

**CITY OF SARASOTA
FIREFIGHTERS' PENSION PLAN**

Sec. 24-21. Definitions.

As used in this division, unless otherwise defined or required by the context, the following words and phrases are defined as follows:

Act means the Employee Retirement Income Security Act of 1974, (P.L. 93-406) as amended by the Retirement Equity Act of 1984 (P.L. 98-397) and any regulations issued thereunder by the Department of Labor and the Internal Revenue Service, as that Statute and these regulations shall be amended.

Average final compensation means one-twelfth (1/12) of the salary, as defined herein, of the highest three (3) years of the last ten (10) years of credited service prior to retirement, termination, or death, or the career average as a full time firefighter, whichever is greater. A year shall be twelve (12) consecutive months. A lump sum payment for unused accrued vacation leave paid at the time of termination or retirement shall not exceed five hundred (500) hours for the purpose of computing average final compensation. A lump sum payment received for accrued leave time for any purpose other than vacation shall not be included for the purposes of computing average final compensation. Lump sum payments not counted for average final compensation shall not be subject to pension contributions. A lump sum payment received pursuant to a collective bargaining agreement, if made during one of the years used to compute average final compensation, shall be prorated equally over the years used to compute average final compensation. Compensation in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for a firefighter who was a member of this fund before October 1, 1996, shall not be less than the amount which was allowed to be taken into account under this division as in effect on July 1, 1993.

Beneficiary means the person or persons entitled to receive benefits hereunder at the death of a member. In the event of a pre-retirement death of a firefighter, the beneficiary will be the spouse at the time of death unless the firefighter has named a different beneficiary after his or her most recent marriage on a form provided by the Pension Office. The member may change beneficiaries at any time.

Board means the board of trustees created herein.

City means the City of Sarasota, Florida.

Code means the Internal Revenue Code of 1986, as amended from time to time, and any subsequent revenue laws.

Computing of interest means that in computing interest on a yearly basis, a year shall start with the first day of January in any given year, as may be appropriate, unless otherwise provided herein. Where the board of trustees is authorized or directed to fix an interest rate and calculation in connection with a member's contribution to the fund during a leave of absence, a period of military service, or similar situation, the rate and calculation shall be fixed to yield to the fund, such sum as a contribution would have earned if on deposit with the fund during the same period in question.

Consolidation means the provision of fire and rescue services to the city by the county pursuant to an interlocal agreement.

Consumer Price Index means the U.S. City Average Consumer Price Index issued by the Bureau of Labor Statistics, U.S. Department of Labor, on all items by all urban consumers, as of December 31 of any given year, commonly known as the "cost-of-living" index, as the same may be revised from time to time by the Bureau of Labor Statistics, provided that any such revision shall be formally recognized by the board by motion reflected in its minutes.

County means Sarasota County, Florida.

Credited service means the total number of years, and fractional parts of years, of active service and contributions by any firefighter, in his or her employment with the fire and rescue service or the county fire department, including time under the provisions of credit for military service, but not including any previous service where a member has been discharged or voluntarily separated from the service and made a withdrawal of any or all of his or her salary deductions, except as provided for herein.

Effective date means the date on which this division becomes effective.

Firefighter means an employee of the city fire and rescue service who is certified as a firefighter as a condition of employment in accordance with the provisions of Section 633.35, Florida Statutes, who is so certified and is employed by the county as a result of a consolidation, or who is certified as a paramedic or emergency medical technician as a condition of employment with the county and is employed by the county as a result of consolidation, whose employment shall be regular and continuous and not of a temporary character and whose employment and discharge are subject to any portions of the Charter of or other special acts, codes, divisions or ordinances pertaining to the city or county dealing with the classified service for fire and rescue personnel of the county, or of the city and/or subject to any civil service rules promulgated or adopted pursuant to such legislative authority.

Fund means the pension fund created by this division.

Issue means the natural living or conceived children and legally adopted living children but shall not include any person who has reached his or her eighteenth birthday or his or her twenty-third birthday if he or she is engaged in a full-time educational curriculum.

Joint Annuitant or Joint Pensioner means a person designated by a member to receive a pension benefit of the same or reduced amount upon the death of the member, for the remainder of the designated person's life.

Plan means the City of Sarasota Firefighters' Pension Fund.

Regular interest means the interest computed at the rate of five (5) percent per annum to be compounded annually and calculated on the balance in question as of the first day of any calendar year unless a different method of calculation is provided herein.

Retire or retirement means the cessation of employment as a firefighter, as such term is defined herein, with eligibility for immediate receipt of benefits under the system.

Salary means the total compensation paid to a firefighter, including up to five hundred (500) hours of accumulated vacation leave, but excluding clothing and car allowances, and excluding payments for any other unused accrued leaves (such as sick, compensatory and holiday). Compensation in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for a firefighter who was a member of this fund before October 1, 1996, shall not be less than the amount which was allowed to be taken into account under this division as in effect on July 1, 1993.

Surviving spouse means the lawful wife or husband of a firefighter or retired firefighter at the time of his or her death.

System means the City of Sarasota Firefighters' Pension Plan and all other rules and provisions under which it is administered.

Vested means a nonforfeitable right to a pension benefit under this pension plan upon reaching the age and years of credited service set forth herein. A firefighter shall be vested upon attaining ten (10) years of Credited service.

Sec. 24-22. Creation; payments into fund.

There is hereby created a fund to be known as the "City of Sarasota Firefighters' Pension Fund". Such fund shall be deemed to be a continuation of any and all heretofore existing firefighters' pension funds covering the members of the fire and rescue service of the city, and all funds and securities now collected and held as a part of any such firefighters' pension fund at this time which has been collected and paid into the fund pursuant to any preexisting act of the legislature, and shall be administered as provided herein.

(a) Employee contributions. Each firefighter who is a member of this fund shall pay into the fund eight (8) percent of his or her salary each pay period, the same to be deducted from the member's salary and to be deposited to the credit of the fund in such depository as the board of trustees shall from time to time designate, for the purpose of assisting in the payment of the benefits to be paid under this division.

(1) Lump sum payments for accumulated leave time for all purposes other than five hundred (500) hours of vacation time are not defined as salary and are not subject to the eight (8) percent contribution.

(2) Lump sum payment for up to five hundred (500) hours of accumulated vacation time is defined as salary and is subject to the eight (8) percent contribution.

(b) Employer contributions. The contributions made by each member to the fund shall be designated as employer contributions pursuant to Sec. 414(h) of the Internal Revenue Code of 1986. Such designation is contingent upon the contributions being excluded from the member's gross income for federal income tax purposes. For all other purposes of the plan, such contributions shall be considered to be member contributions.

(1) Should the city or the county terminate their inter-local agreement and the city re-establish its city fire department, then the city shall pay, each pay period, into the fund a sum not less than eight (8) percent of the salaries of the firefighters who are members of the firefighters' pension fund created by this division.

(2) All funds contributed to the fund shall be held in trust by the trustees and shall be administered and used for the purposes and in accordance with the terms of this division. Such funds shall be deposited to the credit of the fund in such depository as the board shall from time to time designate.

(c) There shall also be paid into such fund to pay the obligations thereof such other contributions as the fund may receive from any source, including, but not limited to, interest on bank deposits, income from investments, gifts, bequests, devises, the net proceeds of the one and eighty-five hundredths (1.85) percent excise or license tax which is now being collected and has in the past been collected and paid into a preexisting pension fund for the members of the fire and rescue service of the city or those members employed by the county due to consolidation, pursuant to F.S. ch. 175, which one and eighty-five hundredths (1.85) percent excise or license tax may hereinafter be referred to as "the one and eighty-five hundredths (1.85) percent insurance tax," and all other sources of income now or hereafter authorized by law for the augmentation of the firefighters' pension fund; and all of such payments into the fund shall be made by deposit to the credit of such fund in such depository that meets the requirements of F.S. ch. 280, as the board of trustees shall from time to time designate.

Sec. 24-23. Board of trustees.

(a) A board of trustees of the firefighters' pension fund is hereby created, which board shall be known as the Sarasota Firefighters' Pension Board. The sole and exclusive administration of and responsibility for the proper operation of the retirement system and for making effective the provisions of this division are hereby vested in the board of trustees. The board of trustees shall consist of five (5) trustees as follows:

(1) Two (2) shall be appointed by the city commission and shall be legal residents of the city, unless otherwise prohibited by law. Each resident member shall serve as trustee for a period of two (2) years, unless sooner replaced by the city commission at whose pleasure he or she shall serve, and may succeed himself or herself as a trustee.

(2) Two (2) shall be full-time firefighters who are members of the plan and shall be elected by a majority of the firefighters who are members of the pension fund.

a. Provided that whenever the active firefighter membership falls below ten (10) members, an active firefighter member seat may be held by either an active firefighter or a retired member of the pension plan elected by the active firefighters and retired members of the pension plan. If there are no active or retired firefighters remaining in the plan or capable of serving, the remaining board members may elect an individual to serve in the active firefighter seat. Upon receipt of such person's name, the city commission shall, as a ministerial duty, appoint such person to the board of trustees.

b. Each member trustee shall serve as trustee for a period of two (2) years, unless he or she sooner leaves the employment of the city or county as a firefighter, or otherwise vacates the office as trustee, other than by retirement when paragraph a. above applies, whereupon his or her successor shall be chosen in the same manner as the trustee originally chosen to complete the term. Each firefighter trustee may succeed himself or herself in office.

