

allocate among themselves or delegate to other persons all or such portion of their duties under the DROP, other than those granted to them as trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A trustee shall not vote on any question relating exclusively to himself.

(2) *Individual accounts, records and reports.*

The board shall maintain records showing the operation and condition of the DROP, including records showing the individual balances in each member's DROP account, and the board shall keep in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The board shall prepare and distribute to members participating in the DROP and other individuals or file with the appropriate governmental agencies, as the case may be, all necessary descriptions, reports, information returns, and data required to be distributed or filed for the DROP pursuant to the Code and any other applicable laws.

(3) *Establishment of rules.* Subject to the limitations of the DROP, the board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The board shall have discretionary authority to construe and interpret the DROP (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in the DROP). The determination of the board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law. The board shall also oversee the investment of the DROP'S assets.

(4) *Limitation of liability.*

- a. The trustees shall not incur any liability individually or on behalf of any other individuals for any act or failure to act, made in good faith in relation to the DROP or the funds of the DROP.
- b. Neither the board nor any trustee of the board shall be responsible for any reports furnished by any expert retained or employed by the board, but they shall be entitled to rely thereon as well as on certificates furnished by an accountant or an actuary, and on all opinions of counsel. The board shall be fully protected with respect to any action taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.

(f) *General provisions.*

- (1) *The DROP is not a separate retirement plan.* Instead, it is a program under which a member who is eligible for normal retirement under the system may elect to accrue future retirement benefits in the manner provided in this section 54-49 for the remainder of his employment, rather than in the normal manner provided under the plan. Upon termination of employment, a member is entitled to a lump sum distribution of his or her DROP account balance or may elect a rollover. The DROP account distribution is in addition to the member's monthly benefit.
- (2) *Notional account.* The DROP account established for such a member is a notional account, used only for the purpose of calculation of the DROP distribution amount. It is not a separate account in the system. There is no change in the system's assets, and there is no distribution available to the member until the

member's termination from the DROP. The member has no control over the investment of the DROP account.

- (3) *No employer discretion.* The DROP benefit is determined pursuant to a specific formula which does not involve employer discretion.
- (4) *IRC limit.* The DROP account distribution, along with other benefits payable from the system, is subject to limitation under Internal Revenue Code Section 415(b).
- (5) *Amendment of DROP.* The DROP may be amended by an ordinance of the city at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP account of any member.
- (6) *Facility of payment.* If a member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or is a minor, the board shall direct that any benefit due him shall be made only to a duly appointed legal representative. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.
- (7) *Information.* Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the DROP, shall file with the board the information that it shall require to establish his rights and benefits under the DROP.

(8) *Written elections, notification.*

- a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the board in a time and manner determined by the board under rules uniformly applicable to all employees similarly situated. The board reserves the right to change from time to time the manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.
- b. Each member or retiree who has a DROP account shall be responsible for furnishing the board with his current address and any subsequent changes in his address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him at the last such address given to the board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the board of his address.

- (9) *Benefits not guaranteed.* All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP account and neither the city nor the board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.

(10) *Forfeiture of retirement benefits.* Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.

(11) *Effect of DROP participation on employment.* Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

(Ord. No. 17-01, § 9, 4-13-17; Ord. No. 19-09, § 3, 2-14-19; Ord. No. 22-02, § 2, 2-24-22)

Sec. 54-50. Military service prior to employment.

The years or fractional parts of years that a member serves or has served on active duty in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily and honorably or under honorable conditions, prior to first and initial employment with the city shall be added to his years of credited service provided that:

- (1) The member contributes to the fund the sum, based on his salary and the member contribution rate in effect at the time that the credited service is requested, had he been a member of the system for the years or fractional parts of years for which he is requesting credit plus amounts 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.
- (2) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.
- (3) Payment by the member of the required amount shall be made within six months of his request for credit, but not later

than the retirement date, and shall be made in one lump sum payment upon receipt of which credited service shall be given.

(4) The maximum credit under this section shall be four years.

(5) Credited service purchased pursuant to this section shall not count toward vesting or eligibility for disability benefits.

(Ord. No. 11-33, § 1, 10-27-11)

Sec. 54-51. Prior government service.

