

CHAPTER 2010-246

House Bill No. 937

An act relating to the City of West Palm Beach, Palm Beach County; amending chapter 24981 (1947), Laws of Florida, as amended; revising definitions relating to the West Palm Beach Firefighters Pension Fund; revising terms of the board of trustees; providing that an authorized fiduciary may sign drafts for fund disbursements; providing additional requirements for the board relating to certain holdings; deleting certain requirements relating to service pension for normal retirement, including optional transition benefits for certain employees; providing that a retired member may change certain designation of joint annuitant or beneficiary relating to payment of benefits; providing that members who are disabled due to specified military service are not excluded from disability pensions; providing that the board may authorize withholdings from retirement pay under certain circumstances; providing that a firefighter for a federal fire department constitutes prior firefighter service; providing for termination of the fund and distribution of assets; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 17 of chapter 24981 (1947), Laws of Florida, as amended, is amended to read:

Section 17. West Palm Beach Firefighters Pension Fund.—

(1) Creation of fund.—There is hereby created a special fund for the Fire Department of the City of West Palm Beach to be known as the West Palm Beach Firefighters Pension Fund. All assets of every description held in the name of the West Palm Beach Firemen's Relief and Pension Fund and in the name of the West Palm Beach Firefighters Pension Fund have been and shall continue to be combined.

(a) Definitions.—The following words or phrases, as used in this act, shall have the following meanings, unless a different meaning is clearly indicated by the context:

1. "Actuarial equivalent value," "actuarial equivalence," or "single sum value" means the stated determination using an interest rate of 8.25 percent per year and the 1983 Group Annuity Mortality Table for males.

2. "Beneficiary" means any person who is not at retirement but who is entitled to receive a benefit from the West Palm Beach Firefighters Pension Fund or the West Palm Beach Firemen's Relief and Pension Fund, as applicable.

3. "Board of Trustees" or "Board" means the Board of Trustees provided for in this act.

4. "City" means the City of West Palm Beach, Florida.
5. "Department" means the Fire Department of the City.
6. "Enrolled actuary" means an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.
7. "Final average salary" means the average of the monthly salary paid a member in the 2 best years of employment, paid in and prior to the 23rd year of credited service. No active nonDROP member shall have any salary amounts paid prior to October 1, 2000, used in the calculation of final average salary. Those members whose final average salary would include salary amounts paid prior to October 1, 2000, shall use salary paid during the period from October 1, 2000, through September 30, 2001, to replace any salary amounts paid prior to October 1, 2000. The replacement salary from October 1, 2000, through September 30, 2001, may range anywhere between 2 weeks and 104 weeks, but shall only be enough salary as is sufficient to replace the salary paid prior to October 1, 2000. The replacement salary amounts from October 1, 2000, to September 30, 2001, shall be prorated based upon an annual salary.
8. "Firefighter" means any person employed in the Department who is certified as a firefighter as a condition of employment in accordance with the provisions of section 633.35, Florida Statutes, whose duty it is to extinguish fires and protect life and property. The term includes all certified, supervisory, and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters but does not include part-time firefighters or auxiliary firefighters whose duty it is to extinguish fires and protect life and property.
9. "Fund" or "Pension Fund" means the West Palm Beach Firefighters Pension Fund or the West Palm Beach Firemen's Relief and Pension Fund, as applicable.
10. "Member" means any person who is included in the membership of the Fund in accordance with paragraph (h).
11. "Pension" means a monthly amount payable from the Fund throughout the future life of a person, or for a limited period of time, as provided in this act.
12. "Qualified health professional" means a person duly and regularly engaged in the practice of his or her profession who holds a professional degree from a university or college and has had special professional training or skill regarding the physical or mental condition, disability, or lack thereof, upon which he or she is to present evidence to the Board.

13. “Qualified public depository” means any bank or savings association organized and existing under the laws of Florida and any bank or savings association organized under the laws of the United States that has its principal place of business in Florida, or has a branch office which is authorized under the laws of Florida or the United States to receive deposits in Florida, that meets all of the requirements of chapter 280, Florida Statutes, and that has been designated by the Treasurer of the State of Florida as a qualified public depository.

14. “Retirant” or “retiree” means any member who retires with a pension payable from the Fund.

15. “Retirement” means a member’s withdrawal from City employment with a pension payable from the Fund.

16. “Salary” means:

a. On and after October 1, 2001, “salary,” for the purpose of pension contributions and benefit calculations, shall mean payments made to a firefighter by the City for: regular hours worked; step-up pay; longevity pay; all authorized leave time, which includes compensatory time used, earned personal leave used, emergency leave used, sick leave used, sick leave pay bank used, vacation time used, holiday time used, emergency leave, bereavement leave, and administrative leave; certification pay, which includes paramedic, hazardous material technician, special operations, dive rescue, fire service instructor, fire inspector, and SWAT certification pay; fire inspector standby pay; educational bonus incentive; pay received from the City during military training; and sick leave conversion when such leave is converted during the course of active employment. The definition of “salary” specifically excludes any lump sum payments for accumulated leave such as that received upon final payoff. Employees who are specifically excluded from bargaining unit recognition as set forth in Article 2, but who are members of the West Palm Beach Firefighters Pension Fund, shall continue to make contributions on management incentive benefits. This definition of compensation shall not include any duty employment that is performed for other than the City of West Palm Beach per Article 31, Salary Plan.

b. On and after January 1, 2007, “salary,” for the purpose of pension contributions and benefit calculations, shall mean total cash remuneration paid by the City to a firefighter for services rendered, excluding payments for overtime and any lump-sum payments for accumulated leave such as accrued vacation leave, accrued sick leave, and accrued personal leave. Employees who are specifically excluded from bargaining unit recognition as set forth in Article 2, but who are members of the West Palm Beach Firefighters Pension Fund, shall continue to make contributions on management incentive benefits. This definition of compensation shall not include any duty employment that is performed for other than the City of West Palm Beach per Article 31, Salary Plan. Beginning with salary paid after December 31, 2008, and pursuant to Internal Revenue Code Section 414(u)(7), the

definition of salary includes amounts paid by the City as differential wages to members who are absent from employment while in qualified military service.

17. “Service,” “credited service,” or “service credit” means the total number of years, and fractional parts of years, of employment of any member in the employ of the Department, omitting intervening years and fractional parts of years of service when the member was not employed by the City. However, no member shall receive credit for years, or fractional parts of years, of service for which the member has withdrawn his or her contributions to the Fund, unless the member repays into the Fund the contributions withdrawn, with interest, within 60 months after reemployment. Further, a member may voluntarily leave his or her contributions in the Fund for a period of 5 years after leaving the employ of the Department, pending the possibility of his or her being rehired by the Department and remaining employed for a period of not less than 3 years, without losing credit for the time he or she has participated actively as a firefighter. If he or she does not remain employed for a period of at least 3 years as a firefighter with the Department upon reemployment, within 5 years his or her contributions shall be returned without interest in accordance with paragraph (5)(i). In determining the aggregate number of years of service of any member, the time spent in the military service of the United States or United States Merchant Marine by the member on leave of absence from the Department for such reason shall be added to the years of service, provided such time shall not exceed 5 years. Further, to receive credit for such service the member must return to employment as a firefighter of the City within 1 year after the date of release from such active service. Effective January 1, 2007, a member who dies or becomes disabled while serving on active duty military service which intervenes the member’s employment shall be entitled to the rights of this section even though such member was not reemployed by the City. A member who dies or becomes disabled while on active duty military service shall be treated as though reemployed the day before the member became disabled or died, was credited with the service the member would have been entitled to under this section, and then either died a nonduty death while employed or became disabled from a nonduty disability.

(b) Gender and number.—The masculine gender includes the feminine, and words of the singular with respect to persons shall include the plural and vice versa.

(c) Board of Trustees created.—There is hereby created a Board of Trustees, which shall be solely responsible for administering the West Palm Beach Firefighters Pension Fund and the West Palm Beach Firemen’s Relief and Pension Fund. The Board shall be a legal entity, with the power to bring and defend lawsuits of every kind, nature, and description, and shall be independent of the City to the extent required to accomplish the intent, requirements, and responsibilities provided for in this act and applicable law. The Board shall consist of five trustees, as follows:

1. Two legal residents of the City, who shall be appointed by the City. Effective for the current and future terms, each resident-trustee shall serve as a trustee for a period of 4 2 years, unless sooner replaced by the City, at whose pleasure he or she shall serve, and may succeed himself or herself as trustee.

2. Two full-time firefighters shall be elected by a majority of the firefighters who are members of the Fund. Elections shall be held under such reasonable rules and regulations as the Board shall from time to time adopt. Effective for current and future terms, each member-trustee shall serve as a trustee for a period of 4 2 years, unless he or she sooner ceases to be a firefighter in the employ of the Department, whereupon the members shall choose a successor in the same manner as the original appointment. Each member-trustee may succeed himself or herself as trustee.

3. A fifth trustee shall be chosen by a majority of the other four trustees. Effective for current and future terms, the This fifth person's name shall be submitted to the City, which shall, as a ministerial duty, appoint such person to the Board as a fifth trustee. The fifth person shall serve as trustee for a period of 4 2 years, and may succeed himself or herself as trustee.

(d) Board vacancy; how filled.—In the event a trustee provided for in subparagraph (c)2. ceases to be a firefighter in the employ of the Department, such trustee shall be considered to have resigned from the Board. In the event a trustee provided for in subparagraph (c)2. shall resign, be removed, or become ineligible to serve as a trustee, the Board shall, by resolution, declare the office of trustee vacated as of the date of adoption of said resolution. If such a vacancy occurs in the office of trustee within 90 days of the next succeeding election for trustee, the vacancy shall be filled at the next regular election for the next term; otherwise, the vacancy shall be filled for the unexpired portion of the term by the members in the same manner as an original appointment. In the event a trustee provided for in subparagraph (c) 1. or subparagraph (c)3. shall resign, be removed, or become ineligible to serve as a trustee, the Board shall, by resolution, declare the office of trustee vacated as of the date of adoption of said resolution. A successor for the unexpired portion of the term shall be chosen in the same manner as an original appointment.

