

ARTICLE III. - CITY OF EUSTIS MUNICIPAL FIREFIGHTERS' PENSION AND RETIREMENT SYSTEM<sup>121</sup>

Footnotes:

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**Editor's note**— Ord. No. [18-16](#), § 1, adopted July 19, 2018, repealed Art. III §§ 70-61—70-100 in its entirety and reenacted a new article §§ 70-61—70-100, as set out herein. The former Art. III pertained to similar subject matter and derived from Code 1959, § 15-11—15-18, 15-20—15-23; Ord. No. 94-34, § 1, adopted Dec. 1, 1994; Ord. No. 96-32, § 1, adopted Sept. 9, 1996; Ord. No. 96-33, § 1, adopted Sept. 9, 1996; Ord. No. 98-31, §§ 1, 2, adopted Sept. 17, 1998; Ord. No. 99-30, §§ 1, 2, adopted Nov. 18, 1999; Ord. No. 00-24, §§ 1, 2, adopted Sept. 21, 2000; Ord. No. 01-11, § 1, adopted May 17, 2001; Ord. No. 03-66, §§ 1—3, adopted Jan. 6, 2004; Ord. No. 04-42, § 1, adopted Aug. 5, 2004; Ord. No. 05-24, §§ 1, 2, adopted Aug. 4, 2005; Ord. No. 10-06, § 1, adopted June 3, 2010.

Sec. 70-61. - Established.

- (a) There is established in the city a pension and retirement system for paid firefighters of the fire department of the city a firefighters' pension trust fund pursuant to the Charter and F.S. ch. 175. Except as specifically provided in this article to the contrary, the local law plan requirements of F.S. ch. 175 shall be applicable.
- (b) The trust fund is a local pension plan as allowed by F.S. § 175.351. Pursuant to such law, the plan shall meet the requirements of F.S. § 175.351. The trust fund shall be administered by a board of trustees as provided in F.S. ch. 175. The board shall have those powers enumerated in F.S. ch. 175 and this article.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-61.5. - 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 ordinance is hereby vested in a board of trustees defined elsewhere herein as the board. The board is hereby designated as the plan administrator, provided that it may delegate plan administration duties to a third-party plan administrator in its discretion.
- (b) The membership of the board shall consist of five members, two of whom, unless otherwise prohibited by law, must be legal residents of the city and must be appointed by the Eustis City Commission, and two of whom must be full-time firefighters as defined in F.S. § 175.032 who are elected by a majority of the active firefighters who are members of such plan. The fifth member shall be chosen by a majority of the previous four members as provided herein, and such person's name shall be submitted to Eustis City Commission. Upon receipt of the fifth person's name, the Eustis City Commission shall, as a ministerial duty, appoint such person to the board. The fifth member shall have the same rights as each of the other four members, shall serve as trustee for a period of two years, and may succeed himself or herself in office. Each resident member shall serve as trustee for a period of two years, unless sooner replaced by the governing body at whose pleasure he or she serves, and may succeed himself or herself as a trustee. Each firefighter member shall serve as trustee for a period of two years, unless he or she sooner leaves the employment of the municipality as a firefighter, whereupon a successor shall be chosen in the same manner as an original appointment. Each firefighter may succeed himself or herself in office. DROP participants can be elected as, but not vote for, elected trustees. The board shall establish and administer the nominating and election procedures for each election. The board shall meet at least quarterly each year. The board shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.

- (c) The trustees shall, by a majority vote, elect a chairman and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.
- (d) Each trustee shall be entitled to one vote on the board. Three affirmative votes shall be necessary for any decision by the trustees at any meeting of the board. A trustee shall abstain from voting as the result of a conflict of interest and shall comply with the provisions of F.S. § 112.3143.
- (e) The board shall engage such actuarial, accounting, legal, and other services as shall be required to transact the business of the system. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the system shall be paid from the fund at such rates and in such amounts as the board shall agree. In the event the board chooses to use the city's legal counsel, actuary or other professional, technical or other advisors, it shall do so only under terms and conditions acceptable to the board.
- (f) The duties and responsibilities of the board shall include, but not necessarily be limited to, the following:
  - (1) To construe the provisions of the system and determine all questions arising thereunder.
  - (2) To determine all questions relating to eligibility and membership.
  - (3) To determine and certify the amount of all retirement allowances or other benefits hereunder.
  - (4) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system.
  - (5) To distribute to members, at regular intervals, information concerning the system.
  - (6) To receive and process all applications for benefits.
  - (7) To authorize all payments whatsoever from the fund, and to notify the custodian, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund.
  - (8) To have performed actuarial studies and valuations, at least as often as required by law, and make recommendations regarding any and all changes in the provisions of the system.
  - (9) To perform such other duties as are required to prudently administer the system.
- (g) *Claims procedures.*
  - (1) The board shall establish administrative claims procedures to be utilized in processing written requests ("claims"), on matters which affect the substantial rights of any person ("claimant"), including members, retirees, beneficiaries, or any person affected by a decision of the board.
  - (2) The board shall have the power to subpoena and require the attendance of witnesses and the production of documents for discovery prior to and at any proceedings provided for in the board's claims procedures. The claimant may request in writing the issuance of subpoenas by the board. A reasonable fee may be charged for the issuance of any subpoenas not to exceed the fees set forth in Florida Statutes.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-62. - Contributions.

- (a) *Contributions by the city to the firefighters' pension trust fund.* The city shall contribute to the firefighters' pension trust fund annually an amount which, together with the contributions from the firefighters and the amount derived from the premium tax and other sources allowed by law, will be sufficient to meet the normal cost of the firefighters' pension trust fund and to fund the actuarial deficiency over a period of not more than 40 years.

- (b) *Contributions by firefighters to the firefighters' pension trust fund.* Each member of the system shall be required to make regular contributions to the fund. The city shall pay into the firefighters' pension trust fund said four percent of the salary of each firefighter who is a member of the fire department and eligible for inclusion in the firefighters' pension trust fund, which four percent shall be deducted by the city from the compensation due to the firefighter. No firefighter shall have any right to the money so paid into the firefighters' pension trust fund except as provided by law and the firefighters' pension trust fund. Member contributions withheld by the city on behalf of the member shall be deposited with the board immediately after each pay period. The contributions made by each member to the fund shall be designated as employer contributions pursuant to § 414(h) of the Code. Such designation is contingent upon the contributions being excluded from the members' gross income for Federal Income Tax purposes. For all other purposes of the system, such contributions shall be considered to be member contributions.
- (c) *State contributions.* Any monies received or receivable by reason of laws of the State of Florida, for the express purpose of funding and paying for retirement benefits for firefighters of the city shall be deposited in the fund comprising part of this system immediately and under no circumstances more than five days after receipt by the city.
- (d) *Other.* Private donations, gifts and contributions may be deposited to the fund, but such deposits must be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used only for additional benefits for members, as determined by the board, and may not be used to reduce what would have otherwise been required city contributions.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-62.5. - Vesting.

