of actual retirement and his or her average final compensation as of such date, such amount of retirement income to be actuarially reduced to take into account the firefighters' younger age and the earlier commencement of retirement income benefits. In no event shall the early retirement reduction exceed three (3) percent for each year by which the member's age at retirement preceded the member's normal retirement age.
- (c) *Retirees.* Commencing October 1, 1994, those members whose benefits are in a pay status shall receive a supplement to their monthly retirement allowance equal to two dollars and fifty cents (\$2.50) for each full year from the date of retirement to October 1, 1994; provided, however, in no event will the number of such years exceed the number of years of credited service at the member's date of retirement. On each subsequent October 1, the supplement shall be increased by two dollars and fifty cents (\$2.50); provided, however, in no event will

the supplement exceed two dollars and fifty cents (\$2.50) for each year of credited service at retirement.

- (d) Notwithstanding the provisions of subsection (a) above, those members who, as of October 15, 1993, are eligible for normal retirement under section 16-74 hereof, and those members who purchase additional credited service pursuant to section 16-64(f)(6) shall, upon retirement, receive an annual normal retirement pension equal to three (3) percent of average final compensation for each year of credited service, rather than the two and one-half (2½) percent provided by subsection (a), under the following terms and conditions:
- (1) The application must be received by the city clerk no later than 5:00 p.m. on October 15, 1993;
 - (2) As a condition of receiving a service pension at the three (3) percent rate, the member shall make an irrevocable application to the retirement system for regular retirement on a date designated by the city manager which must be between October 15, 1993 and March 31, 1994 and shall retire on the date so designated unless the retirement date is extended by the mutual agreement of the member and the city manager; and
 - (3) If more than five (5) members timely apply for early retirement incentives, then only the applications of the five (5) applying members with the highest ranks within the fire department shall be granted; should members of the same rank or job classification apply, then eligibility shall be determined first by the highest base pay, and second by the greatest amount of creditable service (before the purchase of additional creditable service).
- (e) *Early retirement program.* Notwithstanding the provisions of this section a participant who as of January 1, 2003, is within forty-eight (48) months of normal retirement and has ten (10) vesting credits shall be permitted to retire on or after January 1, 2003, but no later than March 31, 2003, on a date approved by the city manager, and upon retirement shall receive a service pension equal to the following percentage of the participant's final average monthly compensation as defined herein for each year of vesting credit as defined in section 16-64 as of the retirement date approved by the city manager.

Ten (10) years of credited service but the total of credit service and age is less than nine hundred (900) months *%

Ten (10) but less than twenty (20) years of credited service *%

A participant electing to participate in the early retirement program shall pay the full actuarial cost of the employee's contributions for such increased benefit rate no later than January 2, 2003. The purchase price will be calculated based on the employee's retirement date designated by the city manager. Such payment shall be by lump sum.

* Actual percentage to be determined by the actuary for each employee

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 88-45, § 1, 1-17-89; Ord. No. 90-2, § 2, 2-19-90; Ord. No. 93-23, § 1, 10-5-93; Ord. No. 94-24, § 2, 11-15-94; Ord. No. 98-8, § 1, 3-17-98; Ord. No. 2002-45, § 7, 12-17-02; Ord. No. 2003-29, § 1, 8-19-03; Ord. No. 2006-23, § 3, 8-15-06)

Sec. 16-74. - Payment of retirement pensions.

- (a) *Application.* In order for a firefighter to receive benefits for normal retirement, early retirement or vested retirement, he or she shall submit an application to the board.
- (b) *Normal retirement date.* A member's normal retirement date shall be the earlier of the following:
 - (1)