(3) The fifth trustee shall be chosen by a majority of the previous four (4) trustees for a two-year term as provided for herein, and such person's name shall be submitted to the city commission. Upon receipt of the fifth person's name, the city commission shall, as a ministerial duty, appoint such person to the board of trustees as its fifth trustee. The fifth trustee shall have the same rights as each of the other four (4) trustees appointed or elected as herein provided and may succeed himself or herself in office.

The board of trustees shall meet at least quarterly each year. The board of trustees shall be a legal entity with, in addition to other powers and responsibilities contained herein and in the state statutes, the power to bring and defend lawsuits of every kind, nature and description.

(b) The trustees shall, by a majority vote, elect a chairman, vice-chairman and a secretary. A treasurer may be designated by rule of the board. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The secretary shall keep a record of all persons receiving retirement benefit payments under the provisions of this plan, in which shall be noted the time when the pension benefit is allowed and when the pension benefit shall cease to be paid. In this record, the secretary shall keep a list of all firefighters participating in the City of Sarasota Firefighters' Pension Fund, which shall show the name, address, date of employment of such firefighters and the date they cease to be employed. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by F.S. § 112. The books, records and accounts of the board of trustees shall at all times be open for inspection by the city or county commissions and the firefighters.

(c) The trustees shall have the authority to make all reasonable rules and regulations for the administration of their duties as such trustees in the administration of the pension fund.

(d) Each trustee shall be entitled to one vote on the board and three (3) trustees shall constitute a quorum of the board. Three (3) affirmative votes shall be necessary for any decision by the trustees at any meeting of the board. A trustee shall have the right to recuse himself or herself from voting as the result of a conflict of interest provided he or she states in writing the nature of the conflict.

(e) Where the administration of this division calls for the determination of any fact, including but without being limited to disability and dependency, the board shall have the authority to make such factual determination and for such purposes shall have the power to hold hearings, receive testimony under oath to be administered by the chairman of the board or a notary public, and issue subpoenas in the name of the board signed by the chairman, for the appearance of persons or the production of records before such board. Such subpoenas shall be effective throughout the county, may be served by any person authorized by law, and obedience thereto may be compelled by the order of the circuit court in and for the county.

Sec. 24-24. Powers and duties of board of trustees.

The duties and responsibilities of the board of trustees shall include, but not necessarily be limited by, the following:

(a) To construe the provisions of the system and determine all questions arising thereunder.

- (b) To determine all questions relating to eligibility and participation.
- (c) To determine and certify the amount of all retirement allowances or other benefits hereunder.
- (d) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system.
- (e) To distribute to members at regular intervals information concerning the system.
- (f) To receive and process all applications for participation and benefits.
- (g) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the fund.
- (h) To have performed actuarial studies and at least annual valuations, and make recommendations regarding any and all changes in the provisions of the fund. To have performed an evaluation, at least every three (3) years, by a professionally qualified independent consultant (as defined in F.S. ch. 175), of the performance of any existing professional money manager which shall include recommendations regarding the selection of money managers for the next investment term. Such recommendations shall be considered by the board of trustees at its next regularly scheduled meeting, which shall be advertised in the same manner as for any regular meeting of the board.
- (i) To perform such other duties as are specified in this division.

Sec. 24-25. Finances and fund management.

(a) Establishment and Operation of the Fund.

(1) The fund created herein shall have deposited into it all of the contributions and assets whatsoever attributable to the fund, including the assets of any prior firefighters' pension fund.

(2) The actual custody and supervision of the fund (and assets thereof) shall be vested in the board of trustees. Payment of benefits and disbursements from the fund shall be made by the disbursing agent but only upon written authorization from the board.

(3) All funds and securities of the firefighters' pension fund may be deposited by the board of trustees in a qualified public depository as defined in F.S. § 280.02(12), which depository with regard to such funds and securities shall conform to and be bound by all of the provisions of F. S. Chapter 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 Investment Advisors Act of 1940, or exempt from registration under the provisions of such act, 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 herein and by the board, in the investment of all fund assets.

(4) All funds and securities of the fund 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:

- a. Current amounts of accumulated contributions of members on both an individual and aggregate account basis, and
- b. Receipts and disbursements; and
- c. Benefit payments; and
- d. Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city or county; and

e. All interest, dividends and gains (or losses) whatsoever; and

f. Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.

(5) An independent audit shall be performed annually by a certified public accountant for the most recent fiscal year of the fund 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.

(6) The board of trustees shall have the following investment powers and authority:

a. The board of trustees shall be vested with full legal title to said fund, subject, however, and in any event to the authority and power of the city commission to amend or terminate the plan, 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 fund. 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.

b. 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 monies shall be limited to:

1. Annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the fund shall be entitled under the provisions of this plan and pay the initial and subsequent premium thereon.

2. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings, building and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

3. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.

4. Bonds issued by the State of Israel.

5. Stocks, mutual funds, bonds, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided that the corporation is listed on any one or more of the recognized national stock exchanges and, in the case of bonds only, holds a rating in one of the three (3) highest rating classifications of a major rating service. Notwithstanding any other provision of the law to the contrary, the board of trustees may invest up to ten (10) percent of the plan assets in foreign securities.

6. Real estate.

c. The board of trustees shall not invest more than five (5) percent of its assets in the common stock, capital stock or convertible bonds of any one (1) issuing company, nor shall the aggregate investment in any one issuing company exceed five (5) percent of the outstanding capital stock of that company; nor shall the aggregate of its investments under this paragraph at cost exceed seventy-five (75) percent of the assets of the fund.

- d. The board of trustees shall not invest more than ten (10) percent at cost of its assets in real estate, and shall only invest in real estate upon the affirmative vote of at least four (4) trustees.
- e. The board of trustees 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 fund.
- f. No person or entity 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 due to his or her or its own negligence, willful misconduct or lack of good faith.
- g. 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 trust fund.
- h. 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 power 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.
- i. 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.
- j. 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 division, can reasonably be taken or performed only after receipt by it from a member, the city, the county, 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.
- k. 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. Overpayment shall be charged against payments next succeeding the correction or collected in another manner if prudent. Underpayments shall be made up from the trust fund.
- l. The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits herein provided for.
- m. 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.
- n. 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 of trustees.

Sec. 24-26. Legal counsel and other professionals.

The board of trustees may employ independent legal counsel at the fund's expense, and he or she shall give advice to said board of trustees in all matters pertaining to their duties in the administration of said fund whenever requested, and he or she shall represent and defend said board as its attorney in all suits and actions at law or in equity that may

be brought against it and bring all suits and actions in its behalf that may be required or determined upon by said board. The board of trustees shall engage such actuarial, accounting, legal, and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by the board of trustees and all other expenses of the board necessary for the operation of the retirement system shall be paid from the fund at such rates and in such amounts as the board of trustees shall agree. The board of trustees may also employ, at the fund's expense such other professional, technical, or other advisors as the board deems necessary. If the board chooses to use the city's legal counsel or actuary, or chooses to use any of the city's other professional, technical, or other advisers, it must do so only under terms and conditions acceptable to the board.

Sec. 24-27. Warrants and drafts; authorization for payment.

Warrants and drafts and authorization for payment shall be signed by two trustees as designated by the board and shall be paid by the depository to which they are directed from the assets of the fund when duly presented for payment; provided, that no pension relief or benefits shall be paid to any person out of the fund unless the same be approved by a majority of the board.

Sec. 24-28. Membership.

(a) Conditions of eligibility. All firefighters shall be members of this fund, except in the event of consolidation, as a condition of employment, however, the fire chief shall have the option to participate or not in this plan.

(b) Membership. Each member shall complete a form prescribed by the board providing the following information:

- (1) Acceptance of the terms and conditions of the retirement system; and
- (2) Designation of a beneficiary or beneficiaries.

(c) Change in designation of beneficiary. A member may from time to time change his or her designated beneficiary by written notice to the board upon forms provided by the board. Upon such change the rights of all previously designated beneficiaries to receive any benefits under the system shall cease.

Sec. 24-29. Disability and death.

(a) Disability Not In Line of Duty.

Any firefighter who shall become totally and permanently disabled to the extent that he or she is unable to render useful and efficient service as a firefighter, which disability is not directly caused by the performance of his or her duty as a firefighter, shall, upon establishing to the satisfaction of the firefighters' pension board that he or she is so disabled, and that such disability was not occasioned by a condition disqualifying such benefits as provided for herein, receive and be paid as a monthly pension a sum equal to two and one-half (2.5) percent of his or her average final compensation, multiplied by his or her years of credited service, and the fund shall pay in addition thereto a separate monthly payment equal to five (5) percent of his or her last monthly salary for each of his or her issue. In no event shall the monthly pension exceed the average final compensation of the member.

