

ARTICLE III. - FIREFIGHTERS' PENSION PLAN

Sec. 22-51. - Established.

The city firefighters' pension plan is established as a local law pension plan pursuant to F.S. ch. 175. An excise tax on property insurance premiums is hereby assessed and imposed pursuant to F.S. § 175.101, in the manner and amounts specified therein, for the purpose of this pension plan.

(Ord. No. 00-08, § 2, 7-17-2000)

Sec. 22-52. - Definitions.

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Accumulated contributions means a member's own contributions without interest.

Actuarial equivalent means a benefit or amount of equal value, based upon the 1983 Group Annuity Mortality Table with a 50 percent blending of male and female mortality rates and an interest rate of seven percent per annum.

Average final compensation means one-twelfth of the average salary of the five best years of the last ten years of credited service prior to retirement, termination, or death, or the career average as a full-time firefighter and member of this plan, whichever is greater. A year shall be 12 consecutive months.

Beneficiary means the person or persons entitled to receive benefits hereunder upon the death of a member who has or have been designated in writing by the member and filed with the board in accordance with the provisions of this pension plan.

Board means the board of trustees, which shall administer the pension plan as provided herein.

City means the City of Marco Island.

Code means the U.S. Internal Revenue Code of 1986, as amended from time to time.

Credited service means the total number of years and fractional parts of years of employment as a city firefighter and contributing member of this pension plan on or after January 1, 1996, omitting intervening years or fractional parts of years when such firefighter may not be employed by the city. If a member accumulates service as both a full-time firefighter and as a volunteer firefighter, credited service shall be calculated separately for full-time and volunteer service, with the sum of all years and fractional parts of years of service used only for vesting and benefit eligibility purposes. A firefighter may voluntarily leave his or her contributions in the pension fund for a period of five years after leaving the employment of the city pending the possibility of being rehired. A firefighter who withdraws his or her contributions upon termination of employment may, upon reemployment as a city firefighter, receive credited service for the period of prior service by repaying into the fund the amount of contributions withdrawn, plus interest as determined by the board of trustees, within 90 days following reemployment. When a firefighter leaves city employment (other than employment in temporary position) in order to:

- (1) Perform training and service in the Armed Forces of the United States or the United States Merchant Marine; or

- (2) Report for the purpose of being inducted into, entering, or determining, by preinduction or other examination, physical fitness to enter the Armed Forces, whether or not voluntarily, the firefighter shall receive credited service for the years or fractional parts of years that he or she was engaged in such Armed Forces or Merchant Marine activities in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as amended, if the member leaves his or her contributions in the pension fund during his absence. Except as otherwise provided by the (USERRA), the firefighter shall receive credited service for the period of military service on the following conditions:
 - a. The firefighter must return to his employment in accordance with the provisions of USERRA.
 - b. The firefighter must deposit into the pension fund the same sum that the member would have contributed if he or she had remained a firefighter, from the date of original employment to the date of deposit, in accordance with USERRA.
 - c. The maximum credit for military service shall be five years.

Effective date means the date on which the first member joins this pension plan.

Firefighter means a full-time employee of the city who is certified as a firefighter as a condition of employment in accordance with the provisions of F.S. § 633.35, and whose duty it is to extinguish fires, protect life and protect property.

Fund means the pension fund established as part of this pension plan.

Member means an actively employed firefighter who fulfills the prescribed participation requirements.

Pension plan or *plan* means the City of Marco Island Firefighters' Pension Plan, as set forth in this article and any amendments thereto.

Retirement means a member's separation from city employment with eligibility for and actual receipt of benefits under the pension plan.

Salary means a member's monthly compensation for work performed for the city arising from the member's employment as a firefighter, including overtime payments paid from a salary fund to the extent permitted under F.S. § 175.032(3).

Spouse means the lawful wife or husband of a member.

Volunteer firefighter shall have the same meaning as the term defined at F.S. § 175.032(8)(b).

(Ord. No. 00-08, §§ 2, 3, 7-17-2000; Ord. No. 11-01, § 2, 2-7-2011; Ord. No. 15-12, § 2, 6-1-2015)

Sec. 22-53. - Membership.

All full-time firefighters hired by the city on or after January 1, 1996, and volunteer firefighters who become active members of the city on or after January 1, 1996, shall be members of this pension plan. All members shall be required to complete a medical examination as may be prescribed by the city, and provide complete and accurate information concerning their health status as requested by the board. Any material misstatements or omissions of requested health or medical information by an applicant or member shall be grounds for denial of benefits. Based upon medical evidence of any pre-existing adverse health condition, resulting from the prescribed examination or other medical records or history, the board may determine any member ineligible for disability benefits hereunder, as related to such pre-

existing condition. A member may be declared ineligible for disability benefits at the time of the initial examination provided in this section, or at a later date if the committee establishes that a condition existed at the time of the member's employment or date of membership. The procedures followed and the determination of the board as to a pre-existing condition shall be on a uniform, non-discriminatory basis, with all members in similar situations being treated alike. The fire chief may elect not to participate in this plan by submitting a written notice of non-participation to the board of trustees within 60 days of initial employment or the adoption of this amendment, whichever is later. A fire chief who elects not to participate in this plan shall not thereafter be eligible to accrue or receive benefits through this plan.

(Ord. No. 00-08, §§ 2, 4, 7-17-2000)

Sec. 22-54. - Board of trustees.

- (a) The sole and exclusive administration of and responsibility for the proper operation of the pension plan and for making effective the provisions of this article are hereby vested in a board of trustees. However, the board of trustees is not empowered to amend the provisions of the pension plan.
- (b) The board of trustees shall consist of five persons. Two trustees, unless otherwise prohibited by law, shall be legal residents of the city who shall be appointed by the city council, one of whom shall be the city clerk, or if the city clerk is not a legal resident of the city, a designee who is a legal resident of the city. Two trustees shall be full-time firefighter members of the pension plan, who shall be elected by a majority of the firefighters who are members of the pension plan. The fifth trustee shall be chosen by a majority of the previous four trustees as provided for herein, and such person's name shall be submitted to the city council. Upon receipt of the fifth person's name, the city council shall, as a ministerial duty, appoint such person to the board of trustees. The fifth trustee shall have the same rights as each of the other four trustees appointed or elected as herein provided, and shall serve a four-year term, unless the office is sooner vacated, and may succeed himself in office. Each resident trustee shall serve as trustee for a period of four years, unless sooner replaced by the city council at whose pleasure the trustee shall serve, and may succeed himself as a trustee. Each firefighter trustee shall serve as trustee for a period of four years, unless he sooner leaves the employment of the city as a firefighter or otherwise vacates his office as trustee, whereupon a successor shall be chosen in the same manner as the departing trustee. Each firefighter trustee may succeed himself in office. The board of trustees shall meet at least quarterly each year.
- (c) The trustees shall, by a majority vote, elect a chairman and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. Additionally the secretary of the board shall keep a record of all persons receiving benefit payments under the provisions of this article, in which it shall be noted the time when such pension benefit was approved and when the pension benefit ceased to be paid. This record shall include a list of all firefighters employed by the city showing the name, address, date of employment, and date of termination of each firefighter. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by state law.
- (d) Each trustee shall be entitled to one vote on the board. Three affirmative votes shall be necessary for any decision by the trustees at any meeting of the board. A trustee shall have the right to abstain from voting as the result of a conflict of interest, provided that trustee complies with the provisions of F.S. § 112.3143.
- (e) The city attorney shall give advice to the board in all matters pertaining to its duties in the administration of

the pension plan whenever requested. The city attorney shall represent and defend the board as its attorney in all suits or legal actions that may be brought against it, and bring all suits and actions at the direction of the board. However, if the board so elects, it may employ independent legal counsel at the pension fund's expense for the purposes contained herein. The board may also engage such professional, technical or other advisers as it deems necessary to administer the pension plan. The board may choose to use the city's actuary or other professional, technical, or other advisors, but must do so only under terms and conditions acceptable to the board. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the pension plan shall be paid from the pension fund at such rates and in such amounts as the board shall agree. The board must, at least every three years, retain a professionally qualified independent consultant, as defined in F.S. ch. 175, who shall evaluate the performance of any existing professional money manager and 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, which will be advertised in the same manner as any meeting of the board.

