

FIREFIGHTERS' RETIREMENT SYSTEM

Sec. 33.73. - ESTABLISHMENT OF FIREFIGHTERS' RETIREMENT SYSTEM.

Effective October 1, 2016, the City of Delray Beach Firefighters' Retirement System is established to continue providing retirement benefits to City firefighters and their beneficiaries, as provided in Sections 33.74 through 33.91 below. However, the benefit changes in Sections 33.74, 33.76, and 33.86, and the change in Section 33.78(B) shall take effect on the effective date of this ordinance.

(Ord. No. [17-16](#), § 2, passed 10/4/16)

Sec. 33.74. - DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Actuarial equivalence or *Actuarially equivalent*. This term shall mean that any benefit payable under the terms of the pension fund in a form other than the normal retirement pension shall have the same actuarial present value on the date payment commences as the normal retirement pension. For purposes of establishing the actuarial present value of any form of payment, all future payments shall be discounted for interest and mortality by using seven (7) percent interest and the 1983 Group Annuity Mortality Table for Males, with ages set ahead five (5) years in the case of disability retirees. Agreement. The written instrument setting forth the provisions of the retirement system.

Average monthly earnings.

- (1) For members hired on or before October 5, 2016, average monthly earnings means one thirty-sixth ($1/36$) of the arithmetical average for the highest consecutive thirty-six-month period preceding the actual retirement or termination of a member; provided, however, the benefit derived shall not be less than the benefit that would have been paid based on a definition of average monthly earnings of one twenty-fourth ($1/24$) of the arithmetical average for the highest consecutive twenty-four-month period, as calculated prior to the effective date of Ordinance No. 17-04.
- (2) For members hired after October 5, 2016, average monthly earnings means one sixtieth ($1/60$) of the arithmetical average for the highest five (5) years of the last ten (10) years preceding the actual retirement or termination of a member.
- (3) In addition to other applicable limitations set forth in the plan, and notwithstanding any other provisions of the plan to the contrary, for the plan years beginning on or after January 1, 1996, the annual compensation of each member taken into account under the plan shall not exceed the annual compensation limit of Section 401(a)(17)(B) of the Internal Revenue Code, as amended for cost of living increases, which is incorporated herein by reference.

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

Board. The Board of Trustees which shall administer and manage the system herein provided and serve as Trustee of the Trust Fund.

City. The City of Delray Beach, Florida.

Continuous service.

- (1) Uninterrupted service by a member (expressed as years and completed months) from the date he last entered employment as an employee until the date his employment is terminated by death, disability, retirement, resignation or discharge.

- (2) However, the continuous service of any member shall not be deemed to be interrupted by:
 - (a) Any authorized leave of absence or vacation, provided all members similarly situated in similar circumstances shall be treated alike pursuant to uniform, nondiscriminatory rules. No credit for benefit eligibility for computation purposes under the system shall be allowed for any such period of leave of absence.
 - (b) Any service, whether voluntary or involuntary, in the armed forces of the United States, provided the member is legally entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 and any amendments thereto, or any law applicable to such reemployment, and provided that a member shall apply for reemployment within three (3) months following termination of such service, or as otherwise allowed by the Uniformed Services Employment and Reemployment Rights Act of 1994, and any amendments thereto. Nothing aforementioned shall serve to reduce the accrued accredited services of the members on the effective date of the plan.
- (3) Continuous service shall also include, for reemployed members, those years and completed months for which the reemployed member had withdrawn his contributions to the Trust Fund, where the reemployed member repays into the Fund the contributions he had withdrawn, with interest based upon the plan's annual total rate of return for the pension funds, as computed by the actuaries or the City, for those years and completed months, within ninety (90) days after his reemployment date. A reemployed member may also repay only a portion of the withdrawn funds with interest and receive a like credit for continuous service; however, repayments, whether partial or total, shall only be permitted once within the ninety-day limit.
- (4) For members who are employed by the City on or after the effective date of this Section who have five (5) or more years of continuous service based on City employment, continuous service shall also include up to three (3) years of active service in the U.S. armed forces or full-time employment as a firefighter with another governmental entity prior to employment by the City, purchased by the member in accordance with this paragraph; provided the member has not received and will not receive a benefit from another retirement plan based on such prior employment. Such a member may purchase continuous service under the plan, in years and tenths of a year, for all or a portion of the period of their active service in the U.S. armed forces or full-time employment as a firefighter with another governmental entity prior to employment by the City, by paying into the plan the full actuarial cost of such continuous service, as determined by the plan actuary. Such payment may be made at any time after employment by the City, and must be made in full prior to entering the DROP or separation from City employment, whichever occurs earlier. In the event full payment is not made prior to such date, the member shall receive only the amount of continuous service, as determined by the actuary, for which the payment made, excluding interest, is the full actuarial cost. In the event a member makes payment for additional continuous service in accordance with this paragraph prior to attaining five (5) years of continuous service based on City employment, and separates from City employment before attaining five (5) years of continuous service based on City employment, such member shall receive a full refund of all payments made, plus interest based on the assumed rate of return of the plan. A member purchasing such additional continuous service must pay the full cost of any actuarial calculations required. Payment for the purchase of continuous service pursuant to this paragraph may be made using any one or a combination of the following options:
 - (a) Cash lump sum payment.
 - (b) Direct transfer or rollover of an eligible rollover distribution from a qualified plan, in accordance with Section 33.88.
 - (c) Time Payment Plan. Under this option the member may elect to pay any remaining balance due for the purchase of continuous service through payroll deduction on a time payment plan over a period of not more than five (5) years, as approved by the Retirement Committee. Interest on such payments shall be paid based on the assumed rate of return

of the plan. Payments deducted from an employee's pay shall be designated as employer contributions pursuant to Section 414(h) of the Internal Revenue Code.

Earnings. Earnings shall mean base wages paid to the member including state education compensation and fire career education compensation, but excluding overtime, bonuses and any other payments.

Effective date. April 22, 1974.

Eligible retired public safety officer. An member who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer.

Employee. All employees of the City classified as regular, full-time firefighters, as defined in F.S. Section; 175.032, but shall exclude all civilian members of the Fire-Rescue Department, and the Fire-Rescue Chief upon his or her written election not to participate in the system.

Fund. The Trust Fund established herein as part of the system.

Member. An employee who satisfies the conditions of eligibility as set forth in Section 33.75.

Public safety officer. The term "public safety officer" shall have the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)).

Qualified Health Insurance Premiums. Premiums for coverage for the eligible retired public safety officer, his spouse, and dependents (as defined in Section 152 of the Internal Revenue Code), by an accident or health plan or qualified long-term care insurance contract (as defined in Section 7702B(b) of the Internal Revenue Code).

Qualified Military Service. Any service in the uniformed service (as defined in chapter 43 of title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service (Section 414(u)(5) of the Internal Revenue Code).

Spouse. The lawful wife or husband of a member at time of retirement and death.

System. The City Firefighters' Retirement System as contained herein and all amendments thereto.

USERRA. Uniformed Services Employment and Reemployment Rights Act (P.L. 103-353).

(Ord. No. [17-16](#), § 2, passed 10/4/16)

Sec. 33.75. - MEMBERSHIP; CONDITIONS OF ELIGIBILITY; APPLICATION.

(A) *Conditions of eligibility.*

- (1) Employees, as defined in Section 33.74, who are covered under the retirement program provided under F.S. ch. 175, as of the effective date, shall become members of this system.
- (2) Any other employee shall, as a condition of employment, become a member upon employment.

(B) *Application.* Each eligible employee shall complete an application form covering the following points, as well as any other points or items as may be prescribed by the Board.

- (1) The employee's acceptance of the terms and conditions of the retirement system, including an initialing of any declaration of ineligibility for disability benefits;
- (2) The employee's designation of a beneficiary; and
- (3) Authorization of a payroll deduction payable to the system in the amount provided for in Section 33.78(A).

