

Sec. 54-208. Indemnification.

(a) To the extent not covered by insurance contracts in force from time to time, the city shall indemnify, defend and hold harmless members of the board from all personal liability for damages and costs, including court costs and attorneys' fees, arising out of claims, suits, litigation, or threat of same, herein referred to as "claims," against these individuals because of acts or circumstances connected with or arising out of their official duty as members of the board. The city reserves the right, in its sole discretion, to settle or not settle the claim at any time, and to appeal or to not appeal from any adverse judgment or ruling, and in either event will indemnify, defend and hold harmless any members of the board from the judgment, execution, or levy thereon.

(b) This section shall not be construed so as to relieve any insurance company or other entity liable to defend the claim or liable for payment of the judgment or claim, from any liability, nor does this section waive any provision of law affording the city immunity from any suit in whole or part, or waive any other substantive or procedural rights the city may have.

(c) This section shall not apply nor shall the city be responsible in any manner to defend or pay for claims arising out of acts or omissions of members of the board which constitute felonies or gross malfeasance or gross misfeasance in office. (Ord. No. 00-22, § 1, 2-24-00)

Sec. 54-209. Direct transfers of eligible rollover distributions.*(a) Rollover distributions.*

- (1) *General.* This section applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the system to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) Definitions.

- a. *Direct rollover:* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.
- b. *Distributee:* A distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse. Effective January 1, 2007, it further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.
- c. *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income. Effective January 1, 2002, any portion of any distribution which would be includible in gross income as after-tax employee contributions will be an eligible rollover distribution if the

distribution is made to an individual retirement account described in Section 408(a); to an individual retirement annuity described in Section 408(b); to a qualified defined contribution plan described in Section 401(a) or 403(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

- d. *Eligible retirement plan:* An 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; effective January 1, 2002, an eligible deferred compensation plan described in § 457(b) of the Code which is maintained by an eligible employer described in Section 457(e)(1)(A) of the Code and which agrees to separately account for amounts transferred into such plan from this plan; effective January 1, 2002, an annuity contract described in Section 403(b) of the Code; a qualified trust described in Section 401(a) of the Code; or effective January 1, 2008, a Roth IRA described in Section 408A of the Code, that accepts the distributee's eligible rollover distribution. This definition shall also

apply in the case of an eligible rollover distribution to the surviving spouse.

(b) *Rollovers or transfers into the fund.* On or after January 1, 2002, the system will accept, solely for the purpose of purchasing credited service as provided herein, permissible Member requested transfers of funds from other retirement or pension plans, member rollover cash contributions and/or direct cash rollovers of distributions made on or after January 1, 2002, as follows:

- (1) *Transfers and direct rollovers or member rollover contributions from other plans.* The system will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in Section 401(a) or 403(a) of the Code, from an annuity contract described in Section 403(b) of the Code or from an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The system will also accept legally permissible member requested transfers of funds from other retirement or pension plans.
- (2) *Member rollover contributions from IRAs.* The system will accept a member rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Section 408(a) or 408(b) of the Code that is eligible to be rolled over.

(c) *Elimination of mandatory distributions.* Notwithstanding any other provision herein to the contrary, in the event this plan provides for a mandatory (involuntary) cash distribution from the plan not otherwise required by law, for an amount in excess of \$1,000.00, such distribution shall be made from the plan only upon written request of the member and completion by the member of a written election on forms designated by the board, to either receive a cash lump sum or to rollover the lump sum amount.

(Ord. No. 00-22, § 1, 2-24-00; Ord. No. 02-43, § 5, 9-26-02; Ord. No. 06-26, § 5, 7-27-06; Ord. No. 09-03, § 14, 3-12-09)

Sec. 54-210. Family and Medical Leave Act.