- (f) The duties and responsibilities of the board shall include, but not necessarily be limited to, the following:
 - (1) To construe the provisions of the pension plan and determine all questions arising thereunder;
 - (2) To determine all questions relating to eligibility and membership;
 - (3) To determine and certify the amount of all retirement allowances or other benefits hereunder;
 - (4) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the pension plan;
 - (5) To distribute to members, at regular intervals, information concerning the pension plan;
 - (6) To receive and process all applications for benefits;
 - (7) 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 pension plan and fund; or
 - (8) To perform such other duties as are specified in this article.
- (g) Notwithstanding anything contained herein to the contrary, "legal resident" members appointed by the Marco Island City Council to the board of trustees of the City of Marco Island Firefighters' Pension Plan pursuant to paragraph (b) of this section, shall serve in the same capacity on the board of trustees of the City of Marco Island Police Officers' Pension Plan.

(Ord. No. 00-08, §§ 2, 5, 7-17-2000; Ord. No. 06-02, § 2, 4-3-2006; Ord. No. 07-04, § 3, 6-4-2007; Ord. No. 11-01, § 3, 2-7-2011)

Sec. 22-55. - Finances and fund management.

- (a) As part of the pension plan, there is hereby established a fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the pension plan.
- (b) 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.

- (c) All funds and securities of the pension fund may be deposited by the board with the finance officer of the city, a ministerial capacity only, who shall be liable in the same manner and to the same extent as he is liable for the safekeeping of city funds. However, any funds and securities so deposited with the finance officer of the city shall be kept in a separate fund or clearly identified as funds and securities of the pension plan. In lieu thereof, the board may deposit the funds and securities of the pension fund in a qualified public depository as defined in F.S. § 280.02, and the depository with regard to such funds and securities shall conform to and be bound by all of the provisions of F.S. § 280. In order to fulfill its investment responsibilities as set forth herein, the board may retain the services of a custodian bank, an investment advisor registered under the Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.
- (d) All funds and securities of the pension plan may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:
- (1) Current amounts of accumulated contributions of members on both an individual and aggregate account basis;
 - (2) Receipts and disbursements;
 - (3) Benefit payments;
 - (4) Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city;
 - (5) All interest, dividends and gains (or losses) whatsoever; and
 - (6) Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.
- (e) If the assets of the fund are \$250,000.00 or more, an independent audit shall be performed annually by a certified public accountant who may, in the board's discretion, be the accountant retained by the city for the city audit. The audit shall be for the most recent fiscal year of the city showing a detailed listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete valuation of assets on both a cost and market basis, as well as other items normally included in a certified audit. If the fund has less than \$250,000.00 in assets, an annual certified statement of accounting must be prepared in accordance with F.S. § 175.261(1)(a)2.
- (f) The board shall have the following investment powers and authority:
- (1) 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.
 - (2) All monies paid into or held in the fund shall be invested and reinvested by the board and the investment of all or any part of such funds shall be limited to:
 - a. 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 pension plan, and to pay the initial and subsequent premiums thereon.

- b. Time or savings accounts of a national or 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 federally chartered credit union whose share accounts are insured by the national credit union share insurance fund.
 - c. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.
 - d. Bonds issued by the State of Israel.
 - e. Bonds, stocks, commingled funds administered by national or state banks, or 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 that the corporation is traded on a nationally recognized exchange and in the case of bonds holds a rating in one of the three highest classifications by a major rating service, and if such investments are made in a pooled fund administered by a state or national bank, then the rating of each issue in the pooled fund shall hold a rating within the top three rating classifications of a major rating service.
 - f. Real estate.
 - g. The board shall identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in F.S. § 215.473, and proceed to sell, redeem, divest, or withdraw all publicly-traded securities it may have in such company beginning January 1, 2010, and shall thereafter be prohibited from purchasing or holding such securities. The divestiture of any such security must be completed by September 30, 2010. In accordance with Ch. 2009-97, Laws of Florida, no person may bring any civil, criminal, or administrative action against the board or any employee, officer, director, or advisor of such board based upon the divestiture of any security pursuant to this paragraph.
- (3) The board shall not invest more than five percent of its assets in the common stock, capital stock or convertible securities of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent of the outstanding capital stock of that company; nor shall the aggregate of its investments in common stock, capital stock and convertible securities at cost exceed 65 percent of the assets of the fund.
- (4) The board may retain in cash such amounts of the fund as it may deem advisable, having due regard for the cash requirements of the pension plan.
- (5) No person or entity shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the fund, except that due to his or its own negligence, willful misconduct or lack of good faith.
- (6) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain such securities unregistered and in a form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.
- (7) The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or

without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stocks or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the fund which it may deem to be in the best interest of the fund to exercise.

- (8) The board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power contained herein.
- (9) 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 instruction, 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 it.
- (10) Any overpayments or underpayments from the fund to a member or beneficiary caused by errors of computation 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.
- (11) In any application to or proceeding or action in the courts, only the board shall be a necessary party, and no member or other person having an interest in the fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.
- (12) 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 agents.
- (13) The board shall not invest more than five percent at cost of its assets in real property or real estate and there shall be no investment in a limited partnership or trust.
- (14) The board shall not invest more than 25 percent of the fund's assets on a market-value basis in foreign securities or certificates of indebtedness, except as specifically authorized herein.
- (15) The board shall not invest more than ten percent of the fund's assets in foreign securities or certificates of indebtedness, except as specifically authorized herein.

(Ord. No. 00-08, §§ 2, 6, 7, 7-17-2000; Ord. No. 11-01, § 4, 2-7-2011; Ord. No. 15-25, § 2, 9-21-2015)

Sec. 22-56. - Contributions.

(a) *Member contributions.*

- (1) *Amount.* Prior to July 1, 2022, members of the pension plan shall be required to make regular contributions to the fund in the amount of one percent of their salary. Effective July 1, 2022, members of the pension plan shall be required to make regular contributions to the fund in the amount of three percent of their salary. Member contributions withheld by the city on behalf of the member shall be

deposited with the board every pay period. The contributions made by each member to the fund may be designated by the city as employer contributions pursuant to Section 414(h) of the Code. Such designation is contingent upon a resolution adopted by the city council and the contributions being excluded from the member's gross income for federal income tax purposes. For all other purposes of the pension plan, such contributions shall be considered to be member contributions.

(2) *Method.* Member contributions shall be made by payroll deduction.

(b) *Insurance premium tax revenues and other contributions received by operation of state law.* Insurance premium tax revenues collected and distributed pursuant to F.S. ch. 175, and any other monies received by operation of the laws of the state for the express purpose of funding and paying for retirement benefits for firefighters of the city, shall be deposited into the pension fund within five days after receipt by the city. In conjunction with the city's adoption of a resolution implementing this pension plan pursuant to F.S. § 175.351, the insurance premium tax revenues received pursuant to F.S. § 175.101, shall be deposited into and become an integral part of this pension fund, and not used for any other purpose. The allocation of insurance premium tax revenues under F.S. ch. 175 shall be determined by mutual consent between the city and the collective bargaining representative of the members. Pursuant to such mutual consent, and until such mutual consent changes, insurance premium tax revenues shall be allocated as follows.

