

ORDINANCE NO. 16-60

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 54-186, DEFINITIONS; AMENDING SECTION 54-188, BOARD OF TRUSTEES; AMENDING SECTION 54-190, CONTRIBUTIONS; AMENDING SECTION 54-191, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 54-192, PRE-RETIREMENT DEATH; AMENDING SECTION 54-193, DISABILITY; AMENDING SECTION 54-195, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 54-200, MAXIMUM PENSION; AMENDING SECTION 54-201, MINIMUM DISTRIBUTION OF BENEFITS; AMENDING SECTION 54-212, PRIOR POLICE AND FIRE SERVICE; AMENDING SECTION 54-213, REEMPLOYMENT AFTER RETIREMENT; ADDING SECTION 54-214, DEFERRED RETIREMENT OPTION PLAN; ADDING SECTION 54-215, SUPPLEMENTAL BENEFIT COMPONENT FOR SPECIAL BENEFITS; CHAPTER 175 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 54-186, Definitions, to amend the definitions of “Actuarial Equivalent”, “Credited Service”, “Firefighter”, “Retirement”, and “Spouse”, to read as follows:

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*Actuarial equivalent* means a benefit or amount of equal value, ~~determined on the basis of actuarial equivalency using assumptions adopted by the board such that benefit calculations are not subject to city discretion~~ based upon the RP-2000 Combined Healthy Unisex Mortality Table, an interest rate equal to the investment return assumption set forth in the last actuarial valuation approved by the Board. This definition may only be amended by the City pursuant to the recommendation of the Board using assumptions adopted by the Board with the advice of the plan’s actuary, such that actuarial assumptions are not subject to City discretion.

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*Credited service* means the total number of years and fractional parts of years of service as a firefighter or police officer with member contributions, when required, omitting intervening years or fractional parts of years when such member was not employed by the city as a firefighter or police officer. A member may voluntarily leave his accumulated contributions in the fund for a period of five years after leaving the employ of the fire or police department pending the possibility of being reemployed as a firefighter or police officer, without losing credit for the

time that he was a member of the system. If a vested member leaves the employ of the fire or police department, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a firefighter or police officer with the fire or police department within five years, his accumulated contributions, if \$1,000.00 or less, shall be returned. If a member who is not vested is not reemployed within five years, his accumulated contributions, if more than \$1,000.00, will be returned only upon the written request of the member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the board. Upon return of a member's accumulated contributions, all of his rights and benefits under the system are forfeited and terminated. Upon any reemployment, a member shall not receive credit for the years and fractional parts of years of service for which he has withdrawn his accumulated contributions from the fund, unless the member repays into the fund the contributions he has withdrawn, with interest, as determined by the board, within 90 days after his reemployment.

The years or fractional parts of a year that a member performs "Qualified Military Service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L.103-353), after separation from employment as a firefighter or police officer with the city to perform training or service, shall be added to his years of credited service for all purposes, including vesting, provided that:

- (a) The member is entitled to reemployment under the provisions of USERRA.
- (b) The member returns to his employment as a firefighter or police officer within one year from the earlier of the date of his military discharge or his release from active service, unless otherwise required by USERRA.
- (c) The maximum credit for military service pursuant to this paragraph shall be five years.
- (d) This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a member dies on or after January 1, 2007, while performing USERRA Qualified Military Service, the beneficiaries of the member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the member had resumed employment and then died while employed.

Beginning January 1, 2009, to the extent required by Section 414(u)(12) of the Code, an individual receiving differential wage payments (as defined under Section 3401(h)(2) of the Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

In the event that a member of this system has also accumulated credited service in another pension system maintained by the city, then such other credited service shall be used in determining vesting as provided for in section 54-194, and for determining eligibility for early or normal retirement. Such other credited service will not be considered in determining benefits under this system. Only his credited service under this system on or after his date of membership in this system will be considered for benefit calculation. In addition, any benefit calculation for a member of this system who is or becomes eligible for a benefit from this system after he has become a member of another pension system maintained by the city, shall be based upon the

member's average final compensation, credited service and benefit accrual rate as of the date the member ceases to be a firefighter or police officer.

Leave conversions of unused accrued paid time off shall not be permitted to be applied toward the accrual of credited service either during each plan year of a member's employment with the City or in the plan year in which the member terminates employment.