The fractional parts of the 12-month period ending each March 1 that a Member is on leave without pay from the city pursuant to the Family and Medical Leave Act (FMLA) shall be added to his credited service provided that:

- (1) The member contributes to the fund the sum that he would have contributed, 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 fractional parts of the 12 months ending each March 1 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 periods of credited service.
 - (2) The request for credited service for FMLA leave time for the 12-month period prior to each March 1 and payment of professional fees shall be made on or before March 31.
 - (3) Payment by the member of the required amount shall be made on or before April 30 for the preceding 12-month period ending March 1 and shall be made in one lump sum payment upon receipt of which credited service shall be issued.
 - (4) Credited service purchased pursuant to this section shall not count toward vesting.
- (Ord. No. 00-22, § 1, 2-24-00)

Sec. 54-211. Military service prior to employment.

The years or fractional parts of years that a firefighter or police officer 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 fire or police department shall be added to his years of credited service provided that:

- (1) The member contributes to the fund the sum that he would have contributed, 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 not-in-line of duty disability benefits.
- (Ord. No. 00-22, § 1, 2-24-00; Ord. No. 02-43, § 6, 9-26-02)

Sec. 54-212. Prior police and fire service.

Unless otherwise prohibited by law, and except as provided for in subsection (1) below, the years or fractional parts of years that a firefighter or police officer previously served as a firefighter or police officer with the city during a period of previous employment and for which period accumulated contributions were withdrawn from the fund, or the years and fractional parts of years that a member served as a police officer for any other municipal, county or state law enforce-

ment department or as a firefighter for any other municipal, county or special district fire department in the State of Florida shall be added to his years of credited service provided that:

- (1) The member contributes to the fund the sum that he would have contributed, 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 this 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 for service other than with the city shall be five years of credited service and shall count for all purposes, except vesting and eligibility for not-in-line of duty disability benefits.
- (5) There shall be no maximum purchase of service for service as a firefighter or police officer with the city, and such purchase of credited service shall count for all purposes, including vesting. The maximum credit under this section for service other than with the city shall be five years of credited service and shall count for all purposes, except vesting and eligibility for not-in-line of duty disability benefits.
- (6) In no event, however, may credited service be purchased pursuant to this section for

prior service as a police officer for any other municipal, county or state law enforcement department or as a firefighter for any other municipal, county, state or special district fire department in the State of Florida, 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 subsection 54-200(k)(2).

- (7) For purposes of determining credit for prior service as a firefighter as provided for in this section, in addition to service as a firefighter in this state, credit may be purchased by the member in the same manner as provided above for federal, other state, county or municipal service if the prior service is recognized by the Division of State Fire Marshal, as provided under F.S. ch. 633, or the firefighter provides proof to the board that such service is equivalent to the service required to meet the definition of a firefighter under section 54-186, above.
 - (8) For purposes of determining credit for prior service as a police officer as provided for in this section, in addition to service as a police officer in this state, credit may be purchased by the member in the same manner as provided above for federal, other state, county or municipal service if the prior service is recognized by the criminal justice standards and training commission within the department of law enforcement, as provided under F.S. ch. 943, or the police officer provides proof to the board that such service is equivalent to the service required to meet the definition of a police officer under section 54-186, above.
- (Ord. No. 00-22, § 1, 2-24-00; Ord. No. 02-43, § 7, 9-26-02; Ord. No. 16-60, § 10, 11-10-16; Ord. No. 22-03, § 7, 2-24-22)

Sec. 54-213. Reemployment after retirement.

(a) *[Reemployment by public or private employer.]* Any retiree 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 (or early) retirement pursuant to this system and who is reemployed as a police officer or firefighter and, by virtue of that reemployment, is eligible to participate in this system, shall upon being reemployed, discontinue receipt of benefits. Upon reemployment, the member 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 retirement shall be based upon the benefit accrual rate, average final compensation, and credited service (and early retirement reduction factor, if applicable) as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate equal to three percent of average final compensation for the first 25 years of credited service and two percent of average final compensation for all years of credited service in excess of 25, average final compensation (based only on the subsequent employment period), and credited service (and early retirement reduction factor, if applicable) as of the date of subsequent retirement. The benefit accrual rate to be used for calculating the benefit for initial retirement and any subsequent employment period shall be three percent of average final compensation for the first 25 years of credited service and two percent for all years of credited service in excess of 25 years, determined by utilizing all credited service (all periods of employment) under the system. The amount of any death or disability benefit received during 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 retiree may select a different optional form and joint pensioner applicable only to the subsequent retirement benefit.