(1) Effective October 1, 2015, through June 5, 2022, insurance premium tax revenues received up to the base premium tax revenue amount of \$73,936.00 shall be applied to reduce the city's annual required contribution as specified by the plan's actuary in its most recent actuarial valuation report. All insurance premium tax revenues in excess of \$73,936.00 shall be used to fund the firefighter share plan as set forth in section 22-61(h) of this Code. Notwithstanding, should the annual cost to fully fund the pension plan as determined by the plan's actuary in its most recent actuarial valuation report in any fiscal year exceed the sum of city contributions plus member contributions plus insurance premium tax revenues up to \$73,936.00, then the amount of insurance premium tax revenues that exceeds \$73,936.00 necessary to fund such deficiency shall be applied to reduce such contribution shortfall. Prior to increasing of member contributions, any shortfall as described herein shall first be addressed by applying 175 funds accordingly. Should the available 175 funds for such fiscal year be insufficient to cover the shortfall, then member contributions shall be increased accordingly subject to the provisions articulated herein.

(2) Effective June 6, 2022, 32.5 percent of the premium tax revenue funds received annually shall be used by the city to offset its annual required pension contribution and 67.5 percent of the premium tax revenue funds received shall be credited to the firefighter share plan and shall be disbursed among share plan participants in accordance with the plan's share plan distribution rules.

(c) *City contributions.* So long as this pension plan is in effect, the city shall make quarterly contributions to the fund in an amount equal to the difference each year between the total contributions from all other sources for the year, and the total cost for the year, as shown by the most recent actuarial valuation of the pension plan. The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded past service liability over a 30-year period, commencing with the fiscal year in which the effective date of this pension plan occurs. Effective October 1, 2015, the city's annual contribution shall be 43.72 percent of total salary of all active members of the plan. Notwithstanding the foregoing, on or before September 30, 2018, the city shall pay off the pension plan's entire unfunded liability as determined in the adopted actuarial valuation report for the plan year ending October 1, 2015. Should

total insurance premium tax revenues plus required city contributions plus member contributions be insufficient to maintain the pension plan fully funded in a given fiscal year, the city shall contribute the remaining shortfall amount and shall bear ultimate responsibility for ensuring that the pension plan remains fully funded every fiscal year as determined by the plan's actuary in its most recent actuarial valuation report.

(d) *Other.* Private donations, gifts and contributions may be deposited into the fund.

(Ord. No. 00-08, §§ 2, 8, 7-17-2000; Ord. No. 19-02, § 1, 1-22-2019; Ord. No. 22-06, § 2, 6-6-2022)

Sec. 22-57. - Benefit amounts and eligibility.

- (a) *Normal retirement date.* A member's normal retirement date hired by the city prior to July 1, 2022, shall be the first day of the month coincident with or next following the attainment of age 55 and the completion of ten years of credited service, the vesting period for members in this plan for normal retirement date shall be reduced from ten years to six years effective July 1, 2001, provided that the member is "employed in a regularly established position" on that date. If not so employed on that date a member must be "employed in a covered position for at least one work year after July 1, 2001", or upon attaining 25 years of credited service regardless of age. A member's normal retirement date hired by the city on or after July 1, 2022, shall be the first day of the month coincident with or next following the attainment of age 55 and the completion of ten years of credited service, or upon attaining 25 years of credited service regardless of age. The vesting period shall be ten years. A member may retire on his normal retirement date or on the first day of any month thereafter, and each member shall become 100 percent vested in his accrued benefit on the member's normal retirement date. Normal retirement under the pension plan is retirement from employment with the city on or after the normal retirement date.
- (b) *Normal retirement benefit.* A member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on his retirement date and be continued thereafter during the member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. The monthly retirement benefit shall equal three percent of average final compensation for each year of credited service.
- (c) *Early retirement benefit.* A member may retire on his early retirement date, which shall be the first day of the month coincident with or next following the attainment of age 50 and the completion of ten years of credited service, the vesting period for members in the reduced from ten years to six years effective July 1, 2001, provided that the member is "employed in a regularly established position" on that date. If not so employed on that date a member must be "employed in a covered position for at least one work year after July 1, 2001". Early retirement under the pension plan is retirement from employment with the city on or after the early retirement date and prior to the normal retirement date.
- (d) *Early retirement benefit.* A member retiring hereunder on his early retirement date shall receive a monthly retirement benefit which shall commence on his early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in subsection (b) above, which is actuarially reduced from the amount to which he would have been entitled had he retired on the date which would have been his normal retirement date had he continued employment as a firefighter, and with the same number of years of credited service as of the time his benefits commence and based on his average

final compensation at that date. In no event, however, shall the early retirement reduction exceed three percent for each year by which the member's age at retirement precedes the member's normal retirement age.

- (e) *Cost of living adjustment.* For credited service earned before October 1, 2022, each January 1 following the later of the member's termination date or otherwise normal retirement date, retirees (including disability retirees), beneficiaries and joint pensioners of deceased members or retirees who are receiving monthly benefit payments shall receive a three percent increase in their monthly benefit amount. For credited service earned on and after October 1, 2022, each January 1 following the later of the member's termination date or otherwise normal retirement date, retirees (including disability retirees), beneficiaries and joint pensioners of deceased members or retirees who are receiving monthly benefit payments shall receive an increase in an amount equal to the COLA under title II of the Social Security Act, with a minimum percentage not to go below one percent and a maximum percentage not to exceed one and one half percent.

(Ord. No. 00-08, § 2, 7-17-00; Ord. No. 01-17, § 1, 10-1-01; Ord. No. 22-06, § 3, 6-6-2022)

Sec. 22-58. - Pre-retirement death benefits.

- (a) *Prior to vesting or eligibility for retirement.* The beneficiary of a deceased member who was not receiving monthly benefits or who was not yet vested or eligible for early or normal retirement shall receive a refund of 100 percent of the member's accumulated contributions.
- (b) *Deceased members vested or eligible for retirement.* The beneficiary of any member who dies while actively employed and who, at the date of his death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:
- (1) If the member was vested, but not eligible for normal or early retirement, the beneficiary shall receive a benefit payable for ten years, beginning on the date that the deceased member would have been eligible for early or normal retirement, at the option of the beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable. The beneficiary may also elect to receive an immediate benefit, payable for ten years, which is actuarially reduced to reflect the commencement of benefits prior to the early retirement date.
 - (2) If the deceased member was eligible for normal or early retirement, the beneficiary shall receive a benefit payable for ten years, beginning on the first day of the month following the member's death or at the deceased member's otherwise normal retirement date, at the option of the beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable.
 - (3) A beneficiary may not elect an optional form of benefit, however, the board may elect to make a lump sum payment pursuant to section 22-61(g).
 - (4) A beneficiary may, in lieu of any benefit provided for in subsection (1) or (2) above, elect to receive a refund of the deceased member's accumulated contributions.
- (c) *Death while performing USERRA-qualified active military service.* In the case of a member who dies on or after January 1, 2007 while performing "Qualified Military Service" under Title 38, United States Code, Chapter 43, Uniformed Services Employment and Reemployment Rights Act ("USERRA") within the meaning of Section

414(u) of the Internal Revenue Code, any "additional benefits" (as defined by Section 401(a)(37) of the Internal Revenue Code) provided under the plan that are contingent upon a member's termination of employment due to death shall be determined as though the member had resumed employment immediately prior to his death. With respect to any such "additional benefits," for vesting purposes only, credit shall be given for the period of the member's absence from covered employment during "Qualified Military Service".

(Ord. No. 00-08, § 2, 7-17-2000; Ord. No. 15-12, § 3, 6-1-2015)

Sec. 22-59. - Disability benefits.