- The date that the member's age, computed in terms of full months, and credited service, also computed in terms of full months, equal or exceed nine hundred (900) months; or
- (2) The date that the member attains age fifty-five (55) with at least ten (10) years of credited service; or
 - (3) The date that the member has at least twenty (20) years of credited service.
- Each member who satisfies the requirements for regular retirement shall be one hundred (100) percent vested in his or her accrued benefit.
- (c) *Early retirement date.* Any member may retire from the service of the fire department, with the consent of the city, as of the first day of any calendar month which is prior to the firefighter's normal retirement date but subsequent to the date as of which he or she has both attained the age of fifty (50) years and has been a member of this pension fund for ten (10) continuous years.
 - (d) *Vested retirement.* If a firefighter leaves the service of the city with ten (10) years of credited service, then, upon attaining age fifty (50) years, the firefighter may retire at the actuarial equivalent of the amount of such retirement income otherwise payable.
 - (e) *Payment of benefits.* The monthly retirement income payable in the event of normal retirement, early retirement or vested retirement will be payable on the first day of each month. The first payment will be made on the firefighter's normal retirement date or early retirement date, as applicable, or on the first day of the month coincident with or next following his or her actual retirement, if later.
 - (f) *Normal form of retirement income.* The standard form of payment for a normal retirement, early retirement or vested retirement pension shall be a ten-year certain benefit. This benefit shall pay monthly benefits for the member's lifetime. The last payment will be the payment due next preceding the firefighter's death; except that, in the event a firefighter dies after his or her retirement but before receiving retirement benefits for a period of ten (10) years, the same monthly benefit will be paid to the beneficiary (or beneficiaries) as designated by the firefighter for the balance of such ten-year period. If a firefighter continues in the service of the city beyond his or her normal retirement date and dies prior to his or her date of actual retirement, without an option made pursuant to [section 16-75\(a\)\(1\)](#) being in effect, monthly retirement income payments will be made for a period of ten (10) years to a beneficiary (or beneficiaries) designated by the firefighter as if the firefighter has retired on the date on which his or her death occurred.
 - (g) *Required payment of pension benefits.* Pension benefits shall begin no later than April 1 of the calendar year following the calendar year (1) in which the firefighter retires; or (2) in which the firefighter attains age seventy and one-half (70½); even if the firefighter has not filed a claim for pension benefits, notwithstanding the requirements of subsection (a) of this section. In addition, payment of benefits shall be made in accordance with the applicable provisions of Section 401(a)(9) of the Internal Revenue Code, which is incorporated herein by reference. The applicable provisions of Section 401(a)(9) of the Internal Revenue Code shall be effective with the plan year beginning in 1983.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 89-9, § 3, 5-15-89; Ord. No. 93-11, § 1, 6-1-93; Ord. No. 2002-9, § 2, 4-16-02)

Sec. 16-75. - Optional forms of retirement income.

- (a) *Enumerated.*
 - (1) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in [section 16-74](#), a firefighter, upon written request to the

board of trustees and submission of evidence of good health (except that such evidence will not be required if such request is made at least three (3) years prior to the date of commencement of retirement income or if such request is made within six (6) months following the effective date of this section, if later) and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one (1) of the following options:

Option 1: Lifetime pension. A retirement income of a larger monthly amount, payable to the firefighter for his or her lifetime only.

Options 2, 3, and 4: Joint and survivor pension. A retirement income of a modified monthly amount, payable to the firefighter during the joint lifetime of the firefighter and a joint pensioner designated by the firefighter, and following the death of either of them, one hundred (100) percent, seventy-five (75) percent, sixty-six and two-thirds (662/3) percent or fifty (50) percent of such monthly amounts payable to the survivor for the lifetime of the survivor.

Option 5: Level income pension. A retirement income of a larger monthly amount payable to age sixty-five (65) and a decreased monthly retirement benefit thereafter in an amount determined by actuarial formula or table in order to provide, to as great an extent as possible, a more level retirement allowance when such decreased retirement benefit is added to his or her primary benefits under the federal social security act.