(c) *[Reemployment by the city.]* Any retiree who is retired under normal retirement pursuant to this system who is reemployed by the city in a position other than as a police officer or firefighter, shall upon being reemployed, continue receipt of benefits for the period of any subsequent employment period.

(d) *After early retirement.* Any retiree who is retired under early 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. If the reemployed person, by virtue of his reemployment, is eligible to participate in this system, that person shall accrue a second benefit as provided for in subsection (b) above and benefit payments shall remain suspended during any such subsequent employment period. If the reemployed person is not eligible to participate in this system, that person's pension benefit payments shall be suspended until the earlier of termination of employment or such time as the reemployed retiree reaches the date that he would have been eligible for normal retirement under this system had he continued employment and not elected early retirement. "Normal retirement" as used in this subsection shall be the current normal retirement date provided for under this system.

(e) *After disability retirement.*

- (1) Subject to paragraph (2) below, any retiree who is retired under section 54-193, Disability ("disability retiree"), may, subject to subsection (e), physical examination requirement, of that section, 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.

- (2) Any disability retiree who subsequently becomes an employee of the city in any capacity, except as a police officer or firefighter, shall discontinue receipt of disability benefits from the system for the period of any such employment.
- (3) If a disability retiree is reemployed as a police officer or firefighter for the city, his disability benefit shall cease and section 54-193(e) shall apply.

(f) *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.

(g) *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 re-employment.
(Ord. No. 05-12, § 2, 2-10-05; Ord. No. 16-60, § 11, 11-10-16; Ord. No. 19-08, § 3, 2-14-19)

Sec. 54-214. Deferred retirement option plan.

(a) *Definitions.* As used in this section 54-214, the following definitions apply:

- (1) *DROP.* The City of Winter Garden Pension Plan for Firefighters and Police Officers - Deferred Retirement Option Plan.
- (2) *DROP account.* The account established for each DROP participant under subsection (c).
- (3) *Total return of the assets.* For purposes of calculating earnings on a member's DROP account pursuant to subsection (c)(2)b., for each fiscal year quarter, the percentage increase in the interest and dividends earned on investments, including realized and unrealized gains, of the total plan assets.

(b) Participation.

- (1) *Eligibility to participate.* In lieu of terminating his employment as a police officer or firefighter, a member who is eligible for normal retirement under the system may elect to defer receipt of such service retirement pension and to participate in the DROP.
- (2) *Election to participate.* A member's election to participate in the DROP must be made in writing in a time and manner determined by the board and shall be effective on the first day of the first calendar month which is at least 15 business days after it is received by the board.
- (3) *Period of participation.* A member who elects to participate in the DROP under subsection (b)(2), shall participate in the DROP for a period not to exceed 60 months beginning at the time his election to participate in the DROP first becomes effective, but in no event can a member remain in the DROP once he attains age 60. An election to participate in the DROP shall constitute an irrevocable election to resign from the service of the city not later than the date provided for in the previous sentence. Notwithstanding the above, any current DROP participant may continue DROP participation for a total of 60 months or until the attainment of age 60. A member may participate only once.
- (4) *Termination of participation.*
 - a. A member's participation in the DROP shall cease at the earlier of:
 1. The end of his permissible period of participation in the DROP as determined under subsection (b)(3); or
 2. Termination of his employment as a police officer or firefighter.
 - b. Upon the member's termination of participation in the DROP, pursuant to subsection 1 above, all

amounts provided for in subsection (c)(2), including monthly benefits and investment earnings, shall cease to be transferred from the system to his DROP account. Any amounts remaining in his DROP account shall be paid to him in accordance with the provisions of subsection (d) when he terminates his employment as a police officer or firefighter.

- c. A member who terminates his participation in the DROP under this subsection (b)(4) shall not be permitted to again become a participant in the DROP.