Unless otherwise prohibited by law, the years or fractional parts of years that a general employee who was previously a member, but who terminated employment and received a refund of his contributions or who terminated employment and is not otherwise entitled to credited service for such previous period of employment as a general employee, or the years or fractional parts of years that a member previously served as an employee for any governmental agency in the United States, including but not limited to federal, state or local government service, and for which he does not otherwise qualify for and receive credit under this system, shall be added to his years of credited service provided that:

- (1) The member contributes to the fund the sum, based on his salary and the member contribution rate in effect at the time that the credited service is requested, had he been a member of the system for the years or fractional parts of years for which he is requesting credit plus amounts 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.
- (2) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.
- (3) Payment by the member of the required amount shall be made within six months of his or her request for credit, but, in any event, prior to retirement, and shall

be made in one lump sum payment upon receipt of which credited service shall be given.

- (4) There shall be no maximum purchase of credited service pursuant to this section. Credited service purchased for prior service with the city shall count for all purposes including vesting. Credited service purchased for any other government service shall count for all purposes except vesting and eligibility for disability benefits.
- (5) In no event, however, may credited service be purchased pursuant to this section for prior service with any other governmental agency, if such prior service forms or will form the basis of a retirement benefit or pension from a different employer's retirement system or plan as set forth in section 54-39, subsection (1)(2).

(Ord. No. 11-33, § 1, 10-27-11; Ord. No. 17-01, § 10, 4-13-17)

Sec. 54-52. Reemployment after retirement.

(a) *[Reemployment by public or private employer.]* Any retiree who is retired under this system may be reemployed by any public or private employer and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this system. Notwithstanding the previous sentence, reemployment by the city shall be subject to the limitations set forth in this section.

(b) *After normal retirement.* Any retiree who is retired under normal retirement pursuant to this system and who is reemployed as a general employee after that retirement and, by virtue of that reemployment, is eligible to participate in this system, shall upon being reemployed select one of the following options:

- (1) The retiree may elect to discontinue receipt of benefits. Upon reemployment, the retiree shall be deemed to be fully vested and the additional credited service accrued during the subsequent employment period shall be used in computing a

second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon initial retirement shall be based upon the benefit accrual rate, average final compensation, and credited service as of that date (not including any period of DROP participation) and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average final compensation and credited service as of the date of the subsequent retirement (based only on the subsequent employment period). The amount of any death or disability benefit received as a result of a subsequent period of employment shall be reduced by the amount of accrued benefit eligible to be paid for a prior period of employment. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the member may select a different optional form and joint pensioner applicable to the subsequent retirement benefit; or

- (2) The retiree may continue to receive retirement benefits previously earned if he is at least age 59½, otherwise the system shall discontinue receipt of benefits until the retiree reaches age 59½ and not be an active member of the system. If this option is selected, the subsequent employment period shall have no effect upon average final compensation, years of credited service or retirement benefits. Regardless of any other provision of this system, any reemployed retiree electing to continue to receive retirement benefits shall not be reinstated as an active member of the system.

(c) *[Reemployment by the city.]* Any retiree who is retired under normal retirement pursuant to this system and who is reemployed by the

city after that retirement and, by virtue of that reemployment is ineligible to participate in this system, shall, during the period of such reemployment, continue to receive retirement benefits previously earned if he is at least age 59½, otherwise the system shall discontinue receipt of benefits until he reaches age 59½. Former DROP participants shall begin receipt of benefits under these circumstances.

(d) *After early or disability retirement.* Any retiree who is retired under early or disability retirement pursuant to this system and who subsequently becomes an employee of the city in any capacity, shall discontinue receipt of benefits from the system until the earlier of termination of employment or such time as the reemployed retiree reaches age 59½. A retiree who returns to work under the provisions of this section shall not be eligible for membership in the system, and, therefore, shall not accumulate additional credited service for subsequent periods of employment described in this section, shall not be required to make contributions to the system, nor shall he be eligible for any other benefit other than the retiree's early retirement benefit when he again becomes eligible as provided herein. Retirement pursuant to an early retirement incentive program shall be deemed early retirement for purposes of this section if the member was permitted to retire prior to the customary retirement date provided for in the system at the time of retirement.

(e) *Reemployment of terminated vested persons.* Reemployed terminated vested persons shall not be subject to the provisions of this section until such time as they begin to actually receive benefits. Upon receipt of benefits, terminated vested persons shall be treated as normal or early retirees for purposes of applying the provisions of this section and their status as an early or normal retiree shall be determined by the date they elect to begin to receive their benefit.