If a member terminates his employment as a firefighter, either voluntarily or by discharge, and is not eligible for any other benefits under this system, the member shall be entitled to the following:

- (1) If the member has less than ten years credited service upon termination, the member shall be entitled to a refund of his accumulated contributions or the member may leave it deposited with the fund. If a member who is not vested is not reemployed as a firefighter with the fire department within five years, his accumulated contributions, if \$1,000.00 or less shall be returned without interest. 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 without interest 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.
- (2) If the member has ten or more years of credited service upon termination, the member shall be entitled to a monthly retirement benefit, determined in the same manner as for normal or early retirement and based upon the member's credited service, average final compensation and the benefit accrual rate as of the date of termination, payable to him commencing at the member's otherwise normal or early retirement date based upon completed service at termination of employment, provided he does not elect to withdraw his accumulated contributions and provided the member survives to his otherwise normal or early retirement date. If the member does not withdraw his accumulated contributions and does not survive to his otherwise normal or early retirement date, his designated beneficiary shall be entitled to a benefit as provided herein for a deceased member, vested or eligible for retirement under pre-retirement death. If a vested member leaves the employ of the fire department, his accumulated contributions will be returned only upon his written request 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.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-63. - Participation in plan mandatory.

- (a) Any firefighter of the city who is eligible for inclusion into the plan must join this fund as a prerequisite to employment in the fire department. Any firefighter that meets that definition found in F.S. § 175.032(11)(a) is eligible for inclusion in the plan. Provided, however the fire chief shall have the option to participate or not participate in the plan pursuant to F.S. § 175.032(11)(a).

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-64. - Reserved.

Sec. 70-65. - Custodial agreements authorized.

The board of trustees in administering the retirement system may enter into custodial agreements with any bank or trust company licensed to do business in the state.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-66. - Effect of article; insurance to implement systems.

Nothing in this article shall be construed to repeal, rescind or replace any existing system of pension or retirement to which any firefighter is a member, but may be coordinated with such system in its continuation.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-67. - Monthly retirement income for firefighters.

- (a) *Normal retirement benefit.* A member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coinciding with or next following his retirement and be continued thereafter during member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. The amount of monthly retirement income payable to a firefighter of the city who is currently employed as of or is first hired after January 6, 2004, who retires on or after his or her normal retirement date shall be in an amount equal to the number of years of credited service multiplied by four percent of his or her average final compensation. The amount of monthly retirement income payable to a firefighter of the city who is eligible to participate in the firefighters' pension trust fund but who is not employed as of January 6, 2004, shall be 2.5 percent of his or her average final compensation for years of service prior to October 1, 1998, and by three percent of his or her average final compensation for years of service after October 1, 1998. Provided however, that should a firefighter of the city who has previously been employed by the city as a firefighter and who has left the city's employment prior to January 6, 2004, subsequently be rehired by the city after January 6, 2004, as a firefighter, then such firefighter shall receive on his or her normal retirement date a monthly retirement income equal to 2.5 percent of his or her average final compensation for years of service prior to October 1, 1998, 3.0 percent of his or her average final compensation for years of service between October 1, 1998, and January 6, 2004, and 4.0 percent of his or her average final compensation for years of service after January 6, 2004. Provided however, in no event may a firefighter receiving benefits from the firefighters' pension trust fund receive a monthly retirement income in excess of 100 percent of such firefighter's average final compensation.

- (b) *Early retirement benefit.* In the event of early retirement at the age provided in section 70-69 (b), payment of retirement income shall be governed as follows: The monthly amount of retirement income payable to a firefighter who retires prior to his or her normal retirement date shall be in the amount computed as described in subsection (a), taking into account the firefighter's credited service to his or her date of actual retirement and final monthly compensation as of such date, such amount of retirement income to be actuarially reduced to take into account the firefighter's younger age and the earlier commencement of retirement income benefits. The amount of monthly income payable in the event of early retirement will be paid in the same manner as in subsection (a). In no event shall the early retirement reduction exceed three percent for each year by which the member's age at retirement preceded the member's normal retirement age based upon completed service at termination of employment, as provided in subsection 70-69 (a).
- (c) *Required distribution date.* The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70 ½ or the calendar year in which the member terminates employment with the city.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-67.5. - Optional forms of benefits.

- (a) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified herein, a member, upon written request to the board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the options set forth in F.S. § 175.171, subject to the conditions and limitations set forth therein.
- (b) Except where the retiree's joint pensioner is his spouse, the payments to the joint pensioner as a percentage of the payments to the retiree shall not exceed the applicable percentage provided for in the applicable table in the treasury regulations. (See Q&A-2 of 1.401(a)(9)-6)
- (c) Upon change of a retiree's joint pensioner in accordance with this section, the amount of the retirement income payable to the retiree shall be actuarially predetermined to take into account the age of the former joint pensioner, the new joint pensioner and the retiree and to ensure that the benefit paid is the actuarial equivalent of the present value of the retiree's then-current benefit at the time of the change. Any such retiree shall pay the actuarial recalculation expenses. Each request for a change will be made in writing on a form prepared by the board and on completion will be filed with the board. In the event that no designated beneficiary survives the retiree, such benefits as are payable in the event of the death of the retiree subsequent to his retirement shall be paid as provided in section 70-74.5.
- (d) The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70 ½ or the calendar year in which the member terminates employment with the city.
- (e) A retiree may not change his retirement option after the date of cashing or depositing his first retirement check.
- (f) Notwithstanding anything herein to the contrary, the board in its discretion, may elect to make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the monthly income payments to be paid do not exceed \$1,000.00. Any such payment made to any person pursuant to the power and discretion conferred upon the board by the preceding sentence shall operate as a complete discharge of all obligations under the system with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-68. - Finances and fund management. Establishment and operation of fund. Investment of retirement funds.