(e) Board meetings; quorum; procedures.—The Board shall hold meetings regularly, at least once in each quarter year, and shall designate the time and place thereof. At any meeting of the Board, three trustees shall constitute a quorum. Each trustee shall be entitled to one vote on each question before the Board and at least three concurring votes shall be required for a decision by the Board at any of its meetings. The Board shall adopt its own rules of procedure and shall keep a record of its proceedings. All public records of the Fund shall be kept and maintained as required by law. All meetings of the Board shall be open to the public and shall be held as required by law.

(f) Board chair.—The Board shall elect a chair from among the trustees.

(g) Board secretary.—The Board shall elect a secretary from among the trustees. The secretary shall keep a complete minute book of the actions, proceedings, and hearings of the Board.

(h) Membership.—All firefighters and all who hold a position of firefighter in the employ of the Department shall be members in the Fund. All firefighters, including the chief, who were in the employ of the Department as of April 30, 1959, shall be given credit for service rendered in the employ of the Department prior to May 1, 1959. New members to the Fund are required to undergo a physical examination for purposes of determining preexisting conditions. This physical examination shall be conducted in conjunction with the City's postoffer, preemployment physical examination. The Board's medical director shall review the results of this physical examination and provide notice to the Board and the member of any abnormal findings of the examination. This physical examination will be used for the purposes of establishing a physical profile of the member for determining preexisting conditions and presumptive illnesses as provided for in subsection (6). After review, if further physical examination is required, such examination shall be conducted at Board expense.

(i) Compensation.—The trustees of the Fund shall not receive any compensation for their services as such, but may receive expenses and per diem as provided by law.

(2) Professional and clerical services.—

(a) Pension administrator.—The pension administrator of the Fund shall be designated by the Board and shall carry out its orders and directions.

(b) Legal counsel.—The City Attorney shall give advice to the Board in all matters pertaining to its duties in the administration of the Fund whenever requested, shall represent and defend the Board as its attorney in all suits and actions at law or in equity that may be brought against it, and shall bring all suits and actions in its behalf that may be required or determined by the Board. However, if the Board so elects, it may employ independent legal counsel at the Fund's expense for the purposes set forth in this act.

(c) Actuary.—The Board shall designate an enrolled actuary, who shall be its technical advisor and who shall perform such actuarial services as are required.

(d) Certified public accountant.—The Board shall employ, at its expense, a certified public accountant to conduct an independent audit of the Fund. The certified public accountant shall be independent of the Board and the City.

(e) Additional professional, technical, or other services.—The Board shall have the authority to employ such professional, technical, or other advisors as required to carry out the provisions of this act.

(3) Sources of revenue.—The financing of the Fund shall consist of the following sources of revenue:

(a) Taxes of insurance companies.—The moneys returned to the City as provided by chapter 175, Florida Statutes, shall be used to fund the share account benefit described in paragraph (5)(j). ~~For the plan year October 1, 2003, through September 30, 2004, all of the chapter 175 funds received shall be utilized to offset the City's contributions for the cost of the purchase of extra benefits, less any amounts used to fund the share account benefits for DROP members who do not convert in accordance with sub-subparagraph (5)(a)2.b. Beginning October 1, 2004, the chapter 175 moneys shall again be used in full to fund the share account benefits provided for in paragraph (5)(j).~~ The City shall not opt out of participation in chapter 175, Florida Statutes, or any similar statutory enactment unless exigent circumstances exist, such as the bankruptcy of the City or changes or amendments to the statute regarding extra benefits by the Legislature. If any statutory changes are made by the Legislature, the City and the Board may renegotiate the impact of such changes, if necessary.

(b) Member contributions.—Effective the first full payroll period after October 1, 2003, the member shall contribute 9.85 percent of his or her salary to the Fund, which shall be deducted each pay period from the salary of each member in the Department. Effective the first full payroll period after October 1, 2004, the member shall contribute 18.2 percent of his or her salary to the Fund, which shall be deducted each pay period from the salary of each member in the Department. Effective the first full payroll period after January 1, 2005, the member shall contribute 18.7 percent of his or her salary to the Fund, which shall be deducted each pay period from the salary of each member in the Department. Effective the first full payroll period after January 1, 2006, the member shall contribute 19.2 percent of his or her salary to the Fund, which shall be deducted each pay period from the salary of each member in the Department. All amounts of member contributions that are deducted shall be immediately paid over to the Pension Fund. For contributions made before October 1, 2004, any contribution amount over 6.85 percent is to be used to purchase eligibility for participation in the postretirement health insurance benefits; effective October 1, 2004, that amount will increase to 15.2 percent.

(c) City contributions.—The City shall contribute to the Fund annually an amount which, together with the contributions from the members and other income sources as authorized by law, will be sufficient to meet the normal cost of the Fund and to fund the actuarial deficiency over a period of not more than 40 years, provided that the net increase, if any, in unfunded liability of the Fund arising from significant amendments or other changes shall be amortized within 30 plan years.

(d) Gifts, etc.—All gifts, bequests, and devises when donated for the Fund.

(e) Interest from deposits.—All accretions to the Fund by way of interest or dividends on bank deposits or otherwise.

(f) Other sources.—All other sources of income now or hereafter authorized by law for the augmentation of the Fund.

(4) Custodian of funds.—All moneys and securities of the Fund may be deposited with the cash management coordinator of the City, acting in a ministerial capacity only, who shall be bonded and shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the City. However, any funds and securities so deposited with the cash management coordinator shall be kept in a separate fund by the cash management coordinator or clearly identified as funds and securities of the Fund. In lieu thereof, the Board shall deposit the funds and securities in a qualified public depository designated by the Board. The cash management coordinator or other depository shall receive all moneys due said Fund from all sources whatsoever. All tax revenue received pursuant to the provisions of chapter 175, Florida Statutes, shall be deposited into the Fund no more than 5 days after receipt. Member contributions withheld by the City on behalf of a member shall be deposited into the Fund immediately.

(a) Disbursements from the Fund.—The Board may issue drafts upon the Fund pursuant to this act and rules and regulations prescribed by the Board, provided that such drafts shall be issued in accordance with generally accepted accounting procedures, American Institute of Certified Public Accountants guidelines, and rules of the State of Florida Auditor General. All such drafts shall be consecutively numbered, signed by the chair and secretary, or other authorized fiduciary, and each draft shall, upon its face, state the purpose for which it is drawn. For this purpose, the chair and secretary shall be bonded. The Board shall retain such drafts when paid, as permanent vouchers for disbursements made, and no moneys shall be otherwise drawn from the Fund. Payments from the Fund shall be made only upon a specific or general motion or resolution previously adopted by the Board authorizing such payment or payments.

(b) Investment of moneys.—The Board shall have the power and authority to invest and reinvest the moneys of the Fund, and to hold, purchase, sell, assign, transfer, and dispose of any securities and investments held in said Fund. The aim of the investment policies shall be to preserve the integrity and security of Fund principal, to maintain a balanced investment portfolio, to maintain and enhance the value of Fund principal, and to secure the maximum total return on investments that is consonant with safety of principal, provided that such investments and reinvestments shall be limited to the following:

1. Direct obligations of the United States Government or any agency thereof and debentures and other evidences of indebtedness which are fully guaranteed by the United States Government or any agency thereof for the payment of principal and interest.

2. Direct obligations of the State of Florida.
3. In debt securities, preferred and common stocks and mutual fund shares subject to the limitations set forth in this section.
4. In time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, a savings and loan association to the extent that deposits are guaranteed by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation, or a state or federally chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.
5. Of the total Fund principal in the pension or retirement system, including the amounts deposited in banks or associations, the total thereof invested in preferred stocks shall not aggregate more than 5 percent, and the total amount thereof invested in common stocks and mutual fund shares shall not aggregate more than 70 percent. Percentages shall be based on market value at the end of each reporting period (September 30).
6. In real property or real estate investments, such investments shall not aggregate more than 15 percent of the market value of the total Fund principal in the pension or retirement system.
7. In derivative investments and futures, such investments shall not aggregate more than 10 percent of the market value of the total Fund principal in the pension or retirement system.
8. Any investments permitted by sections 112.661 and 215.47(1)-(8), (10), and (16), Florida Statutes, up to the limits stated therein.
9. The following minimum standards shall govern the eligibility of securities for purchase as investments:
 - a. All corporate and association securities and mutual fund shares shall be issued by a corporation or other legal person, incorporated or otherwise, organized within the United States and domiciled therein to the extent required by section 175.071(1)(b), Florida Statutes.
 - b. Not more than 10 percent of the total Fund principal at market value shall be invested in any one issuing company other than obligations of the United States or an agency thereof.
 - c. All stocks issued or guaranteed by a corporation shall be listed on any one or more of the major stock exchanges. In the case of bonds, at a minimum, 80 percent of bonds purchased for the Fund shall hold a rating in one of the four highest classifications by a major rating service. Said bonds and preferred stocks that are convertible into common stocks shall be considered common stocks and the purchase of same shall be limited by the provisions of subparagraph 5.

d. The Board shall engage the services of professional investment counsel to assist and advise the trustees in the performance of their duties.

e. At least once every 3 years, the Board shall retain an independent consultant professionally qualified to evaluate the performance of its professional money manager or investment counsel. The independent consultant shall make recommendations to the Board at its next regularly scheduled meeting.

f. Notwithstanding anything else in this subsection and as provided in section 215.473, Florida Statutes, the Board must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section. Beginning January 1, 2010, the Board must proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have directly in such company. The divestiture of any such security must be completed by September 30, 2010. The Board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the Board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the Fund and their beneficiaries if the actions it takes are consistent with the duties imposed by section 215.473, Florida Statutes, as provided for in section 175.071(8), Florida Statutes, and the manner of the disposition, if any, is reasonable as to the means chosen. For purposes of determining which companies are scrutinized companies, the Board may utilize the list of scrutinized companies as developed by the Florida State Board of Administration. No person may bring any civil, criminal, or administrative action against the Board or any employee, officer, director, or advisor of the Fund based upon the divestiture of any security pursuant to this subsection.

(c) Maximum of cash not invested.—No more than 10 percent of the assets of the Fund shall be held in cash or in noninterest-bearing deposits.