(C) *Change in Designation of Beneficiary.*

- (1) A member, including a member who has elected to participate in the Deferred Retirement Option Plan pursuant to Section 33.84, shall designate the joint annuitant or beneficiary to receive the benefit, if any, payable under the plan in the event of the member's death, on a form provided by the Board of Trustees.
- (2) The member may revoke or change the designation of a joint annuitant or beneficiary at any time prior to the commencement of retirement income or benefits, or prior to the member's entry into the Deferred Retirement Option Plan, by submitting such change in writing on a form provided by the Board of Trustees.
- (3) A retired member, including a retired member who is a participant in the Deferred Retirement Option Plan may change the designation of the member's joint annuitant or beneficiary after the commencement of retirement income or benefits up to two (2) times without the approval of the Board of Trustees. Any additional changes must be approved by the Board of Trustees. A retiree 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. The consent of the retiree's joint annuitant or beneficiary to any change in such designation shall not be required. The member must pay the full cost of determining the equivalent actuarial value of the benefit payable. The amount of retirement income payable to the member upon the designation of a new joint annuitant shall be actuarially redetermined, taking into account the benefits already received by the member, and the age and sex of the former joint annuitant, the new joint annuitant and the member. Each designation of a joint annuitant or beneficiary shall be made in writing on a form provided by the Board of Trustees. Upon a change in designation of joint annuitant or beneficiary, the rights of all previously designated joint annuitants or beneficiaries to receive any benefit under the system shall cease.

(Ord. No. [17-16](#), § 2, passed 10/4/16)

Sec. 33.76. - BENEFIT AMOUNTS AND ELIGIBILITY.

(A) *Normal Retirement Date.* This term shall have the following meanings:

- (1) For employees who are eligible to become members of the system as of its effective date, the normal retirement date shall be the date of their fifty-second (52nd) birthday, regardless of the number of years of continuous service.
- (2) For employees who are members of the system and terminate employment prior to October 1, 1989, the normal retirement date shall be the first day of the month coincidental with or subsequent to their fifty-second (52nd) birthday and the completion of twenty (20) years of continuous service.
- (3) For members who are employed on or before October 5, 2016, the normal retirement date shall be the first day of the month coincident with or subsequent to completion of twenty (20) years of continuous service.
- (4) For employees who are members of the system and retire or terminate employment on or after December 31, 1999, the normal retirement date shall also be or the first day of the month coincident with or subsequent to age fifty-five (55) and the completion of ten (10) years of continuous service.
- (5) For employees who are hired after October 5, 2016, the normal retirement date shall be the first day of the month coincident with or subsequent to age fifty-five (55) and the completion of ten (10) years of continuous service, or completion of twenty-five (25) years of continuous service, regardless of age.

(B) *Normal Retirement Benefit.*

- (1) *Duration, Survivor Benefits.* A member retiring on his normal retirement date shall receive a monthly benefit which shall commence on his normal retirement date and be continued thereafter during his lifetime. Upon his death the full retirement benefit shall be continued to his beneficiary for one year and sixty (60) percent of that amount continued thereafter until the earlier of death or remarriage. Notwithstanding the previous sentence, for members who are not eligible for normal retirement on October 5, 2016 and members hired on or after that date who retire on the normal retirement date, the monthly benefit based on continuous service after October 5, 2016 shall commence on the normal retirement date and continue thereafter during the member's lifetime; and in the event the member dies within ten (10) years following retirement, the monthly benefit shall be paid to member's designated beneficiary for the remainder of the ten-year period.
- (2) *Amount.*
 - (a) For members hired on or before October 5, 2016, retirement benefits shall be in the amount of two and one-half (2½) percent of average monthly earnings for each year of continuous service for members with more than ten (10) but less than twenty (20) years of continuous service. Normal retirement benefits shall be in the amount of three (3) percent of average monthly earnings for each year of continuous service if a member has attained twenty (20) or more years of continuous service, subject to a maximum of seventy-five (75) percent of average monthly earnings. Provided, however, that in no event shall a member's total benefit be less than two (2) percent of average monthly earnings for each year of continuous service.
 - (b) Notwithstanding any other provision of the system, the normal retirement benefit for members employed on or before October 5, 2016 shall be three (3) percent of average monthly earnings for each year of continuous service earned after that date.
 - (c) Notwithstanding any other provision of the system, the normal retirement benefit for members hired after October 5, 2016 shall be two and three-fourths (2.75) percent of average monthly earnings for each year of continuous service.
 - (d) Notwithstanding any other provision of the system, effective October 5, 2016, the maximum annual benefit in the normal benefit form at the time of retirement shall be one hundred thousand dollars (\$100,000.00); provided, in no event shall a member's total benefit be less than two (2) percent of average monthly earnings for each year of continuous service. This maximum benefit amount shall be increased annually by two (2) percent, effective October 1, 2016 and each October 1 thereafter.
- (3) *Optional Enhanced Multiplier.*
 - (a) Notwithstanding any other provision of the system, a member who is actively employed by the City on March 15, 2004, but who is not participating in the deferred retirement option plan (DROP), may elect a normal retirement benefit in the amount of three and one-half (3.5) percent of average monthly earnings for each year of continuous service if the member attains twenty (20) or more years of continuous service, subject to a maximum of eighty-seven and one-half (87.5) percent of average monthly earnings. Members electing this enhanced multiplier shall thereafter contribute three (3) percent of earnings to the Trust Fund in addition to the member contribution specified in Section 33.78(A) until October 5, 2016, and shall receive the enhanced multiplier for all periods of continuous service before that date. An election under this subparagraph must be on or before April 15, 2004.

- (b) Notwithstanding any other provision of the system, a member who is actively employed by the City on March 15, 2004, but does not elect the enhanced multiplier in accordance with subparagraph (a), above, and who is not participating in the deferred retirement option plan (DROP), may thereafter elect a normal retirement benefit in the amount of three and one-half (3.5) percent of average monthly earnings for all future continuous service after making such election until October 5, 2016 if the member attains twenty (20) or more years of continuous service, subject to a maximum of eighty-seven and one-half (87.5) percent of average monthly earnings. Members electing this enhanced multiplier shall thereafter contribute three (3) percent of earnings to the Trust Fund in addition to the member contribution specified in Section 33.78(A) until October 5, 2016. Such member may also elect to purchase the enhanced multiplier for some or all periods of continuous service prior to the date of the election, by paying the full actuarial cost of the enhanced multiplier, plus the full cost of any actuarial or other professional services required.
 - (c) Notwithstanding any other provision of the system, a member who is hired after March 15, 2004 and before April 9, 2013, and who is not participating in the deferred retirement option plan (DROP) may elect a normal retirement benefit in the amount of three and one-half (3.5) percent of average monthly earnings for all future continuous service after making such election until October 5, 2016 if the member attains twenty (20) or more years of continuous service, subject to a maximum of eighty-seven and one-half (87.5) percent of average monthly earnings. Members electing this enhanced multiplier shall thereafter contribute three (3) percent of earnings to the Trust Fund in addition to the member contribution specified in Section 33.78(A) until October 5, 2016. Such member may also elect to purchase the enhanced multiplier for some or all periods of continuous service prior to the date of the election, by paying the full actuarial cost of the enhanced multiplier, plus the full cost of any actuarial or other professional services required. Members hired on or after April 9, 2013 shall not be eligible for the optional enhanced multiplier provided in this paragraph (c).
 - (d) The election to receive the enhanced multiplier under this paragraph must be made in writing on a form provided by the City. Such election shall be irrevocable. If an eligible member does not elect an optional enhanced multiplier under this paragraph, or if an eligible member elects the enhanced multiplier for only a portion of his total continuous service, then the benefit provided in paragraph (2) shall be used to calculate the benefit for all continuous service to which the enhanced multiplier does not apply. If an eligible member elects the enhanced multiplier and attains more than ten (10) but less than twenty (20) years of continuous service, the member's benefit shall be determined in accordance with paragraph (b), and the member shall receive a refund of all additional contributions and amounts paid for the enhanced multiplier, without interest. In no event shall a member's total benefit be less than two (2) percent of average monthly earnings for each year of continuous service.
- (4) Upon becoming eligible for normal retirement, a member shall be one hundred (100) percent vested in his or her accrued benefit.
- (C) *Early Retirement Date.* On or after December 31, 1999, a member may retire on or after the early retirement date, which shall be the first day of any month coincident with or next following the attainment of age fifty (50) and the completion of ten (10) years of continuous service. Early retirement is retirement from active employment with the City on or after the early retirement date and prior to the normal retirement date.
- (D) *Early Retirement Benefit.* The amount of the early retirement benefit shall be determined in the same manner as the normal retirement benefit, except that continuous service and average final compensation shall be determined as of the early retirement date. The benefit payable shall be reduced by three (3) percent for each year by which the commencement of benefits precedes the normal retirement date. The early retirement benefit provided in this subsection (D) shall have no application to the early retirement incentive provided in Section 33.85.