- (1) The benefit of any firefighter who retires pursuant to this section on or after the effective date of this ordinance (03-4474), shall be payable for the life of the retired firefighter and the fund shall pay in addition thereto a separate monthly payment equal to five (5) percent of his or her last monthly salary for each of his or her issue. If the retired firefighter dies before he or she has received retirement benefits for a period of 10 years, the same monthly benefit will be paid to the beneficiary as designated by the retired firefighter for the balance of such 10 year period and the benefit paid to the issue, if any, shall cease.

In the event of the death of such firefighter without a beneficiary, an equivalent actuarial value of the ten (10) year annuity reduced by the benefit payments already made shall be paid to the member's estate in a lump sum payment.

Firefighters who retire under this paragraph may elect an optional form of benefit payment as provided in Section 24-48 (a), (b) or (c) in lieu of the 10 year certain benefit and death benefits will be as provided therein.

(2) Upon the death of a member who retired pursuant to this subsection prior to the effective date of this ordinance (03-4474), his or her surviving spouse shall receive and be paid for the remainder of his or her natural life a sum equal to two-thirds (2/3) of the amount which the decedent was receiving calculated upon the length of his or her credited service exclusive of any payments on account of issue, and the fund shall continue to pay a separate monthly payment equal to five (5) percent of the deceased member's last monthly salary for each of the deceased member's issue for which the deceased member had been receiving a payment. If the two-thirds (2/3) surviving spouse's benefit terminates and issue as defined herein are in being, then such spouse's benefit shall be divided equally among and paid to such issue and the five (5) percent benefit shall cease.

In the event of the death of a member without a surviving spouse, or issue, or dependent parent, in which case no other benefits will be payable under the plan, a lump sum payment equal to the amount of member contributions under the plan reduced by any benefit payments already made will be paid to the member's designated beneficiary or, if none, then to the member's estate.

(b) Death in Performance of Duties.

After April 7, 2003, any firefighter who shall lose his or her life as a direct result of the performance of his or her duties as a firefighter, and such loss of life was not occasioned by a condition disqualifying such benefits as provided herein, the benefit will be calculated as if the deceased member had retired pursuant to the provisions of Sec. 24-30, herein with a three (3.0) percent multiplier and at least twenty-five (25) years of credited service assumed, and then died. In no event shall the monthly pension exceed the average final compensation of the member.

(1) For any firefighter who dies in the line of duty on or after the effective date of this ordinance (03-4474) the benefit will be payable to his or her designated beneficiary for a 10 year period. If the designated beneficiary is the spouse or issue of a firefighter who was not eligible for normal retirement, then such beneficiary may elect the optional form of benefit payment as provided in Section 24-48(a)(1), in lieu of the 10 year certain benefit. However, if the deceased firefighter was eligible for normal retirement at the time of death, then the designated beneficiary may elect any optional form of benefit payment as provided in Section 24-48 (a) or (b), in lieu of the 10 year certain option.

In the event of the death of a firefighter without a beneficiary on or after the effective date of this ordinance (03-4474), an equivalent actuarial value of the ten (10) year annuity shall be paid to the member's estate in a lump sum payment.

(2) The surviving spouse of a firefighter who died in the line of duty prior to the effective date of this ordinance (03-4474) shall be paid for the remainder of his or her life a sum equal to two-thirds (2/3) of the amount the firefighter would have been entitled to receive if the firefighter had retired pursuant to Section 24-30 with at least 25 years of service. In addition, the fund shall pay a separate monthly payment equal to five (5) percent of the deceased member's last monthly salary for each of the deceased member's issue. If the two-thirds (2/3) surviving spouse's benefit terminates and issue as defined herein are in being, then such spouse's benefit shall be divided equally among and paid to such issue and the five (5) percent benefit shall cease.

The monthly benefit for a surviving spouse of a firefighter who died in the line of duty prior to April 7, 2003 shall, at all times, be equal to at least one-third (1/3) of the base salary for a journeyman fire medic top step, as such salary may be changed from time to time. Should the surviving spouse's pension be less than this minimum, then the pension shall be increased to the minimum. If the surviving spouse's benefit terminates and issue as defined herein survive, then such spouse's benefit shall be divided equally among and paid to such issue and the five (5) percent benefit shall cease. Any surviving spouse of a firefighter, who died in the line of duty prior to April 7, 2003, shall be entitled to such multiplier as was in effect on the date the firefighter died.

In the event of the death of a member without a surviving spouse, or issue, or dependent parent, in which case no other benefits will be payable under the plan, a lump-sum payment equal to the amount of member

contributions made under the plan will be paid to the member's designated beneficiary or, if none, then to the member's estate.

(c) Disability in Line of Duty.

Any firefighter who on or after April 7, 2003 becomes totally and permanently disabled to the extent that he or she is unable to render useful and efficient service as a firefighter, which disability is directly caused by the performance of his or her duty as a firefighter, shall, upon establishing to the satisfaction of the board that he or she is so disabled and that such disability was not occasioned by a condition disqualifying such benefits as provided for herein, be entitled to the same monthly pension as if he or she had retired pursuant to the provisions of Sec. 24-30 with a three (3.0) percent multiplier; provided, that if he or she shall have served less than twenty-five (25) years of credited service, his or her monthly pension shall be based upon an assumed twenty-five (25) years of credited service. However, in no event shall the monthly pension exceed the average final compensation of the member.

Any condition or impairment of health of a firefighter caused by tuberculosis, hypertension or heart disease resulting in death or total disability shall be presumed to have been suffered in line of duty unless the contrary is shown by competent evidence; provided, that such firefighter shall have successfully passed a physical examination, including electrocardiogram, on entering into such service, or by a physician designated by the firefighters' pension board at the time of his or her employment, which examination fails to reveal any evidence of such condition.

Any condition or impairment of health of a firefighter caused by hepatitis or meningococcal meningitis, that requires medical treatment and results in death, total or partial disability shall be presumed to have been suffered in line of duty unless the contrary is shown by competent evidence; provided, that the firefighter provides a written affidavit as provided in Section 92.50, Florida Statutes, verifying by written declaration that to the best of his or her knowledge, that in the case of meningococcal meningitis, in the ten (10) days immediately preceding diagnosis he or she was not exposed, outside the scope of his or her employment, to any person known to have meningococcal meningitis or known to be an asymptomatic carrier of the disease.

A firefighter must, prior to diagnosis, have undergone standard, medically acceptable tests for evidence of hepatitis, for which the presumption is sought, or evidence of medical conditions derived there from, which tests fail to indicate the presence of infection, or, in the case of hepatitis infection, shall have banked serum for future testing, which future tests fail to reveal evidence of infection. A firefighter may be required to undergo a physical examination, prior to participation in the plan that tests for and fails to reveal any evidence of hepatitis.

(1) The benefit of any firefighter who retires and receives a benefit pursuant to this subsection on or after the effective date of this ordinance (03-4474), shall be payable for the life of the retired firefighter. In the event the retired firefighter dies before he or she has received retirement benefits for a period of 10 years, the same monthly benefit will be paid to the beneficiary as designated by the retired firefighter for the balance of such 10 year period. In the event of the death of a member without a beneficiary, an equivalent actuarial value of the ten (10) year annuity reduced by the benefit payments already made shall be paid to the member's estate in a lump sum payment.

Firefighters retired under this paragraph may elect an optional form of benefit payment as provided in Section 24-48(a), (b) or (c) in lieu of the 10 year certain benefit and death benefits will be as provided therein.

(2) The surviving spouse of a firefighter who receives a benefit pursuant to this subsection prior to the effective date of this ordinance (03-4474) shall be paid for the remainder of his or her life a sum equal to two-thirds (2/3) of the amount the retired firefighter was receiving at the time of death. In addition, the fund shall pay a separate monthly payment equal to five (5) percent of the deceased member's last monthly salary for each of the deceased member's issue. If the two-thirds (2/3) surviving spouse's benefit terminates and issue as defined herein are in being, then such spouse's benefit shall be divided equally among and paid to such issue and the five (5) percent benefit shall cease.

The monthly pension paid hereunder for firefighters who receive a benefit pursuant to this subsection, prior to April 7, 2003, shall, at all times, be equal to at least fifty percent (50%) of the base salary for a journeyman fire medic top step, as such salary may be changed from time to time. Should the benefit pursuant to this paragraph

be less than this minimum, then the pension shall be increased to the minimum. Any firefighter who became disabled prior to April 7, 2003 shall be entitled to such multiplier as was in effect on the date the firefighter became disabled.

Upon the death of any former firefighter drawing or entitled to a pension under this subsection prior to April 7, 2003, his or her surviving spouse shall, at all times, be equal to at least one-third of the base salary for a journeyman fire medic top step, as such salary may be changed from time to time. Should the surviving spouse's pension be less than this minimum, then the pension shall be increased to the minimum.

In the event of the death of a former firefighter who was drawing a pension under this subsection prior to the effective date of this ordinance (03-4474) without a surviving spouse, or issue, or dependent parent, in which case no other benefits will be payable under the plan, a lump sum payment equal to the amount of member contributions made under the plan reduced by any benefit payments already made will be paid to the member's designated beneficiary or, if none, then to the member's estate.

(d) Death Not in Performance of Duties.

