

DROP account will not be made unless the member completes a written request for distribution and a written election, on forms designated by the board, to either receive a cash lump sum or a rollover of the lump sum amount.

- (4) *Proof of death and right of beneficiary or other person.* The board may require and rely upon such proof of death and such evidence of the right of any beneficiary or other person to receive the value of a deceased member's DROP account as the board may deem proper and its determination of the right of that beneficiary or other person to receive payment shall be conclusive.
 - (5) *Distribution limitation.* Notwithstanding any other provision of subsection (d), all distributions from the DROP shall conform to the "minimum distribution of benefits" provisions as provided for herein.
 - (6) *Direct rollover of certain distributions.* This subsection applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the DROP to the contrary, a distributee may elect to have any portion of an eligible rollover distribution paid in a direct rollover as otherwise provided under the system in section 54-209.
- (e) *Administration of DROP.*
- (1) *Board administers the DROP.* The general administration of the DROP, the responsibility for carrying out the provisions of the DROP and the responsibility of overseeing the investment of the DROP's assets shall be placed in the board. The members of the board may appoint from their number such subcommittees with such powers as they shall determine; may adopt such administrative procedures and regulations as they deem desirable for the conduct of their affairs; may authorize one or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical,

accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP; and may 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.

(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 54-214 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) *Construction.*

- a. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.
 - b. The titles and headings of the subsections in this section 54-214 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.
- (11) *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.
- (12) *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. 16-60, § 12, 11-10-16; Ord. No. 16-61, § 3, 12-6-16; Ord. No. 19-08, § 4, 2-14-19; Ord. No. 22-03, § 8, 2-24-22)

Sec. 54-215. Supplemental benefit component for special benefits; chapters 175 and 185 share accounts.

There is hereby established an additional plan component to provide special benefits to members in the form of a supplemental retirement, termination, death and disability benefit to be in addition to the benefits provided for in the previous sections of this plan, such benefit to be funded solely and entirely by F.S. chs. 175 and 185, premium tax monies for each plan year which are allocated to this supplemental component as provided for in F.S. §§ 175.351 and 185.35. Amounts allocated to this supplemental

component ("share plan"), if any, shall be further allocated to the members and DROP participants as follows:

(a) *Individual member share accounts.* The board shall create individual "member share accounts" for all actively employed plan members and DROP participants and maintain appropriate books and records showing the respective interest of each eligible member or DROP participant hereunder. Each member or DROP participant shall have a member share account for his share of the F.S. ch. 175 or 185 tax revenues described above, forfeitures and income and expense adjustments relating thereto. The board shall maintain separate member share accounts, however, the maintenance of separate accounts is for accounting purposes only and a segregation of the assets of the trust fund to each account shall not be required or permitted.

(b) *Share account funding.*

(1) Individual member share accounts shall be established as of September 30, 2015 for all firefighter members and firefighter DROP participants who were actively employed as of October 1, 2014. Individual member share accounts shall be credited with an allocation as provided for in the following subsection (c) of any Chapter 175 premium tax monies which have been allocated to the share plan for that plan year, beginning with the plan year ending September 30, 2015.

Individual member share accounts shall be established as of September 30, 2017 for all police officer members and police officer DROP participants who were actively employed as of October 1, 2016. Individual member share accounts shall be credited with an allocation as provided for in the following subsection (c) of any Chapter 185 premium tax monies which have been allocated to the share plan for that plan year, beginning with the plan year ending September 30, 2017.

(2) Any forfeitures as provided in subsection (d), shall be used as part of future allocations to the individual member share accounts in accordance with the formula set forth in subsection (c)(1).

(c) *Allocation of monies to share accounts.*

(1) Allocation of chapters 175 and 185 contributions.

a. Effective as of September 30, 2015, the amount of any Chapter 175 premium tax monies allocated to the share plan shall be allocated to individual firefighter member share accounts as provided for in this subsection. Firefighter members retiring on or after October 1, 2014 and prior to September 30, 2015 shall receive an allocation. In addition, all premium tax monies allocated to the share plan in any subsequent plan year shall also be allocated as provided for in this subsection. Available premium tax monies shall be allocated to individual member share accounts at the end of each plan year on September 30 (a "valuation date").

Effective as of September 30, 2017, the amount of any Chapter 185 premium tax monies allocated to the share plan shall be allocated to individual police officer member share accounts as provided for in this subsection. Police officer members retiring on or after October 1, 2016 and prior to September 30, 2017 shall receive an allocation. In addition, all premium tax monies allocated to the share plan in any subsequent plan year shall also be allocated as provided for in this subsection. Available premium tax monies shall