(E) *Disability Retirement Provisions.*

- (1) (a) For purposes of this system, "total and permanent disability" shall mean an injury, disease or condition which totally and permanently incapacitates a member, either physically or mentally, from his regular and continuous duty as a firefighter. A "total and permanent disability" arising directly from the performance of service to the City by a member as firefighter shall be considered to be a service incurred disability. A "total and permanent disability" arising from any other cause or source, other than as modified below, shall be considered to be a nonservice incurred disability. A member shall not be entitled to receive a disability retirement benefit from the system if the disability is a result of:
 - (1) Excessive and habitual use of drugs, intoxicants or narcotics;
 - (2) Injury or disease sustained by the member while willfully and illegally participating in fights, riots, civil insurrections, or while committing a crime;
 - (3) Injury or disease sustained by a member while serving in any of the armed forces;
 - (4) Injury or disease sustained by the member after his employment with the City has been terminated.
- (b) A member shall not receive a service incurred disability benefit for injury or disease sustained by the member while working (either as an employee or through some other contractual arrangement) for anyone other than the City, performing a job function the same as or related to the member's City job function, and arising out of the scope of any other employment or contractual arrangement, excepting injuries sustained by members while performing duties on behalf of the City and while within the City's jurisdiction although those injuries occurred at an outside employer's job site. In addition, a member shall not be entitled to receive a disability retirement benefit from the system on the basis of any condition which existed prior to the member's employment or which was evidenced during the member's pre-employment physical.
- (2) *Application for Benefits.* In order for the Board to consider a member's request for disability retirement benefits, the member must apply in writing to the Board. Upon receipt of proper application by the Board of Trustees, the Board of Trustees shall arrange for a physical examination of the applicant by the medical board. A further condition for receipt of disability retirement benefits from the system is that the applicant must apply for and diligently pursue disability benefits from social security and workers' compensation. Written proof of application must be submitted to the Board of Trustees. Failure of the applicant to qualify as being disabled under either the social security or workers' compensation laws may be considered by the Board of Trustees in review of that member's application or recovery from disability.
- (3) *Medical Board.* When a member submits proper application for a disability retirement benefit, the Board of Trustees shall designate a medical board to be composed of at least one physician. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this subchapter, shall investigate all essential statements or certificates made by or on behalf of a member in connection with an application for disability retirement and shall report in writing to the Board of Trustees its conclusions and recommendations upon all matters referred to it. The payment of those services shall be determined by the Board of Trustees.
- (4) *Determination of Disability.* All questions relating to eligibility for initial payment or continuance of disability benefits shall be determined by the Board of Trustees, taking into consideration the recommendations of the medical board and any other evidence of which the Board of Trustees may avail itself. The general steps which the Board of Trustees shall follow in its determination shall be as listed below, provided however, that the Board of Trustees may, in its discretion, alter or modify these steps:

- (a) Determine whether the member's application is proper;
 - (b) If application is for a nonservice incurred disability, determine whether the ten (10) years of continuous service requirement has been met;
 - (c) Based on all evidence submitted to the Board of Trustees, determine whether the applicant satisfies the definition of disability, including the absence of listed exclusions;
 - (d) Determine whether the disability is to be considered a service-incurred disability or a nonservice disability, taking into consideration F.S. § 175.231.
 - (e) Establish a date of disability. This date may be the date of injury causing the disability, the date when the member could no longer perform his regular and continuous duties, the date when his sick pay and vacation pay are exhausted or such other date as determined by the Board of Trustees.
- (5) *Disability Retirement Benefits.*
- (a) *Eligibility.* Each member shall be eligible for service incurred disability benefits, regardless of length of continuous service. Each member who completes ten (10) years of continuous service prior to becoming disabled shall be eligible for nonservice incurred disability benefits.
 - (b) *Initial Amount of Service Incurred Disability Benefit.* The greater of sixty (60) percent of the member's average monthly earnings in effect on the date of disability or the member's accrued pension benefit. Effective for disability applications filed on or after May 3, 2011, the initial amount of service incurred disability benefit shall be the greater of sixty-one (61) percent of the member's average monthly earnings in effect on the date of disability or the member's accrued pension benefit.
 - (c) *Amount of Nonservice Incurred Disability Benefit.* Two (2) percent of average monthly earnings in effect on the date of disability for each year of continuous service; provided, however, the minimum shall not be less than twenty-five (25) percent of average monthly earnings.
 - (d) *Terms of Payments.* Disability benefits shall commence on or as of the first day of the month coincident with or next following the date of disability, as established by the Board of Trustees, and shall continue to be paid on the first day of each subsequent month until the death or recovery of the disability retiree. The same survivorship percentages which apply to normal retirement benefits shall also apply to disability retirement benefits.
 - (e) *Eligibility for Other Benefits.* In the event that a member applying for disability benefits is also eligible for either early or normal retirement, the Board may, upon the request of the member, pay the early or normal retirement benefit instead of a disability retirement benefit.
- (6) *Report by Disability Retiree.*
- (a) Each person currently receiving disability retirement benefits and each person who first qualifies for disability retirement benefits shall be required to submit to the Board of Trustees, upon a request by the Board of Trustees, a signed and notarized report which includes, but is not limited to:
 - (1) A medical report from the disability retiree's physician stating whether the retiree is still totally incapacitated to perform the regular and continuous duties of a firefighter shall be submitted to the Board. The required physician's statement must be dated within four (4) months of the request.
 - (2) A statement to the effect that the disability retiree understands that if the report is incomplete or incorrect, his disability benefits may be suspended or discontinued.

- (b) In the event that the required reports are not submitted to the Board on a timely basis, or are incomplete or incorrect, the Board may, in its discretion, suspend or discontinue the disability retirement benefits.
- (7) *Disability Affidavit.* No member otherwise eligible to receive disability benefits shall be paid those benefits unless and until that member files a disability affidavit with the Board on a form furnished by the Board. By the disability affidavit, the prospective retiree shall affirm that he is acquainted and familiar with the terms and conditions of his disability retirement. In particular, he shall acknowledge the authority of the Board to require him to undergo periodic future physical examinations in order to determine whether he has recovered from disability.
- (8) *Authority for Reexamination.* Each person who first qualifies for or is then receiving disability retirement benefits on or after the effective date of this subchapter shall be subject to periodic reexamination by a medical board selected by the Board of Trustees to determine if the disability has ceased to exist.
- (9) *Recovery from Disability.*
 - (a) In the event a member who has been retired on a disability benefit regains his health and is able to perform his duties in the Fire Department, the Board shall discontinue the pension; and further, the City shall, subject to budget and qualification of the member for the position, offer the member a position with the City as a firefighter.
 - (b) If a member shall resume his employment with the City, as a firefighter, then he may pay into the Fund an amount equal to the aggregate contributions plus interest at a rate to be determined by the Board (computed upon his annual earnings at the time of his disability retirement) he would have been required to make hereunder, as determined by the Board, during the period of his disability retirement had he not been retired, and shall thereupon receive creditable service for the period of the disability retirement. In any event, that member shall retain credit for the period of continuous service to the date of disability.
- (F) *Preretirement Death.*
 - (1) *Service Incurred.* A death benefit shall be payable on behalf of any member who dies as a direct result of an occurrence arising in the performance of service. These benefits are not to be limiting to other benefits available under State law. The benefits shall be payable as follows:
 - (a) To the spouse, until the earlier of death or remarriage, a monthly benefit equal to fifty (50) percent of the member's average monthly earnings; or to a designated beneficiary or beneficiaries other than the spouse, until death, a monthly benefit equal to the actuarial equivalent of a lifetime benefit payable to the member if the amount of fifty (50) percent of the member's average monthly earnings at date of death, plus
 - (b) (1) For each unmarried child until he or she shall have reached the age of eighteen (18) years, and for each unmarried child from age eighteen (18) until age twenty-two (22) who is a full-time student in a fully accredited high school, college or university, there shall be paid in equal monthly installments, an amount equal to five (5) percent of the average monthly earnings subject to an overall limitation of a total of sixty (60) percent of average monthly earnings for the spouse and children combined. The nonstudent child's pension shall terminate on the earlier of death, marriage or the attainment of age eighteen (18). The pension of a child who is a student shall terminate on the earlier of death, marriage or the attainment of age twenty-two (22). Legally adopted children shall be eligible the same as natural children.
 - (2) Upon remarriage or death of the spouse, the five (5) percent child allowance shall be increased to ten (10) percent for each child, not to exceed a combined total of thirty-five (35) percent of the member's average monthly earnings. The trusteeship and disbursements of the pension to any child shall be determined by the Board of Trustees.

