

ORDINANCE NO. 17-35

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE III, PENSION PLAN FOR FIREFIGHTERS AND POLICE OFFICERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-190, CONTRIBUTIONS; AMENDING SECTION 54-193, DISABILITY; AMENDING SECTION 54-215, SUPPLEMENTAL BENEFIT COMPONENT FOR SPECIAL BENEFITS; CHAPTER 175 AND 185 SHARE ACCOUNTS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION 1: That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the Code of Ordinances of the City of Winter Garden, is amended by amending Section 54-190, Contributions, subsection (b), State Contributions, to read as follows:

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(b) *State contributions.* Any monies received or receivable by reason of laws of the state, for the express purpose of funding and paying for retirement benefits for firefighters and police officers of the city shall be deposited in the fund comprising part of this system immediately and under no circumstances more than five days after receipt by the city.

In accordance with section 175.351(1)(g), Florida Statutes, and pursuant to mutual agreement between the city and the collective bargaining representative for city firefighters, the first \$46,100.85 in Chapter 175 premium tax revenues received each year shall be used to reduce the city's annual required contribution to the fund, and 50% of any Chapter 175 premium tax revenues received in excess of \$46,100.85 shall be used to fund Share Plan benefits for firefighters in accordance with section 54-215; and 50% of any Chapter 175 premium tax revenues received in excess of \$46,100.85 shall be used to reduce the unfunded actuarial accrued liability of the fund as long as such liability exists, and thereafter shall be used to reduce the city's annual required contribution to the fund. The city and the collective bargaining representative for city firefighters have further agreed that the total amount of the accumulated excess Chapter 175 premium tax monies held in reserve on October 1, 2014 (\$1,014,963.95) shall be applied to reduce the unfunded actuarial accrued liability of the fund.

~~In accordance with section 185.35, Florida Statutes, and pursuant to mutual agreement between the city and the collective bargaining representative for city police officers, the parties agree and consent that the total amount of accumulated excess Chapter 185 premium tax monies held in reserve as of November 10, 2016 shall be applied to reduce the unfunded actuarial accrued liability of the plan. The parties further agree and consent that all Chapter 185 excess premium tax revenues received after November 10, 2016 will be used as follows: (a) 50% will be used to reduce the unfunded actuarial accrued liability of the plan as long as such liability exists, and thereafter, shall be applied to reduce the city's annual required contribution to the plan; and (b) 50% will be used to fund share plan benefits for police officers in accordance with section 54-215.~~

In accordance with section 185.35, Florida Statutes, and pursuant to mutual agreement between the city and the collective bargaining representative for city police officers, the first \$231,706.15 in Chapter 185 premium tax revenues received each year shall be used to

reduce the city's annual required contribution to the fund, and 50% of any Chapter 185 premium tax revenues received in excess of \$231,706.15 shall be used to fund Share Plan benefits for police officers in accordance with section 54-215; and 50% of any Chapter 185 premium tax revenues received in excess of \$231,706.15 shall be used to reduce the unfunded actuarial accrued liability of the fund as long as such liability exists, and thereafter shall be used to reduce the city's annual required contribution to the fund. The city and the collective bargaining representative for city police officers have further agreed that the total amount of any unallocated accumulated excess premium tax monies held in reserve on November 10, 2016 shall be applied to reduce the unfunded actuarial accrued liability of the fund.

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SECTION 2: That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the Code of Ordinances of the City of Winter Garden, is amended by amending Section 54-193, Disability, subsection (a), Disability Benefits In-Line of Duty, and subsection (c), Disability Benefits Not-in-Line of Duty, to read as follows:

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(a) *Disability benefits in-line of duty.* Any member who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter or police officer, which disability was directly caused by the performance of his duty as a firefighter or police officer, shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension ~~equal to three percent of average final compensation for the first 25 years of credited service and two percent of average final compensation for all years of credited service in excess of 25~~ calculated as for normal retirement as set forth in Section 54-191(b), but in any event the minimum amount paid to the member shall be 42 percent of the average final compensation of the member, provided, however, that the monthly benefit shall not exceed 95 percent of average final compensation, ~~but in any event, the benefit shall not be less than two percent of average final compensation for each year of credited service.~~ Notwithstanding the previous sentence, in the event a member is determined by the board to be disabled in-line of duty and the disability resulted from the perpetration of an intentional act of violence directed toward the firefighter or police officer and the board reasonably believes the perpetrator intended to cause great bodily harm or permanent disfigurement of the firefighter or police officer, the minimum amount paid to the member shall be 80 percent of the average final compensation of the member. Terminated persons, either vested or nonvested, are not eligible for disability benefits. Notwithstanding the previous sentence, if a member is terminated by the city for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the board within thirty (30) days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the board otherwise determines that he is totally and permanently disabled as provided for above.