If any firefighter shall die on or after the effective date of this ordinance (03-4474) from causes not directly caused by the performance of his or her duty as a firefighter, and such death was not occasioned as provided for in subsection 24-29(e) herein, the benefit shall be a sum equal to two and one-half (2.5) percent of the firefighter's average final compensation, multiplied by his or her credited service, and shall be payable to the beneficiary for a ten (10) year period. Provided, however, that in the event the deceased member was, at the time of his or her death, eligible for normal retirement as provided in Section 24-30(a), the multiplier to be utilized in calculating the benefit shall be three (3.0) percent. In no event shall the monthly pension exceed the average final compensation of the member. If the designated beneficiary is the spouse or issue of a firefighter who was not eligible for normal retirement, then such beneficiary may elect the optional form of benefit payment as provided in Section 24-48(a)(1), in lieu of the 10 year certain benefit. However, if the deceased firefighter was eligible for normal retirement at the time of death, then the designated beneficiary may elect any optional form of benefit payment as provided in Section 24-48 (a) or (b), in lieu of the 10 year certain benefit.

In the event of the death of a firefighter without a beneficiary, an equivalent actuarial value of the ten (10) year annuity will be paid in a lump sum payment to the member's estate.

(e) Conditions disqualifying disability benefits. Each firefighter who is claiming disability or death benefits under this section shall establish, to the satisfaction of the board, that such disability or death was not occasioned primarily by:

- (1) Excessive or habitual use of any drugs or intoxicants.
- (2) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections.
- (3) Injury or disease sustained while committing a crime.
- (4) Injury or disease sustained while serving in any branch of the armed forces.
- (5) Injury or disease sustained after his or her employment as a firefighter with the city and county shall have terminated.

(f) Physical examination requirement. A firefighter shall not become eligible for disability benefits until and unless he or she undergoes medical examinations deemed necessary by the board by a qualified physician(s), who shall be selected by the board for that purpose. The board may also require examinations by other health professionals.

(g) Disability payments. The monthly benefit to which a firefighter is entitled in the event of his or her disability retirement shall be payable on the last day of the first month after the board of trustees grants the firefighter's disability benefit application and shall be effective as of the day that the firefighter is or was no longer on active pay

status due to the claimed disability or the date on which the firefighter submitted his or her application for disability benefits to the pension fund, whichever is later. The last payment shall be:

- (1) If the retiree recovers from the disability prior to his or her normal retirement date, the payment due next preceding the date of such recovery; or
- (2) If the retiree dies without recovering from his or her disability, the payment due next preceding his or her death, subject to payment of benefits as provided for herein.

Sec. 24-30. Normal retirement; early retirement; death benefits.

(a) Normal Retirement. On or after April 7, 2003, any firefighter may retire after ten (10) years of credited service therein and after having attained the age of fifty (50) or following the completion of twenty-five (25) years of credited service and shall receive and be paid a monthly pension equal to three (3.0) percent of his or her average final compensation, multiplied by his or her number of years of credited service; however, in no event shall the monthly pension exceed the average final compensation of the member. Any firefighter, who retired prior to April 7, 2003, and the beneficiary of such firefighter, shall be entitled to such multiplier as was in effect on the date of his or her retirement. In order to receive a monthly retirement pension, a member shall not be employed as a "firefighter" as such term is defined herein, by either the city or the county.

- (1) The benefit of any firefighter who retires pursuant to this section after the effective date of this ordinance (03-4474), shall be payable for the life of the retired firefighter. In the event the retired firefighter dies before he or she has received retirement benefits for a period of 10 years, the same monthly benefit will be paid to the beneficiary as designated by the retired firefighter for the balance of such 10 year period. In the event of the death of a member without a beneficiary, an equivalent actuarial value of the ten (10) year annuity reduced by the benefit payments already made shall be paid to the member's estate in a lump sum payment.

Firefighters retired under this section may elect in lieu of the ten (10) year certain benefit any optional form of benefit payment as provided in Section 24-48 and death benefits will be as provided therein.

- (2) Any firefighter, who retired prior to April 7, 2003, and the beneficiaries of such firefighter, shall be entitled to such multiplier as was in effect on the date of his or her retirement. Upon the death of a firefighter retired under this paragraph, his or her beneficiary shall be entitled to the pension benefit selected by the member. In the event of the death of a member without a beneficiary, in which case no other benefits will be payable under the plan, a lump sum payment equal to the amount of member contributions made under the plan reduced by any benefit payments already made will be paid to the member's estate.

For firefighters who retired prior to April 7, 2003 that had completed 25 years of service and reached the age requirement for normal retirement as defined at the time of his or her retirement, the pension paid hereunder shall at all times be equal to at least 50% of the base salary for a journeyman fire medic top step, as such salary may be changed from time to time. Should a retiree's pension be less than this minimum, then the pension shall be increased to the minimum. Further, the pension paid to the surviving spouse of such retired firefighter shall, at all times, be equal to at least one-third (1/3) of the base salary for a journeyman fire medic top step, as such salary may be changed from time to time. Should the surviving spouse's pension be less than this minimum, then the pension shall be increased to the minimum.

(b) Early Retirement.

Any firefighter who elected early retirement prior to April 7, 2003, shall be entitled to such multiplier as was in effect on the date of his or her retirement. Upon the death of a firefighter retired under this paragraph, his or her beneficiary shall be entitled to the pension benefit selected by the member. In the event of the death of a member without a beneficiary, in which case no other benefits will be payable under the plan, a lump sum payment equal to the amount of member contributions made under the plan reduced by any benefit payments already made will be paid to the member's estate.

In order to receive a monthly retirement pension, a member, who elected early retirement, can be employed as a "firefighter" as such term is defined herein, by neither the city nor the county.

Sec. 24-31. Special provisions and limitations, federal.

(a) Maximum pension. Notwithstanding any other provision of this plan to the contrary, a form of retirement income payable from this plan after September 30, 1985, shall satisfy the following conditions:

(1) Basic limitation: Subject to the adjustments hereinafter set forth, the maximum amount of annual retirement income payable with respect to a member under this plan shall not exceed any limitation required pursuant to section 415(b)(1)(A) of the Internal Revenue Code.

For purposes of applying the above limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by Treasury Regulations, so that such benefits are the actuarial equivalent of a straight life annuity. For purposes of this section, the following benefits shall not be taken into account:

- a. Any ancillary benefit which is not directly related to retirement income benefits;
- b. Any other benefit not required under § 415(b)(2) of the Code and regulations thereunder to be taken into account for purposes of the limitation of § 415(b)(1) of the Code.

(2) Participation in other defined benefit plan: the limitation of this section with respect to any member who at any time has been a member in any other defined benefit plan (as defined in § 414(j) of the Code) maintained by the city or county shall apply as if the total benefits payable under all defined benefit plans in which the member has been a member were payable from one (1) plan.

(3) Adjustments in limitations:

- a. The adjustments prescribed by this section shall not be applicable to disability benefits and pre-retirement death benefits provided in this chapter.
- b. In the event the member's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the limitation set forth in subsection (a), paragraph (1) hereof, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). This adjustment shall be made in accordance with regulations promulgated by the secretary of the treasury.
- c. In the event the member's benefit is based on at least fifteen (15) years of credited service, the adjustments in subsections a. and b. herein shall not apply.
- d. The adjustments prescribed by this section shall not be applicable to disability benefits and pre-retirement death benefits provided in this chapter.
- e. In the event the member's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the limitation set forth in subsection (a), paragraph (1) hereof, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). This adjustment shall be made using an assumed interest rate of five (5) percent and shall be made in accordance with regulations promulgated by the Secretary of the Treasury.

(4) Less than ten years of service: The maximum retirement benefits payable under this section to any member who has completed less than ten (10) years of credited service with the city and county shall be the amount determined under subsection (a), paragraph (1) hereof multiplied by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten (10). The adjustments prescribed by this section shall not be applicable to disability benefits and pre-retirement death benefits provided in this chapter.

(5) \$10,000 limit: Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the limitations set forth in this section if the benefits payable with respect to such member under this plan and under all other qualified defined benefit pension plans to which the city or

county contributes do not exceed ten thousand dollars (\$10,000) for the applicable plan year and for any prior plan year and the city or county has not at any time maintained a qualified defined contribution plan in which the member participated.

(6) Reduction of benefits. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which he or she participated, such reduction to be made first with respect to the plan in which he or she most recently accrued benefits and thereafter in such priority as shall be determined by the trustees and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which he or she most recently accrued benefits and thereafter in such priority as shall be established by the trustees and the plan administrator for such other provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the trustees and the plan administrator of all other plans covering such member.

(7) Cost-of-living adjustments. The limitations as stated in subsection (a), paragraphs (1), (2), (3) and (6) hereof shall be adjusted to the time that payment of a benefit begins in accordance with any cost-of-living adjustments prescribed by the Secretary of the Treasury pursuant to Sec. 415(d) of the Code.

(8) Additional limitations on pension benefits. Notwithstanding anything herein to the contrary:

a. 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 one hundred (100) percent of his or her 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.

b. 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 67, title 10 U.S. Code.