(f) *DROP participants.* Retirees who were in the deferred retirement option plan shall, following termination of employment after DROP participation, have the options provided for in this section for reemployment.

(Ord. No. 11-33, § 1, 10-27-11; Ord. No. 17-01, § 11, 4-13-17; Ord. No. 19-09, § 4, 2-14-19; Ord. No. 21-10, § 5, 4-22-21)

Secs. 54-53—54-185. Reserved.

ARTICLE III. PENSION PLAN FOR FIREFIGHTERS AND POLICE OFFICERS*

Sec. 54-186. Definitions.

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

Accumulated contributions means a member's own contributions without interest. For those members who purchase credited service with interest or at no cost to the system, any payment representing the amount attributable to member contributions based on the applicable member contribution rate, and any payment representing interest and any required actuarially calculated payments for the purchase of such credited service, shall be included in accumulated contributions.

Actuarial equivalent means a benefit or amount of equal value, based upon the RP-2000 Combined Healthy Unisex Mortality Table, an interest rate equal to the investment return assumption set forth in the last actuarial valuation approved by the board. This definition may only be amended by the city pursuant to the recommendation of the board using assumptions adopted by the board with the advice of the plan's actuary, such that actuarial assumptions are not subject to city discretion.

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

***Editor's note**—Ord. No. 00-22, § 1, adopted Feb. 24, 2000, amended and restated art. III in its entirety to read as herein set out. Formerly, art. III pertained to similar subject matter and derived from Code 1988 §§ 15-187—15-194, 15-221—15-224, 15-251—15-267, 15-295—15-298, 15-300—15-310, 15-337—15-340, 15-342—15-352; and Ord. No. 98-84, § 1, adopted Dec. 10, 1998.

Cross reference—Fire prevention and protection, ch. 46.

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

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

City means City of Winter Garden, Florida.

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

Credited service means the total number of years and fractional parts of years of service as a firefighter or police officer with member contributions, when required, omitting intervening years or fractional parts of years when such member was not employed by the city as a firefighter or police officer. A member may voluntarily leave his accumulated contributions in the fund for a period of five years after leaving the employ of the fire or police department pending the possibility of being reemployed as a firefighter or police officer, without losing credit for the time that he was a member of the system. If a vested member leaves the employ of the fire or police department, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a firefighter or police officer with the fire or police department within five years, his accumulated contributions, if \$1,000.00 or less, shall be returned. If a member who is not vested is not reemployed within five years, his accumulated contributions, if more than \$1,000.00, will be returned only upon the written request of the member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the board. Upon return of a member's accumulated contributions, all of his rights and benefits under the system are forfeited and terminated. Upon any reemployment, a member shall not receive credit for the years and fractional parts of years of service for which he has withdrawn his accumulated contributions from the fund, unless

the member repays into the fund the contributions he has withdrawn, with interest, as determined by the board, within 90 days after his reemployment.

The years or fractional parts of a year that a member performs "qualified military service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L.103-353), after separation from employment as a firefighter or police officer with the city to perform training or service, shall be added to his years of credited service for all purposes, including vesting, provided that:

- (a) The member is entitled to reemployment under the provisions of USERRA.
- (b) The member returns to his employment as a firefighter or police officer within one year from the earlier of the date of his military discharge or his release from active service, unless otherwise required by USERRA.
- (c) The maximum credit for military service pursuant to this paragraph shall be five years.
- (d) This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a member dies on or after January 1, 2007, while performing USERRA qualified military service, the beneficiaries of the member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the member had resumed employment and then died while employed.

Beginning January 1, 2009, to the extent required by Section 414(u)(12) of the Code, an individual receiving differential wage payments (as defined under Section 3401(h)(2) of the Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual addi-

tions under Section 415(c) of the Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

In the event that a member of this system has also accumulated credited service in another pension system maintained by the city, then such other credited service shall be used in determining vesting as provided for in section 54-194, and for determining eligibility for early or normal retirement. Such other credited service will not be considered in determining benefits under this system. Only his credited service under this system on or after his date of membership in this system will be considered for benefit calculation. In addition, any benefit calculation for a member of this system who is or becomes eligible for a benefit from this system after he has become a member of another pension system maintained by the city, shall be based upon the member's average final compensation, credited service and benefit accrual rate as of the date the member ceases to be a firefighter or police officer.

Leave conversions of unused accrued paid time off shall not be permitted to be applied toward the accrual of credited service either during each plan year of a member's employment with the City or in the plan year in which the member terminates employment.