- (c) Notwithstanding any provision of this subsection to the contrary, the surviving spouse of any member killed in the line of duty shall not lose death benefits upon remarriage.
 - (2) *Nonservice Incurred.* If any member shall die in active service from causes not attributable to active duty or service, a death benefit shall be payable as follows:
 - (a) With less than one year of continuous service, a single sum amount of two thousand five hundred dollars (\$2,500.00) to the member's spouse or other designated beneficiary or beneficiaries, as the case may be.
 - (b) With one but less than five (5) years of continuous service, a single sum amount of five thousand dollars (\$5,000.00) to the member's spouse or other designated beneficiary or beneficiaries, as the case may be.
 - (c) With five (5) or more years of continuous service:
 - (1) A single sum amount of five thousand dollars (\$5,000.00) to the member's spouse or other designated beneficiary or beneficiaries, as the case may be, plus
 - (2) To the spouse until remarriage or death, in equal monthly payments, a pension equal to sixty-five (65) percent of that member's accrued pension as of date of death, subject to a minimum of twenty (20) percent of average monthly earnings; or to a designated beneficiary or beneficiaries other than the spouse, until death, a monthly benefit equal to the actuarial equivalent of a lifetime benefit payable to the member in the amount of sixty-five (65) percent of such member's accrued pension as of date of death, plus
 - (3) To the child of the deceased member, the same benefits as are payable by reason of service incurred death, subject however, to a maximum combined limitation of monthly payments to the spouse and children of fifty (50) percent of average monthly earnings and thirty-five (35) percent after remarriage or death of spouse.
 - (3) In the event more than one beneficiary is designated by the member, the death benefits provided in this Section shall be apportioned equally among the beneficiaries.
- (G) *Vesting.*
- (1) If a member terminates his employment with the Fire Department, either voluntarily or by lawful discharge, and is not eligible for any other benefits under this system, he shall be entitled to the following:
 - (a) Effective September 1, 1999, with less than ten (10) years of continuous service, refund of member contributions with a noncompounded simple interest rate of three (3) percent per year applied to the principal balance of the participant's contribution as accrued on December 31 of each year, per year. In the event the amount of member contributions with interest exceeds one thousand dollars (\$1,000.00), the refund of member contributions and interest shall be made only upon the written request of a member or designated beneficiary.
 - (b) With ten (10) or more years of continuous service:
 - (1) The pension benefit accrued to his date of termination, payable commencing on the date which would have been his earliest normal retirement date had he remained in employment, provided he does not elect to withdraw his member contributions; or
 - (2) Effective September 1, 1999, refund of member contributions with a noncompounded simple interest rate of five (5) percent per year applied to the principal balance of the participant's contribution as accrued on December 31 of each year.
 - (2) Any member of this system who, for whatever reason, has his employment with the City as a firefighter terminated, but who remains with or was previously employed by the City in some other capacity so that his total period of employment with the City is ten (10) years or more, shall have all benefits accrued under this system preserved, provided he does not elect to

withdraw his member contributions. These accrued benefits shall be payable at his otherwise normal retirement date, in accordance with the provisions of this system. For purposes of determining normal retirement date under this vesting provision, continuous service shall include all continuous employment with the City as an employee as herein defined as well as the period of time subsequent to termination as a member of this system; however, benefits shall not be payable under this system during any period of continued employment by the City. Upon the written election of the Fire Chief not to participate in the system, the employment of the Fire Chief shall be deemed terminated for the purpose of applying the provisions of this system. A Fire Chief who terminates his participation in this system shall not thereafter be eligible to receive benefits through this system while actively employed by the City.

- (H) *Application of Section.* The provisions set forth herein shall be applicable to all current and future members of the plan, except those members who retired, entered the DROP plan, or terminated employment prior to August 17, 1999. Members who retired, entered the DROP plan, or terminated employment prior to August 17, 1999 shall receive benefits in accordance with the plan provisions in effect on the date of their retirement, entry into the DROP plan, or termination, whichever is earliest.
- (I) *Maximum Benefits.* A member may not receive a pension or disability benefit which exceeds the lesser of:
- (1) One hundred (100) percent of the member's average monthly earnings for the highest consecutive thirty-six-month period as a member of the pension fund for members hired on or before October 5, 2016; or one hundred (100) percent of the member's average monthly earnings for the highest five of the last ten (10) years of service for members hired after October 5, 2016; or
 - (2) A maximum annual benefit in the normal benefit form at the time of retirement of one hundred thousand dollars (\$100,000.00); provided, in no event shall a member's total benefit be less than two (2) percent of average monthly earnings for each year of continuous service. This maximum benefit amount shall be increased annually by two (2) percent, effective October 1, 2016 and each October 1 thereafter; or
 - (3) The maximum amount allowed under Section 415 of the Internal Revenue Code (increased to reflect the cost-of-living adjustment factor prescribed under Section 415(d) of the Internal Revenue Code), that is incorporated herein by reference. Notwithstanding any other provision of the system to the contrary, the annual benefit to which a member is entitled under the system shall not, in any limitation year, be in an amount which would exceed the applicable limitations under Section 415 of the Internal Revenue Code and the regulations issued thereunder. If the benefit payable under the system would (but for this Section) exceed the limitations of Section 415 of the [Internal Revenue] Code by reason of a benefit payable under another defined benefit plan aggregated with this system under [Internal Revenue] Code Section 415(f), the benefit under this system shall be reduced only after all reductions have been made under such other plan. As of January 1 of each calendar year commencing on or after January 1, 2008, the dollar limitation as determined by the Commissioner of the Internal Revenue Service for that calendar year, adjusted for the member's age in accordance with the applicable IRS regulations, shall become effective as the maximum permissible dollar amount of benefit payable under the system during the limitation year ending within that calendar year.
- (J) *Required Payment of Pension Benefits.* Pension benefits shall begin no later than April 1 of the calendar year following the calendar year in which the member retires, or in which the member attains age seventy and one-half (70½), even if the member has not filed a claim for pension benefits. In addition, payment of benefits shall be made in accordance with the applicable provisions of Section 401(a)(9) of the Internal Revenue Code, which is incorporated herein by reference. Notwithstanding any other provision of this plan to the contrary, a form of retirement income payable from this 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 seventy and one-half (70½), or the calendar year in which the member retires;
 - b. The distribution shall commence not later than the calendar year defined above; and (i) shall be paid over the life of the member or over the lifetimes of the member and spouse, issue or dependent, or (ii) 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 plan has been distributed, the remaining portion of such interest in the 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 plan has commenced, member's entire interest in the plan shall be distributed within five (5) years of member's death, unless it is to be distributed in accordance with the following rules:
 - a. The member's remaining interest in the 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, is the sole designated beneficiary, in which case the distribution need not begin before the date on which the member would have attained age seventy and one-half (70½); and if the member's spouse dies before the distribution to the spouse begins, this Section shall be applied as if the spouse were the member.

- (K) *Qualified Health Insurance Premiums.* Upon the written request of the member, a distribution hereunder, or part thereof, shall be paid directly to an insurer on account of the qualified health insurance premiums payable by such member who is an eligible retired public safety officer, in accordance with the applicable provisions and limitations in Section 402 of the Internal Revenue Code.