- (2) The firefighter, upon electing any option of this section, will designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable from the pension fund in the event of his or her death, and will have the power to change such designation from time to time, but any such change shall be deemed a new election and will be subject to approval by the board of trustees. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a firefighter has elected an option with a joint pensioner or beneficiary and his or her retirement income benefits have commenced, he or she may thereafter change his or her designated joint pensioner or beneficiary, but only if the board of trustees consents to such change and if the joint pensioner last previously designated by him or her is alive when he or she files with the board of trustees the request for such change.
 - (3) The consent of a firefighter's joint pensioner or beneficiary to any such change shall not be required.
 - (4) The board of trustees may request such evidence of the good health of the joint pensioner that is being removed as it may require and the amount of retirement income payable to the firefighter upon the designation of a new joint pensioner shall be actuarially redetermined taking into account the age and sex of the former joint pensioner, the new joint pensioner, and the firefighter. Each such designation will be made in writing on a form prepared by the board of trustees and on completion will be filed with the board of trustees. In the event that no designated beneficiary survives the firefighter, such benefits as are payable in the event of the death of the firefighter subsequent to his or her retirement shall be paid as provided in [section 16-83](#).
- (b) *Limitations on payments.* Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:
- (1)

If a firefighter dies prior to his or her normal retirement date or before age fifty (50) with ten (10) years of credited service, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under [section 16-85](#), [16-86](#) or [16-87](#), as applicable.

- (2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the firefighter's retirement from the pension fund, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the firefighter upon his or her retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the firefighter prior to his or her retirement and within ninety (90) days after the death of the beneficiary.
 - (3) If a firefighter continues in the employ of the city beyond his or her normal retirement date and dies prior to his or her actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the firefighter in the amount or amounts computed as if the firefighter had retired under the option on the date on which his or her death occurred.
- (c) No firefighter may make any change in his or her retirement option after the date of cashing or depositing his or her first retirement check.
 - (d) If the member selects a joint and survivor option, or this Division 1 specifies the member's spouse is to receive the benefits which continue to be payable upon the death of the member, then in both of these cases after the benefits have commenced a retired member may change his or her designation of joint annuitant or beneficiary only twice. If said retired member desires to change his or her joint annuitant or beneficiary, he or she shall file with the board of trustees a notarized notice of such change either by registered letter or on a form as provided by the board of trustees. Upon receipt of a complete change of joint annuitant form or such other notice, the board of trustees shall adjust the member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit.
 - (e) Nothing herein shall preclude the pension fund from actuarially adjusting benefits or offering options based upon sex, age, early retirement or disability.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 2002-9, § 3, 4-16-02)

Sec. 16-76. - Involuntary retirement.

Any member who has attained age sixty (60) years may be retired by the board. The board may continue such member in service for periods not to extend beyond the member's attainment of age sixty-five (65) years.

(Ord. No. 88-25, § 1, 10-17-88)

Sec. 16-77. - Disability pension formulae.

- (a) *Disability in line of duty.* A member who becomes totally disabled in the line of duty prior to his or her normal retirement date shall be eligible to receive a disability retirement pension. The amount of the annual disability retirement pension shall be equal to the greater of:
 - (1) Fifty per cent (50%) of his or her average final compensation; or
 - (2) The accrued retirement benefit provided in [section 16-73](#)

Upon attaining eligible retirement age, the disability beneficiary shall receive a pension as provided in [section 16-73](#). In computing the amount of such pension, credited service shall be given such disability beneficiary for the period used in receiving a disability pension.

- (b) *Disability not in line of duty.* Upon retirement for disability not in the line of duty, a disability beneficiary who has not attained eligible retirement age shall receive a disability retirement pension. The amount of the annual disability retirement pension shall be equal to the accrued normal retirement benefit provided in [section 16-73](#). Upon attaining eligible retirement age, the disability beneficiary shall receive a pension as provided in [section 16-73](#); however, no credited service shall be given the beneficiary for the period used in receiving a disability pension. The provisions for disability other than line of duty disability shall not apply to a member who has reached early or normal retirement age.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 90-11, § 1, 3-19-90)

Sec. 16-78. - Payment of disability retirement pension.