(d) Administrative expenses.—The administrative expenses of the Fund shall be paid by the Fund.

(e) Restrictions on the use of assets of Fund.—The assets of the Fund shall be used only for the payment of benefits and other disbursements authorized by this act and shall be used for no other purpose.

(5) Service pension.—

(a) Normal retirement.—

1. Any member who is actively employed on and after October 1, 2003, excluding members in the DROP, who has attained age 50 years and who has acquired 15 or more years of service credit; who has attained age 55 years and who has acquired 10 or more years of service credit; or who has acquired 26 years of service credit without regard to age shall, upon application filed

with the Board, be retired and shall be entitled to a monthly pension for the remainder of his or her life equal to the greater of the following:

a. ~~4~~ Four percent of final average salary times credited service subject to a maximum of 92 percent of final average salary. However, in all cases, members shall be entitled to at least 2 percent per year of credited service, ~~;~~ or

b. The sum of the following:

(I) ~~Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of service credit to a maximum of 26 years of service, and 2 percent of his or her final average salary multiplied by the number of years, and fraction of a year, in excess of 26 years of service, for all years of service earned through September 30, 1988; and~~

(II) ~~Two percent of final average salary multiplied by the number of years, and fraction of a year, of service credit earned on and after October 1, 1988.~~

2. ~~Any member who is actively employed by the Department on and after October 1, 2003, and who is a member of the DROP on or after that date, may elect one of the following transition benefits by making a written election within 45 days after the effective date of this special act on a form provided by the Board of Trustees. The right to elect the transition benefits contained in sub-subparagraph b. shall terminate if no written election is made within 45 days after the effective date of this act. In the event a member does not submit a timely written election, the member shall be deemed to have elected the transition benefits contained in sub-subparagraph a. below:~~

a. ~~Retain member's original monthly retirement benefit, DROP account balance, and share account balance. DROP members who select this transition benefit may continue to participate in the DROP until the end of the original DROP term. Additional allocations to the share account shall be made in accordance with the provisions of paragraph (j).~~

b. ~~Convert the member's original monthly benefit and DROP balance to a new monthly benefit and BackDROP. In order to be entitled to this benefit, the member must cease membership in the DROP program. The new converted benefits will not be paid until the member has terminated employment. The conversion of the member's benefits shall be based on the following:~~

(I) ~~Original monthly benefit conversion: A DROP member is entitled to a conversion of the original monthly benefit in an amount equal to 4 percent for each year of credited service excluding the BackDROP period with a 2-year final average salary. The 2-year final average salary shall be determined based on a 24-month period with the highest average prior to the number of full years of BackDROP (selected by the member in accordance with sub-subparagraph II). No final average salary shall be included in a monthly benefit calculation for which a member has received a BackDROP payment.~~

~~(H) BackDROP conversion: The DROP member is entitled to a lump sum payment equal to the new monthly benefit annualized times a period of whole years as selected by the member up to a maximum of 5. The BackDROP benefit will be paid interest at the rate of 8.25 percent less expenses, compounded annually.~~

2. The 4-percent benefit accrual factor in subparagraph 1. sub-subparagraph 1.a. is contingent on and subject to the adoption and maintenance of the assumptions set forth in subsection (22). If such assumptions are modified by legislative, judicial, or administrative agency action, and the modification results in increased City contributions to the Pension Fund, the 4-percent accrual factor in subparagraph 1. sub-subparagraph 1.a. shall be automatically decreased prospectively, from the date of the action, to completely offset the increase in City contributions. However, in no event shall the benefit accrual factor in subparagraph 1. sub-subparagraph 1.a. be adjusted below 3.5 percent. To the extent that the benefit accrual factor is less than 4 percent, the supplemental pension distribution calculation under paragraph (d) shall be adjusted for employees who retire on or after October 1, 1998, and those employees who were members of the DROP on October 1, 1998. The adjustment shall be to decrease the minimum return of 8.25 percent needed to afford the supplemental pension distribution, when the amount of the reduction is zero if an employee has been credited with 16 or more years with the 3-percent benefit accrual factor or 1.25 percent if an employee has been credited with no more than a 2.5-percent benefit accrual factor. If an employee has been credited with less than 16 years at the 3-percent benefit accrual factor, then the accumulated amount over 2.5 percent for each year of service divided by .5 percent divided by 16 subtracted from 1 multiplied by 1.25 percent is the reduction from 8.25 percent. An example of the calculation of the minimum return for supplemental pension distribution as described above is set forth in Appendix B to the collective bargaining agreement between the City of West Palm Beach and the West Palm Beach Association of Firefighters, Local 727-IAFF, October 1, 2003-September 30, 2006.

(b) Vested deferred retirement.—A member who leaves the employ of the Department with 10 or more years of credited service who is not eligible for any other retirement benefit under this act shall be entitled to the applicable pension provided for in paragraph (a) or paragraph (c). Payment of this pension shall begin the first day of the calendar month following the month in which the member's application is filed with and accepted by the Board on or after attainment of age 50 years. If applicable, the amount of the pension shall be determined in accordance with paragraph (c).

(c) Early retirement.—Any member may retire from the service of the Department as of the first day of any calendar month which is prior to the member's normal retirement date but subsequent to the date as of which the member has both attained the age of 50 and has been a member of this Fund for 10 continuous years. In the event of early retirement, the monthly amount of retirement income shall be computed as described in paragraph (a), taking into account his or her credited service to the date of actual retirement and

his or her final average salary as of such date. The amount of retirement income shall be actuarially reduced to take into account the member's younger age and earlier commencement of retirement income benefits. The early retirement reduction shall be 3 percent for each year by which the member's age at retirement preceded the member's normal retirement age.

(d) Supplemental pension distribution.—

1.a. The actuary for the Pension Fund shall determine the rate of investment return earned on Pension Fund assets during the 12-month period ending each September 30. The rate determined shall be the rate reported in the most recent actuarial report submitted pursuant to part VII of chapter 112, Florida Statutes.

b. The actuary for the Pension Fund shall determine the actuarial present value, as of September 30, of future pension payments to eligible persons, as described in subparagraph 3., who are then being paid a pension. The actuarial present values shall be calculated using an interest rate of 7 percent per year compounded yearly and a mortality table as approved by the Board of Trustees and as used in the most recent actuarial report submitted pursuant to part VII of chapter 112, Florida Statutes.

c. A distribution amount shall be determined as of each September 30. For distributions made after October 1, 1998, there shall be two different calculations to determine the distribution amount. For those employees who retire on or after October 1, 1998, or who are part of the DROP on or after October 1, 1998, the distribution amount shall be equal to factor (i) for each applicable member multiplied by the sum of factor (ii) and the positive difference, if any, between factor (iii) and 8.25 percent. For those employees who have retired before October 1, 1998, except as provided in this sub-subparagraph, the distribution amount shall be equal to factor (i) for each applicable member multiplied by the sum of factor (ii) and the positive difference, if any, between factor (iii) and 7 percent. For purposes of both calculations, factor (i) is the actuarial present value determined in sub-subparagraph 1.b. for the respective group. Factor (ii) is one-half of the investment return rate in sub-subparagraph 1.a. in excess of 9 percent. Factor (iii) is the rate of investment return in sub-subparagraph 1.a., not to exceed 9 percent. The distribution amount shall not exceed accumulated net actuarial experience from all pension liabilities and assets. If the net actuarial experience is favorable, cumulatively, commencing with the experience for the year ended September 30, 1985, after offset for all prior supplemental distributions, the supplemental distribution may be made. If the net actuarial experience is unfavorable, cumulatively, commencing with the experience for the year ended September 30, 1985, after offset for all prior supplemental distributions, no supplemental distribution may be made, and the City must amortize the loss until it is offset by cumulative favorable experience.

If an actuarial report submitted as provided in this paragraph is not state accepted prior to distribution, and if a deficiency to the Pension Fund results,

the deficiency shall be made up from the next available supplemental pension distribution, unless sooner made up by agreement between the Board of Trustees and the City. No such deficiency shall be permitted to continue for a period of greater than 3 years from the date of payment of the supplemental pension distribution which resulted in the deficiency.

2. The Board of Trustees shall determine annually if there is to be a supplemental pension distribution. The supplemental pension distribution is that portion of the distribution amount, as defined in sub-subparagraph 1.c., to be distributed to eligible persons.

3. Eligible persons are:

- a. Pensioners.
- b. Surviving spouses.
- c. Surviving dependent children.
- d. Surviving dependent parents.
- e. Pensioners' estates for the year following death only.

Eligible persons are initially eligible if they have been in receipt of a pension for at least 1 year on the first distribution date following their retirement. A survivor beneficiary of a deceased retired member shall be considered to have been in receipt of a pension for at least 1 year if at least 12 monthly pension payments have been made on account of the retirement. A surviving spouse may count the retirement period, if any, of the deceased member toward the 1-year requirement. Surviving spouses, children, and parents and retired members who receive pension adjustments under the prior escalator clause are not eligible for the supplemental pension distribution.

4. The supplemental pension distribution dates shall be the April 1 following the effective date of this subsection and each April 1 thereafter. Each eligible person shall be paid his or her allocated portion of the applicable supplemental pension distribution amount from the preceding September 30. A pensioner's estate is entitled to a pro rata share of the deceased retiree's supplemental pension distribution based on the number of months that the deceased retiree received a pension during the year ending the September 30 prior to the pensioner's death after initial eligibility.

5. Each supplemental pension distribution amount shall be allocated among the eligible persons in the proportion that an eligible person's supplemental pension distribution points bears to the aggregate amount of supplemental pension distribution points of all eligible persons. An eligible person shall be credited with supplemental pension distribution points as follows:

- a. Three and eighty-five hundredths of a point multiplied by the service credit of the member at the time of retirement or prior to death; however, in

the computation of the supplemental pension distribution due the in-line-of-duty pensioner, the maximum service credit of 26 years shall be used.

b. Maximum service credit shall be 26 years.

c. Allocations for surviving spouses and surviving dependent children who are eligible to receive supplemental pension distributions shall be 75 percent of the years of service earned by the pensioner. Allocations for duty death beneficiaries (surviving spouse and surviving children) shall be based upon 75 percent of 26 years of service.