- (a) *Disability benefits on-duty.* Each firefighter who is a member in the pension plan and who shall have become totally and permanently disabled while an active member of the pension plan to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability was directly caused by the performance of his duties as a firefighter, shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to three percent of his average final compensation multiplied by the total years of credited service, but in any event the minimum amount paid to the member shall be 42 percent of his average monthly salary at the time of disability, whichever is greater, minus any benefits that may be paid from time to time by any policy or plan of disability insurance or benefits maintained by the city or the pension plan. A firefighter must apply for benefits under such disability insurance or benefits as a condition of receiving disability benefits from this pension plan.
- (b) *Conditions presumed suffered in line of duty.* Any condition or impairment of health of a firefighter caused by hypertension or heart disease shall be presumed to have been suffered in line of duty unless the contrary is shown by competent evidence, provided that such firefighter shall have successfully passed a physical examination upon entering into such service, including cardiogram, which examination failed to reveal any evidence of such condition; and provided further, that such presumption shall not apply to benefits payable or granted in a policy of life insurance or disability insurance. A condition or impairment of health caused by hepatitis, meningococcal meningitis, or tuberculosis, that requires medical treatment and results in disability or death shall be presumed to have occurred in the line of duty, unless the contrary be shown by competent evidence, in accordance with F.S. § 112.181, as amended from time to time.
- (c) *Disability benefits off-duty.* Each firefighter who is a member in the pension plan with ten or more years of credited service who becomes totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability was not directly caused by the performance of his duties as a firefighter, shall be entitled to a monthly pension equal to three percent of his average final compensation multiplied by the total years of credited service, or 25 percent of his average monthly salary at the date of disability, whichever is greater, minus any benefits that may be paid from time to time by any policy or plan of disability insurance or benefits maintained by the city or the pension plan. Provided that effective July 1, 2000, service time required to qualify for non-service related disability benefits shall be reduced from ten to eight or more years of credited service. A firefighter must apply for benefits under such disability insurance or benefits as a condition of receiving disability benefits from this pension plan.
- (d) *Conditions disqualifying disability benefits.* A member may be disqualified from receiving disability benefits

based on a pre-existing condition as determined by the board in accordance with this pension plan. Each firefighter who is claiming disability benefits must also establish, to the satisfaction of the board, that such disability was not occasioned primarily by:

- (1) Excessive or habitual use of any drugs, intoxicants, or alcohol.
 - (2) Injury or disease sustained while willfully and illegally participating in fights, riots, or civil insurrections.
 - (3) Injury or disease sustained while committing a crime.
 - (4) Injury or disease sustained while serving in any branch of the Armed Forces.
 - (5) Injury or disease sustained after his employment as a firefighter with the city shall have terminated.
 - (6) Willful, wanton or gross negligence of the member.
 - (7) Injury or disease sustained by the firefighter while working for anyone other than the city and arising out of such employment.
- (e) *Medical examination requirement.* A member shall not be eligible for disability benefits unless and until he undergoes a medical examination by a qualified physician or physicians selected by the board for that purpose. The member will be required to authorize the release of all relevant medical records to the physician or physicians who conduct the medical examination. Any member receiving disability benefits under provisions of this article may be periodically reexamined by a qualified physician or physicians and/or surgeon or surgeons who shall be selected by the board, to determine if such disability has ceased to exist. If the board finds that a member receiving disability benefits is no longer permanently and totally disabled to the extent that the member is able to render useful and efficient service as a firefighter, disability benefit payments to the member shall be discontinued. The cost of the medical examination and/or re-examination of a member claiming and/or receiving disability benefits shall be borne by the pension fund.
- (f) *Reentry into service after recovery from disability.* If a member recovers from disability and reenters the service of the city as a firefighter, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service of the city will not be considered as credited service for purposes of the pension plan.
- (g) *Authority of board.* The board shall have the power and authority to make the final decisions regarding all disability claims.
- (h) *Disability payments.* The monthly benefit to which a member is entitled in the event of the member's disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment. Disability retirement benefits shall be payable for 120 months or the member's lifetime, whichever is longer, or until the member recovers from disability, in which case the last payment shall be the payment due next preceding the date of such recovery.
- (i) *Workers' compensation.* When a member is receiving a disability pension and workers' compensation benefits pursuant to F.S. ch. 440, for the same disability, and the total monthly benefit received from both exceed 100 percent of the member's final monthly salary, excluding overtime, the disability pension benefit shall be reduced so that the total monthly amount received by the member does not exceed 100 percent of such salary; provided that in no event shall the resulting disability retirement income payable from the

pension plan be less than the member's accrued benefit or 42 percent of average monthly salary, whichever is greater. In the case of a lump sum workers' compensation settlement, the disability retirement income payable from the pension plan shall be adjusted as follows:

- (1) The amount of the lump sum settlement shall be divided by the participant's remaining life expectancy (in months) as determined using standard actuarial tables approved by the actuary for the pension plan.
- (2) If the number obtained in subsection (1) above, when added to the participant's monthly disability retirement income from the pension plan, exceeds the participant's final monthly compensation on the date of disability, the amount of the excess shall be deducted from the participant's monthly disability retirement income from the pension plan, for the duration of the participant's remaining life expectancy as determined in subsection (1) above.
- (3) If the number obtained in subsection (1) above, when added to the participant's monthly disability retirement income from the pension plan, does not exceed the participant's final monthly compensation on the date of disability, there shall be no reduction of the participant's disability retirement income from the pension plan.

(Ord. No. 00-08, § 2, 7-17-2000; Ord. No. 00-12, § 1, 9-25-2000; Ord. No. 01-17, § 2, 10-1-2001)

Sec. 22-60. - Termination of employment prior to retirement.

If a member terminates city employment and is not eligible for any other benefits under this pension plan, the member shall be entitled to the following:

- (1) If the member has less than ten years credited service upon termination, the member shall be entitled to a refund of his accumulated contributions, or the member may leave them deposited with the pension fund for up to five years following termination. Provided that the vesting period for members in this plan for this benefit shall be reduced from ten years to six years effective July 1, 2001, provided that the member is "employed in a regularly established position" on that date. If not so employed on that date a member must be "employed in a covered position for at least one work year after July 1, 2001."
- (2) If the member has ten or more years of credited service upon termination, the member shall be entitled to a monthly retirement benefit determined in the same manner as for normal or early retirement based upon the member's credited service and average final compensation as of the date of termination, payable commencing at the member's normal or early retirement date; provided he does not elect to withdraw his accumulated contributions and provided the member survives to his normal or early retirement date. Provided that the vesting period for members in this plan for this benefit shall be reduced from ten years to six years effective July 1, 2001, provided that the member is "employed in a regularly established position" on that date. If not so employed on that date a member must be "employed in a covered position for at least one work year after July 1, 2001."

(Ord. No. 00-08, § 2, 7-17-2000; Ord. No. 01-17, § 3, 10-1-2001)

Sec. 22-61. - Optional forms of benefits.