- (a) As part of the system, there is hereby established the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the system.
- (b) The actual custody and supervision of the fund (and assets thereof) shall be vested in the board. Payment of benefits and disbursements from the fund shall be made by the custodian but only upon written authorization from the board.
- (c) The board shall deposit the funds of the firefighters' retirement trust fund in a qualified public depository as defined in F.S. § 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of F.S. ch. 280. In order to fulfill its investment responsibilities as set forth herein, the board may retain the services of a custodian bank, an investment advisor registered under the Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.
- (d) All funds and securities of the system may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:
  - (1) Current amounts of accumulated contributions of members on both an individual and aggregate account basis, and
  - (2) Receipts and disbursements, and
  - (3) Benefit payments, and
  - (4) Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city, and
  - (5) All interest, dividends and gains (or losses) whatsoever, and
  - (6) Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.
- (e) An audit shall be performed annually by a certified public accountant for the most recent fiscal year of the system showing a detailed listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete evaluation of assets on both a cost and market basis, as well as other items normally included in a certified audit.
- (f) The board shall have the following investment powers and authority:
  - (1) The board shall be vested with full legal title to said fund, subject, however, and in any event, to the authority and power of the Eustis City Commission to amend or terminate this fund, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this system, except as otherwise provided herein. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund.
  - (2) All monies paid into or held in the fund shall be invested and reinvested by the board and the investment of all or any part of such funds shall be subject to the following:
    - a. Notwithstanding any limitation provided for in F.S. ch. 175, to the contrary (unless such limitation may not be amended by local ordinance) or any limitation in prior city ordinances to the contrary, all monies paid into or held in the fund may be invested and reinvested in such securities, investment vehicles or property wherever situated and of whatever kind, as

shall be approved by the board, including but not limited to common or preferred stocks, bonds, and other evidences of indebtedness or ownership. In no event, however, shall more than 25 percent of the assets of the fund at market value be invested in foreign securities.

- b. The board shall develop and adopt a written investment policy statement setting forth permissible types of investments, goals and objectives of investments and setting quality and quantity limitations on investments in accordance with the recommendations of its investment consultants. The investment policy statement shall be reviewed by the board at least annually.
  - c. In addition, the board may, upon recommendation by the board's investment consultant, make investments in group trusts meeting the requirements of Internal Revenue Service Revenue Ruling 81-100, Revenue Ruling 2011-1 IRS Notice 2012-6 and Revenue Ruling 2014-24, or successor rulings or guidance of similar import, and operated or maintained exclusively for the commingling and collective investment of monies, provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under section 401(a) of the Code, individual retirement accounts that are exempt under section 408(e) of the Code, eligible governmental plans that meet the requirements of section 457(b) of the Code, and governmental plans under 401(a)(24) of the Code. For this purpose, a trust includes a custodial account or separate tax-favored account maintained by an insurance company that is treated as a trust under section 401(f) or under section 457(g)(3) of the Code. While any portion of the assets of the fund are invested in such a group trust, such group trust is itself adopted as a part of the system or plan.
    1. Any collective or common group trust to which assets of the fund are transferred pursuant to subsection c. shall be adopted by the board as part of the plan by executing appropriate participation, adoption agreements, and/or trust agreements with the group trust's trustee.
    2. The separate account maintained by the group trust for the plan pursuant to subsection c. shall not be used for, or diverted to, any purpose other than for the exclusive benefit of the members and beneficiaries of the plan.
    3. For purposes of valuation, the value of the separate account maintained by the group trust for the plan shall be the fair market value of the portion of the group trust held for the plan, determined in accordance with generally recognized valuation procedures.
- (3) At least once every three years, and more often as determined by the board, the board shall retain a professionally qualified independent consultant, as defined in F.S. § 175.071, to evaluate the performance of all current investment managers and make recommendations regarding the retention of all such investment managers. These recommendations shall be considered by the board at its next regularly scheduled meeting.
  - (4) The board may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the system.
  - (5) 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 fund, except that due to his or its own negligence, willful misconduct or lack of good faith.
  - (6) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.
  - (7) The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with

the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the fund which it may deem to be to the best interest of the fund to exercise.

- (8) The board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power contained herein.
- (9) Where any action which the board is required to take or any duty or function which it is required to perform either under the terms herein or under the general law applicable to it as trustee under this ordinance, can reasonably be taken or performed only after receipt by it from a member, the city, or any other entity, of specific information, certification, direction or instructions, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.
- (10) Any overpayments or underpayments from the fund to a member, retiree or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board in such a manner that the actuarial equivalent of the benefit to which the member, retiree or beneficiary was correctly entitled, shall be paid. Overpayments shall be charged against payments next succeeding the correction or collected in another manner if prudent. Underpayments shall be made up from the fund in a prudent manner.
- (11) The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits provided for herein.
- (12) In any application to or proceeding or action in the courts, only the board shall be a necessary party, and no member or other person having an interest in the fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.
- (13) Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to said fund shall always remain in the board.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-69. - Retirement age.

- (a) A member's normal retirement age is the earlier of the attainment of age 55 and the completion of ten years of credited service, or upon the attainment of age 52 and the completion of 25 years of credited service. Each member shall become 100 percent vested in his accrued benefit at normal retirement age. A member's normal retirement date shall be the first day of the month coincident with or next following the date the member retires from the city after attaining normal retirement age.
- (b) *Early retirement date.* A member may retire, with the consent of the city, on his early retirement date which shall be the first day of any month coincident with or next following the attainment of age 50 and the completion of ten years of credited service. Early retirement under the system is retirement from employment with the city on or after the early retirement date and prior to the normal retirement date.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-70. - 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 and an interest rate equal to the investment return assumption set forth in the last actuarial valuation report 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:*

- (1) Average final compensation for a full-time firefighter 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 since July 1, 1953, whichever is greater. A year shall be 12 consecutive months.
- (2) The average final compensation for a volunteer firefighter means the average salary of the ten best contributing years prior to change in status to a permanent full-time firefighter or retirement as a volunteer firefighter or the career average of a volunteer firefighter since July 1, 1953, whichever is greater. A year shall be 12 consecutive months.

*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 Eustis, Florida.

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

*Credited service* means the aggregate number of years of service and fractional parts of years of service of any firefighter, omitting intervening years and fractional parts of years when such firefighter may not have been employed by the municipality, subject to the following conditions:

- (1) A firefighter may not receive credit for years or fractional parts of years of service if he or she has withdrawn his or her contributions to the fund for those years or fractional parts of years of service, unless the firefighter repays into the fund the amount he or she has withdrawn, plus interest determined by the board. The member has at least 90 days after his or her reemployment to make repayment.
- (2) A firefighter may voluntarily leave his or her contributions in the fund for five years after leaving the employ of the fire department, pending the possibility of being rehired by the same department, without losing credit for the time he or she has participated actively as a firefighter.
- (3) If the firefighter is not reemployed as a firefighter with the same department within five years, his or her contributions shall be returned without interest.
- (4) Credited service under this chapter shall be provided only for service as a firefighter employed by the city or for military service and does not include credit for any other type of service.
- (5) 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 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 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 additions under section 415(c) of the Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner. 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 the date on which this ordinance becomes effective.