(Ord. No. [17-16](#), § 2, passed 10/4/16)

Sec. 33.77. - OPTIONAL FORMS OF BENEFITS.

Each member entitled to a normal, early or disability retirement benefit shall have the right at any time prior to his actual retirement to elect to have his benefit payable under any one of the options hereinafter set forth in lieu of the benefits otherwise provided herein, and to revoke any elections and make a new election at any time prior to actual retirement. The value of optional benefits shall be actuarially equivalent to the value of benefits otherwise payable. The member shall make an election by written request to the Board of Trustees, this request being retained in the Board's files.

- (A) *Option 1: Joint and Last Survivor Option.* A retiring member may elect to receive an actuarially adjusted retirement benefit during his lifetime and have such retirement benefit (including seventy-five (75) percent, sixty-six and sixty-six one hundredths (66.66) percent or fifty (50) percent thereof) continued after his death to and during the lifetime of a designated joint annuitant. The election of Option 1 shall be null and void if the designated joint annuitant dies before the member's retirement, unless the member designates another joint annuitant in accordance with Subsection 33.75(C). In addition, the member may elect to add a "pop-up" feature to his joint and survivor option, then, upon the death of his joint annuitant, the amount of his monthly payment will be increased to the amount of a straight life annuity and such amount will be payable as of the first day of each month after the death of his joint annuitant for the

remainder of his lifetime. A member electing to add the pop-up feature to his joint and survivor option will have his monthly benefit under this Option 1 actuarially reduced to take into account the addition of the pop-up feature.

- (B) *Option 2: Ten Years Certain and Life Thereafter.* A retiring member may elect to receive a retirement benefit with one hundred twenty (120) monthly payments guaranteed. If, after retiring, the member should die before the one hundred twenty (120) monthly payments are made, payments are then continued to his designated beneficiary until one hundred twenty (120) payments in all have been made, at which time benefits cease. After expiration of the one hundred twenty (120) monthly payments guaranteed, should the retired member be then alive, payments shall be continued during his remaining lifetime. Notwithstanding any other provision of the plan to the contrary, this option (Option 2) shall be the normal form of benefit for unmarried employees who retire from active service on or after December 31, 1999.
- (C) *Option 3: Other.* In lieu of the other optional forms enumerated in this Section, retirement benefits may be paid in any form approved by the Board so long as actuarial equivalence with the benefits otherwise payable is maintained.

(Ord. No. [17-16](#), § 2, passed 10/4/16)

Sec. 33.78. - CONTRIBUTIONS.

(A) *Member Contributions.*

- (1) Members shall make regular contributions to the Trust Fund at a rate equal to nine (9) percent of their respective annual earnings. Eligible employees, as a condition of membership, shall agree in writing upon becoming a member to make the contribution specified herein. These contributions shall be deducted from the earnings before the same are paid, until the member has completed twenty-five (25) years of continuous service at which time member contributions are no longer required.
- (2) The City shall pick up the member contribution required by subsection (A)(1) above. The contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code. The City shall pick up the member contributions from funds established and available in the salaries account, which funds would have otherwise been designated as member contributions and paid to the pension fund. Member contributions picked up by the City pursuant to this subdivision shall be treated for purposes of making a refund of member contributions, and for all other purposes of this and other laws, in the same manner and to the same extent as member contributions made prior to the effective date of this subdivision. The intent of this subdivision is to comply with Section 414(h)(2) of the Internal Revenue Code. No employee shall have the option of choosing to receive the contributed amounts directly instead of having them paid by the City to the System.

- (B) *State Contributions.* Any moneys received or receivable by reason of laws of the State, for the express purpose of funding and paying for retirement benefits for Firefighters of the City shall be deposited in the Trust Fund comprising part of this system. By mutual agreement of the City and firefighters' union, all annual premium tax moneys received pursuant to F.S. ch. 175, up to the amount received during the 2013 calendar year (one million two hundred six thousand nine hundred ninety-four dollars (\$1,206,994.00)) shall be used to offset the cost of current benefits by reducing the City's annual required contribution to the system.
- (C) *City Contributions.* So long as this system is in effect, the City shall make an annual contribution to the Trust Fund during the first quarter of the plan year or in quarterly installments in an amount equal to the difference in each year as between the total of aggregate member contributions for the year plus State contributions for the year and the total cost for the year as shown by the most recent actuarial valuation and report for the system. The total cost for any year shall be defined as the total of normal cost plus the additional amount sufficient to amortize the unfunded accrued past service liability over a period not greater than thirty (30) years.

- (D) *Guaranteed Refund of Member Contributions.* All benefits payable under this system are in lieu of a refund of member contributions. Effective September 1, 1999, employees who terminate employment with less than ten (10) years of continuous service, upon the election to receive a refund of member contributions, shall receive a noncompounded simple interest rate of three (3) percent per year applied to the principal balance of the participant's contributions as accrued on December 31 of each year. Effective September 1, 1999, employees who terminate employment with ten (10) years or more of continuous service, upon the election to receive a refund of member contributions, shall receive a noncompounded simple interest rate of five (5) percent per year applied to the principal balance of the participant's contribution as accrued on December 31 of each year. In any event, each member shall be guaranteed the payment of benefits at least equal in total amount to his accumulated contributions plus interest as provided herein.
- (E) All beneficiaries and retired members presently receiving benefits under F.S. ch. 175 shall continue to receive those benefits under this system.
- (F) Any forfeitures that may arise upon the termination of a member's employment shall be used to offset the subsequent cost of the City. Such forfeitures shall not be used to increase benefits of remaining members.

(Ord. No. [17-16](#), § 2, passed 10/4/16)

Sec. 33.79. - Administration.

- (A) Effective October 1, 2016, the general administration and responsibility for the proper operation of the retirement system and for making effective the provisions of this subchapter are vested in a Board of Trustees consisting of five (5) members as follows:
 - (1) Two (2) legal residents of the City to be appointed by the City Commission;
 - (2) Two (2) full-time City firefighters as defined in F.S. § 175.032, to be elected by all active members as provided herein; and
 - (3) A fifth member, who shall be chosen by a majority of the other four (4) members. Such person's name shall be submitted to the City Commission, which shall, as a ministerial act, appoint such person to the Board of Trustees.
- (B) Each appointed member shall serve as trustee for a period of four (4) years, unless sooner replaced by the City Commission, at whose pleasure he or she serves, and may succeed himself or herself as a trustee. Each elected firefighter member shall serve as trustee for a period of four (4) years, unless he or she sooner leaves the employment of the City as a firefighter, whereupon a successor shall be chosen in the same manner as the original election. Each elected firefighter trustee may succeed himself or herself in office. The fifth member shall have the same rights and duties as the other trustees, shall serve as trustee for a period of two (2) years, and may succeed himself or herself in office.
- (C) The elective trustees shall be elected in the following manner, to wit: by vote of all active firefighter members at meetings to be held at places designated by the City Manager, of which meetings all qualified members entitled to vote shall be notified in person or by mail ten (10) days in advance of the meeting. The candidate receiving the highest number of votes for each office shall be declared elected and shall take office immediately upon commencement of the term of office for which elected or as soon thereafter as he shall qualify therefor. An election shall be held not more than thirty (30) and not less than ten (10) days prior to the commencement of the terms for which trustees are to be elected. The City Manager shall establish the election procedure for the initial election. Thereafter, it shall be the duty of the Board of Trustees. The Board of Trustees shall meet, organize and elect one of their members as chairperson and one member as vice chairperson, within thirty (30) days after trustees are elected and duly qualified, and annually thereafter.
- (D) If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