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(c) *Disability benefits not-in-line of duty.* Any member with ten years or more credited service who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter or police officer, which disability is not directly caused by the performance of his duties as a firefighter or police officer shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension ~~equal to three percent of average final compensation for the first 25 years of credited service and two percent of average final compensation for all years of credited service in excess of 25, provided~~ calculated as for

normal retirement as set forth in Section 54-191(b), however, that the monthly benefit shall not exceed 95 percent of average final compensation, ~~but in any event, the benefit shall not be less than two percent of average final compensation for each year of credited service.~~ Terminated persons, either vested or nonvested, are not eligible for disability benefits. Notwithstanding the previous sentence, if a member is terminated by the city for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the board within thirty (30) days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the board otherwise determines that he is totally and permanently disabled as provided for above.

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SECTION 3: That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the Code of Ordinances of the City of Winter Garden, is amended by amending Section 54-215, Supplemental Benefit Component for Special Benefits; Chapter 175 Share Accounts, to read as follows:

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

There is hereby established an additional plan component to provide special benefits to members in the form of a supplemental retirement, termination, death and disability benefit to be in addition to the benefits provided for in the previous sections of this plan, such benefit to be funded solely and entirely by F.S. Chapters 175 and 185, premium tax monies for each plan year which are allocated to this supplemental component as provided for in F.S. ' 175.351 and 185.35. Amounts allocated to this supplemental component ("Share Plan"), if any, shall be further allocated to the members and DROP participants as follows:

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

(b) *Share Account Funding.*

(1) Individual member share accounts shall be established as of September 30, 2016 15 for all firefighter members and firefighter DROP participants who were actively employed as of October 1, 201514. Individual member share accounts shall be credited with an allocation as provided for in the following subsection (c) of any Chapter 175 premium tax monies which have been allocated to the share plan for that plan year, beginning with the plan year ending September 30, 201615.

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

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

(c) *Allocation of Monies to Share Accounts.*

(1) *Allocation of Chapter 175 and 185 Contributions.*

a. Effective as of September 30, 2016~~15~~, the amount of any Chapter 175 premium tax monies allocated to the share plan shall be allocated to individual firefighter member share accounts as provided for in this subsection. Firefighter Members retiring on or after October 1, 2015~~14~~ and prior to September 30, 2016~~15~~ shall receive an allocation. In addition, all premium tax monies allocated to the share plan in any subsequent plan year shall also be allocated as provided for in this subsection. Available premium tax monies shall be allocated to individual member share accounts at the end of each plan year on September 30 (a "valuation date").

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

b. On each valuation date, each current actively employed member of the plan not participating in the DROP, each DROP participant and each retiree who retires or DROP participant who has terminated DROP participation in the plan year ending on the valuation date (including each disability retiree), or beneficiary of a deceased member (not including terminated vested persons) who is otherwise eligible for an allocation as of the valuation date shall receive a share allocation as follows:

c. The total funds subject to allocation on each valuation date shall be allocated to each member share account of those eligible for an allocation in an amount equal to a fraction of the total amount, the numerator of which shall be the individual's total years and fractional parts of years of credited service as of the valuation date, and the denominator of which shall be the sum of the total years and fractional parts of years of credited service as of the valuation date of all individuals to whom allocations are being made. Beneficiaries shall receive an allocation based on the years of credited service of the deceased member or DROP participant.

d. Re-employed retirees shall be deemed new employees and shall receive an allocation based solely on the credited service in the reemployment period.

- (2) *Allocation of Investment Gains and Losses.* On each valuation date, each individual member share account shall be adjusted to reflect the net earnings or losses resulting from investments during the year. The net earnings or losses allocated to the individual member share accounts shall be the same percentage which is earned or lost by the total plan investments, including realized and unrealized gains or losses, net of brokerage commissions, transaction costs and management fees.

Net earnings or losses are determined as of the last business day of the fiscal year, which is the valuation date, and are debited or credited as of such date.

For purposes of calculating net earnings or losses on a member's share account pursuant to this subsection, brokerage commissions, transaction costs, and management fees for the immediately preceding fiscal year shall be determined for each year by the investment consultant pursuant to contracts with fund managers as reported in the custodial statement. The investment consultant shall report these annual contractual fees to the board. The investment consultant shall also report the net investment return for each manager and the net investment return for the total plan assets.