\* \* \* \* \*

*Firefighter* means an actively employed full-time person employed by the city, including his initial probationary employment period, who is certified as a firefighter as a condition of employment in accordance with the provisions of F.S. § ~~633.35~~ 633.408, and whose duty it is to extinguish fires, to protect life and to protect property. The term includes all certified, supervisory, and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters but does not include part-time firefighters or auxiliary firefighters.

\* \* \* \* \*

*Retirement* means a member's separation from city employment with eligibility for immediate receipt of benefits under the system (or entry into the Deferred Retirement Option Plan).

\* \* \* \* \*

*Spouse* means the ~~lawful wife or husband of a member or retiree~~ member's or retiree's spouse under applicable law at the time benefits become payable.

\* \* \* \* \*

**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 54-188, Board of Trustees, subsection (a), to read as follows:

\* \* \* \* \*

(a) The sole and exclusive administration of and responsibility for the proper operation of the system and for making effective the provisions of this article are hereby vested in a board of trustees. The board is hereby designated as the plan administrator. The board shall consist of five trustees, two of whom, unless otherwise prohibited by law, shall be legal residents of the city, who shall be appointed by the city commission, one of whom shall be a firefighter member of the system and one of whom shall be a police officer member of the system, who shall be elected by a majority of the firefighters or police officers who are members of the system. The fifth trustee shall be chosen by a majority of the previous four trustees 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 trustees appointed or elected as herein provided and shall serve a two-year term unless he sooner vacates the office. Each resident trustee shall serve as trustee for a period of two years, unless he sooner vacates the office or is sooner replaced by the city commission at whose pleasure he shall serve. Each member trustee shall serve as trustee for a period of two years, unless he sooner leaves the employment of the city as a firefighter or police officer or otherwise vacates his office as trustee, whereupon a successor shall be chosen in the same manner as the

departing trustee. Each trustee may succeed himself in office. DROP participants can be elected as but not vote for elected Trustees. The board shall establish and administer the nominating and election procedures for each election. The board shall meet at least quarterly each year. The board shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.

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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 54-190, Contributions, subsection (b), State Contributions, to read as follows:

\* \* \* \* \*

(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.

\* \* \* \* \*

**SECTION 4:** 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 54-191, Benefit Amounts and Eligibility, subsection (a), Normal Retirement Date, and subsection (b), Normal Retirement Benefit, to read as follows:

\* \* \* \* \*

(a) *Normal retirement age and date.* ~~A member's normal retirement date shall be the first day of the month coincident with, or next following the earlier of the attainment of age 55 and the completion of six years of credited service or the completion of 25 years of credited service, regardless of age. A member may retire on his normal retirement date or on the first day of any month thereafter, and each member shall become 100 percent vested in his accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date. A member's normal retirement age is the earlier of the attainment of age 55 and the completion of 25 years of credited service, regardless of age. Each member shall become one hundred percent (100%) vested in his accrued benefit at normal retirement age. A member's normal retirement date shall be the first day of the month coincident with or next following the date the member retires from the City after attaining normal retirement age.~~

(b) *Normal retirement benefit.*

(1) For firefighter members: A member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his retirement and be continued thereafter during member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. The monthly retirement benefit shall equal 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, 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 and three-quarters percent of average final compensation for each year of credited service.

(2) For police officer members: A member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his retirement and be continued thereafter during member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. The monthly retirement benefit shall equal 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, 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.

\* \* \* \* \*

**SECTION 5:** 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 54-192, Pre-Retirement Death, subsection (b)(2), to read as follows:

\* \* \* \* \*

(b)(2) If the deceased member was eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the first day of the month following the member's death or at the deceased member's otherwise ~~early or~~ normal retirement date, at the option of the spouse beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable.

\* \* \* \* \*

**SECTION 6:** 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:

\* \* \* \* \*

(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, 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, ~~except that those terminated by the city for medical reasons may apply for a disability within 30 days after termination.~~ 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.