(b) Distribution of Benefits. Notwithstanding any other provision of this plan to the contrary, a form of retirement income payable from this plan after September 30, 1985, shall satisfy the following conditions:

If the retirement income is payable before the member's death,

(1) It shall either be distributed or commence to the member not later than the April 1 of the calendar year following the later of:

a. The calendar year in which the member attains age seventy and one-half (70 1/2); or

b. The calendar year in which he or she retires.

(2) The distribution shall commence not later than the calendar year defined in subparagraph (1)a above and shall be paid:

a. Over the life of the member or over the lifetimes of the member and his or her spouse, issue or dependent; or

b. Over the period extending not beyond the life expectancy of the member and his or her spouse, issue or dependent.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the member dies before his or her entire interest in the plan has been distributed, the remaining portion of such interest in the plan shall be distributed no less rapidly than under the form of distribution in effect at the time of the member's death.

(3) If the member's death occurs before the distribution of his or her interest in the plan has commenced, his or her entire interest in the plan shall be distributed within five (5) years of his or her death, unless it is to be distributed in accordance with the following rules:

- a. The member's remaining interest in the plan is payable to his or her spouse, issue or dependent;
- b. The remaining interest is to be distributed over the life of the spouse, issue or dependent or over a period not extending beyond the life expectancy of the spouse, issue or dependent; and
- c. Such distribution begins within one year of the member's death unless the member's spouse shall receive the remaining interest, in which case the distribution need not begin before the date on which the member would have attained age seventy and one-half (70 1/2) and if the spouse dies before the distribution to the spouse begins, this section shall be applied as if the surviving spouse, issue or dependent were the plan member.

Section 24-32. Benefits for dependent parents.

If a deceased member who retired prior to the effective date of this ordinance (03-4474), shall leave no spouse surviving him or her, nor any issue, but shall leave surviving him or her a parent who was dependent upon the member at the time of his or her death for eighty (80) percent or more of his or her support, his or her parent shall receive the same pension to which a surviving spouse would have been entitled, unless and until the parent becomes self-supporting, or dies. If the decedent is survived by both parents with each being dependent upon the member at the time of his or her death for eighty (80) percent or more of the support of each of them, the benefit shall be shared equally by each parent and upon the death of the first parent to die, the pension benefits being paid to the deceased parent shall be paid over to the surviving parent during his or her lifetime until he or she becomes self-supporting or remarries.

Sec. 24-33. When benefits for issue cease.

Any benefits paid under the provisions of this division for any issue shall cease when and if such issue dies or reaches the age of eighteen (18) years or reaches the age of twenty-three (23) years if engaged in a full-time educational curriculum.

Sec. 24-34. Reexaminations; recall to active duty.

Any firefighter who shall have retired on pension due to permanent disability shall be subject to the call of the firefighters' pension board for reexamination and if found able to render useful and efficient service as a firefighter, the board shall have the authority to recommend to the city or county the return of the member to the department, and should the member be so returned shall enjoy the same rights that he or she had at the time he or she was placed upon permanent disability pension. In the event the member is ordered to return and shall refuse to comply with the order within thirty (30) days from the issuance thereof, he or she shall forfeit his or her right to his or her pension.

Sec. 24-35. Computation of continuous credited service.

If any firefighter shall be laid off due to a reduction in the force of the fire and rescue service or placed on pension under the terms and provisions of this division, except for injury as in this section hereinafter mentioned, and then returned to service in the fire and rescue service, only the period of time during which the member was laid off, or so placed upon pension, shall be deducted in computing the credited service referred to in this division. Any firefighter who shall be placed on pension under the terms and provisions of this division due to an in-line-of-duty disability, upon returning to service as a firefighter shall be given credit for the time he or she was so off on pension in computing this credited service under the terms and provisions of this division. Any firefighter who shall be retired due to a not-in-line-of-duty disability, upon returning to service as a firefighter shall receive credit only for the service actually rendered in the department as a firefighter on computing his or her credited service under the terms and provisions of this division.

Sec. 24-36. Non-assignability.

The pensions, annuities, or any other benefits accruing or accrued to any person under the provisions of this division and the accumulated contributions and the cash, funds, securities and assets in the fund created under this division shall not be subject to execution or attachment or to legal process. No pension whatsoever as herein provided shall be assignable nor shall such pension be subject to attachment, garnishment, execution, or to any other legal process.

Sec. 24-37. Direct transfers of eligible rollover distributions.

Eligible Rollover Distributions. If the recipient of any eligible rollover distribution, as that term is defined in section 402(f)(2)(A) and 457(e)(17) of the Internal Revenue Code, including any lump sum payments of retirement benefits, lump sum refunds of member contributions, and lump sum returns of member contributions which were picked up by the city or county (pre or post tax), elects to have such distribution paid directly to an eligible qualified plan (including 403(b) annuities, Section 457 plans, 401(a) retirement plans, or individual retirement accounts (IRAs)), retirement plan or individual retirement account (IRA), and specifies the eligible retirement plan or IRA to which such distribution is to be paid (in such form and at such time as the board of trustees may prescribe), then the distribution shall be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan or IRA.

Sec. 24-38. Lay-off, consolidation and termination benefits.

(a) Lay-Off. If any firefighter shall be laid off due to a reduction in the force of such fire and rescue service, and shall not then be entitled to pension benefits, he or she shall have the option to withdraw all of the amount deducted from his or her salary and paid into the firefighters' pension fund with regular interest or to leave such amount in the fund. Such option may be exercised at any time unless such member has been reemployed and again becomes a firefighter. If such option of withdrawal is exercised, and such individual is subsequently reemployed in the fire and rescue service, he or she shall not be credited with credited service time for the period covered by the salary deductions previously withdrawn by him or her, anything in section 24-35 to the contrary notwithstanding.

(b) Consolidation. If any firefighter shall cease to be employed by the city or county due to consolidation or integration of the fire and rescue service with any other agency of the county or state, he or she shall, upon application, have the following options:

- (1) A lump sum equal to the full amount that has been deducted from his or her salary under section 24-22 of the Code, with regular interest;
- (2) To be retained in the plan with no change in his or her pension plan status, with the employer's share of cost for such employee being paid to the pension plan by the agency assuming control;
- (3) To retain his or her attained pension credit for salary and length of service as of the date of consolidation and receive an annuity deferred as provided in subsection (c)(1)b. hereof; or
- (4) To elect any of the other options or provisions which may be available to him or her under state or local laws as of the date of consolidation.

(c) Termination. If any firefighter voluntarily terminates employment, or if he or she is involuntarily terminated, the following benefits shall be payable:

- (1) After April 7, 2003, if he or she has at least ten (10) years of credited service at the time of termination and has not attained age fifty (50), he or she shall have a vested right to receive a benefit and may elect to either:
 - a. Receive the full amount that has been deducted from his or her salary under section 24-22 with regular interest. This shall be a complete discharge of all benefits to him or her under the section and shall operate to eliminate any further interest of such member or anyone claiming under him or her to benefits under this section, or

b. Receive a deferred monthly pension commencing at attainment of age fifty (50) or later equal to the applicable pension percentage as provided for in the following table, multiplied by his or her average final compensation at the time of the termination, multiplied by his or her years of credited service at the time of termination.

Benefit Commencement Age	Pension Percentage
50	2.50
51	2.60
52	2.70
53	2.80
54	2.90
55	3.00

1. The benefit of any firefighter who terminates employment pursuant to this subparagraph on or after the effective date of this ordinance (03-4474) who has not elected to withdraw contributions under subsection (c), subparagraph (2)a above, shall be payable for the life of the terminated firefighter after the commencement of benefits. In the event the terminated firefighter dies before he or she has received retirement benefits for a period of 10 years, the same monthly benefit will be paid to the beneficiary as designated by the terminated firefighter for the balance of such 10 year period. If the terminated firefighter dies prior to commencement of such benefits, his or her beneficiary shall be entitled to the same pension, commencing on the month the decedent would have turned fifty (50), payable for ten (10) years. In the event of the death of a member without a beneficiary, an equivalent actuarial value of the ten (10) year annuity reduced by the benefit payments already made shall be paid to the member's estate in a lump sum payment.

Firefighters terminated under this section may elect an optional form of benefit payment as provided in Section 24-48(a)(1) in lieu of the 10 year certain benefit with such benefit commencing at the age selected by the terminated firefighter as provided above. Death benefits will be as provided therein beginning the month the terminated firefighter would have turned fifty (50).

2. Upon the death of such member who terminated prior to the effective date of this ordinance (03-4474) and has not elected to withdraw contributions under subsection (c), subparagraph (1) above, his or her surviving spouse, if any, shall be entitled to a pension, commencing on the month the decedent would have turned age fifty (50), equal to two-thirds of the amount which the decedent was then receiving or, if not yet receiving, was entitled to receive at age fifty (50), and the fund shall pay, in addition thereto, a monthly payment equal to five (5) percent of his or her last monthly salary for each of the decedent's issue. If the surviving spouse's benefit terminates or there is no surviving spouse and issue as defined herein are in being, then such spouse's benefit shall be divided equally among and paid to such issue and the five (5) percent benefit shall cease.

Any firefighter, who terminated employment with at least ten (10) years of credited service prior to April 7, 2003, shall be entitled to such multiplier and benefits as was in effect on the date of termination.

Sec. 24-39. Acceptance of division; return of contributions in case of separation; re-employment after separation.