(5) *Effect of DROP participation on the system.*

- a. A member's credited service and his accrued benefit under the system shall be determined on the date his election to participate in the DROP first becomes effective. The member shall not accrue any additional credited service or any additional benefits under the system (except for any supplemental benefit payable to DROP participants or any additional benefits provided under any cost-of-living adjustment for retirees in the system) while he is a participant in the DROP. After a member commences participation, he shall not be permitted to again contribute to the system nor shall he be eligible for disability or pre-retirement death benefits, except as provided for in section 54-213.
- b. No amounts shall be paid to a member from the system while the member is a participant in the DROP. Unless otherwise specified in the system, if a member's participation in the DROP is terminated other than by terminating his employment as a police officer or firefighter, no amounts shall be paid to him from the system until he terminates his employment as a police officer or firefighter. Unless otherwise specified in the system, amounts transferred from the system to the member's DROP account shall be

paid directly to the member only on the termination of his employment as a police officer or firefighter.

(c) *Funding.*

- (1) *Establishment of DROP account.* A DROP account shall be established for each member participating in the DROP. A member's DROP account shall consist of amounts transferred to the DROP under subsection (c)(2), and earnings on those amounts.

(2) *Transfers from retirement system.*

- a. As of the first day of each month of a member's period of participation in the DROP, the monthly retirement benefit he would have received under the system had he terminated his employment as a police officer or firefighter and elected to receive monthly benefit payments thereunder shall be transferred to his DROP account, except as otherwise provided for in subsection (b)(4)b. A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (b)(3) and (b)(4), but in no event shall it continue past the date he terminates his employment as a police officer or firefighter.

- b. Except as otherwise provided in subsection (b)(4)b., a member's DROP account under this subsection (c)(2) shall be credited with earnings, to be credited to the member's DROP account, determined as of the last business day of each fiscal year quarter, and credited as of such date, determined as follows:

The average daily balance in a member's DROP account shall be credited at a rate equal to the net investment return realized by the system for that quarter, but not less than zero percent. "Net investment return" for the purpose of this

paragraph is the total return of the assets in which the member's DROP account is invested by the board net of brokerage commissions, transaction costs and management fees.

For purposes of calculating earnings on a member's DROP account pursuant to this subsection (c)(2)b., brokerage commissions, transaction costs, and management fees shall be determined for each quarter by the investment consultant pursuant to contracts with fund managers as reported in the custodial statement. The investment consultant shall report these quarterly contractual fees to the board. The investment consultant shall also report the net investment return for each manager and the net investment return for the total plan assets.

- c. A member's DROP account shall only be credited with earnings and monthly benefits while the member is a participant in the DROP. A member's final DROP account value for distribution to the member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation plus any monthly periodic additions made to the DROP account subsequent to the end of the previous quarter and prior to distribution. If a member fails to terminate employment after participating in the DROP for the permissible period of DROP participation, then beginning with the member's first month of employment following the last month of the permissible period of DROP participation, the member's DROP account will no longer be credited with earnings, nor will monthly benefits be transferred to the DROP account. All such non-transferred

amounts shall be forfeited and continue to be forfeited while the member is employed by the police or fire department. A member employed by the police or fire department after the permissible period of DROP participation will still not be eligible for pre-retirement death or disability benefits and will not accrue additional credited service except as provided for in section 54-213.

(d) *Distribution of DROP accounts on termination of employment.*

- (1) *Eligibility for benefits.* A member shall receive the balance in his DROP account in accordance with the provisions of this subsection (d) upon his termination of employment as a police officer or firefighter. Except as provided in subsection (d)(5), no amounts shall be paid to a member from the DROP prior to his termination of employment as a police officer or firefighter.
- (2) *Form of distribution.*
 - a. Unless the member elects otherwise, distribution of his DROP account shall be made in a lump sum, subject to the direct rollover provisions set forth in subsection (d)(6). Elections under this paragraph shall be in writing and shall be made in such time or manner as the board shall determine.
 - b. Notwithstanding the preceding, if a member dies before his benefit is paid, his DROP account shall be paid to his beneficiary in such optional form as his beneficiary may select. If no beneficiary designation is made, the DROP account shall be distributed to the member's estate.
- (3) *Date of payment of distribution.* Except as otherwise provided in this subsection (d), distribution of a member's DROP account shall be made as soon as administratively practicable following the member's termination of employment. Distribution of the amount in a member's