(e) Payment of benefits.—

1. First payment.—Service pensions shall be payable on the first day of each month. The first payment shall be payable on the first day of the month coincident with or next following the date of retirement, or death, provided the member has completed the applicable age and service requirements.

2. Last payment.—The last payment shall be the payment due next preceding the member's death, except that payments shall be continued to the designated beneficiary or beneficiaries if a 10-year certain benefit, a joint and survivor option, or beneficiary benefits, as applicable, are payable.

(f) Normal form of retirement income.—

1. Married member.—The normal form of retirement benefit for a married member or for a member with a dependent child or children or parent or parents shall be a service pension and beneficiary benefits. The service benefit shall provide monthly payments for the life of the member. Thereafter, beneficiary benefits shall be paid as provided in subsection (7).

2. Unmarried member.—The normal form of retirement benefit for an unmarried member without a dependent child or children or parent or parents shall be a 10-year certain benefit. This benefit shall pay monthly benefits for the member's lifetime. In the event the member dies after his or her retirement but before receiving retirement benefits for a period of 10 years, the same monthly benefit shall be paid to the beneficiary or beneficiaries as designated by the member for the balance of such 10-year period or, if no beneficiary is designated, to heirs at law, or estate of the member, as provided in section 175.181, Florida Statutes.

(g) Optional forms of retirement income.—

1.a. In the event of normal, early, or disability retirement, in lieu of the normal form of retirement income payable as specified in paragraph (a), paragraph (b), paragraph (c), or subsection (6) and in lieu of the beneficiary benefits as specified in subsection (7), a member, upon written request to the Board and subject to the approval of the Board, may elect to receive a retirement income of equivalent actuarial value payable in accordance with one of the following options:

(I) Lifetime option.—A retirement income of a larger monthly amount, payable to the member for his or her lifetime only.

(II) Joint and survivor option.—A retirement income of a modified monthly amount, payable to the member during the joint lifetime of the member and a dependent joint pensioner designated by the member, and following the death of either of them, 100 percent, 75 percent, 66- $\frac{2}{3}$ percent, or 50 percent of such monthly amounts, payable to the survivor for the lifetime of the survivor.

b. The member, upon electing any option of this paragraph, shall designate the joint pensioner or beneficiary or beneficiaries to receive the benefit, if any, payable in the event of his or her death, and will have the power to change such designation from time to time; but any such change shall be deemed a new election and shall be subject to approval by the Board. Such designation shall name a joint pensioner or one or more primary beneficiaries where applicable. If a member has elected an option with a joint pensioner or beneficiary and his or her retirement income benefits have commenced, he or she may thereafter change the designated joint pensioner or beneficiary only twice. Notwithstanding any other provision of this section, a retired member may change his or her designation of joint annuitant or beneficiary up to two times as provided in section 175.333, Florida Statutes, without the approval of the Board or the current joint annuitant or beneficiary. The retiree is not required to 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. Any retired member who desires to change his or her joint annuitant or beneficiary shall file with the Board a notarized notice of such change. Upon receipt of a completed change of joint annuitant form or such other notice, the Board shall adjust the member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit and there is no impact to the plan.

c. ~~The consent of a member's joint pensioner or beneficiary to any such change shall not be required. However, the spouse of a married member must consent to any election to waive a joint and survivor benefit by signing the election form before a notary public. The spouse's written consent must acknowledge the effect of such a waiver. Consent of the spouse shall not be required if the spouse cannot be located, or for such other circumstances as may be prescribed by the Secretary of the Treasury of the United States. Any consent by a spouse shall be effective only with respect to such spouse.~~

d. For any additional changes in beneficiaries, the Board may request such evidence of the good health of the joint pensioner that is being added as it may require; and the amount of the retirement income payable to the member upon the designation of a new joint pensioner shall be actuarially redetermined, taking into account the age and sex of the former joint pensioner, the new joint pensioner, and the member. Each such designation shall be filed with the Board. In the event that no designated beneficiary

survives the member, such benefits as are payable in the event of the death of the member subsequent to his or her retirement shall be paid as provided in subparagraph (h)2.

2. Retirement income payments shall be made under the option elected in accordance with the provisions of this paragraph and shall be subject to the following limitations:

a. If a member dies prior to his or her normal retirement date or early retirement date, whichever first occurs, retirement benefits shall be paid in accordance with subsection (7).

b. If the designated beneficiary or beneficiaries or joint pensioner dies before the member's retirement, the option elected shall be canceled automatically and a retirement income of the normal form and amount shall be payable to the member upon the member's retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this paragraph or a new beneficiary is designated by the member prior to retirement.

c. If a member continues in the employ of the Department after meeting the age and service requirements set forth in paragraph (a) or paragraph (c) and dies prior to the member's actual retirement, and while an option made pursuant to this subparagraph is in effect, monthly retirement income payments shall be paid, under the option, to a beneficiary or beneficiaries designated by the member in the amount or amounts computed as if the member has retired under the option on the date on which the member's death occurred.

3. No member may make any change in his or her retirement option after the date of cashing or depositing the first retirement check.

(h) Designation of beneficiary.—

1. Each member may, on a form provided for that purpose, signed and filed with the Board, designate a beneficiary or beneficiaries to receive the benefit, if any, which may be payable in the event of the member's death; and each designation may be revoked by such member by signing and filing with the Board a new designation of beneficiary form. However, after the benefits have commenced, a retirant may change his or her designation of joint annuitant or beneficiary only twice. If the retirant desires to change his or her joint annuitant or beneficiary, the retirant shall file with the Board a notarized notice of such change either by registered letter or on a form as provided by the Board. Upon receipt of a completed change of joint annuitant form or such other notice, the Board shall adjust the member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit.

2. Absence or death of beneficiary.—If a deceased member fails to name a beneficiary in the manner prescribed in subparagraph 1., or if the beneficiary or beneficiaries named by a deceased member predecease the member, the beneficiary benefits, if any, which may be payable with respect to such deceased member may be paid, in the discretion of the Board to:

- a. The spouse or dependent child or children of the member;
- b. The dependent living parent or parents of the member; or
- c. The estate of the member.

(i) Refund of contributions.—In the event a member leaves the employ of the Department or dies with less than 10 years of credited service, and no service pension, disability pension, or beneficiary benefit is payable, the contributions made by him or her to the Fund shall be refunded, without interest (less any disability payments paid to the member), to the member or, in the event of death, to the beneficiary or to the member's estate.

(j) Chapter 175, Florida Statutes, share accounts.—

1. Individual member accounts.—A separate account shall be established and maintained in each member's name effective on or after October 1, 1988.

2. Share account funding.—

a. Each individual member account shall be credited with a pro rata share of all of the moneys received from chapter 175, Florida Statutes, tax revenues in June 1988 and thereafter.

b. In addition, any forfeitures as provided in subparagraph 5. shall be credited to the individual member accounts in accordance with the formula set forth in subparagraph 3.

3. Annual allocation of accounts.—

a. Moneys shall be credited to each individual member account in an amount directly proportionate to the number of pay periods for which the member was paid compared to the total number of pay periods for which all members were paid, counting the pay periods in the calendar year preceding the date for which chapter 175, Florida Statutes, tax revenues were received. ~~For the fiscal year beginning October 1, 2003, and ending September 30, 2004, share account allocations shall only be made to DROP members who elect not to convert in accordance with sub-subparagraph (5)(a)2.b. For purposes of determining the pro rata share for those share account allocations during the fiscal year beginning October 1, 2003, and ending September 30, 2004, the pay periods of all active firefighters, including DROP members, shall be used. Share account allocations made on and after October 1, 2004, shall be made to each individual share account.~~

b. At the end of each fiscal ~~quarter year (September 30)~~, each individual account shall be adjusted to reflect the earnings or losses resulting from investment, as well as reflecting costs, fees, and expenses of administration.

c. ~~Effective October 1, 2002~~, Vested participants have the option to select one of three methods to credit investment earnings to their account. The method may be changed each year effective October 1; however, the method must be elected prior to October 1. The methods are:

(I) The investment earnings or losses credited to the individual member accounts shall be in the same percentage as are earned or lost by the total investment earnings or losses of the Fund as a whole, unless the Board dedicates a separate investment portfolio for chapter 175, Florida Statutes, share accounts, in which case the investment earnings or losses shall be measured by the investment earnings or losses of the separate investment portfolio;

(II) A fixed annual rate of 8.25 percent; or

(III) A percentage of the share account assets to be credited with earnings or losses in accordance with sub-sub-subparagraph (I) and a corresponding percentage of the share account assets credited in accordance with sub-sub-subparagraph (II). The combined total percentage invested under this sub-sub-subparagraph must equal 100 percent.

d. Costs, fees, and expenses of administration shall be debited from the individual member accounts on a proportionate basis, taking the cost, fees, and expenses of administration of the Fund as a whole, multiplied by a fraction, the numerator of which is the total assets in all individual member accounts and the denominator of which is the total assets of the Fund as a whole. The proportionate share of the costs, fees, and expenses shall be debited from each individual member account on a pro rata basis in the same manner as chapter 175, Florida Statutes, tax revenues are credited to each individual member account (i.e., based on pay periods).

~~e. If the entire balance of the individual member account is withdrawn before September 30 of any year, there shall be no adjustment made to that individual member account to reflect either investment earnings or losses or costs, fees, and expenses of administration.~~

4. Eligibility for benefits.—Any member who terminates employment with the City, upon the member’s filing an application with the Board, shall be entitled to 100 percent of the value of his or her individual member account, provided the member meets any of the following criteria:

a. The member is eligible to receive a service pension as provided in this subsection;

b. The member has 5 or more years of credited service and is eligible to receive either:

- (I) A nonduty disability pension as provided in paragraph (6)(a); or
 - (II) Beneficiary benefits for nonduty death as provided in paragraph (7)(a); or
- c. The member has any credited service and is eligible to receive either:
- (I) A duty disability pension as provided in paragraph (6)(c); or
 - (II) Beneficiary benefits for death in the line of duty as provided in paragraph (7)(b).