Effective date means October 1, 1976.

Firefighter means an actively employed full-time person employed by the city, including his initial probationary employment period, who is certified as a firefighter as a condition of employment in accordance with the provisions of F.S. § 633.408, and whose duty it is to extinguish fires, to protect life and to protect 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.

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

Member means an actively employed firefighter or police officer who fulfills the prescribed membership requirements. Benefit improvements which, in the past, have been provided for by amendments to the system adopted by city ordinance, and any benefit improvements which might be made in the future shall apply prospectively and shall not apply to members who terminate employment or who retire prior to the effective date of any ordinance adopting such benefit improvements, unless such ordinance specifically provides to the contrary.

Plan year means the 12-month period beginning October 1 and ending September 30 of the following year.

Police officer means an actively employed full-time person, employed by the city, including his initial probationary employment period, who is certified as a police officer as a condition of employment in accordance with the provisions of F.S. § 943.1395, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of the state.

Retiree means a member who has entered retirement status.

Retirement means a member's separation from city employment with eligibility for immediate receipt of benefits under the system (or entry into the Deferred Retirement Option Plan).

Salary means the total cash remuneration including overtime, paid by the city to a firefighter or police officer for services rendered, but not including any payments for extra duty or a special detail work performed on behalf of a second party employer. For service earned after July 1, 2011, Salary shall not include more than 300 hours of overtime per calendar year and shall also not include payments for accrued unused sick or annual leave. Provided however, in any event, payments for overtime in excess of 300 hours per year or accrued unused sick or annual leave accrued as of July 1, 2011 and attributable to service earned prior to July 1, 2011, may still be included in salary for pension purposes even if the payment is not actually

made until on or after July 1, 2011. Additional hours worked pursuant to the Fair Labor Standards Act (FLSA) shall not be deemed to be overtime. In any event, with respect to unused sick leave and unused annual leave accrued prior to July 1, 2011, Salary will include the lesser of the amount of sick or annual leave time accrued on July 1, 2011 or the actual amount of sick or annual leave time for which the retiree receives payment at the time of retirement, regardless of whether the amount of sick or annual leave was, at some time prior to retirement, reduced below the amount on July 1, 2011.

Compensation in excess of the limitations set forth in section 401(a)(17) of the Code as of the first day of the plan year shall be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each member taken into account in determining benefits or employee contributions for any plan year beginning on or after January 1, 2002, may not exceed \$200,000.00, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B). Compensation means compensation during the fiscal year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. 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.

Spouse means the member's or retiree's spouse under applicable law at the time benefits become payable.

System means the City of Winter Garden Pension Plan for Firefighters and Police Officers as contained herein and all amendments thereto.

(b) *Masculine gender.* The masculine gender, where used herein, unless the context specifically requires otherwise, shall include both the feminine and masculine genders.

(Ord. No. 00-22, § 1, 2-24-00; Ord. No. 00-74, § 1, 2-22-01; Ord. No. 02-43, § 1, 9-26-02; Ord. No. 06-26, § 1, 7-27-06; Ord. No. 06-28, § 1, 8-10-06; Ord. No. 09-03, § 1, 3-12-09; Ord. No. 11-18, § 1, 8-25-11; Ord. No. 12-37, § 1, 8-23-12; Ord. No. 13-60, § 1, 9-26-13; Ord. No. 16-60, § 1, 11-10-16)

Sec. 54-187. Membership.

(a) *Conditions of eligibility.* All firefighters and police officers as of the effective date, and all future new firefighters and police officers, shall become members of this system as a condition of employment.

(b) *Designation of beneficiary.* Each firefighter and police officer shall complete a form prescribed by the board designating a beneficiary or beneficiaries.

(Ord. No. 00-22, § 1, 2-24-00)

Sec. 54-188. Board of trustees.

(a) The sole and exclusive administration of and responsibility for the proper operation of the system and for making effective the provisions of this article are hereby vested in a board of trustees. The board is hereby designated as the plan administrator. The board shall consist of five trustees, two of whom, unless otherwise prohibited by law, shall be legal residents of the city, who shall be appointed by the city commission, one of whom shall be a firefighter member of the system and one of whom shall be a police officer member of the system, who shall be elected by a majority of the firefighters or police officers who are members of the system. The fifth trustee shall be chosen by a majority of the previous four trustees as provided for herein, and such person's name shall be submitted to the