- (E) The trustees shall serve without compensation, but they may be reimbursed from the Trust Fund for all necessary expenses which they may actually expend through service on the Board.
- (F) Each trustee shall, within ten (10) days after his appointment or election, take an oath of office before the City Clerk, that so far as it develops upon him he will diligently and honestly administer the affairs of the Board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system. The oath shall be subscribed to by the members making it and certified by the Clerk and filed in the office of the City Clerk.
- (G) Each trustee shall be entitled to one vote on the Board. Three (3) affirmative votes shall be necessary for a decision by the trustees at any meeting of the Board. The chairperson shall have the right to one vote only.
- (H) Subject to the limitations of this subchapter, the Board of Trustees shall from time to time establish uniform rules and regulations for the administration of funds created by this subchapter and for transactions of its business, including provisions for expulsion due to nonattendance of its members which could result in a vacancy.
- (I) The Board of Trustees shall by majority vote of its members appoint a secretary who shall be one of its members. It shall engage actuarial and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by the Board of Trustees and all other expenses of the Board necessary for the operation of the retirement system shall be paid at those rates and in amounts as the Board of Trustees shall agree. Funds may be disbursed by the City Finance Department or other disbursing agent as determined by the Board, only upon written authorization by the Board of Trustees.
- (J) Any trustee who neglects the duties of his office as determined by the Board, may be removed by four (4) concurring votes among the Board of Trustees.
- (K) The duties and responsibilities of the Board of Trustees shall include, but not necessarily be limited by, the following:
 - (1) To construe the provisions of the system and determine all questions arising thereunder;
 - (2) To determine all questions relating to eligibility and participation;
 - (3) To determine and certify 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 system;
 - (5) To distribute at regular intervals to employees information concerning the system;
 - (6) To receive and process all applications for participation and benefits;
 - (7) To authorize all payments whatsoever from the Fund and to notify in writing the disbursing agent of approved benefit payments and other expenditures arising through operation of the system and fund;
 - (8) To have performed actuarial studies and annual actuarial valuations and make recommendations regarding any and all changes in the provisions of the system;
 - (9) To perform those duties as are specified in this subchapter.

(Ord. No. [17-16](#), § 2, passed 10/4/16)

Sec. 33.80. - FINANCES AND FUND MANAGEMENT.

- (A) As part of the system there is established the Trust Fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the system.
- (B) The actual custody and supervision of the Fund (and assets thereof) shall be vested in the Board of Trustees. Payment of benefits and disbursements from the Fund shall be made by the disbursing agent on authorization from the Board.
- (C) The Board may hire and appoint those persons, agents or entities (including corporate fiduciaries) as in its discretion may be required or advisable to enable it to perform custodial and investment duties hereunder. The Board may enter into agency, investment advisory, and custodial agreements for the purpose of securing investment and custodianship services for the system and fund.
- (D)
 - (1) All funds and securities of the system 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:
 - (a) Current amounts of accumulated contributions of members on both an individual and aggregate account basis;
 - (b) Receipts and disbursements;
 - (c) Benefit payments;
 - (d) Current amounts clearly reflecting all moneys, funds and assets whatsoever attributable to contributions and deposits from the City;
 - (e) All interest, dividends and gains (or losses) whatsoever; and
 - (f) Any other entries as may be properly required so as to reflect a clear and complete financial report of the Fund.
 - (2) An annual report shall be made by the certified public accounting firm performing the City's annual audit.
- (E) The Board of Trustees shall have the following investment powers and authority:
 - (1) The Board of Trustees shall be vested with full legal title to the Fund; subject however and in any event to the authority and power of the City Commission to amend or terminate this trust; provided that no amendment or fund termination shall ever result in the use of any assets of this Fund except for the payment of regular expenses and benefits under this system. 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) The Board and each trustee thereof is a fiduciary with respect to the Trust Fund, and shall exercise investment authority under this Section solely in the interest of plan members and beneficiaries, for the exclusive purpose of providing benefits to members and their beneficiaries and defraying the reasonable expenses of administering the plan. The Board shall exercise its investment authority with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person in a like capacity and familiar with such matters would use in the conduct of an enterprise with like character and like aims.
 - (3) Notwithstanding any limitation provided in F.S. ch. 175, or any limitation or condition contained in F.S. § 215.47, the Board of Trustees may invest and reinvest pension fund assets in such securities, investment vehicles and property wherever situated and of whatever kind, as the Board shall approve in the exercise of its fiduciary duty and authority, including but not limited to common or preferred stocks, bonds and other evidences of indebtedness or ownership. The Board may invest up to twenty-five (25) percent of fund assets, on a market-value basis in foreign securities.

- (4) The Board shall adopt and periodically update a written investment policy in accordance with F.S. § 112.661. All investments approved by the Board shall be in accordance with the investment policy. The Board shall provide a copy of the investment policy and any revisions thereto to the City Manager, in accordance with F.S. § 112.661.
- (5) The Board shall provide a quarterly financial report to the City Manager no later than thirty (30) days following the end of each calendar quarter, which report shall include a summary reflecting the total market value of the fund at the beginning and end of the quarter, total investment gains and losses during the quarter, and a summary of the market value and investment gains and losses during the quarter for each manager responsible for investing fund assets. The Board shall also provide a copy of all reports from the Board's investment consultant to the City Manager within five (5) days following the Board's approval or review of such reports.
- (6) The Board may retain in cash or unproductive of income an amount of the Fund as it may deem advisable, having regard for the cash requirements of the system.
- (7) Neither the Board nor any 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 own negligence, willful misconduct, or lack of good faith.
- (8) 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 the nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the Fund.
- (9) 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 those securities; to deposit stock or other securities in any voting trust or any protective or like committee or with the trustees or with depositaries 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 to the best interest of the Fund to exercise.
- (10) 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 herein contained.
- (11) 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 subchapter, can reasonably be taken or performed only after receipt by it from a member, the City or any other entity of specific information, certification, direction or instructions, the Board shall be free of liability in failing to take any action or perform any duty or function until that information, certification, direction or instruction has been received by it.
- (12) 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 Trust Fund.
- (13) The Board shall sustain no liability whatsoever for the sufficiency of the Fund to meet the payments and benefits herein provided for and shall be under no obligation to inquire into the sufficiency of the payments made into the Fund by the City.
- (14) In any application to or proceeding or action in the courts, only the City and the Board shall be necessary parties, and no member or other person having an interest in the Fund shall be entitled to any notice of service or process. Any judgment entered in that proceeding or action shall be conclusive upon all persons.

- (F) 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 agent; and that legal title to the Fund shall always remain in the Board of Trustees.
- (G) At least once every three (3) years, the Board shall retain a professionally qualified independent consultant to evaluate the performance of any existing money manager and make recommendations to the Board regarding the selection of money managers for the next investment term, in accordance with F.S. § 175.071(6). No change in any of the administrative provisions of the system shall be made without the approval of a majority of the Board of Trustees.

(Ord. No. [17-16](#), § 2, passed 10/4/16)

Sec. 33.81. - OTHER PROVISIONS.

- (A) *Discharged Members.* Members entitled to a pension shall not forfeit the same upon dismissal from the department, but shall be retired as herein described.
- (B) *Recovery from Disability.* In the event a member who has been retired on a disability benefit regains his health and is able to perform his duties in the Fire-Rescue Department, the Board of Trustees shall require the member to resume employment with the respective department and discontinue the pension; provided that if a member shall after resuming his position pay into the Fund an amount equal to the aggregate contributions plus interest at a rate to be determined by the Board (computed upon his annual earnings at the time of his disability retirement) he would have been required to make hereunder, as determined by the Board, during the period of his disability retirement had he not been retired, the member shall receive creditable service for the period of disability retirement. In any event, a member shall retain credit for the period of continuous service prior to the date of disability.
- (C) *Nonassignability.* No benefit provided for herein shall be assignable or subject to garnishment for debt or for other legal process.
- (D) *Duration of Benefits.* Benefits granted to members shall be paid to them for life and shall not be revoked nor in any way diminished except as provided in this subchapter and the payments of the member to this fund shall cease upon his retirement and acceptance of a benefit or thirty (30) years of continuous service or termination.
- (E) *Pension Validity.* The Board of Trustees shall have the power to examine into 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. The Board is empowered to purge the pension rolls of any person heretofore granted a pension under prior or existing law or hereafter granted under this subchapter if the same is found to be erroneous, fraudulent, or illegal for any reason; and to reclassify any pensioner who has heretofore under any prior or existing law, or who shall hereafter under this subchapter be erroneously, improperly or illegally classified.
- (F) *Incompetents.* If any member or beneficiary is a minor or is, in the judgment of the Board, otherwise incapable of personally receiving and giving a valid receipt for any payment due him under the system, the Board may, unless and until claims shall have been made by a duly appointed guardian or Committee of that person, make the payment or any part thereof to the person's spouse, children or other person deemed by the Board to have incurred expenses or assumed responsibility for the expenses of that person. Any payment so made shall be a complete discharge of any liability under the system for the payment.