- (a) *Payment of benefits.* The monthly retirement income to which a firefighter is entitled in the event of his or her disability retirement shall be payable on the first day of the first month after the board of trustees determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determines such entitlement, and any portion due for a partial month shall be paid together with the first payment.
- (b) *Normal form of disability retirement income.* The standard form of payment for a disability retirement pension shall be a ten (10) year certain benefit. This benefit shall pay monthly benefits for the member's lifetime. The last payment will be:
- (1) If the firefighter recovers from the disability prior to his or her normal retirement date, the payment due next preceding the date of such recovery; or
 - (2) If the firefighter dies without recovering from his or her disability, the payment due next preceding his or her death or the one hundred twentieth monthly payment, whichever is later. Any monthly retirement income payments due after the death of a disabled firefighter shall be paid to the firefighter's designated beneficiary (or beneficiaries).
- (c) *Optional forms of disability retirement income.* In lieu of the amount and form of retirement income payable in the event of disability retirement as specified in subsection (b) herein, a firefighter, upon written request to the board of trustees prior to receipt of disability benefits, may elect to receive a retirement income of equivalent actuarial value of a reduced monthly amount as per Options 2, 3 and 4 (joint and one hundred per cent (100%), seventy-five (75) percent, sixty-six and two-thirds per cent (662/3%), fifty per cent (50%) survivor annuity) as set forth in [section 16-75\(a\)](#) herein.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 2002-9, § 4, 4-16-02)

Sec. 16-79. - Disability pension procedures, termination.

- (a) *Application.* In order for a firefighter to receive disability benefits, he or she shall submit an application to the board of trustees.
- (b) *Physical examination.* The board may arrange for a physical examination of such applicant by one or more duly qualified physicians or surgeons, and the written and sworn report of such examining physicians and surgeons shall be given full consideration by the board in arriving at its decision concerning the disabled status of such applicant.
- (c)

Total disability. In order to be eligible for disability benefits, a firefighter must be totally disabled. Total disability means a firefighter who, in the opinion of the board of trustees, is wholly prevented from rendering useful and efficient service as a firefighter and is likely to remain so disabled continuously and permanently.

- (d) *Exclusions.* No disability benefits shall be payable if the disability is a result of:
- (1) Excessive and habitual use by the firefighter of drugs, intoxicants, or narcotics;
 - (2) Injury and disease sustained by the firefighter while willfully and illegally participating in fights, riots, or civil insurrections or while committing a crime;
 - (3) Injury or disease sustained by the firefighter while serving in any armed forces; or
 - (4) Injury or disease sustained by the firefighter after his or her employment has terminated.
- (e) *Board determination.* In the event the board shall find the applicant totally disabled, the board shall then determine whether or not the disability resulted from the actual performance of duty. The decision of the board concerning disabled status shall be final.
- (f) *Periodic reexamination.* At least once each year following a firefighter's retirement on account of disability, the board may require any disability retiree to undergo a medical examination to be made by or under the direction of a physician designated by the board. If the disability retiree refuses to submit to such medical examination, disability benefits may be suspended by the board until his or her withdrawal of such refusal.
- (g) *Termination.* A disability pension shall terminate upon a finding by the board that the retiree is no longer totally disabled, is able to render useful and efficient service as a firefighter and is able to resume his or her former duties. The effective date of termination shall be thirty (30) days after the city offers reemployment to a position of equal or greater pay for which the retiree is not disabled, or on the day of acceptance or rejection thereof, whichever shall first occur.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 90-26, § 1, 7-16-90; Ord. No. 2000-10, § 1, 5-16-00; Ord. No. 2002-10, § 2, 4-16-02)

Sec. 16-80. - Disability affidavit.

No member otherwise eligible to receive disability benefits shall be paid such benefits unless and until such member files a disability affidavit with the secretary on a form furnished by the board. By such disability affidavit the prospective retiree shall affirm that he or she is acquainted and familiar with the terms and conditions of his or her disability retirement.

(Ord. No. 88-25, § 1, 10-17-88)

Sec. 16-81. - Disability beneficiary restored to service.