- (a) In lieu of the amount and form of retirement income payable as specified in this pension plan, a member, upon written request to the board, may elect to receive a retirement income or benefit of equivalent actuarial

value payable in accordance with one of the following options:

- (1) A retirement income of a monthly amount payable to the member for his lifetime only.
 - (2) A retirement income of a modified monthly amount payable to the member during the lifetime of the member and, following the death of the member, 100 percent, 66⅔ percent, 75 percent or 50 percent of such monthly amount payable to a joint pensioner for his lifetime.
 - (3) If a member retires prior to the time at which social security benefits are payable, he 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 pension plan, based upon the social security law in effect at the time of the member's retirement.
- (b) The member, upon electing any option provided in subsection (a) of this section, will designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the pension plan in the event of the member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a member has elected an option with a joint pensioner or beneficiary and the member's retirement income benefits have commenced, such member may thereafter change his designated joint pensioner or beneficiary up to two times as provided in F.S. § 175.333 without the approval of the board of trustees or the current joint annuitant or beneficiary. The member need not provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living. Upon any such new election, the member's final pension benefit shall be recalculated accordingly by the actuary with all costs resulting directly from the new election borne solely by the member.
- (c) The consent of a member's joint pensioner or beneficiary to any such change shall not be required. The rights of all previously-designated beneficiaries to receive benefits under the pension plan shall thereupon cease.
- (d) Upon change of a member's beneficiary or joint pensioner in accordance with this section, the board shall adjust the member's monthly benefit by application of actuarial calculations to insure that the benefit paid is the actuarial equivalent of the member's then-current benefit. Any such member shall pay the actuarial recalculation expenses and shall make repayment of any overage of previously-paid pension benefits as a result of said recalculations. Each request for a change will be made in writing on a form prepared by the board and on completion will be filed with the board. In the event that no designated beneficiary survives the member, such benefits as are payable in the event of the death of the member subsequent to his retirement shall be paid as provided in section 22-62.
- (e) 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 member dies prior to his normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefit, if any, will be determined under section 22-58.
 - (2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the member's retirement under the pension plan, the option elected will be canceled automatically and a retirement income of the

normal form and amount will be payable to the member upon his 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 member prior to his retirement and within 90 days after the death of the beneficiary.

- (3) If both the retired member and the beneficiary (or beneficiaries) designated by member die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection a of this section, the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 22-62.
- (4) If a member continues beyond his normal retirement date pursuant to the provisions of section 22-57(a), and dies prior to his 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 member in the amount or amounts computed as if the member had retired under the option on the date on which his death occurred.
- (f) A member may not change his retirement option after the date of cashing or depositing his first retirement check.
- (g) Notwithstanding anything herein to the contrary, the board in its discretion may elect to make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the remaining monthly income payments to be paid do not exceed \$3,500.00. Any such payment made to any person pursuant to the power and discretion conferred upon the board by the preceding sentence shall operate as a complete discharge of all obligations under the pension plan with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.
- (h) "Share plan." There is hereby provided, in addition to all other benefits provided in this article, an annual supplemental retirement benefit, which shall consist of an individual share account for each member of the pension plan employed as a firefighter for the city on or after the effective date hereof. The amount of which shall be determined annually, based upon the receipt by the fund of any "additional premium tax revenues," as defined in F.S. § 175.032(1), meaning, those insurance premium tax revenues in excess of base premium tax revenues equaling \$73,936.00. By December 1 of each year (or, if the premium tax revenues are received after October 2, within 60 days after receipt of the premium tax revenues from the state), each actively employed member of the pension plan employed as a firefighter for the city on or after the effective date of the ordinance from which this section is derived hereof, shall be paid a supplemental retirement benefit determined as follows:

Initial crediting. No later than 180 days after the adoption of the ordinance from which this section derives, each member's share account shall be credited retroactively from the member's date of hire to September 30, 2007. Each member who was employed during this time as a firefighter shall receive one share for each month of credited service as defined in section 22-52, earned during the preceding fiscal year. The total value of each share shall be determined annually based on the total number of members at that time divided into the total additional premium tax revenues received during said fiscal year, plus interest at the pension plan's actual rate of investment return calculated from the pension plan's receipt of said revenue to September 30 of that year, to determine the amount to be initially credited to the share account of each eligible member. It

is the intent of the city council that the initial payment under this section shall be made based on each separate year's accumulation and the status of each eligible member in those years. The crediting of shares for each year shall be based on the excess premium taxes received in that particular year and shall be payable only to persons who were eligible to receive a payment in the particular year in which the taxes were received. For purposes of implementing this share plan, a member's annual accrued benefit shall mean the amount allocable each fiscal year up to the corresponding annual prescribed Internal Revenue Code Section 415 limitation, beyond which any excess amount shall be deemed to accrue in the subsequent fiscal year.

Crediting effective December 2008 and thereafter for members hired prior to July 1, 2022. Share accounts shall be funded solely with additional premium tax revenues as defined herein. Effective October 1, 2015, should member contributions plus city contributions plus base premium tax revenues in the amount of \$73,936.00 be insufficient to fully fund the pension plan in a given fiscal year as determined by the plan's actuary in its most recent actuarial valuation report, additional premium tax revenues shall be allocated accordingly to fund such shortfall instead of funding member share accounts. Any additional premium tax revenue not utilized to fund such a shortfall shall be allocated to fund member share accounts accordingly.

Each member who was employed during the preceding calendar year shall receive one share for each month of credited service, as defined in section 22-52, earned during the preceding calendar year. The total number of shares thus determined shall be divided into the additional premium tax revenues received during said year, plus interest at the pension plan's actual rate of investment return, calculated from the pension plan's receipt of said revenue to December 31 of that year, to determine the amount to be credited to the share account of each eligible member.

Effective January 1 of each calendar year, each member's share account shall be credited or debited with earnings based upon the amount in the share account at the close of the next preceding calendar year (e.g., the amount credited in 2008 shall be based upon the amount in the share account as of December 31, 2006, since the interest on the additional premiums tax revenues credited to the account during 2007 was already added to the amount distributed in 2007) at a rate equal to the pension plan's net investment return for the preceding calendar year (e.g., effective January 1, 2008, the amount in each share account as of December 31, 2006, shall be credited with the net investment rate of return for 2007.) Upon attaining 12 years of credited service, a member may thereafter make a one-time irrevocable election to have interest credited to his or her share account at the rate earned by the pension fund from a money market mutual fund selected by the board of trustees rather than credited or debited at the pension fund's actual rate of return.

Prior to June 6, 2022, a member who reaches age 55 or who attains at least 20 years of credited service shall be eligible to receive the balance in the member's share account upon actual termination of employment with the city.

Prior to June 6, 2022, a member with at least 15, but less than 20 years of credited service, shall be eligible to receive 75 percent of the balance in the member's share account upon actual termination of employment with the city.

Prior to June 6, 2022, a member with at least six but less than 15 years of credited service upon termination of employment shall be eligible to receive one-half of the balance in the member's share account upon termination of employment.

Effective June 6, 2022, a member with at least with six or more years of credited service shall be eligible to receive 100 percent of the balance in the member's share account upon actual termination of employment with the city.

No benefit shall be payable to a member who terminates covered employment with less than six years of credited service. The share account balances of such nonvested terminated members shall be redistributed into the allocation for the next fiscal year. The designated beneficiary of a member who dies shall receive the accumulated total of the deceased member's share account and a member awarded a disability pension from the pension plan shall receive the accumulated total of the disabled member's share account. There shall be no forfeiture of a member's share account based on member's death, disability, or layoff. Payment of share account benefits shall be by lump sum, which shall consist of the accumulated total of the member's share account or can be rolled over in accordance with section 22-72, with an additional payment made for any amount credited in the year following the member's termination of employment. Any additional costs of additional minimum or mandated pension benefits required by changes to state law that take effect after the date of the ordinance from which this section derived shall be paid from the additional premium tax revenues before any remaining additional premium tax revenues are allocated to the share accounts hereunder.

Crediting for members hired on or after July 1, 2022. members hired on or after July 1, 2022, shall not receive any shares of credited service into their individual share accounts. Instead, the amount or value associated with such shares of credited service will be used by the city to offset its required contribution to the plan. However, these members hired on or after July 1, 2022, shall be eligible to enter into the deferred retirement option plan (DROP), as defined in section 22-74, upon reaching normal retirement eligibility.