*Firefighter* means a person employed solely by the Eustis Fire Department who is certified as a firefighter as a condition of employment in accordance with F.S. § 633.408 and whose duty it is to extinguish fires, to protect life, or 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 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 twelve month period beginning October 1 and ending September 30 of the following year.

*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 compensation for services rendered to the city as a firefighter reportable on the member's W-2 form plus all tax deferred, tax sheltered, or tax exempt items of income derived from elective employee payroll deductions or salary reductions. For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term has the same meaning except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

For service earned under collective bargaining agreements entered into on or after July 1, 2011 (the effective date of the first such agreement being the "effective date" for the purposes of this paragraph), 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 the effective date and attributable to service earned prior to the effective date, may still be included in salary for pension purposes even if the payment is not actually made until on or after the effective date. In any event, with respect to unused sick leave and unused annual leave accrued prior to the effective date, salary will include the lesser of the amount of sick or annual leave time accrued on the effective date 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 the effective date.

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 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 Eustis Municipal Firefighters' Pension and Retirement System 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. [18-16](#), § 1, 7-19-2018)

Sec. 70-71. - Firefighter disability benefits.

(a) Firefighters shall be entitled to disability benefits as follows:

- (1) A firefighter may retire from the service of the city under the plan if, prior to his normal retirement date, the firefighter becomes totally and permanently disabled as defined in subsection (2) of this section by reason or any cause other than a cause set out in subsection (3) of this section on or after the effective date of the plan. Such retirement shall be referred to as "disability retirement." Terminated persons, either vested or non-vested, are not eligible for disability benefits. Notwithstanding the previous sentence, if a member is terminated by the city for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the board within 30 days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the board otherwise determines that he is totally and permanently disabled as provided for above.
- (2) A firefighter will be considered totally disabled if, in the opinion of the board of trustees, he is wholly prevented from rendering useful and efficient service as a firefighter; and a firefighter will be considered permanently disabled if, in the opinion of the board of trustees, such firefighter is likely to remain so disabled continuously and permanently from a cause other than as specified in subsection (3) of this section.

- (3) A firefighter will not be entitled to receive any disability retirement income if the disability is a result of:
    - a. Excessive and habitual use by the firefighter of drugs, intoxicants or narcotics.
    - b. Injury or disease sustained by the firefighter while willfully and illegally participating in fights, riots or civil insurrections, or while committing a crime.
    - c. Injury or disease sustained by the firefighter while serving in any armed forces.
    - d. Injury or disease sustained by the firefighter after his employment has terminated.
  - (4) No firefighter shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, to be selected by the board of trustees for that purpose, and is found to be disabled in the degree and in the manner specified in this section. The board shall not select the member's treating physician or surgeon for this purpose except in an unusual case where the board determines that it would be reasonable and prudent to do so. Any firefighter retiring under this section may be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons, to be selected by the board of trustees for that purpose, to determine if such disability has ceased to exist.
  - (5) The board shall have the power and authority to make the final decisions regarding all disability claims.
- (b) *Calculation and payment of benefit.*
- (1) The benefit payable to a firefighter who retires from the city due to total and permanent disability as a direct result of a disability commencing prior to his normal retirement date is the monthly income payable for ten years certain and life for which, if the firefighter's disability occurred in the line of duty, his monthly benefit shall be the accrued retirement benefit, but shall not be less than 65 percent of his average monthly salary at the time of disability. If the disability is other than in the line of duty, the firefighter's monthly benefit shall be the accrued normal retirement benefit, but shall not be less than 25 percent of his average monthly salary at the time of disability.
  - (2) *Payment of benefit.*
    - a. The monthly retirement income to which a firefighter is entitled in the event of his or her disability retirement shall be payable on the first day of the first month after the board of trustees determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determines such entitlement, and any portion due for a partial month shall be paid together with the first payment.
    - b. The last payment will be:
      1. If the firefighter recovers from the disability, the payment due next preceding the date of such recovery; or
      2. If the firefighter dies without recovering from the disability, the payment due next preceding his or her death or the 120th monthly payment, whichever is later.
    - c. In lieu of the benefit payment as provided in this subsection, a firefighter may select an optional form as provided in F.S. § 175.171.
    - d. Any monthly retirement income payments due after the death of a disabled firefighter shall be paid to the firefighter's designated beneficiary (or beneficiaries) as provided in F.S. §§ 175.181 and 175.201.
- (c) *Recovery from disability.*
- (1) If the board of trustees finds that a firefighter who is receiving a disability retirement income is, at any time prior to his normal retirement date, no longer disabled, the board of trustees shall direct that the disability retirement income be discontinued. "Recovery from disability" means the ability of the firefighter to render useful and efficient service as a firefighter.

- (2) If the firefighter recovers from disability and reenters as a firefighter, his service shall be deemed to have been continuous; but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered service will not be considered as credited service for the purpose of the plan.
- (3) Any retiree receiving disability benefits under provisions of this ordinance may be required by the board to submit sworn statements of his condition accompanied by a physician's statement (provided at the retiree's expense) to the board annually and may, at any time, be required by the board to undergo additional periodic re-examinations by a qualified physician or physicians and/or surgeon or surgeons who shall be selected by the board, to determine if such disability has ceased to exist. The cost of the physical examination and/or re-examination of the member claiming or the retiree receiving disability benefits shall be borne by the fund. All other reasonable costs as determined by the board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the fund.

(d) *Presumptions.*

- (1) The presumption in general law set forth at F.S. § 175.231, which provides that certain medical conditions or impairments are presumed to have been accidental and suffered in the line of duty, subject to all limitations and conditions set forth therein, shall be applied to line-of-duty determinations in claims for disability retirement. To the extent that F.S. § 175.231, is amended from time to time, repealed, or replaced, such amendments, repeals, or replacements shall apply to line of duty determinations in disability claims hereunder unless they are inapplicable to pension benefits. This subsection is not intended to expand the scope of the statutory presumption.
- (2) The presumption in general law set forth at F.S. § 112.181, which provides that a condition or impairment of health that is caused by hepatitis, meningococcal meningitis, or tuberculosis, that requires medical treatment, and that results in total or partial disability or death shall be presumed to have a disability suffered in the line-of-duty, subject to all limitations and conditions set forth therein, shall be applied to line of duty determinations in claims for disability retirement. To the extent that F.S. § 112.181, is amended from time to time, repealed, or replaced, such amendments, repeals, or replacements shall apply to disability claims hereunder unless they are inapplicable to pension benefits. This subsection is not intended to expand the scope of the statutory presumption.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-72. - Reentry of eligible participants into the firefighters' pension fund.