Each and every firefighter, employed after this section has become a law, shall conclusively be presumed to have accepted the terms of this division. Any firefighter who voluntarily separates from the service shall be entitled to benefits as outlined in section 24-38 herein; provided, however, that any firefighter who, upon voluntary separation from the fire and rescue service of the city or county, elects to permit his or her pension fund contributions to remain on deposit until he or she may be re-employed by the city or county fire and rescue service shall, upon his or her re-employment, have all of his or her pension rights relate back to his or her original employment date, excluding only that portion of time such employee was not in employment.

Sec. 24-40. Current addresses.

It shall be the duty of each and every person on pension under the terms and provisions of this division to file with the firefighters' pension board the address of his or her residence and to immediately notify the board in writing of any change in residence.

Sec. 24-41. Credited service for military service.

(a) Military service after employment. The years or fractional parts of years that a firefighter serves in military service of the Armed Forces of the United States, voluntarily or involuntarily upon an authorized leave of absence, after current employment with the fire and rescue service shall be added to his or her years of credited service provided that:

The firefighter must return to his or her employment as a firefighter with the city or county within one (1) year of his or her military discharge.

The maximum credit for military service under this subsection shall be five (5) years; irrespective of how many times a firefighter is employed by the city or county fire and rescue service.

(b) Military service prior to employment. The years or fractional parts of years that a firefighter serves or has served in the military service of the Armed Forces of the United States, voluntarily or involuntarily, prior to first and initial employment with the city fire and rescue service shall be added to his or her years of credited service provided that:

(1) The firefighter contributes to the fund the amount actuarially determined for the years or fractional parts of years for which he or she is requesting credit such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.

(2) The request shall be made only once and made by the firefighter on or before the expiration of six (6) months from the date of his or her employment with the city fire and rescue service.

(3) Payment by the firefighter of the required amount shall be made within six (6) months of his or her request for credit and shall be made in one (1) lump sum payment upon receipt of which credited service shall be given.

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

Sec. 24-42. Disbursement of pension benefits for issue.

Whenever a payment of a pension benefit is to be made on account of or for the use of any issue of a firefighter or deceased firefighter, such payment shall be made in the following manner:

(a) To the firefighter who is the parent of such issue if such firefighter is living and is legally competent and such issue is living with him or her; or

(b) To the surviving parent of such issue if the surviving parent is legally competent and such issue is living with such surviving parent; or

(c) If such pension benefits for issue are not payable under subsection (a) or (b) above, then the firefighters' pension board in its sole discretion may direct such benefits to be paid, to be used for the benefit of such issue, to whichever of the following persons or institutions will in its opinion best serve to use and apply such benefits for such use; that is, to the legal guardian of such issue, to any person in whose home or any institution in which such issue may be living, directly to such issue or by itself applying such benefits in the manner which it determines to be in the best interest of such issue.

Sec. 24-43. Cost-of living adjustments.

(a) Effective February 1, 1999, the pension being paid to any firefighter or any survivor of a deceased firefighter pensioner that commenced prior to the immediately preceding January shall be increased annually as of the end of each February by three and one-half (3.5) percent, except that the increase to those pensions which first commenced during the preceding calendar year shall be prorated according to the number of months for which the pension was

paid. However, a firefighter who is receiving or is eligible to receive a pension as a result of service which terminated before October 1, 1998, or a survivor beneficiary of a deceased firefighter whose service terminated before October 1, 1998, may, prior to February 1, 1999, make an irrevocable election to continue to receive cost of living adjustments based on the change in the consumer price index, but not to exceed four (4) percent instead of an annual increase of three and one-half (3.5) percent. However, the pension shall not be reduced below the amount which was initially being paid.

(b) Available Funds, definitions and allocation.

(1) In July or August of each year, the trustees, with the advice of their actuary, shall determine the actuarial gain for the prior fiscal year which shall be added to the amount of money received by the city from the state during the current fiscal year pursuant to F.S. § 175.121. The sum of these amounts shall be known as the "available funds." Should the employer contribution for each fiscal year commencing October 1, 2000, and thereafter exceed zero (0) percent of payroll, then the available funds for each year shall be reduced by the amount necessary for the employer's contribution rate to be zero, but shall not be reduced to an amount less than the amount of money received by the city from the state during the current fiscal year pursuant to F.S. § 175.121. Any available funds not distributed according to the provisions of this section shall be added to the fund balance.

(2) Firefighters or the surviving spouse of firefighters, who retired or terminated employment prior to April 7, 2003, shall be eligible to receive a distribution equal to 0.5405 percent (1/185th) of the available funds on the thirtieth (30) day of September of each year.

(3) Active members and those members who retire or are terminated after April 7, 2003 shall not be eligible to receive a distribution of the share of the available funds after April 7, 2003. The amount of available funds allocated to active members, prior to April 7, 2003, shall have been credited to individual accounts for each active member, known as the "share accounts". The share accounts for allocations that were made to active firefighters prior to April 7, 2003 shall be annually credited with interest at a rate equal to the pension fund's actuarially assumed rate of investment return, and shall be payable to the active members within ninety (90) days after retirement.

Sec. 24-44. Claims procedure before the board.

(a) Claims for benefits. If any member of the system claims a benefit under the plan; or is dissatisfied with the amount of pension he or she is receiving:

(1) He or she may, in writing on forms adopted by the board, apply to the board for a benefit or a change in benefit amount:

a. A claim for a disability benefit shall be made in accordance with disability application procedures established by the board and shall include a list of the names and addresses of all health care providers who have diagnosed, treated or evaluated the applicant, a written medical release authorization, a waiver of confidentiality of medical records, and such other forms and information as may be required by the board. A claim for other forms of benefits or for a change in benefits shall include such information as may be required by the board.

b. The board shall initially consider each claim informally based upon the completed application forms, the reports and records submitted to and obtained by the board, the board's and city's files and business records, and any presentation or statement made by the applicant in support of his or her application.

c. The board shall consider the claim and grant or deny the claim, in whole or in part, within sixty (60) days from the board's receipt of all reports and records which pertain to the claim; provided the board may extend the time for acting upon the claim by an additional forty-five (45) days if it determines that further information or consideration is necessary or the board may extend the time upon the written request of the claimant.

d. In the event that the board votes to deny the claim in whole or in part, the board shall, within sixty (60) days thereafter, enter a written order. Such written order shall include:

1. The specific reasons for the denial, including specific references to pertinent provisions of the retirement system on which such denial is based; and
2. An explanation of the review procedure open to the member, as follows.

(b) Review procedure. A member whose claim for benefits or for a change in benefits is denied, in whole or in part, may request a review of the member's claim in the following manner.

(1) During the pension office's regular business hours and upon twenty-four (24) hours' advance notice, the member and/or his or her duly authorized representative may review any pertinent documents including plan provisions, minutes of the meeting of the board in which the claim was initially denied, the board's file on the member, and any other documents material to the claim;

(2) The member and/or his or her duly authorized representative shall submit a request for review in writing to the board and request a hearing. Such request for review must be filed with the board within ninety (90) days after the mailing of the order of the board provided in section 24-44(a)(2)d., above, to the address shown on the member's application. The board shall schedule a full formal hearing of the member's claim within ninety (90) days after receiving the request for review, with notice of the hearing sent in writing to the member. The member and/or his or her duly authorized representative may then appear at such scheduled hearing to present the member's case. Special counsel, who may be retained by the board at its discretion, may also appear at such scheduled hearing to present any facts or arguments that may support denial of the member's claim. The board shall consider the facts and arguments presented at the hearing and shall, within seventy-five (75) days after the close of the hearing, make a final ruling in writing on the member's claim. The written decision shall be mailed to the member, shall include the reasons for such decision and, such decision shall be filed.

(3) Formal review hearing procedure.

a. The chairman shall preside over the hearing and shall rule on all evidentiary and other legal questions that arise during the hearing.

b. The claimant and the board, or special counsel if retained shall provide each other with the names and addresses of witnesses expected to be called to testify at the hearing, as well as copies of exhibits that are intended to be introduced, at least fifteen (15) days prior to the hearing, unless another time is agreed to in writing by the board's attorney or special counsel if retained. Testimony of the witnesses shall be under oath or affirmation. Depositions shall not be admissible unless upon stipulation of the claimant and the board's attorney or special counsel if retained. Depositions shall be admissible provided that the claimant and the board's attorney or special counsel if retained give each other at least fifteen (15) days notice of the date of the deposition (unless a shorter time is agreed upon between them) and the party desiring to introduce the deposition pays the cost of the court reporter and the transcript presented to the board. The chairman, any member of the board, the attorney for the board, a representative of the city or the county, the claimant, the claimant's attorney, and special counsel if retained, shall have the right to present evidence relevant to the issues, to cross-examine witnesses, to impeach the witnesses and to respond to the evidence presented. The fees of expert witnesses shall be paid by the party which presents the witnesses' testimony or deposition. The claimant, the board's attorney or special counsel if retained and the city's or the county's representative shall have the right to present an opening and closing argument. The claimant may secure the services of a court reporter to record the proceedings with the cost to be borne by the claimant.

c. In all cases, unless otherwise provided in this section, the burden of proof shall be on the claimant who seeks to establish his or her entitlement to a pension, disability benefit, or increased pension benefits.

d. In all proceedings under subsections (a) or (b) hereof, 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 the

proceedings provided for in each paragraph. Subpoenas shall be issued upon the request of the claimant, any board member, the board's attorney, special counsel, or the city or the county.