(Ord. No. 00-08, § 2, 7-17-2000; Ord. No. 00-12, § 2, 9-25-2000; Ord. No. 09-02, § 2, 2-17-2009; Ord. No. 11-01, § 5, 2-7-2011; Ord. No. 15-11, § 2, 6-1-2015; Ord. No. 19-02, § 2, 1-22-2019; Ord. No. 22-06, § 4, 6-6-2022)

Sec. 22-62. - Beneficiaries.

- (a) Each member may, on a form provided for that purpose, signed and filed with the board, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his death; and each designation may be revoked by such member by signing and filing with the board a new designation-of-beneficiary form.
- (b) If a deceased member fails to name a beneficiary in the manner prescribed in subsection (a) of this section, or if the beneficiary (or beneficiaries) named by a deceased member predeceases the member, the death benefit, if any, which may be payable under the pension plan with respect to such deceased member, shall be paid to the estate of the member.

(Ord. No. 00-08, § 2, 7-17-2000)

Sec. 22-63. - Reports to division of retirement.

No later than March 15 each year, the chairman or secretary of the board shall file a report with the division of retirement in accordance with F.S. § 175.261(2).

(Ord. No. 00-08, § 2, 7-17-2000)

Sec. 22-64. - Roster of retirees.

The secretary of the board shall keep a record of all persons receiving benefits under the provisions of this article, in which it shall be noted the time when the benefits commence and when the same shall cease to be paid. Additionally, the secretary shall keep a record of all members employed by the city in such a manner as to show the name, address, date of employment, and date such employment is terminated.

(Ord. No. 00-08, § 2, 7-17-2000)

Sec. 22-65. - Internal Revenue Code compliance.

(a) *Maximum amount of retirement income.*

- (1) The limitations of this subsection (a) shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein, and are intended to comply with the requirements of the Pension Protection Act of 2006 and shall be construed in accordance with said Act and guidance issued thereunder. The provisions of this subsection (a) shall supersede any provision of the plan to the extent such provision is inconsistent with this subsection.

The annual pension as defined in paragraph (2) below otherwise payable to a member at any time shall not exceed the dollar limitation for the member multiplied by a fraction whose value cannot exceed one, the numerator of which is the member's number of years (or part thereof, but not less than one year) of service with the city and the denominator of which is ten. For this purpose, no more than one year of service may be credited for any plan year. If the benefit the member would otherwise accrue in a limitation year would produce an annual pension in excess of the dollar limitation, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the dollar limitation.

- (2) "Annual pension" means the sum of all annual benefits, payable in the form of a straight life annuity. Benefits payable in any other form shall be adjusted to the larger of:
 - a. For limitation years beginning on or after July 1, 2007:
 1. The straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit, or
 2. The actuarially equivalent straight life annuity commencing at the same annuity starting date, computed using a 5.00 percent interest rate and the mortality basis prescribed in [Internal Revenue] Code Section 415(b)(2)(E)(v).
 - b. For limitation years beginning before July 1, 2007:
 1. The actuarially equivalent straight life annuity commencing at the same annuity starting date, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan for the particular form of payment, or
 2. The actuarially equivalent straight life annuity commencing at the same annuity starting date,

computed using a 5.00 percent interest rate and the mortality basis prescribed in [Internal Revenue] Code Section 415(b)(2)(E)(v).

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this subsection (a), and the amount payable under the form of benefit in any limitation year shall not exceed the limits of this subsection (a) applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the [Internal Revenue] Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

- (3) "Dollar limitation" means, effective for the first limitation year beginning after January 1, 2001, \$160,000.00, automatically adjusted under [Internal Revenue] Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a member's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The dollar limitation shall be further adjusted based on the age of the member when the benefit begins as follows:

a. For annuity starting dates in limitation years beginning on or after July 1, 2007.

1. If the annuity starting date for the member's benefit is after age 65.

- (i) If the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement.

The dollar limitation at the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation with actuarial equivalence computed using a 5.00 percent interest rate assumption and the mortality basis prescribed in [Internal Revenue] Code Section 415(b)(2)(E)(v) for that annuity starting date (and expressing the member's age based on completed calendar months as of the annuity starting date).

- (ii) If the plan does have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement.

The dollar limitation at the member's annuity starting date is the lesser of (aa) the dollar limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of this subsection (a), and (bb) the limitation determined under subparagraph (3)a.1.(i) of this subsection (a). For this purpose, the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date is the annual amount of such annuity payable to the member, computed disregarding the member's accruals after age 65 but including actuarial adjustments even if

those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the plan at age 65 is the annual amount of such annuity that would be payable under the plan to a hypothetical member who is age 65 and has the same accrued benefit as the member.

2. Except with respect to a member who is a "Qualified Member" as defined in Section 415(b)(2)(H) of the [Internal Revenue] Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the [Internal Revenue] Code), if the annuity starting date for the member's benefit is before age 62.

- (i) If the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement.

The dollar limitation at the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation with actuarial equivalence computed using a 5.00 percent interest rate assumption and the mortality basis prescribed in [Internal Revenue] Code Section 415(b)(2)(E)(v) for that annuity starting date (and expressing the member's age based on completed calendar months as of the annuity starting date).

- (ii) If the plan does have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement.

The dollar limitation at the member's annuity starting date is the lesser of (aa) the dollar limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of this subsection (a), and (bb) the limitation determined under subparagraph (3)a.2.(i) of this subsection (a).

- b. For annuity starting dates in limitation years beginning before July 1, 2007:

Age as of Annuity Starting Date:	Adjustment of Dollar Limitation:	
Over 65	The smaller of:	(a) The actuarial equivalent of the limitation for age 65, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan, or
		(b) The actuarial equivalent of the limitation for age 65, computed using a 5.00 percent interest rate and the mortality basis prescribed in [Internal Revenue] Code Section 415(b)(2)(E)(v).

	Any increase in the dollar limitation determined in accordance with this paragraph shall not reflect a mortality decrement between age 65 and the age at which benefits commence if benefits are not forfeited upon the death of the member. If any benefits are forfeited upon death, the full mortality decrement is taken into account.	
62 to 65	No adjustment.	
Less than 62	The smaller of:	(a) The actuarial equivalent of the limitation for age 62, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan, or
		(b) The actuarial equivalent of the limitation for age 62, computed using a 5.00 percent interest rate and the mortality basis prescribed in [Internal Revenue] Code Section 415(b)(2)(E)(v).
	This adjustment shall not apply to any "Qualified Member" as defined in Section 415(b)(2)(H), nor to survivor and disability benefits as defined in Section 415(b)(2)(I) of the [Internal Revenue] Code.	

- (4) With respect to clause (3)a.1.(i), clause (3)a.2.(i) and paragraph (3)b. above, no adjustment shall be made to the dollar limitation to reflect the probability of a member's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the member prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the member's death if the plan does not charge members for providing a qualified preretirement survivor annuity, as defined in [Internal Revenue] Code Section 417(c), upon the member's death.
- (5) The term "limitation year" is the 12 month period which is used for application of the limitations under [Internal Revenue] Code Section 415 and shall be the calendar year.
- (6) The limitations set forth in this subsection (a) shall not apply if the annual pension does not exceed \$10,000.00 provided the member has never participated in a defined contribution plan maintained by the city.
- (7) Cost-of-living adjustments in the dollar limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Section 415(d) of the [Internal Revenue]

Code.