If a participant who has withdrawn from the firefighters' pension plan is rehired and is eligible to be a participant in the plan within 24 months of withdrawal and termination, the firefighter may reenter the plan at withdrawal level provided the participant repays to the plan the sum equal to the amount the participant withdrew at termination together with interest at the rate of actuarial assumption at the date of the last actuarial study. If the firefighter had not withdrawn his money from the plan, the interest would not be assessed. The payment shall be made within 60 days of rehire or the privilege shall lapse and the firefighter will enter the plan as any other newly employed firefighter. The provision of this section shall not be retroactive.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-73. - Direct transfers of eligible rollover distributions.

(a) *Rollover distributions.*

- (1) *Generally.* 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.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
- a. *Direct rollover* means a payment by the plan to the eligible retirement plan specified by the distributee.
  - b. *Distributee* means 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 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 retirement plan* means 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 section 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.
  - d. *Eligible rollover distribution* means 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 Code section 401(a) or to an annuity contract described in 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.
- (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 to the extent permitted 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. [18-16](#), § 1, 7-19-2018)

Sec. 70-74. - Pre-retirement death.

- (a) *Prior to vesting or eligibility for retirement.* The beneficiary of a deceased member who was not receiving monthly benefits or who was not yet vested or eligible for early or normal retirement shall receive a refund of 100 percent of the member's accumulated contributions without interest.
- (b) *Deceased members vested or eligible for retirement with spouse as beneficiary.* This subsection (b) applies only when the member's spouse is the sole designated beneficiary. The spouse beneficiary of any member who dies and who, at the date of his death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:
  - (1) If the member was vested, but not eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the date that the deceased member would have been eligible for early or normal retirement, at the option of the spouse beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable. The spouse beneficiary may also elect to receive an immediate benefit, payable for ten years, which is actuarially reduced to reflect the commencement of benefits prior to the early retirement date.
  - (2) If the deceased member was eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the first day of the month following the member's death or at the deceased member's otherwise early or normal retirement date, at the option of the spouse beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable.
  - (3) A spouse beneficiary may not elect an optional form of benefit, however, the board may elect to make a lump sum payment pursuant to section 70-67.5, subsection (f).
  - (4) A spouse beneficiary may, in lieu of any benefit provided for in (1) or (2) above, elect to receive a refund of the deceased member's accumulated contributions.
  - (5) Notwithstanding anything contained in this section to the contrary, in any event, distributions to the spouse beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by a date selected pursuant to the above

provisions in this section that must be on or before December 31 of the calendar year in which the member would have attained 70 ½.

- (6) If the surviving spouse beneficiary commences receiving a benefit under subsection (1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the spouse beneficiary's estate in a lump sum.
- (c) *Deceased members vested or eligible for retirement with non-spouse beneficiary.* This subsection applies only when the member's spouse is not the beneficiary or is not the sole designated beneficiary, but there is a surviving beneficiary. The beneficiary of any member who dies and who, at the date of his death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:
- (1) If the member was vested, but not eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten years. The benefit will begin by December 31 of the calendar year immediately following the calendar year in which the member died. The benefit will be calculated as for normal retirement based on the deceased member's credited service and average final compensation and actuarially reduced to reflect the commencement of benefits prior to the normal retirement date.
  - (2) If the deceased member was eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten years, beginning on the first day of the month following the member's death. The benefit will be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced for early retirement, if applicable.
  - (3) A beneficiary may not elect an optional form of benefit, however the board may elect to make a lump sum payment pursuant to section 70-67.5, subsection (f).
  - (4) A beneficiary, may, in lieu of any benefit provided for in (1) or (2) above, elect to receive a refund of the deceased member's accumulated contributions.
  - (5) If a surviving beneficiary commences receiving a benefit under subsection (1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the surviving beneficiary's estate by December 31 of the calendar year of the beneficiary's death in a lump sum.
  - (6) If there is no surviving beneficiary as of the member's death, and the estate is to receive the benefits, the actuarial equivalent of the member's entire interest must be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.
  - (7) The Uniform Lifetime Table in Treasury Regulations § 1.401(a)(9)-9 shall determine the payment period for the calendar year benefits commence, if necessary to satisfy the regulations.
- (d) In the event that a death benefit paid by a life insurance company exceeds the limits set forth in F.S. § 175.081, the excess of the death benefit over the limit shall be paid to the firefighters' pension trust fund. However, death benefits as provided pursuant to F.S. § 112.191 or any other state or federal law shall not be included in the calculation of death or retirement benefits provided by this article.

(Ord. No. [18-16](#), § 1, 7-19-2018)

#### Sec. 70-74.5. - Beneficiaries.

- (a) Each member or retiree shall, 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 his death. Each designation may be revoked or changed by such member or retiree by signing and filing with the board a new designation-of-beneficiary form. Upon such change, the rights of all previously designated beneficiaries to receive any benefits under the system shall cease.

- (b) If a deceased member or retiree failed to name a beneficiary in the manner prescribed in subsection (a), or if the beneficiary (or beneficiaries) named by a deceased member or retiree predeceases the member or retiree, the death benefit, if any, which may be payable under the system with respect to such deceased member or retiree, shall be paid to the estate of the member or retiree and the board, in its discretion, may direct that the commuted value of the remaining monthly income benefits be paid in a lump sum.
- (c) Any payment made to any person pursuant to this section shall operate as a complete discharge of all obligations under the system with regard to the deceased member and any other persons with rights under the system and shall not be subject to review by anyone but shall be final, binding and conclusive on all persons ever interested hereunder.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-75. - Deferred retirement option plan.

- (a) A deferred retirement option plan (DROP) is hereby created.
- (b) A member who is eligible for normal retirement shall be eligible to enter the deferred retirement option plan beginning on the first day of the month following their eligibility for normal retirement or on the first day of any month thereafter. 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. Participation in the deferred retirement option plan shall be limited to 60 consecutive months. As of the first day of each month of a member's period of participation in the deferred retirement option plan, the monthly retirement benefit he or she would have received under the system had the firefighter terminated employment as a firefighter and elected to receive monthly benefit payments thereunder, shall be transferred to a deferred retirement option plan account created for the member under the system.
- (c) Upon entry into the deferred retirement option plan, a member shall be considered a retired member of the system. The member's benefits shall be calculated as if the member had actually separated from service and no further credited service salary increases, or system changes (except for any additional benefits provided under any cost-of-living adjustment for retirees in the system) shall apply to a member in the deferred retirement option plan for purposes of determining the member's benefit under the system. In all other respects however, the member shall remain an active member of the fire department and otherwise be eligible for all other contractual and job benefits.
- (d) Upon entry into the deferred retirement option plan, a member shall not be permitted to contribute to the system and shall no longer be eligible for disability or retirement death benefits. In the event that a member suffers a disabling injury, the member shall commence a regular service retirement. In the event that a member in the deferred retirement option plan shall die, the member shall be treated the same as any other retired member who dies and any survivorship option which the member may have elected shall be paid in accordance with the provisions of the system. In the event of the death of a member, the deferred retirement option plan benefit shall be distributed to the named beneficiary or beneficiaries. In the event that no beneficiary has been named by the member, the deferred retirement option plan account balance shall be paid to the member's estate. 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 firefighter, no amounts shall be paid to him from the system until he terminates his employment as a 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 firefighter.
- (e) By entering into the deferred retirement option plan, a member agrees to terminate active service with the fire department not later than 60 months following the date of entry into the deferred

retirement option plan. Nothing shall prohibit a member who has entered the deferred retirement option plan or the city from terminating service prior to the expiration of 60 months.