Sec. 24-45. Authority of city commission to increase or liberalize pension benefits.

The city commission is hereby authorized by this division to provide for the increase or liberalization of any benefits prescribed herein, after a prior study of the condition and potential of the firefighter's pension fund by professional actuarial or pension plan consultants, the city commission has found and determined that such benefits may be increased or liberalized without impairing the actuarial soundness of the pension fund to pay the benefits called for by this division. The provisions of this section shall be deemed to be optional and in the discretion of the city commission and not mandatory in operation, except that no amendment or division shall be adopted by the city commission which shall have the effects of reducing the then accrued benefits of members or a member's spouse, issue or dependent parent; and, unless any amendment or division specifically provides otherwise, any amendment or division made heretofore or hereafter applies only to firefighters actively employed on the effective date of such amendment or division and is applicable only prospectively.

Sec. 24-46. Miscellaneous provisions.

(a) Interest of Members in Pension Fund. At no time prior to the satisfaction of all liabilities under the plan with respect to members and their spouse or beneficiaries, shall any part of the corpus or income of the pension fund be used for or diverted to any purpose other than for their exclusive benefit.

(b) Liquidation of Pension Fund Assets.

(1) In the event that contributions of the city and county are permanently discontinued or in the event that it becomes necessary for the city to discontinue the plan, the board of trustees shall determine a proposed date of termination and direct and require the trustee to liquidate the pension fund, in accordance with the applicable requirements of the act governing termination. The rights of affected plan members, joint annuitants, beneficiaries and surviving spouses to benefits accrued to the date of any such termination or discontinuance to the extent then funded shall become fully vested and nonforfeitable and upon occurrence of such event, the city's aliquot share of the assets then remaining in the pension fund shall be allocated among the members and their beneficiaries and administered and distributed at such time or times as is determined by the board of trustees.

(2) Any reserves which shall be released as a result of the application of the provisions hereof (Restriction--25 Highest-Paid Members) shall be added to the portion of the fund which is distributed as provided above to members whose benefits are not restricted, provided that in the event that all of the benefits accrued to such members are fully provided for, such released reserves (or any remaining portion thereof) shall be allocated to provide to the extent possible up to one hundred (100) percent of the benefits otherwise canceled pursuant to the provisions hereof (Restriction--25 Highest-Paid Members), allocating such remaining funds in proportion to the value of the benefits so canceled.

(3) The board of trustees may, in its discretion, give effect to the provisions of the foregoing subsection (b), paragraphs (1) and (2) above by the purchase of annuities, by continuing the trust fund in existence and making provisions there under for pension benefits, or by immediate distribution from the trust fund. If the assets of the pension fund applicable to any asset distribution priority category are insufficient to provide full benefits for all persons in such group, the benefits other wise payable to such persons shall be reduced proportionately except as may otherwise be specified by regulations. If there is any balance remaining in the pension fund after all obligations to plan members, joint annuitants, beneficiaries and surviving spouses are met, such balance will revert to the city in accordance with chapter 175, F.S. The actuary shall calculate the allocation of the assets of the pension fund in accordance with the asset distribution priority category, and certify his or her calculations to the board of trustees. No liquidation of assets and payment of benefits (or provision therefore) shall actually be made by the board until after it is advised by the city in writing that applicable requirements, if any, of the act governing termination of employee pension benefit plans have been, or are being, complied with or that appropriate authorizations, waivers, exceptions or variances have been, or are being, obtained.

(c) In January 1984, a one-time cost-of-living adjustment was created for payment to each firefighter who had retired prior to January 1, 1979, or any survivor beneficiary of a deceased firefighter pensioner who retired prior to January 1, 1979, of an amount equal to ten (10) percent of the then current base rate of pension being received by each said firefighter or said survivor as of the effective date of the division creating the adjustment.

Sec. 24-47. Reports to Division of Retirement.

Each year as required by the Florida statutes, the chairman of the board shall file a report with the Division of Retirement containing the following:

- (a) Whether in fact the city is in compliance with the provisions of Chapter 175, Florida Statutes.
- (b) A certified statement of accounting for the most recent fiscal year of the city or county showing a detailed listing of assets and methods used to value them and a statement of all income and disbursements during the year. Such income and disbursements shall be reconciled with the assets at the beginning and end of the year.
- (c) A statistical exhibit showing the number of firefighters who are members of this system on the force of the city or county, the number included in the pension plan, the number of firefighters ineligible classified according to the reasons for their being ineligible, and the number of disabled and retired firefighters and their beneficiaries receiving pension payments and the amounts of annual retirement income or pension payments being received by them.
- (d) A statement of the amount the city or county has contributed to the pension fund for the preceding fiscal year and the amount the city or county will contribute to the pension fund for the current fiscal year.
- (e) If any benefits are insured with a commercial insurance company, the report shall include a statement of the relationship of the insured benefits to the benefits provided by this division. This report shall also contain information about the insurer, basis of premium rates, mortality table, interest rates and method used in valuating retirement benefits.
- (f) An actuarial valuation of the retirement plan shall be made annually. Such valuation shall be prepared by an enrolled actuary who is enrolled under Subtitle C of Title 3 of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.
- (g) All other documents and reports that may be required from time to time and amendments to the requirements specified in this section.

Sec. 24-48. Optional forms of benefits.

In lieu of the 10 year certain benefit as specified herein, a firefighter retiring under normal retirement as specified in Section 24-30(a), upon written request to the board of trustees and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with the options set forth below. A firefighter retiring with a disability pension as provided in Section 24-29 (a) or (c), may select option (a), (b) or (c) below but shall not be eligible to select the optional form of benefit under (d). A firefighter receiving a vested termination benefit as provided in Section 24-38 may select option (a)(1) only. If a firefighter dies on or after the effective date of this ordinance (03-4474) and is eligible for normal retirement at the time of death, then the designated beneficiary may elect option (a) or (b) below in lieu of the 10 year certain benefit. If a firefighter dies on or after the effective date of this ordinance (03-4474) and is not eligible for normal retirement at the time of death, and if the designated beneficiary is the surviving spouse or issue of the firefighter, then such beneficiary may elect option (a)(1) below in lieu of the 10 year certain benefit. If no designated beneficiary or joint pensioner survives the retired firefighter, a lump sum payment equal to the amount of member contributions reduced by any benefit payments already made shall be paid to the estate of the firefighter.

- (a) Optional form for spouse.
 - (1) A retirement income of the same amount, payable to the retired firefighter during his or her lifetime; and following the death of the retired firefighter, sixty-six and two-thirds (66 2/3) percent of such monthly amount shall be payable to the spouse until the spouse's death and the fund shall pay, in addition thereto, a separate monthly payment equal to five (5) percent of his or her last monthly salary for each of the decedent's issue at the

member's death. If the surviving spouse's benefit terminates and issue as defined herein are in being, then such spouse's benefit shall be divided equally among and paid to such issue and the five (5) percent benefit shall cease.

- (2) A retirement income of an equivalent actuarial value, payable to the retired firefighter during his or her lifetime; and following the death of the retired firefighter, one hundred (100) percent or seventy-five (75) percent or fifty (50) percent of such monthly amount shall be payable to the spouse until the spouse's death and the fund shall pay, in addition thereto, a separate monthly payment equal to five (5) percent of his or her last monthly salary for each of the decedent's issue at the member's death. If the surviving spouse's benefit terminates and issue as defined herein are in being, then such spouse's benefit shall be divided equally among and paid to such issue and the five (5) percent benefit shall cease.

(b) Optional form for other joint pensioner. A retirement income of an equivalent actuarial value, payable to the retired firefighter during his or her lifetime and following the death of the retired firefighter, one hundred (100) percent or seventy-five (75) percent or sixty-six and two-thirds (66 2/3) percent or fifty (50) percent of such monthly amount shall be payable to a joint pensioner as designated by the firefighter upon electing this option. The retired firefighter shall be allowed to change such joint pensioner designation twice. The consent of the previously designated joint pensioner shall not be required to make such change. Upon filing a new designation of joint pensioner, the rights of the previously designated joint pensioner to receive benefits under the system shall be extinguished. The board of trustees shall require that the benefit be actuarially re-determined taking into account the age of the former designated joint pensioner, the new designated joint pensioner and the retired firefighter.

(c) Lifetime Only. A monthly retirement income of an equivalent actuarial value, payable to the retired firefighter for his or her lifetime only. If the member dies prior to receiving the equivalent of his or her member contributions, a lump sum payment equal to the amount of member contributions into the plan reduced by any benefit payments already made will be paid to the member's designated beneficiary or, if none, then to the member's estate.

(d) Partial Lump Sum Distribution.