- (8) In the case of a member who has fewer than ten years of participation in the plan, the dollar limitation set forth in paragraph (3) of this subsection (a) shall be multiplied by a fraction - (i) the numerator of which is the number of years (or part thereof) of participation in the plan, and (ii) the denominator of which is ten.
- (9) Any portion of a member's benefit that is attributable to mandatory member contributions (unless picked-up by the city) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the [Internal Revenue] Code.
- (10) Should any member participate in more than one defined benefit plan maintained by the city, in any case in which the member's benefits under all such defined benefit plans (determined as of the same age) would exceed the dollar limitation applicable at that age, the accrual of the member's benefit under this plan shall be reduced so that the member's combined benefits will equal the dollar limitation.
- (11) For a member who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to Section 1.401(a)-20, Q&A 10(d), and with regard to Section 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.
- (12) The determination of the annual pension under paragraph (a)(2) of this subsection (a) [sic] shall take into account (in the manner prescribed by the regulations under Section 415 of the [Internal Revenue] Code) Social Security supplements described in Section 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant [to] Section 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.
- (13) The above limitations are intended to comply with the provisions of Section 415 of the [Internal Revenue] Code, as amended, so that the maximum benefits provided by plans of the city shall be exactly equal to the maximum amounts allowed under Section 415 of the [Internal Revenue] Code and regulations thereunder. If there is any discrepancy between the provisions of this subsection (a) and the provisions of Section 415 of the [Internal Revenue] Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the [Internal Revenue] Code. The value of any benefits forfeited as a result of the application of this subsection (a) shall be used to decrease future employer contributions.
- (14) For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, compensation shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in this subsection (a), compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code. For limitation years on or after July 1, 2007, compensation shall include payments that otherwise qualify as

compensation and that are made by the later of: (a) two and one-half months after severance from employment with the employer, and (b) the end of the limitation year that includes the date of severance. With respect to plan years beginning on or after December 31, 2008, compensation shall also include differential wage payments within the meaning of Section 3401(h)(2) of the Internal Revenue Code.

- (b) *Required beginning date.* Notwithstanding any other provision of the plan, payment of a participant's retirement benefits under the plan shall commence not later than the participant's required beginning date, which is defined as the later of:

-April 1 of the calendar year that next follows the calendar year in which the participant attains or will attain the age of 70½ years; or

-April 1 of the calendar year that next follows the calendar year in which the participant retires.

- (c) *Required minimum distributions.*

- (1) *Required beginning date.* The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date as defined in subsection (b) of this section 22-65.

- (2) *Death of participant before distributions begin.*

- a. If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

1. If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.
2. If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.
3. If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

- b. The participant's entire interest shall be distributed as follows:

1. *Participant survived by designated beneficiary.* If the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in subparagraph (2)a. above, over the life of the designated beneficiary or over a period certain not exceeding:
 - (i) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or
 - (ii) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

2. *No designated beneficiary.* If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
 - c. *Death of surviving spouse before distributions to surviving spouse begin.* In any case in which (i) the participant dies before the date distribution of his or her interest begins, (ii) the participant's surviving spouse is the participant's sole designated beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, subparagraphs (2)a. and (2)b. above shall apply as though the surviving spouse were the participant.
- (3) *Requirements for annuity distributions that commence during participant's lifetime.*
- a. *Joint life annuities where the beneficiary is not the participant's spouse.* If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.
 - b. *Period-certain annuities.* Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this subparagraph (3)b., or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.
- (4) *Form of distribution.* Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subparagraphs (4)a., (4)b. and (4)c. below. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of

Section 401(a)(9) of the Code and the Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

- a. *General annuity requirements.* If the participant's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:
 1. The annuity distributions will be paid in periodic payments made at intervals not longer than one year;
 2. The distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in paragraphs (2) or (3) above, whichever is applicable, of this subsection (c);
 3. Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
 4. Payments will either be non-increasing or increase only as follows:
 - (i) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
 - (ii) To the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the [Internal Revenue] Code;
 - (iii) To provide cash refunds of employee contributions upon the participant's death; or
 - (iv) To pay increased benefits that result from a plan amendment.
- b. *Amount required to be distributed by required beginning date.* The amount that must be distributed on or before the participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under subparagraph (2)a.1. or (2)a.2., whichever is applicable) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.
- c. *Additional accruals after first distribution calendar year.* Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(5) *[Distributions.]* For purposes of this subsection (c), distributions are considered to begin on the participant's required beginning date. If annuity payments irrevocably commence to the participant (or to

the participant's surviving spouse) before the participant's required beginning date (or, if to the participant's surviving spouse, before the date distributions are required to begin in accordance with subparagraph (2)a. above), the date distributions are considered to begin is the date distributions actually commence.

(6) *Definitions.*

- a. *Designated beneficiary.* The individual who is designated as the beneficiary under the plan and is the designated beneficiary under Section 401(a)(9) of the [Internal Revenue] Code and Section 1.401(a)(9)-4 of the Treasury regulations.
 - b. *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to paragraph 2. of this subsection (c).
 - c. *Life expectancy.* Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (d) (1) *[Rollover distribution.]* Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the administrator, 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.* The following definitions apply to this section:

- a. *Eligible rollover distribution.* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
 - 1. Any distribution that is one 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 years or more;
 - 2. Any distribution to the extent such distribution is required under Section 401(a)(9) of the [Internal Revenue] Code;
 - 3. The portion of any distribution which is made upon hardship of the member; and
 - 4. The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the [Internal Revenue] Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the [Internal Revenue] Code that agrees

to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (3) *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, an annuity contract described in Section 403(b) of the [Internal Revenue] Code, a qualified trust described in Section 401(a) of the [Internal Revenue] Code, an eligible plan under Section 457(b) of the [Internal Revenue] Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of [Internal Revenue] Code Section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.
- (4) *Distributee.* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the [Internal Revenue] Code, are distributees with regard to the interest of the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated beneficiary as defined in Section 401(a)(9)(E) of the [Internal Revenue] Code who is not the surviving spouse and who elects a direct rollover to an individual retirement account described in Section 408(a) of the [Internal Revenue] Code or an individual retirement annuity described in Section 408(b) of the [Internal Revenue] Code shall be considered a distributee.
- (5) *Direct rollover.* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.
- (e) *[Maximum amount of mandatory distribution.]* Notwithstanding any other provision of this plan, the maximum amount of any mandatory distribution, as defined in Section 401(a)(31) of the [Internal Revenue] Code, payable under the plan shall be \$1,000.00.
- (f) *Compensation limitations under 401(a)(17).* In addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the plan to the contrary, the annual compensation of each participant taken into account under the plan shall not exceed the EGTRRA annual compensation limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is \$200,000.00, as adjusted by the commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the [Internal Revenue] Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Any reference in the plan to the limitation under Section 401 (a)(17) of the [Internal Revenue] Code shall mean the EGTRRA annual compensation limit set forth in this provision.

- (g) *[Use of funds.]* At no time prior to the satisfaction of all liabilities under the plan with respect to members

and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

(Ord. No. 11-01, § 6, 2-7-2011; Ord. No. 15-11, § 3, 6-1-2015; Ord. No. 15-12, §§ 4—6, 6-1-2015)

Editor's note— Ord. No. 11-01, § 6, adopted Feb. 7, 2011, amended § 2-65 in its entirety as set out herein. Formerly, said section pertained to maximum pension limitation. See the Code Comparative Table.

Sec. 22-66. - Commencement of benefits.

- (a) Unless the member otherwise elects, with such election being in writing and delivered to the board and specifying the form of retirement income and date on which the retirement income is to commence, the payment benefits under the pension plan to the member shall commence not later than the sixtieth day after the close of the year of the pension plan in which the latest of the following events occur:
 - (1) The attainment by the member of age 65;
 - (2) The tenth anniversary of the date on which the member commenced participation in the pension plan; or
 - (3) The termination of the member's service with the city.
- (b) If the payment of a member's retirement income cannot begin on the date required under subsection (a) of this section because the board either cannot ascertain the amount of the member's retirement income or cannot locate the member after making reasonable efforts to do so, the payment of the member's benefits shall begin not later than 60 days after the date on which the amount can be ascertained or the member is located, whichever is applicable. Any such payment shall be made retroactive to a date which is not earlier than the date on which the payment of the member's benefits was scheduled to begin but which is not later than the date specified under subsection (a) of this section.