- (3) *Allocation of Costs, Fees and Expenses.* On each valuation date, each individual member share account shall be adjusted to allocate its pro rata share of the costs, fees and expenses of administration of the share plan. These fees shall be allocated to each individual member share account on a proportionate basis taking the costs, fees and expenses of administration of the share plan as a whole multiplied by a fraction, the numerator of which is the total assets in each individual member share account (after adding the annual investment gain or loss) and the denominator of which is the total assets of the fund as a whole as of the same date.
- (4) *No Right to Allocation.* The fact of allocation or credit of an allocation to a member's share account by the board shall not vest in any member, any right, title, or interest in the assets of the trust or in the Chapter 175 or 185 tax revenues except at the time or times, to the extent, and subject to the terms and conditions provided in this Section.
- (5) Members and DROP participants shall be provided annual statements setting forth their share account balance as of the end of the plan year.

(d) *Forfeitures.* Any member who has less than six (6) years of service credit and who is not otherwise eligible for payment of benefits after termination of employment with the city as provided for in subsection (e) shall forfeit his individual member share account or the non-vested portion thereof. Forfeited amounts shall be included and used as part of the Chapter 175 or 185 tax revenues for future allocations to individual member share accounts on each valuation date in accordance with the formula set forth in subsection (c)(1).

(e) *Eligibility For Benefits.* Any member (or his beneficiary) who terminates employment as a firefighter or police officer with the City or who dies, upon application filed with the board, shall be entitled to be paid the value of his individual member share account, subject to the following criteria:

(1) *Retirement Benefit.*

- a. A member shall be entitled to one hundred percent (100%) of the value of his share account upon normal or early retirement pursuant to Section 54-191, or if the member enters the DROP, upon termination of employment.
- b. Such payment shall be made as provided in subsection (f).

(2) *Termination Benefit.*

- a. In the event that a member's employment as a firefighter or police officer is terminated by reason other than retirement, death or disability, he shall be entitled to receive the value of his share account only if he is vested in accordance with Section 54-194.
- b. Such payment shall be made as provided in subsection (f).

(3) *Disability Benefit.*

- a. In the event that a member is determined to be eligible for either an in-line of duty disability benefit pursuant to Section 54-193, subsection (a) or a not-in-line of duty disability benefit pursuant to Section 54-193, subsection (c), he shall be entitled to one hundred percent (100%) of the value of his share account.
- b. Such payment shall be made as provided in subsection (f).

(4) *Death Benefit.*

- a. In the event that a member or DROP participant dies while actively employed as a firefighter or police officer, one hundred percent (100%) of the value of his member share account shall be paid to his designated Beneficiary as provided in Section 54-192.
- b. Such payment shall be made as provided in subsection (f).

(f) *Payment of Benefits.* If a member or DROP participant terminates employment for any reason or dies and he or his beneficiary is otherwise entitled to receive the balance in the member's share account, the member's share account shall be valued by the plan's actuary on the next valuation date as provided for in subsection (c) above, following termination of employment. Payment of the calculated share account balance shall be payable as soon as administratively practicable following the valuation date, but not later than one hundred fifty (150) days following the valuation date and shall be paid in one lump sum payment. No optional forms of payments shall be permitted.

(g) *Benefits Not Guaranteed.* All benefits payable under this Section 54-215 shall be paid only from the assets accounted for in individual member share accounts. Neither the City nor the board shall have any duty or liability to furnish any additional funds, securities or other assets to fund share account benefits. Neither the board nor any trustee shall be liable for the making, retention, or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the member share account balances, except due to his or its

own negligence, willful misconduct or lack of good faith. All investments shall be made by the board subject to the restrictions otherwise applicable to fund investments.

(h) *Notional account.* The member share account is a notional account, used only for the purpose of calculation of the share distribution amount. It is not a separate account in the system. There is no change in the system's assets, and there is no distribution available to the member or DROP participant until the member's or DROP participant's termination from employment. The member or DROP participant has no control over the investment of the share account.

(i) *No employer discretion.* The share account benefit is determined pursuant to a specific formula which does not involve employer discretion.

(j) *Maximum Additions.* Notwithstanding any other provision of this Section, annual additions under this Section shall not exceed the limitations of Section 415(c) of the code pursuant to the provisions of Section 54-200, subsection (k).

(k) *IRC limit.* The share account distribution, along with other benefits payable from the system, is subject to limitation under Internal Revenue Code Section 415(b).

SECTION 4: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Winter Garden, Florida.

SECTION 5: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 6: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 7: That this Ordinance shall become effective upon adoption.

PASSED ON FIRST READING, this 24th day of August, 2017.

PASSED AND ADOPTED ON SECOND READING, this 28th day of September, 2017.

APPROVED:

/S/
JOHN REES, MAYOR/COMMISSIONER

ATTEST:

/S/
KATHY GOLDEN, CITY CLERK