5. Forfeitures.—Any member who has less than 10 years of credited service and who is not eligible for payment of benefits after termination of employment with the City shall forfeit his or her individual member account. The amounts credited to said individual member account shall be redistributed to the other individual member accounts in the same manner as chapter 175, Florida Statutes, tax revenues are credited (i.e., based on pay periods). However, the assets shall first be used to ensure that the former member's refund of contributions has not actuarially adversely impacted the payment for the extra benefits. If there has been an adverse impact, the shortfall shall be made up first before the amounts are reallocated to active members.

6. Payment of benefits.—The normal form of benefit payment shall be a lump sum payment of the entire balance of the individual member account; or, upon the written election of the member, upon a form prescribed by the Board, payment may be made either by:

a. Installments.—The account balance shall be paid out to the member in three equal payments paid over 3 years, the first payment to be made upon approval of the Board; or

b. Annuity.—The account balance shall be paid out in monthly installments over the lifetime of the member or until the entire balance is exhausted. The monthly amount paid shall be determined by the Fund's actuary in accordance with selections made by the member in a form provided by the Board.

7. Death of a member.—If a member dies and is eligible for benefits from the individual member account, the entire balance of the individual member account shall be paid in a lump sum to the beneficiaries designated in accordance with paragraph (h). If a member fails to designate a beneficiary or, if the beneficiary predeceases the member, the entire balance shall be paid in a lump sum in the following order:

- a. To the spouse;
- b. If there is no spouse or the spouse is not alive, to the member's surviving child or children on a pro rata basis;

c. If there are no children or no child is alive, to the member’s parent or parents; or

d. If no parent is alive, to the estate of the member.

(k) Deferred Retirement Option Plan (DROP).—Effective upon the ratification of the collective bargaining agreement between the City of West Palm Beach and the West Palm Beach Association of Firefighters, Local 727-IAFF, October 1, 2003-September 30, 2006, no new members may enter into the DROP. Existing DROP members on the ratification date shall have the option to remain in the DROP for the remainder of their individual 5-year terms in accordance with the provisions of subparagraph (5)(a)2.

1. Eligibility to participate in the DROP.—

a. Any member who is eligible to receive an early or normal retirement pension may participate in the DROP. Members shall elect to participate by applying to the Board of Trustees on a form provided for that purpose.

b. Election to participate shall be forfeited if not exercised within the first 35 years of combined credited service.

c. A member shall not participate in the DROP beyond the time of attaining 37 years of service and the total years of participation in the DROP shall not exceed 5 years. For example:

(I) Members with 32 years of credited service at the time of entry shall participate for only 5 years.

(II) Members with 33 years of credited service at the time of entry shall participate for only 4 years.

(III) Members with 34 years of credited service at the time of entry shall participate for only 3 years.

(IV) Members with 35 years of credited service at the time of entry shall participate for only 2 years.

d. Upon a member’s election to participate in the DROP, he or she shall cease to be a member and shall no longer accrue any benefits under the Pension Fund, except for the benefits provided under paragraph (j) of this subsection, chapter 175, Florida Statutes, share accounts. For all Fund purposes, the member becomes a retirant, except that a DROP participant shall continue to receive shares of the chapter 175, Florida Statutes, money in accordance with paragraph (j), chapter 175, Florida Statutes, share accounts. The amount of credited service and final average salary shall freeze as of the date of entry into the DROP.

2. Amounts payable upon election to participate in the DROP.—

a. Monthly retirement benefits that would have been payable had the member terminated employment with the Department and elected to receive monthly pension payments shall be paid into the DROP and credited to the retiree. Payments into the DROP shall be made monthly over the period the retiree participates in the DROP, up to a maximum of 60 months.

b. ~~Effective October 1, 2002,~~ Participants have the option to select one of three methods to credit investment earnings to their account. Investment earnings shall be credited on a quarterly basis. The method may be changed each year effective October 1; however, the method must be elected prior to October 1. The methods are:

(I) Earnings using the rate of investment return earned on Pension Fund assets as reported by the Fund's investment monitor. DROP assets are commingled with the Pension Fund assets for investment purposes;

(II) A fixed rate of 8.25 percent; or

(III) A percentage of the DROP account assets to be credited with earnings or losses in accordance with sub-sub-subparagraph (I) and a corresponding percentage of the DROP account assets credited in accordance with sub-sub-subparagraph (II). The combined total percentage invested under this sub-sub-subparagraph must equal 100 percent.

However, if a member does not terminate employment at the end of participation in the DROP, interest credit shall cease on the balance.

c. No payments shall be made from the DROP until the member terminates employment with the Department.

d. Upon termination of employment, participants in the DROP shall receive the balance of the DROP account in accordance with the following rules:

(I) Members may elect to begin to receive payment upon termination of employment or defer payment of the DROP until the latest day under sub-sub-subparagraph (III).

(II) Payments shall be made in either:

(A) Lump sum.—The entire account balance shall be paid to the retiree upon approval of the Board of Trustees.

(B) Installments.—The account balance shall be paid out to the retiree in three equal payments paid over 3 years, the first payment to be made upon approval of the Board of Trustees.

(C) Annuity.—The account balance shall be paid out in monthly installments over the lifetime of the member or until the entire balance is exhausted. Monthly amount paid will be determined by the Fund's actuary

in accordance with selections made by the member in a form provided by the Board of Trustees.

(III) Any form of payment selected by a member must comply with the minimum distribution requirements of the IRC 401(A)(9), and are subject to the requirements of subsection (18).

(IV) The beneficiary of the DROP participant who dies before payments from DROP begin shall have the same right as the participant in accordance with subsection (7).

e. Costs, fees, and expenses of administration shall be debited from the individual member accounts on a proportionate basis, taking the cost, fees, and expenses of administration of the Fund as a whole, multiplied by a fraction, the numerator of which is the total assets in all individual member accounts and the denominator of which is the total assets of the Fund as a whole.

3. Loans from the DROP.—

a. Availability of loans.—

(I) Loans are available to members only after termination of employment, provided the member had participated in the DROP for a period of 12 months.

(II) Loans may only be made from a member’s own account.

(III) There may be no more than one loan at a time.

b. Amount of loan.—

(I) Loans may be made up to a maximum of 50 percent of account balance.

(II) The maximum dollar amount of a loan is \$50,000, reduced by the highest outstanding loan balance during the last 12 months.

(III) The minimum amount of a loan is \$5,000.

c. Limitation on loans.—Loans shall be made from the amounts paid into the DROP and earnings thereon.

d. Term of loan.—

(I) A loan must be for at least 1 year.

(II) A loan shall be for no longer than 5 years.

e. Loan interest rate.—

(I) The interest rate shall be fixed at the time the loan is originated for the entire term of the loan.

(II) The interest rate shall be equal to the lowest prime rate published by the Wall Street Journal on the last day of each calendar quarter preceding the date of the loan application.

f. Defaults of loans.—

(I) A loan shall be in default if 2 consecutive months of repayments are missed or if a total of 4 months of repayments is missed.

(II) Upon default, the entire balance of the loan becomes due and payable immediately.

(III) If a loan in default is not repaid in full immediately, the loan may be canceled and the outstanding balance treated as a distribution, which may be taxable.

(IV) Upon default of a loan, a member shall not be eligible for additional loans.

g. Miscellaneous provisions.—

(I) All loans must be evidenced by a written loan agreement signed by the member and the Board of Trustees. The agreement shall contain a promissory note.

(II) A member’s spouse must consent in writing to the loan. The consent shall acknowledge the effect of the loan on the member’s account balance.

(III) Loans shall be considered general assets of the Fund.

(IV) Loans shall be subject to administrative fees to be set by the Board of Trustees.

4. After-tax contributions to the DROP.—

a. A member may make after-tax contributions to the DROP. The maximum amount that may be contributed is the lesser of:

(I) The IRS 415(c) limit.

(II) The amount allowable under IRC 401(m).

b. After-tax contributions to the DROP shall earn interest in the same manner as set forth in sub-subparagraph 2.b.

c. Distributions to members or their beneficiaries of after-tax contributions may be withdrawn at any time on or after termination of employment. However, payments must be made at least as promptly as required under subsection (18).

d. Loans shall not be made against after-tax contributions.

(l) Backwards Deferred Retirement Option Plan (BackDROP).—

1. Eligibility to participate in the BackDROP.—

a. Any member who has attained age 53 with 18 or more years of service, who has attained age 58 with 13 or more years of service, or who has acquired 26 years of service regardless of age may participate in the BackDROP. Members shall elect to participate by applying to the Board of Trustees on a form provided for that purpose. A member may not participate in both the DROP and the BackDROP.

b. Election to participate shall be forfeited if not exercised within the first 28 years of credited service. However, a member who is actively employed by the Department on October 1, 2003, may elect to participate in the BackDROP beyond the 28th year as follows: the member may elect to participate in the benefit for 3 full years in the 29th year of employment, for 1 full year in the 30th year of employment, and after the 30th year of employment all elections to participate in the BackDROP end.

c. A member shall not be eligible to receive a BackDROP benefit that is greater than an accumulation of 60 months of the monthly retirement benefit. A member shall not be eligible to receive a benefit which is less than an accumulation of 36 months of the monthly retirement benefit, except for the reduction of benefits as defined in sub-subparagraph b.

d. Member contributions shall continue throughout the period of employment and are not refundable for the BackDROP period.

e. Members who elect to participate in the BackDROP must retire and terminate employment to be eligible for payment of the benefit.

f. Any member who terminates employment by any means, including death, prior to attaining age 53 with 18 or more years of service or age 58 with 13 or more years of service or by acquiring 26 years of service is not eligible to participate in the BackDROP.

2. Benefits payable upon election to participate in the BackDROP.—

a. Upon election to receive the BackDROP benefit, a member's retirement benefits will be calculated as if the member had chosen to retire and terminate employment at a date which is more than 36 months but less than 60 months earlier. The number of months to be applied is based upon the member's election. The monthly pension amount shall be multiplied by the number of months of BackDROP selected by the member, which shall be between 36 and 60 months, inclusive. The BackDROP benefit shall be calculated as a single sum, including interest at the rate of 8.25 percent less expenses, compounded annually for the period of BackDROP.

b. No payments shall be made from the BackDROP until the member terminates employment with the Department.

c. Upon termination of employment, participants in the BackDROP shall receive the balance of the BackDROP account in accordance with the following rules:

(I) Members may elect to receive payment upon termination of employment or defer payment of the BackDROP until the latest day under sub-sub-subparagraph (III).