(Ord. No. 00-08, § 2, 7-17-2000)

Sec. 22-67. - Distribution of benefits.

Notwithstanding any other provision of this pension plan to the contrary, a form of retirement income payable from this pension plan, after the effective date of this pension plan, shall satisfy the following conditions:

- (1) If the retirement income is payable before the member's death:
 - a. It shall either be distributed or commence to the member not later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½, or the calendar year in which the member retires; or
 - b. The distribution shall commence not later than the calendar year defined above; and
 - 1. Shall be paid over the life of the member or over the lifetimes of the member and spouse, issue or dependent; or
 - 2. Shall be paid over the period extending not beyond the life expectancy of the member and spouse, issue or dependent.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the member dies before his entire interest in the pension plan has been distributed, the remaining portion of such interest in the pension plan shall be distributed no less rapidly than under the

form of distribution in effect at the time of the member's death.

- (2) If the member's death occurs before the distribution of his interest in the pension plan has commenced, the member's entire interest in the pension plan shall be distributed within five years of the member's death, unless it is to be distributed in accordance with the following rules:
- a. The member's remaining interest in the pension plan is payable to his spouse, issue or dependent;
 - b. The remaining interest is to be distributed over the life of the spouse, issue or dependent or over a period not extending beyond the life expectancy of the spouse, issue or dependent; and
 - c. Such distribution begins within one year of the member's death unless the member's spouse, issue or dependent shall receive the remaining interest, in which case the distribution need not begin before the date on which the member would have attained age 70½, and if the spouse, issue or dependent dies before the distribution to the spouse, issue or dependent begins, this section shall be applied as if the spouse, issue or dependent were the member.

(Ord. No. 00-08, § 2, 7-17-2000)

Sec. 22-68. - Repeal or termination of pension plan.

- (a) This article establishing the pension plan and fund, and subsequent resolutions pertaining to said pension plan and fund, may be modified, terminated, or amended, in whole or in part; provided, however, that if this or any subsequent resolution shall be altered, 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.
- (b) If this article shall be repealed, or if contributions to the pension plan are discontinued, the board shall continue to administer the pension plan 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 said members. In the event of repeal, or if contributions to the pension plan are discontinued, there shall be full vesting (100 percent) of benefits accrued to the date of repeal. The board shall determine the date of distribution and the asset value required to fund all nonforfeitable benefits after taking into account the expenses of such distribution. The board shall inform the city, or then current plan sponsor, if additional assets are required, in which event the city, or then current plan sponsor, shall continue to financially support the pension plan until all nonforfeitable benefits have been funded.
- (c) The board of trustees shall determine the method of distribution of the asset value, that is, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each firefighter entitled to benefits under the plan as specified in subsection F.S. § 175.361(3).

(Ord. No. 00-08, § 2, 7-17-2000; Ord. No. 11-01, § 7, 2-7-2011)

Sec. 22-69. - Exemption from execution and non-assignability.

Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this article and the accumulated contributions and the cash securities in the fund created under this article are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable; except the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit those funds necessary to pay for the benefits being received through the city, to pay the certified bargaining agent of the city, and to make any payments for child support or alimony. The board of trustees may, upon the written request of the retiree of the pension plan, authorize the plan administrator to withhold from the retirement payment those funds that are necessary to pay for premiums for accident, health, and long-term care insurance for the retiree and the retiree's spouse and dependents. The pension plan, and its board of trustees, shall not incur any liability for participation in this permissive program should its actions be taken in good faith.

(Ord. No. 00-08, § 2, 7-17-2000; Ord. No. 05-01, § 2, 12-6-2004; Ord. No. 11-01, § 8, 2-7-2011)

Sec. 22-70. - Pension validity.

The board shall have the power to examine the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. Said board is empowered to purge the pension rolls of any person heretofore granted a pension under prior or existing law or heretofore granted under this article if the same is found to be erroneous, fraudulent or illegal for any reason and to reclassify any person who has heretofore under any prior or existing law been or who shall hereafter under this article be erroneously, improperly or illegally classified.

(Ord. No. 00-08, § 2, 7-17-2000)

Sec. 22-71. - Forfeiture of pension.

- (a) Any member who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this pension plan, except for the return of his accumulated contributions as of the date of termination.
- (b) Specified offenses are as follows:
 - (1) The committing, aiding or abetting of an embezzlement of public funds;
 - (2) The committing, aiding or abetting of any theft by a public officer or employee from employer;
 - (3) Bribery in connection with the employment of a public officer or employee;
 - (4) Any felony specified in F.S. ch. 838;
 - (5) The committing of an impeachable offense;
 - (6) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he acts or in which he is employed, of the right to receive the faithful performance of his duty as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his public office or employment.

(c) As used in this section:

- (1) "Conviction" means an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or a nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the senate of an impeachable offense.
- (2) "Court" means any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the board shall hold a hearing on which notice shall be given to the member whose benefits are being considered for forfeiture. Said member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the member shall be afforded a full opportunity to present his case against forfeiture.

(d) Any member who has received benefits from the pension plan in excess of his accumulated contributions after the member's rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his accumulated contributions. The board may implement all legal action necessary to recover such funds.

(Ord. No. 00-08, § 2, 7-17-2000)

Sec. 22-72. - Direct transfers of eligible rollover distributions.

(a) Notwithstanding any provision of the pension plan to the contrary that would otherwise limit a distributee's election under this section, 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.

(b) As used in this section:

- (1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one 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 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income.
- (2) "Eligible retirement plan" means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the 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.
- (3) "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.
- (4) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

(Ord. No. 00-08, § 2, 7-17-2000)

Sec. 22-73. - Retiree health insurance subsidy.

Each eligible retiree or beneficiary who is a spouse or financial dependent shall receive a monthly retiree health insurance subsidy payment equal to the number of years of credited service completed at the time of the member's retirement multiplied by \$3.00; however, no retiree or beneficiary may receive a subsidy payment of more than \$90.00 or less than \$30.00.

(Ord. No. 00-08, § 2, 7-17-2000)

Sec. 22-74. - Deferred retirement option plan (DROP).

A deferred retirement option plan ("DROP") shall be created for all 175-member participation as soon as practicable after June 6, 2022. Eligibility to participate in the DROP is based upon eligibility for normal service retirement and subject to the below.

- (1) The maximum period of DROP participation is five years. Members entering the DROP must submit an irrevocable letter of termination or resignation, effective not later than 60 months after the commencement of DROP participation. Upon entry into the DROP, the member's average final compensation and accrued benefits shall be calculated. No change in the plan benefits made subsequent to entry into the DROP shall apply to the member unless otherwise applicable to retired pension members.
- (2) Payment shall be made into the member's DROP account in an amount determined by the member's selection of the payment option as if the member had terminated employment in the city.
- (3) The interest in a member's account in the DROP program shall accrue at an effective annual rate of 1.3 percent, compounded monthly, on the prior month's accumulated ending balance, up to the month of termination or death.
- (4) All interest will be credited to the member's DROP account at the end of the DROP period.
- (5) A member must terminate service with the city at the conclusion of years in the maximum DROP participation period. Upon termination of service with the city, a member may receive payment or defer payment until a time not later than the latest date authorized by Section 401(a)(9) of the Internal Revenue Code at the option of the employee.
- (6) No payment may be made from the DROP until the member actually separates from service with the city.
- (7) If a member dies during participation in the DROP, the member will be treated as any other retired pension member and shall not be entitled to pre-retirement death benefits.

(Ord. No. 22-06, § 5, 6-6-2022)