- (a) A disability beneficiary who has been or shall be restored to active service with the city, as provided in this article, shall from the date of such restoration again become a member of the retirement system and shall contribute to the retirement system thereafter in the same manner as he or she paid prior to his or her disability retirement. Any prior service and membership service credited at the time of disability retirement shall be restored to full force and effect.
- (b) In the event a duty disability beneficiary shall be restored to service, credited service shall be allowed for the time during which he or she was receiving benefits. A nonduty disability beneficiary shall not be so credited upon a restoration to service.

(Ord. No. 88-25, § 1, 10-17-88)

Sec. 16-82. - Eligibility for disability benefits.

- (a) Disability incurred through performance of duty. Any firefighter who is totally disabled in the line of duty may be eligible for disability benefits regardless of the member's years of credited service.
- (b) Disability not incurred through performance of duty. Any firefighter who is totally disabled outside the line of duty may be eligible for disability benefits if the member has completed ten (10) years of credited service.
- (c) Cases of disability resulting from a heart, lung or other respiratory ailment shall be deemed to be a disability incurred through the performance of duty.
- (d) This section shall not include any officer or person employed for temporary duty only.

(Ord. No. 88-25, § 1, 10-17-88)

Sec. 16-83. - Beneficiaries.

- (a) Each firefighter may, on a form provided for that purpose, signed and filed with the board of trustees, designate a beneficiary (or beneficiaries), named jointly or sequentially, to receive the benefit, if any, which may be payable in the event of his or her death, and each designation may be revoked by such firefighter by signing and filing with the board of trustees a new designation of beneficiary form.
- (b) If a deceased firefighter failed to name a beneficiary in the manner prescribed in subsection (a), or if the beneficiary (or beneficiaries) named by a deceased firefighter predeceases the firefighter, the death benefit, if any, which may be payable from this pension fund with respect to such deceased firefighter may be paid, in the discretion of the board of trustees, either to:
 - (1) The spouse or dependent children of the firefighter; or
 - (2) The dependent living parents of the firefighter; or
 - (3) The estate of the firefighter.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 2002-9, § 5, 4-16-02)

Sec. 16-84. - Pensions offset by workers' compensation and other benefits.

- (a) *Workers' compensation offset.* Any amounts which may be paid or payable under the provisions of any workers' compensation law, excluding social security, to a member or to the dependent(s) of a member on account of any disability or death shall be offset against and shall thereby reduce the amount of benefits payable from the pension fund on account of the same disability or death to the extent that the total of the benefits payable from the pension fund and from workers' compensation exceeds the employee's average monthly wage. The provisions of this section shall operate to prevent an employee from receiving more than the employee's average monthly wage.
- (b) *Other pension offset.* Any amounts which may be paid or payable under the provisions of any pension or similar law, excluding social security but including pensions allowed and payable by the federal or state government on account of service performed in the armed forces of the United States or the state, to a member or to the dependent(s) of a member on account of any disability or death shall be offset against and payable in lieu of any benefits payable from the pension fund on account of the same disability or death. In case the present value of the total benefits payable under such pension or similar law or such federal or state pension is less than the pension reserve covering the pensions otherwise payable from the pension fund, then the present value of such benefits shall be deducted from the

pension reserve, and such pensions as may be provided by the pension reserve so reduced shall be payable under the provisions of the retirement system, provided that benefits shall not be reduced below two per cent (2%) of the firefighter's average final compensation per year of credited service and shall further not be reduced:

- (1) In the case of a duty disability retirement pension, below forty-two per cent (42%) of the firefighter's average monthly salary at the time of disability; or
 - (2) In the case of a nonduty disability retirement pension, below twenty-five per cent (25%) of the firefighter's average monthly salary at the time of disability.
- (c) *Annual review.* This offset of workers' compensation or other pension benefits shall be determined by the board at its March meeting for payments made during the preceding calendar year or portions thereof during disability. Whenever possible, the board shall reduce current and future pension disability payments in contemplation of expected workers' compensation benefits. A lump sum award shall be offset over a period of time to be determined by the board so as not to cause undue hardship on the retiree.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 90-11, § 2, 3-19-90)

Sec. 16-85. - Death benefits, nonduty death, ten years of service.