(G) *Miscellaneous Provisions.*

- (1) The Board will furnish the actuary with all data required for necessary actuarial computations under the plan.
- (2) No payment or any benefit, contribution or other sum which would constitute a violation of any applicable wage control law shall be made hereunder.
- (3) The benefits for any person who was a member under F.S. ch. 175, immediately prior to the effective date of this subchapter, shall not be less than those which he would have received under the plan prior to the effective date based on his rate of earnings in effect as of the effective date.

(H) *Lump-Sum Distributions in Excess of One Thousand Dollars (\$1,000.00).* Notwithstanding any provision of the system to the contrary, and only to the extent a lump-sum distribution is expressly authorized, a lump-sum distribution in excess of one thousand dollars (\$1,000.00) shall be made only upon the written request of a member or designated beneficiary.

(Ord. No. [17-16](#), § 2, passed 10/4/16)

Sec. 33.82. - SUPPLEMENTAL RETIREMENT INCOME AND MINIMUM BENEFIT FOR MEMBERS WHO RETIRED PRIOR TO CERTAIN DATE.

- (A) Members and beneficiaries of members who retired prior to October 1, 1987, shall receive an increase in their retirement income calculated in accordance with Sections 33.76 and 33.77, equal to two (2) percent for each year from the date of the member's retirement through September 30, 1987. The supplemental and minimum retirement income provided in this Section shall be paid effective January 1, 1988. The supplemental retirement income provided in this Section shall not be subject to the benefit offset contained in subsections 33.76(E)(5)(e). and (E)(7).
- (B) Members and beneficiaries of members who retired or terminated employment prior to October 1, 1990, and began receiving benefits prior to June 18, 1993, shall receive an increase in their retirement income calculated in accordance with Sections 33.76, 33.77, 33.82(A), equal to five (5) percent. The supplemental and minimum retirement income provided in this Section shall be paid effective April 1, 1993. The supplemental retirement income provided in this Section shall not be subject to the benefit offset contained in subsections 33.76 (E)(5)(e) and (E)(7).
- (C) Effective August 1, 1999, all participants or beneficiaries of participants who are receiving benefits under the plan prior to September 30, 1993, shall have the monthly amount of retirement income increased by five (5) percent over the gross amount they were receiving in August of 1993. Provided, however, this increase effective August 1, 1999, shall not exceed one hundred dollars (\$100.00) per month.
- (D) Effective August 1, 1999, all participants with ten (10) or more years of credited service and designated beneficiaries of such participants who receive plan benefits that are based on or derived from the participant's normal retirement income, regardless of the participant's retirement date, shall receive benefits based on a minimum monthly normal retirement income amount of at least five hundred dollars (\$500.00) per month.

(Ord. No. [17-16](#), § 2, passed 10/4/16)

Sec. 33.84. - DEFERRED RETIREMENT OPTION PLAN.

- (A) Effective January 1, 1994, any employee with at least twenty (20) but not more than thirty (30) years of continuous service as a member of the system may elect to participate in the Deferred Retirement Option Plan in accordance with this Section.
- (B) An employee's election to participate in the Deferred Retirement Option Plan must be made in writing and shall become effective thirty (30) days following the date it is received by the Board of Trustees, or on a later date specified by the employee.
- (C) An employee who elects to participate in the Deferred Retirement Option Plan may participate in such plan for a maximum of sixty (60) continuous months. If upon the effective date of the employee's election there are less than sixty (60) months before the employee attains thirty (30) years of continuous service, the employee may participate in the Deferred Retirement Option Plan only until thirty (30) years of service is attained.
- (D) An employee's continuous service and accrued benefit under the system shall be determined on the effective date of the employee's election to participate in the Deferred Retirement Option Plan. An employee who elects to participate in the Deferred Retirement Option Plan shall not accrue any additional continuous service or benefits under the system, except for additional benefits provided under the retirement benefit enhancement, if applicable, while participating in the Deferred Retirement Option Plan. No amounts shall be paid to an employee from the system while the employee is a participant in the Deferred Retirement Option Plan.
- (E) A Deferred Retirement Option Plan account shall be established for each employee who elects to participate in the Deferred Retirement Option Plan in accordance with this Section. During the period of the employee's participation in the Deferred Retirement Option Plan, the employee's normal retirement benefit, calculated in accordance with Subsection 33.76 (B) based on average monthly earnings and continuous service as of the effective date of the employee's election to participate in the Deferred Retirement Option Plan, shall be paid into the employee's Deferred Retirement Option Plan account. The employee's Deferred Retirement Option Plan account shall be invested by the Board of Trustees and credited with interest equal to the overall net rate of return on retirement fund assets during the period the employee participates in the Deferred Retirement Option Plan. Effective July 1, 2001, the Board of Trustees, in its sole discretion, may select a third-party administrator and establish a separate plan for DROP accounts to be invested by participating employees in accordance with an agreement between the participating employee and the third-party administrator. Employees who are participating in the DROP as of July 1, 2001, may elect to participate in the self-directed investment program. Employees who elect to participate in the DROP after July 1, 2001, shall be required to participate in the self-directed investment program as a condition of participating in the DROP. The Board of Trustees may adopt any necessary rules to administer the DROP in accordance with applicable provisions of the Internal Revenue Code and regulations adopted thereunder.
- (F) At the conclusion of the employee's participation in the Deferred Retirement Option Plan, and as a condition of participating in such plan, the employee will retire and terminate City employment. The employee will thereafter receive a normal retirement benefit calculated in accordance with Subsection 33.76(B) based on average monthly earnings and continuous service as of the effective date of the employee's election to participate in the Deferred Retirement Option Plan. The employee's Deferred Retirement Option Plan account will thereafter be distributed to the employee in a cash lump sum, unless the employee elects an alternative distribution as described below:
 - (1) Payments in approximately equal monthly, quarterly or annual installments over a period designated by the employee, not to exceed the life expectancy of the employee or the joint life expectancy of the employee and the employee's designated beneficiary. In the event that the employee dies before all installments have been paid, the remaining balance in the employee's Deferred Retirement Option Plan account shall be paid in an immediate cash lump sum to the employee's designated beneficiary.

- (2) The purchase of a nonforfeitable fixed annuity payable in such form as the employee may elect. Elections under this Subsection (2) shall be in writing and shall be made in such time or manner as the Board of Trustees shall determine. If the annuity form selected is not a qualified joint and fifty (50) percent survivor annuity with the employee's spouse as the beneficiary, the annuity payable to the employee and thereafter to the employee's beneficiary shall be subject to the incidental death benefit rule as described in section 401(a)9g of the Internal Revenue Code and applicable regulations.
- (G) Notwithstanding the provisions of the foregoing paragraph (F), if an employee dies before distribution of the employee's Deferred Retirement Option Plan account commences, the account balance shall be paid to the employee's beneficiary in such optional form as the beneficiary may select.
- (H) Except as otherwise provided in this Section, distribution of an employee's Deferred Retirement Option Plan account shall begin as soon as administratively practicable following the employee's termination of employment. An employee may, in accordance with such procedures as the Board of Trustees may prescribe, elect to defer distribution of the Deferred Retirement Option Plan account until the first day of any month coincident with or following the employee's termination of City employment; provided, however, distribution shall be made before the distribution date elected by the employee to the extent necessary to comply with the internal revenue code and regulations thereunder. Any amounts in an employee's Deferred Retirement Option Plan account shall continue to be invested by the Board of Trustees and shall be credited with the net investment return on the Fund until the balance of the Deferred Retirement Option Plan account is fully distributed to the employee or the employee's beneficiary.
- (I) In no event shall the provisions of this Section operate so as to allow the distribution of an employee's Deferred Retirement Option Plan account to begin later than April 1 following the later of the calendar year in which the employee terminates city employment or attains age seventy and one-half (70½).
- (J) Notwithstanding any other provision of this Section, all distributions from employee Deferred Retirement Option Plan accounts shall conform to applicable provisions of the Internal Revenue Code and regulations issued thereunder.