(II) Payments shall be made in either:

(A) A lump sum.—The entire account balance shall be paid to the retirant upon approval of the Board of Trustees.

(B) Installments.—The account balance shall be paid out to the retirant in three equal payments paid over 3 years, the first payment to be made upon approval of the Board of Trustees.

(C) Annuity.—The account balance shall be paid out in monthly installments over the lifetime of the member or until the entire balance is exhausted. The monthly amount paid shall be determined by the Fund’s actuary in accordance with selections made by the member in a form provided by the Board of Trustees.

(III) Any form of payment selected by a member must comply with the minimum distribution requirements of the IRC 401(A)(9), and are subject to the requirements of subsection (18).

(IV) The beneficiary of the BackDROP member shall have the same right as the participant in accordance with subsection (7).

3. BackDROP earnings.—

a. BackDROP members may select one of three methods to credit investment earnings to their accounts. Investment earnings shall be credited on a quarterly basis. The method may be changed each year effective October 1; however, the method must be elected prior to October 1. The methods are:

(I) The BackDROP is credited with earnings and losses using the rate of investment return earned on Pension Fund assets as reported by the Fund’s investment monitor. BackDROP assets are commingled with the Pension Fund assets for investment purposes;

(II) A fixed rate of 8.25 percent; or

(III) A percentage of the BackDROP account assets to be credited with earnings or losses in accordance with sub-sub-subparagraph (I) and a corresponding percentage of the BackDROP account assets credited in accordance with sub-sub-subparagraph (II). The combined total percentage invested under this sub-sub-subparagraph must equal 100 percent.

b. Costs, fees, and expenses of administration shall be debited from the individual member BackDROP accounts on a proportionate basis, taking the cost, fees, and expenses of administration of the Fund as a whole, multiplied by a fraction, the numerator of which is the total of assets in all individual member accounts and the denominator of which is the total of assets of the Fund as a whole.

4. Loans from the BackDROP.—

a. Availability of loans.—

(I) Loans are available to members only after termination of employment, provided the member had participated in the BackDROP for a period of at least 12 months.

(II) Loans may only be made from a member’s own account.

(III) There may be no more than one loan at a time.

b. Amount of loan.—

(I) Loans may be made up to a maximum of 50 percent of account balance.

(II) The maximum dollar amount of a loan is \$50,000, reduced by the highest outstanding loan balance during the last 12 months.

(III) The minimum amount of a loan is \$5,000.

c. Limitation on loans.—Loans shall be made from the amounts paid into the BackDROP and earnings thereon.

d. Term of loan.—

(I) A loan must be for at least 1 year.

(II) A loan shall be for no longer than 5 years.

e. Loan interest rate.—

(I) The interest rate shall be fixed at the time a loan is originated for the entire term of the loan.

(II) The interest rate shall be equal to the lowest prime rate published by the Wall Street Journal on the last day of each calendar quarter preceding the date of the loan application.

f. Defaults of loans.—

(I) A loan shall be in default if 2 consecutive months of repayments are missed or if a total of 4 months of repayments is missed.

(II) Upon default of a loan, the entire balance of the loan becomes due and payable immediately.

(III) If a loan in default is not repaid in full immediately, the loan may be canceled and the outstanding balance treated as a distribution, which may be taxable.

(IV) Upon default of a loan, a member shall not be eligible for additional loans.

g. Miscellaneous provisions.—

(I) All loans must be evidenced by a written loan agreement signed by the member and the Board of Trustees. The agreement shall contain a promissory note.

(II) A member’s spouse must consent in writing to the loan. The consent shall acknowledge the effect of the loan on the member’s account balance.

(III) Loans shall be considered general assets of the Fund.

(IV) Loans shall be subject to administrative fees to be set by the Board of Trustees.

5. After-tax contributions to the BackDROP.—

a. A member may make after-tax contributions to the BackDROP. The maximum amount that may be contributed is the lesser of:

(I) The IRS 415(c) limit.

(II) The amount allowable under IRC 401(m).

b. After-tax contributions to the BackDROP shall earn interest in the same manner as set forth in sub-subparagraph 3.a.

c. Distributions to members or their beneficiaries of after-tax contributions may be withdrawn at any time on or after termination of employment. However, payments must be made at least as promptly as required under subsection (18).

d. Loans shall not be made against after-tax contributions.

(6) Disability pensions, medical examinations, return to work, etc.—

(a) Nonduty disability requirements.—Any member with 5 or more years of service credit who is regularly employed in the Department who becomes physically or mentally totally and permanently disabled by illness, disease, or injury to perform the duties of a firefighter shall, upon the member’s application to the Board, be retired with a pension provided for in this paragraph, provided that after a medical examination of the member made by or under the direction of a medical committee, the medical committee reports to the Board, in writing, whether:

1. The member is wholly prevented from rendering useful and efficient service as a firefighter; and
2. The member is likely to remain so disabled continuously and permanently.

The Board may admit and consider any other evidence that it deems appropriate. The final decision as to whether a member meets the requirements for a nonduty disability pension rests with the Board and shall be based on competent substantial evidence on the record as a whole.

(b) Nonduty disability pension benefits.—Upon retirement on account of disability as provided in paragraph (a), a member shall receive a disability pension computed according to subparagraph (5)(a)1., notwithstanding that he or she might not have attained age 50 years and might not have 15 or more years of service credit. Further, if the member has at least 10 years of service credit, the disability pension shall not be less than 25 percent of the member’s average monthly salary at the time of disability. A disability retiree may select optional forms of benefits in accordance with paragraph (5)(g).

(c) Duty disability requirements.—Any member who is regularly employed in the Department and who becomes physically or mentally totally and permanently disabled to perform the duties of a firefighter by reason of an injury or disease arising out of and in the course of the performance of his or her duties as a firefighter in the employ of the City, shall, upon his or her application to the Board, be retired with a disability pension provided for in this paragraph, provided that after a medical examination of the member made by or under the direction of the medical committee, the medical committee reports to the Board in writing, whether:

1. The member is wholly prevented from rendering useful and efficient service as a firefighter; and
2. The member is likely to remain so disabled continuously and permanently.

The Board shall admit and consider any other evidence that it deems appropriate. Any condition or impairment of health of a member caused by tuberculosis, hypertension, heart disease, hepatitis, or meningococcal meningitis resulting in total disability or death shall be presumed to have been accidental and suffered in the line of duty unless the contrary is shown by competent evidence, provided such member shall have successfully passed a physical examination before entering into such service, which examination failed to reveal any evidence of such condition. In order to be entitled to the presumption in the case of hepatitis, meningococcal meningitis, or tuberculosis, the member must meet the requirements of section 112.181, Florida Statutes. The final decision as to whether a member meets the requirements for a disability pension rests with the Board, based on competent substantial evidence on the record as a whole.

(d) Duty disability pension benefits.—Upon retirement on account of disability, as provided in paragraph (c), a member shall receive a monthly pension for the remainder of his or her life, equal to the greater of the following:

1. Sixty-five percent of the final average salary; or
2. The sum of the following:

a. Two and one-half percent of the member's final average salary multiplied by the number of years, and fraction of a year, of his or her service credit to a maximum of 26 years of service, and 2 percent of his or her final average salary multiplied by the number of years, and fraction of a year, in excess of 26 years of service, for all years of service earned through September 30, 1988; and

b. Two percent of the member's final average salary multiplied by the number of years, and fraction of a year, of his or her service credit earned on or after October 1, 1988.

(e) Medical committee.—The medical committee provided for in this subsection shall consist of no less than two qualified health professionals, one of whom shall be designated by the Board and one by the member. If deemed necessary by the Board, a third qualified health professional, selected by the two committee members previously designated, may be named to the medical committee. The medical committee shall report to the Board the existence and degree of permanent physical impairment of the member, if any, based upon the most recent edition of the American Medical Association's Guide to the Evaluation of Permanent Impairment, if applicable.

(f) Exclusions from disability pensions.—No disability pension shall be payable, either as a duty disability pension or as a nonduty disability pension, if the disability is a result of:

1. Excessive and habitual use by the member of drugs, intoxicants, or narcotics;

2. Injury or disease sustained by the member while willfully and illegally participating in fights, riots, or civil insurrections or while committing a crime;

3. Injury or disease sustained by the member while serving in any armed forces. This exclusion does not affect members who have become disabled as a result of intervening military service under the federal Heroes Earnings Assistance and Relief Tax Act of 2008, Pub. L. No. 110-245;

4. Injury or disease sustained by the member after his or her employment has terminated;

5. Injury or disease sustained by the member while working for anyone other than the City and arising out of such employment; or

6. Injury or disease sustained by the member before coming to work for the City. This exclusion applies to duty disability applications only.

(g) Payment of disability pensions.—Monthly disability retirement benefits shall be payable as of the date the Board determines that the member was entitled to a disability pension; however, the first payment shall actually be paid on the first day of the first month after the Board determines such entitlement. Any portion due for a partial month shall be paid together with the first payment. If the member recovers from the disability prior to his or her normal retirement date, the last payment shall be the payment due next preceding the date of such recovery or, if the member dies without recovering from his or her disability, then the following shall apply:

1. Married member.—Beneficiary benefits as set forth in subsection (7) shall be paid if, at the time of death, the member was married or had a dependent child or children or parent or parents; or

2. Unmarried member with 10 years of service or more.—Payments shall be made until the member’s death or the 120th monthly payment, whichever is later; or

3. Unmarried member with less than 10 years of service.—Payments shall be made until the member’s death.

Any monthly retirement income payments due after the death of a disabled member shall be paid to the member’s designated beneficiary or beneficiaries or the member’s estate as provided in paragraph (5)(h) or subsection (7), as applicable.