- (f) Upon separation from service and the commencement of the receipt of retirement benefits, a member shall be eligible for distribution of the deferred retirement option plan account. The deferred retirement option plan account may be distributed in a lump sum, may be rolled over to another qualified retirement system, may be made in periodic payments, or any other form approved by the board of trustees. In no instance shall the method of distribution result in the payment of any amount which exceeds the balance in the deferred retirement option plan account. Except as otherwise provided in this subsection, 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 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.
- (g) A member's participation in the deferred retirement option plan shall cease when either of the first occurs:
  - (1) Continuation of his employment as a firefighter at the end of his period of participation in the deferred retirement option plan as determined under subsection (e) of this section
  - (2) Termination of his employment as a firefighter.

Upon the member's termination of participation in the deferred retirement option plan, all amounts provided for in subsection (b) of this section, including monthly benefits and investments earnings and losses and interest, shall cease to be transferred from the system to his deferred retirement option plan account. A member who terminates his participation in the deferred retirement option plan under this section shall not be permitted to again become a participant in the deferred retirement option plan.

- (h) A member's deferred retirement option plan account shall be debited or credited after each fiscal year quarter with either: (i) interest at the rate applicable to the Florida Retirement System deferred retirement option plan for the calendar quarter immediately preceding the system's deferred retirement option plan calculation, or (ii) earnings, determined as follows: the average daily balance in a member's deferred retirement option plan account shall be credited or debited at a rate equal to the actual net rate of investment return realized by the system for that quarter. "Net rate of investment return" for the purpose of this subsection is the total return of the assets in which the member's deferred retirement option plan 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, 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. Upon electing participation in the deferred retirement option plan, the member shall elect to receive either interest or earnings on his account to be determined as provided above. The member may, in writing, elect to change his election only once during his deferred retirement option plan participation. An election to change must be made prior to the end of a quarter and shall be effective beginning the following quarter. A member's deferred retirement option plan account shall only be credited or debited with earnings or interest and monthly benefits while the member is a participant in the deferred retirement option plan and after the member dies, retires, or terminates his employment as a firefighter.

If a member is employed by the city fire department after electing to cease participation in the deferred retirement option plan account pursuant to subsection (g) of this section or after participating in the deferred retirement option plan for five years, then beginning with the next payment following cessation of participation or beginning with the member's 61st month of deferred retirement option plan participation, whichever occurs first, the member's deferred retirement option plan account will no longer be credited or debited with earnings or interest, nor will monthly benefits be transferred to the deferred retirement option plan account. All such nontransferred amounts shall be forfeited and continue to be forfeited while the

member is employed by the city fire department. A member employed by the city fire department after five years of deferred retirement option plan participation will still not be eligible for preretirement death or disability benefits, nor will he or she accrue additional credited service.

- (i) *Effect of deferred retirement option plan participation on employment.* Participation in the deferred retirement option plan is not a guarantee of employment and deferred retirement option plan participants shall be subject to the same employment standards and policies that are applicable to employees who are not deferred retirement option plan participants.
- (j) *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.
- (k) *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 70-73.
- (l) *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.

(m) *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 70-75 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) *Prevention of escheat.* If the board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the board may, no earlier than three years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the board or the city. If such person has not made written claim therefor within three months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the system, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the system. Upon such cancellation, the system shall have no further liability therefor except that, in the event such person or his beneficiary later notifies the board of his whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.
- (9) *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.
- (10) *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.
- (11) *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 70-75 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.
- (12) *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.
- (13) *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. [18-16](#), § 1, 7-19-2018)

Sec. 70-75.5. - Reemployment after retirement

- (a) Any retiree who is retired under this system, except for disability retirement as previously provided for, may be reemployed by any public or private employer, except the city, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this system. 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 firefighter after that retirement and, by virtue of that reemployment, is eligible to participate in this system, shall upon being reemployed 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 retirement shall be based upon the benefit accrual rate, average final compensation, and credited service as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average final compensation (based only on the subsequent employment period), and credited service as of the date of subsequent retirement. 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.

- (c) 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 receipt of benefits during 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 by virtue of that reemployment, the retiree is eligible to participate in this system, 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 retirement shall be based upon the benefit accrual rate, average final compensation, credited service and early retirement reduction factor as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average final compensation (based only on the subsequent employment period), and credited service as of the date of subsequent retirement. 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. 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.* Members or retirees who are or 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. [18-16](#), § 1, 7-19-2018)

Sec. 70-76. - Maximum pension.

- (a) *Basic limitation.* Notwithstanding any other provisions of this system to the contrary, the member contributions paid to, and retirement benefits paid from, the system shall be limited to such extent as may be necessary to conform to the requirements of Code section 415 and the regulations promulgated thereunder for a qualified retirement plan.
- (b) *Additional limitation on pension benefits.* Notwithstanding anything herein to the contrary:
  - (1) The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1, 1980, shall not exceed 100 percent of his average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.

- (2) No member of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 1223, Title 10, U.S. Code.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-77. - Minimum distribution of benefits.

(a) *General rules.*

- (1) *Effective date.* Effective as of January 1, 1989, the plan will pay all benefits in accordance with a good faith interpretation of the requirements of Code section 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Code section 414(d). Effective on and after January 1, 2003, the plan is also subject to the specific provisions contained in this section. The provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- (2) *Precedence.* The requirements of this section will take precedence over any inconsistent provisions of the plan.
- (3) *TEFRA Section 242(b)(2) Elections.* Notwithstanding the other provisions of this section other than this subsection (a)(3), distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that related to section 242(b)(2) of TEFRA.