Should any member who has ten (10) or more years of credited service die not in the line of duty prior to retirement, the following benefits shall be payable in lieu of a refund of contributions provided in [section 16-87](#):

- (a) *Married members.* Such member's surviving spouse shall be entitled to a monthly survivor pension, payable for life, in an amount which is actuarially equivalent to that which should have been paid had the deceased member retired on the date of death. Such benefit shall become immediately payable as provided in [section 16-75](#), Option 4, joint and one hundred per cent (100%) survivor annuity.
- (b) *Nonmarried members.* Such member's designated beneficiary (or beneficiaries) shall be entitled to monthly retirement income payments for a period of ten (10) years, in an amount which is actuarially equivalent to that which should have been paid had the deceased member retired on the date of death. Such benefit shall become immediately payable.

(Ord. No. 88-25, § 1, 10-17-88)

Sec. 16-86. - Death benefits; duty death.

If a member is killed in the performance of his or her actual duty to the city, or dies, prior to retirement, as the result of illness contracted or injuries received while in the performance of his or her actual duty to the city, and such death, illness or injuries resulting in death, be found by the medical director to have resulted from the actual performance of his or her duty in the service of the city, and the report of the medical director is concurred in by the board, there shall be paid:

- (a) *Accumulated contributions.* The accumulated contributions standing to the member's credit, at the time of his or her death, shall be paid in accordance with the provisions of [section 16-87](#)
- (b) *Spouse's benefits.* A pension of one-third (1/3) of the deceased member's final compensation shall be paid to his or her spouse, if he or she leaves a spouse, to continue during the spouse's lifetime, until remarried; provided, that such spouse shall be the person to whom he or she was married at the time of his or her retirement from service if his or her retirement preceded his or her death. The benefits payable under

this subsection shall be subject to the provisions of subsection (f) of this section and [section 16-84](#)

- (c) *Children's benefit while spouse is living.* If, in addition to a widow or widower, a child or children under age eighteen (18) years also survive the deceased member, each child under age eighteen (18) years shall receive a pension equal to a proportionate share of one-fourth ($\frac{1}{4}$) of the deceased member's final compensation. If any child dies, marries or attains the age of eighteen (18) years, there shall be a redistribution by the board to the surviving children under age eighteen (18) years, but in no event shall any child receive a pension greater than one-fourth ($\frac{1}{4}$) of the deceased member's final compensation. The benefits payable under this subsection shall be subject to the provisions of subsection (f) of this section and [section 16-84](#)
- (d) *Children's benefits if spouse dies or remarries.* If there be no spouse, or if the spouse dies or remarries before the youngest surviving child of such deceased member shall have attained age eighteen (18) years, then his or her child or children under age eighteen (18) years, if he or she leaves children, shall each receive in lieu of all other benefits, except as provided for in subsection (a) of this section, a pension equal to one-fourth ($\frac{1}{4}$) the deceased member's final compensation, but in no event shall the total so paid in any one (1) year exceed one-half ($\frac{1}{2}$) the deceased member's final compensation. If there be more than two (2) children surviving under eighteen (18) years of age, each child shall receive a pension equal to a proportionate share of one-half ($\frac{1}{2}$) the deceased member's final compensation. If any child dies, marries or attains eighteen (18) years of age, there shall be a redistribution by the board to the surviving children under eighteen (18) years of age, but in no event shall any child receive more than one-fourth ($\frac{1}{4}$) the deceased member's final compensation in any one (1) year. Any benefits payable under this subsection shall be subject to the provisions of subsection (f) of this section and [section 16-84](#)
- (e) *Dependent parent benefits.* If there is neither a spouse nor children under eighteen (18) years of age eligible to receive benefits under the provisions of this section, there shall be paid to the dependent father or dependent mother or both, as the board after investigation shall determine to have been actually dependent upon such deceased member through absence of earning power due to physical disability, a pension of one-sixth ($\frac{1}{6}$) the deceased member's final compensation to each such dependent parent. Any benefits payable under this subsection shall be subject to the provisions of [section 16-84](#)
- (f) *Limitations.* In all cases the board shall determine the eligibility of claimants for benefits payable under the provisions of this section and the decision of the board shall be final. The benefits payable under this section shall be subject to the provisions of [section 16-84](#) and shall be in lieu of any benefit otherwise payable under [section 16-87](#)

(Ord. No. 88-25, § 1, 10-17-88)

Sec. 16-87. - Refund of contributions.