(h) Reexamination of disability retiree.—At least once each year during the first 5 years following a member’s retirement on account of disability, and at least once in each 3-year period thereafter, the Board shall require any disability retiree who has not attained age 50 to undergo a medical examination to be made by or under the direction of a physician designated by the Board. However, if a disability retiree has lost the firefighter certification, as required by Florida Statutes, then the reexamination is discretionary. If the retiree refuses to submit to the medical examination in any such period, his or her disability pension may be suspended by the Board until withdrawal of such refusal. If such refusal continues for 1 year, all of the retiree’s rights in and to a disability pension may be revoked by the Board. If, upon medical examination of the retiree, the physician reports to the Board that the retiree is physically able and capable of performing the duties of a firefighter in the rank held by him or her at the time of retirement, the member shall be returned to employment in the Department at a salary not less than the salary of the rank last held by him or her, provided that return to the employ of the Department shall be subject to the approval of the Fire Chief. Should the retiree become employed by the City, his or her disability pension shall terminate.

(i) Return to work of a disability retirant; service credit.—In the event a disability retirant is returned to employment in the department, as provided in paragraph (h), his or her service credit at the time of disability retirement shall be restored to his or her credit. In the event he or she retired under the provisions of paragraph (c), he or she shall be given service credit for the period he or she was in receipt of a disability pension. If he or she retired under the provisions of paragraph (a), he or she shall not be given service credit for the period he or she was in receipt of a disability pension.

(j) Expenses of medical examinations for disability.—The member shall be responsible for the expenses of the physician the member designates for medical examinations required under this subsection. Expenses for any other medical examinations required under this subsection shall be paid by the Fund.

(7) Beneficiary benefits.—

(a) Death while in service; 5 years or more (nonduty).—In the event a member with 5 or more years of service credit dies while in the employ of the Department, and the Board finds his or her death to have occurred as the result of causes arising outside the performance of his or her duties as a firefighter in the employ of the City, the following applicable pensions shall be paid:

1. Surviving spouse’s benefits.—The surviving spouse shall receive a pension equal to two-thirds of the pension the member would otherwise have been entitled to receive under paragraph (5)(a), as if the member had retired the day preceding the date of his or her death, notwithstanding that the member might not have met the age and service requirements for retirement as specified in subsection (5). Upon the surviving spouse’s death, the pension shall terminate.

2. Benefits for children, surviving spouse, etc.—In the event the deceased member does not leave a surviving spouse, or if the surviving spouse shall die, and the member leaves an unmarried child or children under age 18, each such child shall receive a pension of an equal share of the pension to which said member’s surviving spouse was or would have been entitled. Upon any such child’s adoption, marriage, death, or attainment of age 18, the child’s pension shall terminate and said child’s pension shall be apportioned to the deceased member’s remaining eligible children under age 18.

3. Benefits for dependent parents.—In the event a member dies and does not leave a surviving spouse or children eligible to receive a pension provided for in subparagraphs 1. and 2., and the member leaves a parent or parents whom the Board finds to have been dependent upon the member for 50 percent or more of their financial support, each such parent shall receive a pension of an equal share of the pension to which the member’s surviving spouse would have been entitled. Upon any such parent’s remarriage or death, the parent’s pension shall terminate.

4. Estate.—In the event a member dies and does not leave a surviving spouse, children, or parents eligible to receive a pension provided for in subparagraph 1., subparagraph 2., or subparagraph 3., then the benefits remaining, if any, shall be paid to the member’s estate.

(b) Death in the line of duty.—In the event a member dies while in the employ of the Department, and the Board finds his or her death to be the natural and proximate result of causes arising out of and in the actual performance of duty as a firefighter in the employ of the City, the following applicable pensions shall be paid:

1. Surviving spouse’s benefits.—The surviving spouse shall receive a monthly pension equal to the greater of:

a. Sixty-six and two-thirds of the member’s highest 12 months’ salary or top step firefighter pay, whichever is greater; or

b. The surviving spouse’s share of the member’s accrued benefit. Upon the surviving spouse’s death, the pension shall terminate.

2. Benefits for children, surviving spouse, etc.—In the event the deceased member does not leave a surviving spouse, or if the surviving spouse shall die, and the member leaves an unmarried child or children under age 18, each such child shall receive a pension of an equal share of the pension to which the member’s surviving spouse was or would have been entitled. Upon any such child’s adoption, marriage, death, or attainment of age 18, the child’s pension shall terminate and said child’s pension shall be apportioned to the deceased member’s remaining eligible children under age 18.

3. Benefits for dependent parents.—In the event a member dies and does not leave a surviving spouse or children eligible to receive a pension provided for in subparagraphs 1. and 2., and the member leaves a parent or parents whom the Board finds to have been dependent upon the member for 50 percent or more of their financial support, each such parent shall receive a pension of an equal share of the pension to which said member’s surviving spouse would have been entitled. Upon any such parent’s remarriage or death, the parent’s pension shall terminate.

4. Estate.—In the event a member dies and does not leave a surviving spouse, children, or parents eligible to receive a pension provided for in subparagraph 1., subparagraph 2., or subparagraph 3., then the benefits remaining, if any, shall be paid to the member’s estate.

(c) Death after retirement.—Upon the death of a retirant, the following applicable pensions shall be paid:

1. Surviving spouse’s benefits.—The surviving spouse shall receive a pension equal to three-fourths of the retirant’s pension at the time of his or her death. Upon the surviving spouse’s death, the pension shall terminate.

2. Benefits for children, surviving spouse, etc.—In the event a deceased retirant does not leave a surviving spouse, or if the surviving spouse shall die, and the retirant leaves an unmarried child or children under age 18, each such child shall receive a pension of an equal share of the pension to which the retirant's surviving spouse was or would have been entitled. Upon any such child's adoption, marriage, death, or attainment of age 18, the child's pension shall terminate and said child's pension shall be apportioned to the deceased retirant's remaining eligible children under age 18.

3. Benefits for dependent parents.—In the event a retirant dies and does not leave a surviving spouse or children eligible to receive a pension provided for in subparagraphs 1. and 2., and the retirant leaves a parent or parents whom the Board finds to have been dependent upon the retirant for 50 percent or more of their financial support, each such parent shall receive a pension of an equal share of the pension to which the retirant's surviving spouse would have been entitled. Upon any such parent's remarriage or death, the parent's pension shall terminate.

4. Estate.—In the event a retirant dies and does not leave a surviving spouse, children, or parents eligible to receive a pension provided for in subparagraph 1., subparagraph 2., or subparagraph 3., then the benefits remaining, if any, shall be paid to the retirant's estate.

(8) Acceptance of pension no bar to subsequent work.—The acceptance of a pension by a member upon retirement shall not bar the member from engaging in any other business thereafter.

(9) Pension not assignable or subject to garnishment.—The pensions or other benefits accrued or accruing to any person under the provision of this act and the accumulated contributions and the cash securities in the Funds created under this act shall not be subject to execution or attachment or to any legal process whatsoever, and shall be unassignable. However, pursuant to a court support order, the Trustees may direct that the retirement benefits be paid for alimony or child support in accordance with rules and regulations adopted by the Board of Trustees. Upon written request by the retiree, the Board of Trustees may authorize the Plan administrator to withhold from the monthly retirement payment funds necessary to:

(a) Pay for benefits being received through the City;

(b) Pay the certified bargaining agent; or

(c) Pay for premiums for accident health and long-term care insurance for the retiree's spouse and dependants. A retirement plan does not incur liability for participation in this permissive program if its actions are taken in good faith pursuant to section 175.061(7), Florida Statutes.

(10) Transfer of funds.—All funds and assets previously owned and controlled by the West Palm Beach Firemen's Relief and Pension Fund are vested in the Board of this Fund.

(11) Ordinances applicable.—All ordinances of the City applicable to chapter 175, Florida Statutes, are hereby made applicable to this act with equal force and effect. No proposed change or amendment to this act shall be adopted without approval required by section 175.351(2), Florida Statutes.

(12) Existing benefits to continue.—This act, and any amendments thereto, shall not be construed to decrease the benefits payable to, or on account of, any member of the Fund.

(13) Workers' compensation offset.—The pension benefits payable under this act shall not be offset by workers' compensation benefits payable on account of the disability or death of a member except to the extent that the total of the pension benefits and workers' compensation benefits exceed the member's monthly average wage.

(14) Actuarial valuations.—The Fund shall be actuarially evaluated annually.

(15) Review procedures.—

(a) The applicant for benefits under this chapter may, within 20 days after being informed of the denial of his or her request for pension benefits, appeal the denial by filing a reply to the proposed order with the pension's secretary. If no appeal is filed within the time period, then the proposed order shall be final.

(b) The Board of Trustees shall hold a hearing within 45 days after the receipt of the appeal. Written notice of the hearing shall be sent by certified mail return receipt/restricted to individual, to the applicant at the address listed on the application 10 days prior to the hearing.

(c) The procedures at the hearing shall be as follows:

1. All parties shall have an opportunity to respond, to present physical and testimonial evidence and argument on all issues involved, to conduct cross-examination, to submit rebuttal evidence, and to be represented by counsel. Medical reports and depositions may be accepted in lieu of live testimony at the Board's discretion.

2. All witnesses shall be sworn.

3. The applicant and the Board shall have an opportunity to question all witnesses.

4. Formal rules of evidence and formal rules of civil procedure shall not apply. The proceedings shall comply with the essential requirements of due process and law.

5. The record in a case governed by this subsection shall consist only of:

a. A tape recording of the hearing, to be taped and maintained as part of the official files of the Board of Trustees by the pension’s secretary.

b. Evidence received or considered.

c. All notices, pleadings, motions, and intermediate rulings.

d. Any decisions, opinions, proposed or recommended orders, or reports by the Board of Trustees.

(d) Within 5 days after the first hearing, the Board shall take one of the following actions:

1. Grant the pension benefits by overturning the proposed order by a majority vote.

2. Deny the benefits and approve the proposed order as a final order after making any changes in the order the Board feels is necessary.

(e) Findings of fact by the Board shall be based on competent, substantial evidence on the record.

(f) Within 20 calendar days after rendering its order, the Board of Trustees shall send to the applicant, by certified mail return receipt/restricted to individual, a copy of the order.