(b) *Time and manner of distribution.*

- (1) *Required beginning date.* The member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date which shall not be later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70 ½ or the calendar year in which the member terminates employment with the city.
- (2) *Death of member before distributions begin.* If the member dies before distributions begin, the member's entire interest will be distributed, or begin to be distributed no later than as follows:
  - a. If the member's surviving spouse is the member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by a date on or before December 31 of the calendar year in which the member would have attained age 70 ½, if later, as the surviving spouse elects.
  - b. If the member's surviving spouse is not the member's sole designated beneficiary, then, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died.
  - c. If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.
  - d. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subsection (b)(2), other than subsection (b)(2)a., will apply as if the surviving spouse were the member.

For purposes of this subsection (b)(2), distributions are considered to begin on the member's required beginning date or, if subsection (b)(2)d. applies, the date of distributions are required to begin to the surviving spouse under subsection (b)(2)a. If annuity payments irrevocably commence to the member before the member's required beginning date (or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(2)a.) the date distributions are considered to begin is the date distributions actually commence.

- (3) *Death after distributions begin.* If the member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.
  - (4) *Form of distribution.* Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with this section. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401 (a)(9) of the Code and Treasury regulations. Any part of the member's interest which is in the form of an individual account described in section 414(k) of the Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the Code and Treasury regulations that apply to individual accounts.
- (c) *Determination of amount to be distributed each year.*
- (1) *General requirements.* If the member's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:
    - a. The annuity distributions will be paid in periodic payments made at intervals not longer than one year.
    - b. The member's entire interest must be distributed pursuant to section 70-67, section 70-74, section 70-62.5, or section 70-67.5 (as applicable) and in any event over a period equal to or less than the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary. The life expectancy of the member, the member's spouse, or the member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.
  - (2) *Amount required to be distributed by required beginning date.* The amount that must be distributed on or before the member's required beginning date (or, if the member dies before distributions begin, the date distributions are required to begin under section 70-74) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., monthly. All of the member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.
  - (3) *Additional accruals after first distribution calendar year.* Any additional benefits accruing to the member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
- (d) *General distribution rules.*
- (1) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Code section 401(a)(9)(G), and effective for any annuity commencing on or after January 1, 2008, the minimum distribution incidental benefit rule under Treasury Regulation section 1.401(a)(9)-6, Q&A-2.
  - (2) The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in Code section 401(a)(9)(G) and Treasury Regulation section 1.401-1(b)(1)(l) or any

successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25 percent of the cost for all of the members' benefits received from the retirement system.

(e) *Definitions.*

- (1) *Designated beneficiary* means the individual who is designated as the beneficiary under the plan and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.
- (2) *Distribution calendar year* means a calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section 70-74.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-78. - Miscellaneous provisions.

- (a) *Interest of members in system.* All assets of the fund are held in trust, and at no time prior to the satisfaction of all liabilities under the system with respect to retirees and members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.
- (b) *No reduction of accrued benefits.* No amendment or ordinance shall be adopted by the city commission of the city of Eustis which shall have the effect of reducing the then vested accrued benefits of members or a member's beneficiaries.
- (c) *Qualification of system.* It is intended that the system will constitute a qualified public pension plan under the applicable provisions of the code for a qualified plan under Code section 401(a) and a governmental plan under Code section 414(d), as now in effect or hereafter amended. Any modification or amendment of the system may be made retroactively, if necessary or appropriate, to qualify or maintain the system as a plan meeting the requirements of the applicable provisions of the code as now in effect or hereafter amended, or any other applicable provisions of the U.S. federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder.
- (d) *Use of forfeitures.* Forfeitures arising from terminations of service of members shall serve only to reduce future city contributions.
- (e) *Prohibited transactions.* Effective as of January 1, 1989, a board may not engage in a transaction prohibited by Code section 503(b).
- (f) *USERRA.* Effective December 12, 1994, notwithstanding any other provision of this system, contributions, benefits and service credit with respect to qualified military service are governed by Code section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended. To the extent that the definition of "credited service" sets forth contribution requirements that are more favorable to the member than the minimum compliance requirements, the more favorable provisions shall apply.
- (g) *Vesting.*
  - (1) Member will be 100 percent vested in all benefits upon attainment of the plan's age and service requirements for the plan's normal retirement benefit; and
  - (2) A member will be 100 percent vested in all accrued benefits, to the extent funded, if the plan is terminated or experiences a complete discontinuance of employer contributions.
- (h) *Electronic forms.* In those circumstances where a written election or consent is not required by the plan or the code, an oral, electronic, or telephonic form in lieu of or in addition to a written form may

be prescribed by the board. However, where applicable, the board shall comply with Treas. Reg. § 1.401(a)-21.

- (i) *Compliance with chapter 175, Florida Statutes.* It is intended that the system will continue to qualify for funding under F.S. ch. 175-101, et seq. Accordingly, unless otherwise required by law, any provision of the system which violates the requirements of F.S. ch. 175, as amended from time to time, shall be superseded by and administered in accordance with the requirements of such chapter.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-79. - Repeal or termination of system.

- (a) This ordinance establishing the system and fund, and subsequent ordinances pertaining to said system and fund, may be modified, terminated, or amended, in whole or in part; provided that if this or any subsequent ordinance shall be amended or repealed in its application to any person benefitting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the member or beneficiary shall not be affected thereby.
- (b) If this ordinance shall be repealed, or if contributions to the system are discontinued or if there is a transfer, merger or consolidation of government units, services or functions as provided in F.S. ch. 121, the board shall continue to administer the system in accordance with the provisions of this ordinance, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this ordinance who are designated by any of said members. In the event of repeal, discontinuance of contributions, or transfer, merger or consolidation of government units, services or functions, there shall be full vesting 100 percent of benefits accrued to date of repeal and such benefits shall be nonforfeitable.
- (c) The fund shall be distributed in accordance with the following procedures:
  - (1) 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.
  - (2) 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 subsection (3).
  - (3) The board shall distribute the asset value as of the date of termination in the manner set forth in this subsection, 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 subsection (2) 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 firefighter's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the firefighter.
  - (4) If there is asset value remaining after the full distribution specified in subsection (3), and after the 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.
  - (5) The board shall distribute, in accordance with subsection (2), the amounts determined under subsection (3). If, after 24 months after the date the plan terminated or the date the board received written notice that the contributions thereunder were being permanently discontinued,

the city or the board of the fund affected has not complied with all the provisions in this section, the Florida Department of Management Services will effect the termination of the fund in accordance with this section.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-80. - Domestic relations orders; retiree directed payments; exemption from execution, non-assignability.