- (a) *Termination of employment or death.* If a firefighter leaves the service of the city or dies before accumulating aggregate time or ten (10) years toward retirement and before being eligible to retire under the provisions of division 1, he or she shall be entitled to a refund of all of his or her contributions made to the pension fund. If the member is not alive, the refund of the contributions shall be paid to the designated beneficiary (or beneficiaries). A member of the pension fund who elects to receive payment of the member's share account balance

from the plan created in division 2 of this Code waives the right to receive a refund of contributions from this plan. Notwithstanding the foregoing, a member of the pension fund who elects to receive payment of the member's share account balance from the division 2 plan shall remain eligible to receive payment of normal, early, or vested retirement benefits from this plan under the provisions of [section 16-74](#)

- (b) *Retirement.* In the event any retirement benefit being paid under the provisions of Division 1, shall cease before the retiree has received an amount equal to the amount of the accumulated contributions standing to the member's credit, an amount equal to the difference thereof shall be paid to the designated beneficiary (or beneficiaries).

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 2003-13, § 1, 3-3-03)

Sec. 16-88. - Forfeiture of benefits.

A member shall forfeit all rights and benefits under Division 1 if the member is convicted of certain specified offenses committed prior to retirement, or if the member is terminated from employment by reason of his or her admitted commission, aid, or abetment of certain specified offenses, in accordance with section 112.3173, Florida Statutes, except that such member shall be entitled to the return of his or her accumulated contributions.

(Ord. No. 88-25, § 1, 10-17-88)

Sec. 16-89. - Exemption from execution; eligible rollover distributions.

- (a) *Exemption from execution.* The pensions, annuities, and any other benefits accrued or accruing to any person under the provisions of this Division 1 and the accumulated contributions and the cash securities in the funds created under Division 1 are hereby exempted from any state, county, or municipal tax and shall not be subject to execution or attachment or to any legal process whatsoever, and shall be unassignable.

- (b) *Direct transfers of eligible rollover distributions.*

- (1) *General.* This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

- (2) *Definitions.*

- a. *Eligible rollover distribution.* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of a distributee, except that an eligible rollover distribution does not include: any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includable in gross income.
- b. *Eligible retirement plan.* An eligible retirement plan is an individual retirement account described in section 408(a) of the Internal Revenue Code, an individual retirement annuity described in section 408(b) of the Internal

Revenue Code, an annuity plan described in section 403(a) of the Internal Revenue Code, or a qualified trust described in section 401(a) of the Internal Revenue Code, that accepts a distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

- c. *Distributee.* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse.
- d. *Direct rollover.* A direct rollover is a payment by the plan to the eligible retirement plan specified by a distributee.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 93-8, § 2, 5-4-93)

Sec. 16-90. - Records of pensions and personnel.

The secretary of the board of trustees shall keep a record of all persons enjoying a pension under the provisions of this article, in which shall be noted the time when the pension is allowed and when the same shall cease to be paid; also in this book the secretary shall keep a record of all firefighters employed by the city and a record shall be kept in such manner as to show the name, address and time of employment, birthday, beneficiary and amount of accumulated contributions and when such firefighters ceased to be employed by the city.

(Ord. No. 88-25, § 1, 10-17-88)

Sec. 16-91. - Disposition of moneys; duties of finance director.

All funds and securities of the pension fund may be deposited by the board with the city finance director, acting in a ministerial capacity only, who shall keep the same in a special fund and shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the city. In lieu thereof, the board shall deposit the funds and securities of the pension fund in a qualified public depository as defined in section 280.02, Florida Statutes, which depository with regard to such funds and securities shall conform to and be bound by all of the provisions of Chapter 280, Florida Statutes.