- be allocated to individual member share accounts at the end of each plan year on September 30 (a "valuation date").
- b. On each valuation date, each current actively employed member of the plan not participating in the DROP, each DROP participant and each retiree who retires or DROP participant who has terminated DROP participation in the plan year ending on the valuation date (including each disability retiree), or beneficiary of a deceased member (not including terminated vested persons) who is otherwise eligible for an allocation as of the valuation date shall receive a share allocation as follows.
- c. The total funds subject to allocation on each valuation date shall be allocated to each member share account of those eligible for an allocation in an amount equal to a fraction of the total amount, the numerator of which shall be the individual's total years and fractional parts of years of credited service as of the valuation date, and the denominator of which shall be the sum of the total years and fractional parts of years of credited service as of the valuation date of all individuals to whom allocations are being made. Beneficiaries shall receive an allocation based on the years of credited service of the deceased member or DROP participant.
- d. Re-employed retirees shall be deemed new employees and shall receive an allocation based solely on the credited service in the reemployment period.
- (2) Allocation of investment gains and losses. On each valuation date, each individual member share account shall be adjusted to reflect the net earnings or losses resulting from investments during the year. The net earnings or losses allocated to the individual member share accounts shall be the same percentage which is earned or lost by the total plan investments, including realized and unrealized gains or losses, net of brokerage commissions, transaction costs and management fees.
- Net earnings or losses are determined as of the last business day of the fiscal year, which is the valuation date, and are debited or credited as of such date.
- For purposes of calculating net earnings or losses on a member's share account pursuant to this subsection, brokerage commissions, transaction costs, and management fees for the immediately preceding fiscal year shall be determined for each year by the investment consultant pursuant to contracts with fund managers as reported in the custodial statement. The investment consultant shall report these annual 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.
- (3) Allocation of costs, fees and expenses. On each valuation date, each individual member share account shall be adjusted to allocate its pro rata share of the costs, fees and expenses of administration of the share plan. These fees shall be allocated to each individual member share account on a proportionate basis taking the costs, fees and expenses of administration of the share plan as a whole multiplied by

- a fraction, the numerator of which is the total assets in each individual member share account (after adding the annual investment gain or loss) and the denominator of which is the total assets of the fund as a whole as of the same date.
- (4) No right to allocation. The fact of allocation or credit of an allocation to a member's share account by the board shall not vest in any member, any right, title, or interest in the assets of the trust or in the chapter 175 or 185 tax revenues except at the time or times, to the extent, and subject to the terms and conditions provided in this section.
- (5) Members and DROP participants shall be provided annual statements setting forth their share account balance as of the end of the plan year.
- (d) *Forfeitures.* Any member who has less than six years of service credit and who is not otherwise eligible for payment of benefits after termination of employment with the city as provided for in subsection (e) shall forfeit his individual member share account or the nonvested portion thereof. Forfeited amounts shall be included and used as part of the chapter 175 or 185 tax revenues for future allocations to individual member share accounts on each valuation date in accordance with the formula set forth in subsection (c)(1).
- (e) *Eligibility for benefits.* Any member (or his beneficiary) who terminates employment as a firefighter or police officer with the city or who dies, upon application filed with the board, shall be entitled to be paid the value of his individual member share account, subject to the following criteria:
- (1) Retirement benefit.
- a. A member shall be entitled to 100 percent of the value of his share account upon normal or early retirement pursuant to section 54-191, or if the member enters the DROP, upon termination of employment.
- b. Such payment shall be made as provided in subsection (f).
- (2) Termination benefit.
- a. In the event that a member's employment as a firefighter or police officer is terminated by reason other than retirement, death or disability, he shall be entitled to receive the value of his share account only if he is vested in accordance with section 54-194.
- b. Such payment shall be made as provided in subsection (f).
- (3) Disability benefit.
- a. In the event that a member is determined to be eligible for either an in-line of duty disability benefit pursuant to section 54-193, subsection (a) or a not-in-line of duty disability benefit pursuant to section 54-193, subsection (c), he shall be entitled to 100 percent of the value of his share account.
- b. Such payment shall be made as provided in subsection (f)(4), death benefit.
- (4) Death benefit.
- a. In the event that a member or DROP participant dies while actively employed as a firefighter or police officer, 100 percent of the value of his member share account shall be paid to his designated beneficiary as provided in section 54-192.
- b. Such payment shall be made as provided in subsection (f).
- (f) *Payment of benefits.* If a member or DROP participant terminates employment for any reason or dies and he or his

- beneficiary is otherwise entitled to receive the balance in the member's share account, the member's share account shall be valued by the plan's actuary on the next valuation date as provided for in subsection (c) above, following termination of employment. Payment of the calculated share account balance shall be payable as soon as administratively practicable following the valuation date, but not later than 150 days following the valuation date and shall be paid in one lump sum payment. No optional forms of payments shall be permitted.
- (g) *Benefits not guaranteed.* All benefits payable under this section 54-215 shall be paid only from the assets accounted for in individual member share accounts. Neither the city nor the board shall have any duty or liability to furnish any additional funds, securities or other assets to fund share account benefits. Neither the board nor any trustee shall be liable for the making, retention, or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the member share account balances, except due to his or its own negligence, willful misconduct or lack of good faith. All investments shall be made by the board subject to the restrictions otherwise applicable to fund investments.
- (h) *Notional account.* The member share account is a notional account, used only for the purpose of calculation of the share 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 or DROP participant until the member's or DROP participant's termination from employment. The member or DROP participant has no control over the investment of the share account.
- (i) *No employer discretion.* The share account benefit is determined pursuant to a specific formula which does not involve employer discretion.
- (j) *Maximum additions.* Notwithstanding any other provision of this section, annual additions under this section shall not exceed the limitations of Section 415(c) of the code pursuant to the provisions of section 54-200, subsection (k).
- (k) *IRC limit.* The share account distribution, along with other benefits payable from the system, is subject to limitation under Internal Revenue Code Section 415(b).

(Ord. No. 16-60, § 13, 11-10-16; Ord. No. 16-61, § 4, 12-6-16; Ord. No. 17-35, § 3, 9-28-17)

Editor's note—Ord. No. 16-61, § 4, adopted Dec. 6, 2016, changed the title of § 54-215 from "Supplemental benefit component for special benefits; chapter 175 share accounts" to "Supplemental benefit component for special benefits; chapters 175 and 185 share accounts".