- (1) A firefighter who retires on a normal retirement after attaining normal retirement eligibility as set forth in Section 24-30 may elect a benefit of an equivalent actuarial value comprised of one partial lump sum payment and a reduced monthly income. The partial lump sum payment shall

- a. be in the amount selected by the retiring firefighter but shall not exceed the product of multiplying the retiring firefighter's normal amount and form of retirement income by the number of complete months of credited service, not to exceed 60 months, earned after the attainment of normal retirement eligibility;
- b. shall be payable at a time selected by the trustees, in their sole discretion, not less than 60 nor more than 180 days after the firefighter's retirement date with no interest payable for the period between the firefighter's retirement date and the payment of the partial lump sum;
- c. be eligible for rollover distribution as provided in section 24-37 and
- d. be paid to the retired firefighter's designated beneficiary should the retired firefighter die before payment of the partial lump sum.

- (2) The monthly retirement income of a firefighter who selected this partial lump sum distribution option shall

- a. be reduced to the actuarial equivalent of the normal form and amount of monthly retirement income after accounting for the partial lump sum distribution;
- b. be further modified should the firefighter elect one of the optional forms of benefits set forth in subsections (a), (b) and (c) above, which options shall be available to firefighters selecting this partial lump sum distribution option.

(3) This partial lump sum distribution option shall not be available to firefighters retiring with a disability benefit or receiving a vested termination benefit. The monthly retirement income after all modifications shall

- a. be the starting basis of the death benefit paid to the surviving spouse pursuant to section 24-30(a) or 24-48(a) or the survivor benefit pursuant to section 24-48(b) as selected by the retired firefighter; and
- b. be the starting basis for calculating the annual cost of living adjustments provided in section 24-43.

(e) No firefighter may make any change in his or her retirement option after the date of cashing or depositing his or her first retirement check.

Sec. 24-49. Repeal or termination of system.

(a) This division establishing the system and fund, and subsequent divisions pertaining to said system and fund, may be modified, terminated, or amended, in whole or in part; provided that if this division or any subsequent divisions shall be amended or repealed in its application to any person benefiting 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, except to the extent that the assets of the fund may be determined to be inadequate.

(b) If this division shall be repealed, or if contributions to the system are discontinued, the board shall continue to administer the system in accordance with the provisions of this division, 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 division who are designated by any of said members. In the event of repeal, or if contributions to the fund are discontinued, there shall be full vesting (100%) of benefits accrued to date of repeal and the assets of the fund shall be allocated in an equitable manner to provide benefits on a proportionate basis to the person so entitled in accordance with the provisions thereof.

(c) The following shall be the order of priority for purposes of allocating the assets of the fund as of the date of repeal of this division, or if contributions to the fund are discontinued with the date of such discontinuation being determined by the board:

(1) Apportionment shall first be made in respect of each retired firefighter receiving a retirement or disability benefit hereunder on such date, each person receiving a benefit on such date on account of a retired or disabled (but since deceased) firefighter, and each firefighter who has, by such date, become eligible for normal retirement but has not yet retired, an amount which is the actuarial equivalent of such benefit, based upon the actuarial assumptions in use for purposes of the most recent actuarial valuation, provided that, if such asset value be less than the aggregate of such reduce amounts, such amounts shall be proportionately reduced so that the aggregate of such amounts will be equal to such asset value.

(2) If there be any asset value remaining after the apportionment under subsection (c), paragraph (1), apportionment shall next be made in respect of each firefighter in the service of the city or county who is a member of this system on such date who has completed at least ten (10) years of credited service and who is not entitled to an apportionment under subsection (c), paragraph (1), in the amount required to provide the actuarial equivalent, as described in (c)(1) above, of the accrued normal retirement benefit, based on the credited service and average monthly earnings as of such date, and each vested former member then entitled to a deferred benefit who has not, by such date, begun receiving benefit payments, in the amount required to provide said actuarial equivalent of the accrued normal retirement benefit, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(3) If there be any asset value after the apportionments under subsection (c), paragraphs (1) and (2), apportionment shall be made in respect of each firefighter in the service of the city or county who is a member of this system on such date who is not entitled to an apportionment under subsection (c), paragraphs (1) and (2), in the amount equal to his or her accumulated contributions, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder such latter amount shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(4) If there be any asset value remaining after the apportionments under subsection (c), paragraphs (1), (2), and (3), apportionment shall lastly be made in respect of each firefighter included in subsection (c), paragraph (3)

above to the extent of the actuarial equivalent, as described in subsection (a) above, of the accrued normal retirement benefit, less the amount apportioned in subsection (c), paragraph (3), based on the credited service and average monthly earnings as of such date, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such amounts shall be reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(5) In the event that there be asset value remaining after the full apportionment specified in subsection (c), paragraphs (1), (2), (3), and (4) above, such excess shall be returned to the city, less return of the state's contributions to the state, provided that, if the excess is less than the total contributions made by the city, the county and the state to the date of termination, such excess shall be divided proportionately to the total contributions made by the city and county and by the state.

The allocation of the fund provided for in this subsection may, as decided by the board, be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this subsection. The fund may be distributed in one (1) sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the board may direct. The trust may be continued in existence for purposes of subsequent distributions.

If at any time prior to March 4, 2001, the plan shall be terminated or the full current costs of the plan shall not have been met, anything in the plan to the contrary notwithstanding, city or county contributions which may be used for the benefit of any one (1) of the twenty-five (25) highest paid firefighter or participant of the plan on the effective date, whose anticipated annual retirement allowance provided by the city's or county's contribution at his or her normal retirement date would exceed fifteen hundred dollars (\$1,500.00), shall not exceed greater of either (a) twenty thousand (\$20,000.00) or (b) an amount computed by multiplying the smaller of ten thousand (\$10,000.00) or twenty (20) percent of such firefighter's average annual earnings during his or her last five (5) years of service by the number of years of service since the effective date. In the event that it shall hereafter be determined by statute, court decision, ruling by the commissioner of internal revenue, or otherwise, that the provisions of this paragraph are not then necessary to qualify the plan under the Internal Revenue Code, this paragraph shall be ineffective without the necessity of further amendment of this division.

(d) After all the vested and accrued benefits provided hereunder have been paid and after all other liabilities have been satisfied, then and only then shall any remaining funds revert to the city, county and state in accordance with chapter 175, F.S.

Sec. 24-50. Pension validity.

The board of trustees shall have the power to examine into the facts upon which any pension shall heretofore have been granted under any prior existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. Said board is empowered to purge the pension rolls and require forfeiture of all benefits under this system, retroactively and prospectively, of any person heretofore granted a pension under prior or existing law or under this division if the same is found to be erroneous, fraudulent or illegal for any reason, and to reclassify any person who has heretofore been, under any prior or existing law, or who shall hereafter under this division be erroneously, improperly or illegally classified.

Sec. 24-51. Forfeiture of pension.

Any firefighter who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his or her admitted commission, aid or abetment of the following specified offenses shall forfeit all rights and benefits under this pension fund, except for the return of his or her contributions as of the date of his or her termination.

(a) 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 his or her employer.

(3) Bribery in connection with the employment of a public officer or employee.

(4) Any felony specified in F.S. Chapter 838.

(5) The committing of an impeachable offense.

(6) Violation of Section 175.195 of the Florida Statutes.

(b) 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 or she acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his or her public office or employment position.

(1) "Conviction" shall be defined as follows: An adjudication of guilt by a court of competent jurisdiction, a plea of guilty or 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" shall be defined as follows: 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.

(3) Prior to forfeiture, the board of trustees 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 or her case against forfeiture.

Any member who has received benefits from the system in excess of his or her accumulated contributions after his or her rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his or her accumulated contributions. The board of trustees may implement all legal action necessary to recover such funds.

Sec. 24-52. Suspension of pension benefits.

(1) The payment of pension benefits hereunder shall be suspended for each month that a member works for the city or the county as a "firefighter", as such term is defined herein.

(2) Retired members shall notify the board of trustees upon returning to any work as a firefighter with the county or the city, within thirty (30) days after starting work. Notice of reemployment shall be given on a form provided by the board of trustees.

(3) Retired members shall be required to certify, at least on a biennial basis, that the participant has been retired for the prior twenty-four (24) months. Verification or retirement shall be made on a form provided by the board of trustees. Pension benefits shall be suspended until such time as the member completes and submits the verification form.

(4) A retired member may request, in writing and on a form provided by the board of trustees, an advance determination as to whether certain work is prohibited under the plan. A written determination shall be given to the participant within sixty (60) days of the request, unless special circumstances (such as a hearing) require additional time, not to exceed one hundred and twenty (120) days from receipt of the request.

Sec. 24-53. Fire department benefits.

If the city or county terminates their interlocal agreement, the city re-establishes its city fire department, and the cost of the benefit improvements provided by City Ordinance 98-4074 for all active members of the re-established city fire department causes the city's contribution to the pension fund to exceed the minimum contribution set forth in

section 24-22 hereof, then the benefit improvements for active members employed by the city's re-established fire department provided by Ordinance 98-4074 (but not the level of benefits which existed prior to the adoption of Ordinance 98-4074) shall be reduced to a level which is supported by the minimum city contribution set forth in section 24-22, unless other methods of reducing the city's contribution to said minimum are agreed upon by the city, the pension fund's board of trustees, and the labor organization representing the city's firefighters.

Secs. 24-54--24-60. Reserved.