(Ord. No. 88-25, § 1, 10-17-88; Ord. No. 90-26, § 1, 7-16-90)

Sec. 16-92. - Maximum benefit amount.

A firefighter may not receive a pension or disability which exceeds the lesser of:

- (1) One hundred (100) percent of the member's final compensation, inclusive of pensionable earnings and non-pension payroll (increased to reflect the cost of living adjustment factor prescribed under section 415(d) of the Internal Revenue Code); or
- (2) The maximum amount allowed under section 415 of the Internal Revenue Code, which is incorporated herein by reference.

(Ord. No. 89-9, § 4, 5-15-89; Ord. No. 93-11, § 2, 6-1-93; Ord. No. 2006-23, § 3, 8-15-06)

Sec. 16-93. - Repeal or termination of the retirement system.

In the event of the termination or partial termination of the retirement system, each member's accrued pension benefit shall become nonforfeitable, i.e., one hundred (100) percent vested, to the

extent funded. In no event may any part of the fund revert to the city except after the satisfaction of all liabilities and expenses, and except for reversions which are permitted by Internal Revenue Service Revenue Ruling 77-200, or any succeeding ruling, regulation or statute of similar import.

(Ord. No. 93-11, § 2, 6-1-93)

Sec. 16-94. - Maximum earnings limitation.

Compensation in excess of limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for an "eligible employee" shall be not less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. "Eligible employee" is an individual who was a member before the first plan year beginning after December 31, 1995.

(Ord. No. 94-29, § 1, 1-3-95)

Sec. 16-95. - Cost of living adjustment.

- (a) *Cost of living adjustment created.* A cost of living adjustment is hereby created. The cost of living adjustment shall be determined on an annual basis by the board of trustees based upon the criteria set forth in this section and shall not constitute a vested benefit.
- (b) *Cost of living adjustment calculated.* The cost of living adjustment shall be based upon actuarial gains in the retirement system. No cost of living adjustment may be paid in any year in which the plan failed to experience an overall actuarial gain as determined in the sole and exclusive discretion of the board of trustees, with the advice of the plan actuary.
- (c) *Amount of the cost of living adjustment.* The cost of living adjustment shall be in the form of a thirteenth check. The benefit shall be paid in equal amounts to each retiree. The benefit shall be paid in December of each year, following the issuance of the actuarial evaluation report and shall be based on the actuarial gains and losses as determined in the actuarial report for the preceding year.

(Ord. No. 97-16, § 1, 9-16-97; Ord. No. 99-30, § 1, 11-16-99)

Sec. 16-96. - Rollovers from firefighter relief and pension fund.

A DROP participant may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution from the Lake Worth Firefighters Relief and Pension Fund (division 2), paid directly into the Lake Worth Firefighters Pension Trust Fund (division 1) DROP plan via direct rollover. Such transfers will only be made at the written request of the DROP participant and only after approval by the division 1 and division 2 boards of trustees.

(Ord. No. 2005-22, § 1, 7-19-05)

Secs. 16-97—16-98. - Reserved.

FOOTNOTE(S):

⁽⁵⁰⁾ **Editor's note**— Division 1 of Art. III was amended in its entirety by § 1 of Ord. No. 88-25, adopted Oct. 17, 1988, to read as set out in §§ 16-63—16-91. Formerly Div. 1 contained §§ 16-63—16-92, which pertained to the firemen's retirement system and derived from Code 1956, §§ 25-38—25-60.5, and the following ordinances: ([Back](#))

Ord. No.	Section	Date	Ord. No.	Section	Date
77-29	3, 7	12- 5-77	80-23	3	11- 3-80
78-14	3	6-19-78	82-31	2	11- 5-82
78-36	12-15	12-18-78	84-1	2, 3	4-16-84
79-5	1	3- 5-79	85-9	2	11-18-85
79-26	12, 13	10- 1-79	86-29	1	10- 6-86
79-30	1, 2	12- 3-79	86-36	1	12-15-86
80-1	2	1-21-80	87-27	2	10- 5-87
80-9	16, 17	6-16-80			