(Ord. No. [17-16](#), § 2, passed 10/4/16)

Sec. 33.85. - EARLY RETIREMENT INCENTIVE.

- (A) Effective January 1, 1994, an early retirement incentive shall be provided to employees in accordance with this Section. The availability of the early retirement incentive in any calendar year shall be determined by the City.
- (B) Employees with eighteen (18) and up to, but not including, twenty (20) years of continuous service shall be eligible for the early retirement incentive. In any calendar year in which the City determines that the early retirement incentive will be offered, eligible employees shall be given an opportunity to decide within a specified time period (thirty (30) to ninety (90) days) whether they wish to receive the early retirement incentive and retire from city employment. The City will provide at least sixty (60) days' advance notice to eligible employees of the early retirement incentive offering.
- (C) Eligible employees who elect to receive the early retirement incentive shall receive two (2) additional years of continuous service, under the System, and upon receiving such additional continuous service shall immediately retire and terminate City employment. Effective the first pay period after September 1, 1999, eligible employees who elect to receive the early retirement incentive shall receive three (3) percent of average monthly earnings for each year of continuous service if the employee qualifies for the twenty (20) year (or more) normal retirement benefit. Eligible employees who previously elected the enhanced three and one-half (3.5) percent multiplier pursuant to Section 33.76 (3) and who elect to receive the early retirement incentive on or after March 15, 2004 shall receive three and one-half (3.5) percent of average monthly earnings for each year of

continuous service, or portion thereof, to which the optional enhanced multiplier under Section 33.76(3) applies; and if the enhanced multiplier is applicable to more than fifty (50) percent of the employee's total continuous service, excluding the two (2) additional years provided in this Section, the employee shall receive three and one-half (3.5) percent of average monthly earnings for each of the two (2) additional years provided in this Section. The early retirement incentive program shall be voluntary for all eligible employees. The early retirement incentive shall not apply to sick leave, vacation or any other accruals or benefits.

- (D) An employee who elects to receive the early retirement incentive under this Section cannot also participate in the Deferred Retirement Option Plan under Section 33.84.

(Ord. No. [17-16](#), § 2, passed 10/4/16)

Sec. 33.86. - ALLOCATION OF CHAPTER 175 PREMIUM TAX REVENUES; RETIREMENT BENEFIT ENHANCEMENT.

- (A) Effective October 1, 1994, the benefits paid to eligible retirees or their beneficiaries shall be adjusted as provided in this Section. For the purpose of this Section, "eligible retirees" are members who retired or terminated employment after September 30, 1993, and whose date of hire as a City firefighter was twenty-five (25) or more years prior to the benefit adjustment date. The benefits payable under the system to all eligible retirees or their beneficiaries shall be based on the amount of insurance premium tax revenues received by the City for the preceding plan year pursuant to F.S. ch. 175. A minimum benefit increase of one percent per year will be provided, regardless of the amount of premium tax revenues received by the City.
- (B) Effective September 8, 2016, to the extent total annual premium tax revenues received pursuant to F.S. ch. 175, exceed one million two hundred six thousand nine hundred ninety-four dollars (\$1,206,994.00), the annual one percent minimum adjustment for retirees will be increased in increments of one-tenth of one percent, based on the actuary's determination that the amount of the excess premium tax revenues is sufficient to fund the benefit increase on an actuarially sound basis. The maximum amount of the total annual benefit increase shall not exceed four (4) percent, regardless of the amount of premium tax revenues received by the City.
- (C) The annual benefit adjustment provided under this Section shall be compounded annually (i.e. the increase shall be based on the benefits received by plan members and beneficiaries at the end of the preceding plan year). The benefits payable under the system to all eligible retirees or their beneficiaries shall be adjusted annually on the anniversary of the retiree's first benefit payment. Disability retirees and their beneficiaries are not eligible to receive the retirement benefit enhancement.
- (D) Notwithstanding any other provision of this Section, the annual benefit adjustment provided in this Section for benefits accrued on or after October 5, 2016, shall not commence until one year after a member has separated from City employment.
- (E) Notwithstanding any other provision of this Section, effective September 8, 2016 all annual premium tax moneys received pursuant to Chapter 175, Florida Statutes, up to the amount received during the 2013 calendar year one million two hundred six thousand nine hundred ninety-four dollars (\$1,206,994.00) shall be used to offset the cost of current benefits by reducing the City's annual required contribution to the system, and any annual premium tax moneys received in excess of one million two hundred six thousand nine hundred ninety-four dollars (\$1,206,994.00) shall be used as provided in subsection (B) above.

(Ord. No. [17-16](#), § 2, passed 10/4/16)

Sec. 33.87. - INCORPORATION OF STATE LAW BY REFERENCE.

F.S. Sections 175.101 through 175.121 and 175.131 through 175.151 (excise tax on property insurance premiums to be deposited in the Municipal Firefighters' Pension Trust Fund) (excise tax on property insurance premiums to be deposited in Municipal Firefighters' Pension Trust Fund) are hereby incorporated by reference.

(Ord. No. [17-16](#), § 2, passed 10/4/16)

Sec. 33.88. - DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS.

- (A) *General.* This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the system 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 paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (B) *Definitions.*
- (1) *Eligible Rollover Distribution.* 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 life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includable in gross income.
 - (2) *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, a qualified trust described in Section 401 (a) of the Internal Revenue Code, an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code which is maintained by an eligible employer described in Section 457(e)(1)(A) of the Internal Revenue Code, or an annuity contract described in Section 403 (b) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution.
 - (3) *Distributee.* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse. Effective as of January 1, 2008, an Employee's or former Employee's non-spouse Beneficiary is a distributee with regard to the interest of the Employee or former Employee.
 - (4) *Direct Rollover.* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee. Effective as of January 1, 2008, a non-spouse Beneficiary may make a direct rollover only to an "inherited" individual retirement account as described in Section 408(b) of the Internal Revenue Code. If a non-spouse Beneficiary receives a distribution from the plan, the distribution is not eligible for a 60-day (non-direct) rollover.
- (C) *Rollovers or Transfers into the Fund.* On or after the effective date of this Section, the fund will accept member rollover cash contributions and/or direct cash rollovers of distributions for the purchase of continuous service or an enhanced multiplier as authorized under the plan, as follows: the fund will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code, from an annuity contract described in Section 403(b) of the Internal Revenue Code, or from 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.

(Ord. No. [17-16](#), § 2, passed 10/4/16)

Sec. 33.89. - SEPARATION FROM EMPLOYMENT FOR MILITARY SERVICE.

- (A) The years or parts of a year that a member serves in Qualified Military Service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily, after separation from city employment, shall be added to his years of credited service for all purposes, including vesting, provided that:
- (1) The member must return to City employment within one year from the earlier of the date of his military discharge or his release from service.
 - (2) The maximum credit for military service pursuant to this Section shall be five (5) years.
 - (3) In order to qualify for credited service pursuant to this Section, the member must have been discharged or released from service under honorable conditions. This Section is intended to meet or exceed the minimum requirements of USERRA. To the extent that this Section does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards of USERRA shall apply.
- (B) *Death Benefits.* In the case of a death or disability occurring on or after January 1, 2007, if a participant dies while performing Qualified Military Service, the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of Qualified Military Service) provided under the plan as if the participant had resumed and then terminated employment with the City on account of death.
- (C) *Differential Wage Payments.* For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined in Section 3401(h)(2) of the Internal Revenue Code, shall be treated as an employee of the employer making the payment, (ii) the differential wage payment shall be treated as compensation, and (iii) the plan shall not be treated as failing to meet the requirements of any provision described in Section 414(u)(91)(c) of the Internal Revenue Code by reason of any contribution or benefit which is based on the differential wage payment.

(Ord. No. [17-16](#), § 2, passed 10/4/16)

Sec. 33.91. - TERMINATION OF THE SYSTEM.

If it is determined by the City Commission that this Retirement System be terminated it shall be terminated in accordance with State law as set forth in F.S. ch. 175, as the Chapter now exists and as may be amended in the future.

(Ord. No. [17-16](#), § 2, passed 10/4/16)