(a) *Domestic relations orders.*

- (1) Prior to the entry of any domestic relations order which affects or purports to affect the system's responsibility in connection with the payment of benefits of a retiree, the member or retiree shall submit the proposed order to the board for review to determine whether the system may legally honor the order.
- (2) If a domestic relations order is not submitted to the board for review prior to entry of the order, and the system is ordered to take action that it may not legally take, and the system expends administrative or legal fees in resolving the matter, the member or retiree who submits such an order will be required to reimburse the system for its expenses in connection with the order.

(b) *Retiree directed payments.* The board may, upon written request by a retiree or by a dependent, when authorized by a retiree or the retiree's beneficiary, authorize the system to withhold from the monthly retirement payment those funds that are necessary to pay for the benefits being received through the city, to pay the certified bargaining agent of the city, to make payment to insurance companies for insurance premiums as permitted by F.S. ch. 175 and to make any payments for child support or alimony.

(c) *Exemption from execution, non-assignability.* Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this ordinance and the accumulated contributions and the cash securities in the fund created under this ordinance are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-81. - Pension validity.

The board shall have the power to examine into the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. The board is empowered to purge the pension rolls or correct the pension amount of any person heretofore granted a pension under prior or existing law or any person hereafter granted a pension under this ordinance if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any person who has heretofore under any prior or existing law been or who shall hereafter under this ordinance be erroneously, improperly or illegally classified. Any overpayments or underpayments shall be corrected and paid or repaid in a reasonable manner determined by the board.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-82. - Certain offenses; forfeiture of pension.

(a) *Definitions.*

- (1) *Conviction* means an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or a nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the senate of an impeachable offense.
  - (2) *Court* means any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense.
- (b) Any member who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this system, except for the return of his accumulated contributions as of the date of termination. Specified offenses are as follows:
- (1) The committing, aiding or abetting of an embezzlement of public funds;
  - (2) The committing, aiding or abetting of any theft by a public officer or employee from employer;
  - (3) Bribery in connection with the employment of a public officer or employee;
  - (4) Any felony specified in F.S. ch. 838;
  - (5) The committing of an impeachable offense;
  - (6) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he acts or in which he is employed, of the right to receive the faithful performance of his duty as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his public office or employment position; or
  - (7) The committing on or after October 1, 2008, of any felony defined in F.S. Section 800.04, against a victim younger than 16 years of age, or any felony defined in F.S. ch. 794, against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.
- (c) Prior to forfeiture, the board shall hold a hearing on which notice shall be given to the member whose benefits are being considered for forfeiture. Said member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the member shall be afforded a full opportunity to present his case against forfeiture.
- (d) Any member who has received benefits from the system in excess of his accumulated contributions after member's rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his accumulated contributions. The board may implement all legal action necessary to recover such funds.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-83. - Conviction and forfeiture; false, misleading or fraudulent statements.

- (a) 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 withhold or conceal material information to obtain any benefit from the system.
- (b) A person who violates subsection (a) commits a misdemeanor of the first degree, punishable as provided in F.S. § 775.082 or § 775.083.
- (c) In addition to any applicable criminal penalty, upon conviction for a violation described in subsection (a), a member or beneficiary of the system may, in the discretion of the board, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled under the

system. For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(Ord. No. [18-16](#), § 1, 7-19-2018)

Sec. 70-84. - 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. [18-16](#), § 1, 7-19-2018)

Sec. 70-85. - Supplemental benefit component for special benefits; chapter 175 share accounts.

There is hereby established an additional plan component to provide special benefits in the form of a supplemental retirement, termination, death and disability benefits 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. ch. 175, premium tax monies for each plan year which are allocated to this supplemental defined contribution component for special benefits as provided for in F.S. § 175.351. Amounts allocated to this supplemental component ("Share Plan"), if any, shall be further allocated to the members and DROP participants as follows:

- (1) *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 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 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.
- (2) *Share account funding.*
  - a. Individual member share accounts shall be established as of September 30, 2017 for all members and DROP participants who were actively employed as of October 1, 2016 and for each member who becomes employed thereafter. Individual member share accounts shall be credited with an allocation as provided for in the following subsection (3) of any premium tax monies which have been allocated to the share plan for that plan year, beginning with the plan year ending September 30, 2017.

- b. Any forfeitures as provided in subsection (4), shall be used as part of future allocations to the individual member share accounts in accordance with the formula set forth in subsection (3)a.
- (3) *Allocation of monies to share accounts.*
- a. *Allocation of chapter 175 contributions.*
    - 1. Effective as of September 30, 2016, the amount of any premium tax monies allocated to the share plan shall be allocated to individual member share accounts as provided for in this subsection. 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").
    - 2. 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:
    - 3. 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.
    - 4. For the purposes of establishing and maintaining share accounts, Re-employed retirees shall be deemed new employees and shall receive an allocation based solely on the credited service in the reemployment period.
  - b. *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.
  - c. *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.

- d. *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 tax revenues except at the time or times, to the extent, and subject to the terms and conditions provided in this section.
  - e. Members and DROP participants shall be provided annual statements setting forth their share account balance as of the end of the plan year.
- (4) *Forfeitures.* Any member who has less than ten 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 (5) shall forfeit his individual member share account. Forfeited amounts shall be included and used as part of the chapter 175 tax revenues for future allocations to individual member share accounts on each valuation date in accordance with the formula set forth in subsection (3)a.
- (5) *Eligibility for benefits.* Any member (or his beneficiary) who terminates employment as a firefighter 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:
- a. *Retirement benefit.*
    - 1. A member shall be entitled to 100 percent of the value of his share account upon normal or early retirement pursuant to section 70-67, or if the member enters the DROP, upon termination of employment.
    - 2. Such payment shall be made as provided in subsection (6).
  - b. *Termination benefit.*
    - 1. In the event that a member's employment as a firefighter 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 70-62.5.
    - 2. Such payment shall be made as provided in subsection (6).
  - c. *Disability benefit.*
    - 1. In the event that a member is determined to be eligible for a disability benefit pursuant to Section 70-71, he shall be entitled to 100 percent of the value of his share account.
    - 2. Such payment shall be made as provided in subsection (6).
  - d. *Death benefit.*
    - 1. In the event that a member or DROP participant dies while actively employed as a firefighter, 100 percent of the value of his member share account shall be paid to his designated beneficiary as provided in section 70-74.
    - 2. Such payment shall be made as provided in subsection (6).
- (6) *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 (3) 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.
- (7) *Benefits not guaranteed.* All benefits payable under this section 70-85 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.

- (8) *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.
- (9) *No employer discretion.* The share account benefit is determined pursuant to a specific formula which does not involve employer discretion.
- (10) *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.
- (11) *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. [18-16](#), § 1, 7-19-2018)

Secs. 70-86—70-100. - Reserved.