(g) The applicant may seek review of the order by the Board of Trustees by filing a petition for writ of certiorari with the circuit court within 30 days.

(16) Pickup of employee contributions.—Effective the first day of the first full payroll period of the first calendar quarter following receipt of a favorable determination letter from the Internal Revenue Service, the City shall pick up the member contribution required by this section. The contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code. The City shall pick up the member contributions from funds established and available for salaries, which funds would otherwise have been designated as member contributions and paid to the Fund. Member contributions picked up by the City pursuant to this subsection shall be treated for all other purposes of making a refund of members’ contributions, and for all other purposes of this and other laws, in the same manner and to the same extent as member contributions made prior to the effective date of this subsection. The intent of this subsection is to comply with section 414(H)(2) of the Internal Revenue Code.

(17) Internal Revenue Code limits.—

(a) In no event may a member’s annual benefit exceed \$160,000, adjusted for cost of living in accordance with Internal Revenue Code (“IRC”) Section 415(d).

(b) If a member has less than 10 years of service with the City, the applicable limitation in paragraph (a) shall be reduced by multiplying such limitation by a fraction, not to exceed 1. The numerator of such fraction shall be the number of years, or part thereof, of service with the City; the denominator shall be 10 years.

(c) For purposes of this subsection, “annual benefit” means a benefit payable annually in the form of a straight life annuity with no ancillary or incidental benefits and with no member or rollover contributions. To the extent that ancillary benefits are provided, the limits set forth in paragraph (a) shall be reduced actuarially, using an interest rate assumption equal to the greater of 5 percent or the rate being used for actuarial equivalence, to reflect such ancillary benefits.

(d) If distribution of retirement benefits begins before age 62, the dollar limitation as described in paragraph (a) shall be reduced using an interest rate assumption equal to the greater of 5 percent or the interest rate used for actuarial equivalence; however, retirement benefits shall not be reduced below \$75,000 if payment of benefits begins at or after age 55, and not below the actuarial equivalent of \$75,000 if payment of benefits begins before age 55. For a member with 15 or more years of service with the City, the reductions described above shall not reduce such member’s benefit below \$50,000, adjusted for cost of living in accordance with IRC Section 415(d), but only for the year in which such adjustment is effective. If retirement benefits begin after age 65, the dollar limitation of paragraph (a) shall be increased actuarially by using an interest assumption equal to the lesser of 5 percent or the rate used for actuarial equivalence.

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

(18) Required distributions.—In accordance with IRC Section 401(9)(C), any and all benefit payments shall begin by the later of:

(a) April 1 of the calendar year following the calendar year of the member’s retirement date; or

(b) April 1 of the calendar year following the calendar year in which the employee attains age 70 ½.

(19) Miscellaneous requirements.—

(a) No benefit of any kind shall be payable from the assets of the Pension Fund unless specifically provided for in this act; however, the Board of Trustees, with the approval of the City, may grant ad hoc benefits after a

public hearing and acceptance by the state of an actuarial impact statement submitted pursuant to part VII of chapter 112, Florida Statutes.

(b) The City may not offset any part of its required annual contribution by the Fund’s assets except as determined in an actuarial valuation, the report for which is determined to be state accepted pursuant to part VII of chapter 112, Florida Statutes.

(c) All provisions of this act and operations of the Pension Fund shall be carried out in compliance with part VII of chapter 112, Florida Statutes.

(d) False or misleading statements made to obtain retirement benefits prohibited.—

1. It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement or to withhold or conceal material information to obtain any benefit under this plan.

2.a. A person who violates subparagraph 1. commits a misdemeanor of the first degree, punishable as provided in section 775.082 or section 775.083, Florida Statutes.

b. In addition to any applicable criminal penalty, upon conviction for a violation of subparagraph 1., a participant or beneficiary of this plan may, in the discretion of the Board of Trustees, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled under this Plan. For the purposes of this sub-subparagraph, “conviction” means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(20) Rollover distributions.—

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

(b)1. “Eligible rollover distribution” is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee’s designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income.

2. “Eligible retirement plan” is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code that accepts the distributee’s eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an “eligible retirement plan” is an individual retirement account or individual retirement annuity.

3. “Distributee” includes an employee or former employee. In addition, the employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse or former spouse who is entitled to payment for alimony and child support under a domestic relations order determined to be qualified by this Fund are distributees with regard to the interest of the spouse or former spouse.

4. “Direct rollover” is a payment by the Plan to the eligible retirement plan specified by the distributee.

(21) Rollovers from qualified plans.—

(a) A member may roll over all or part of his or her assets in another qualified plan to his or her chapter 175, Florida Statutes, share account, provided all of the following requirements are met:

1. Some or all of the amount distributed from the other plan is rolled over to this plan no later than the 60th day after distribution was made from the plan or, if distributions are made in installments, no later than the 60th day after the last distribution was made.

2. The amount rolled over to the share account does not include any amounts contributed by the member to the plan on a posttax basis.

3. The rollover is made in cash.

4. The member certifies that the distribution is eligible for a rollover.

5. Amounts which the Trustee accepts as a rollover to this Fund shall, along with any earnings allocated to the Trustee, be fully vested at all times.

The rollover may also be made to this plan from an individual retirement account qualified under Code Section 408 when the individual retirement was merely used as a conduit for funds from another qualified plan and the rollover is made in accordance with the rules provided in subparagraphs 1.-5. Amounts rolled over may be segregated from other Fund assets. The Trustee shall separately account for gains, losses, and administrative expenses on these rollovers as provided for in paragraphs (5)(d) and (j). In addition, the Fund may accept the direct transfer of a member’s benefits from another qualified retirement plan or Internal Revenue Code section 457 plan. The Fund shall account for direct transfers in the same manner as a rollover and

shall obtain certification from the member that the amounts are eligible for a rollover or direct transfer to this Fund.

(b) Transfer of accumulated leave.—

1. Members eligible to receive accumulated sick leave, accumulated vacation leave, or any other accumulated leave payable upon separation shall have the leave transferred to the Fund up to the amount permitted by law. Any additional amounts shall be paid directly to the member. Members on whose behalf leave has been transferred shall maintain the entire amount of the transferred leave balance in the DROP or Share Account.

2. If a member on whose behalf the City makes a transferred leave balance to the Plan dies after retirement or other separation, then any person who would have received a death benefit had the member died in service immediately prior to the date of retirement or other separation shall be entitled to receive an amount equal to the transferred leave balance in a lump sum. In the case of a surviving spouse or former spouse, an election may be made to transfer the leave balance to an eligible retirement plan in lieu of the lump sum payment. Failure to make such an election by the surviving spouse or former spouse within 60 days after the member's death shall be deemed an election to receive the lump sum payment.

3. The Board, by rule, shall prescribe the method for implementing the provisions of this paragraph.

4. Amounts transferred under this section shall remain invested in the Pension Fund for a period of not less than 1 year.

(22) Actuarial assumptions.—The following actuarial assumptions shall be used for all purposes in connection with this Fund, effective October 1, 1998:

(a) The period for amortizing current, future, and past actuarial gains or losses shall be 20 years.

(b) The assumed investment rate of return shall be 8.25 percent.

(23) Prior firefighter service.—Unless otherwise prohibited by law, the years, or fractional parts of years, that a member previously served as a firefighter for any other municipal, county, or state, or federal fire department or district or any time served in the military service of the Armed Forces of the United States shall be added to the years of credited service, provided that the member contributes to the fund the sum that would have been contributed, based on the member's salary and the employee contribution rate in effect at the time that the credited service is requested, had the member been a member of this system for the years, or fractional parts of years, for which the credit is requested, plus the amount actuarially determined, such that the crediting of service does not result in any cost to the fund, plus payment of costs for all professional services

rendered to the board in connection with the purchase of years of credited service.

(a) Payment by the member of the required amount may be made within 6 months after the request for credit and in one lump sum payment, or the member may buy back this time over a period equal to the length of time being purchased or 5 years, whichever is greater, at an interest rate which is equal to the Fund’s actuarial assumption. A member may request to purchase some or all years of eligible service.

(b) The credit purchased under this section shall count for all purposes, except vesting.

(c) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal, county, or state fire department or district, if such prior service forms or will form the basis of a retirement benefit or pension from another retirement system or plan.

(d) In the event that a member who is in the process of purchasing service suffers a disability and is awarded a benefit from the plan, the member shall not be required to complete the buyback. However, contributions made prior to the date the disability payment begins will be retained by the Fund.

(e) If a member who has either completed the purchase of service or is in the process of purchasing service terminates before vesting, the member’s contributions shall be refunded, including the buyback contributions.

(f) A request to purchase service may be made at any time during the course of employment. A member may elect to purchase permissive service more than one time; however, the maximum years of service that may be purchased is 5 years.

(g) There shall be no fiscal impact to the City, now or in the future, as a result of the purchase of credit for prior firefighter service or military service.

(24) Termination of the Fund.—Upon termination of the Plan by the City for any reason, or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in chapter 121, Florida Statutes, or upon written notice to the Board by the City that contributions under the plan are being permanently discontinued, the rights of all employees to benefits accrued to the date of such termination or discontinuance and the amounts credited to the employees’ accounts are nonforfeitable. The Fund shall be distributed in accordance with the following procedures:

(a) The Board shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits, after taking into account the expenses of such distribution. The Board shall inform the City if additional assets are required, in which event the City shall continue to financially support the Plan until all nonforfeitable benefits have been funded.

(b) The Board shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each firefighter entitled to benefits under the plan, as specified in paragraph (c).

(c) The Board shall distribute the asset value as of the date of termination in the manner set forth in this paragraph, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under paragraph (b) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the employee's accumulated contributions to the Plan, with interest if provided by the Plan, less the value of any Plan benefits previously paid to the employee.

(d) If there is asset value remaining after the full distribution specified in paragraph (c), and after payment of any expenses incurred with such distribution, such excess shall be returned to the City, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the City and the state to date of termination of the Plan, such excess shall be divided proportionately to the total contributions made by the City and the state.

(e) The Board shall distribute, in accordance with the manner of distribution determined under paragraph (b), the amounts determined under paragraph (c).

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor May 26, 2010.

Filed in Office Secretary of State May 26, 2010.