\* \* \* \* \*

(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, 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; ~~except that those terminated by the city for medical reasons may apply for a disability within 30 days after termination.~~ 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 7:** 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 54-195, Optional Forms of Benefits, subsection (a)(4), and subsection (b), to read as follows:

\* \* \* \* \*

- (4) For members who do not participate in the DROP, the member may elect a percentage of benefit in a lump sum as follows:

- a. Ten percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining 90 percent paid under the normal form or as per subsection (1), (2) or (3) above.
- b. Fifteen percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining 85 percent paid under the normal form or as per subsection (1), (2) or (3) above.
- c. Twenty percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining 80 percent paid under the normal form or as per subsection (1), (2) or (3) above.
- d. Twenty-five percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining 75 percent paid under the normal form or as per subsection (1), (2) or (3) above.

(b) The member, upon electing any option of this section, will designate the joint pensioner (subsection (a)(2) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. A member may change his beneficiary at any time. If a member has elected an option with a joint pensioner and the member's retirement income benefits have commenced, the member may thereafter change his designated beneficiary at any time, but may only change his joint pensioner twice. Subject to the restriction in the previous sentence, a member may substitute a new joint pensioner for a deceased joint pensioner. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume that the joint pensioner has deceased for purposes of calculating the new payment.

\* \* \* \* \*

**SECTION 8:** 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 54-200, Maximum Pension, subsections (f), (h), (l)(2), and by adding subsection (m), to read as follows:

\* \* \* \* \*

(f) *Less than ten years of participation ~~or service~~.* The maximum retirement benefits payable under this section to any member who has completed less than ten years of ~~credited service with the city~~ participation shall be the amount determined under subsection (a) of this section multiplied by a fraction, the numerator of which is the number of the member's years of ~~credited service~~ participation and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below ten percent of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits paid pursuant to section 54-193, or pre-retirement death benefits paid pursuant to section 54-192.

\* \* \* \* \*

(h) *Ten thousand dollar limit; less than ten years of service.* Notwithstanding anything in this section 54-200, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection (h) of section 54-200 if the benefits payable, with respect to such member under this system and under all other qualified defined benefit pension plans to which the city contributes, do not exceed \$10,000.00 for the applicable limitation year ~~and or~~ for any prior limitation year, and the city has not at any time maintained a qualified defined contribution plan in which the member participated; provided, however, that if

the member has completed less than ten years of credited service with the city, the limit under this subsection (h) of section 54-200 shall be a reduced limit equal to \$10,000.00 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.

\* \* \* \* \*

- (l)(2) No member of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter ~~67~~ 1223, Title 10, U.S. Code.

(m) Effect of Direct Rollover on 415(b) Limit. If the plan accepts a direct rollover of an employee's or former employee's benefit from a defined contribution plan qualified under Code Section 401(a) which is maintained by the employer, any annuity resulting from the rollover amount that is determined using a more favorable actuarial basis than required under Code Section 417(e) shall be included in the annual benefit for purposes of the limit under Code Section 415(b).

**SECTION 9:** 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 54-201, Minimum Distribution of Benefits, subsection (b)(2)d., to read as follows:

\* \* \* \* \*

- d. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subsection (b)(2), other than subsection (b)(2)a., will apply as if the surviving spouse were the member.

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

\* \* \* \* \*

**SECTION 10:** 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 54-212, Prior Police and Fire Service, subsection (6), to read as follows:

\* \* \* \* \*

- (6) In no event, however, may credited service be purchased pursuant to this section for prior service as a police officer for any other municipal, county or state law



enforcement department or as a firefighter for any other municipal, county, state or special district fire department in the State of Florida, if such prior service forms or will form the basis of a retirement benefit or pension from a different employer's retirement system or plan as set forth in subsection ~~54-200(h)(2)~~ 54-200(k)(2).

\* \* \* \* \*

**SECTION 11:** 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 54-213, Reemployment After Retirement, to add subsection (f), to read as follows:

\* \* \* \* \*

(f) DROPParticipants. Members or retirees who are or were in the deferred retirement option plan shall, following termination of employment after DROPParticipation, have the options provided for in this section for re-employment.

**SECTION 12:** 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 adding Section 54-214, Deferred Retirement Option Plan, to read as follows:

**Sec. 54-214. Deferred Retirement Option Plan.**

- (a) Definitions. As used in this section 54-214, the following definitions apply:
- (1) "DROPP" -- The City of City of Winter Garden Pension Plan for Firefighters and Police Officers - Firefighters' Deferred Retirement Option Plan.
  - (2) "DROPP account" -- The account established for each DROPP participant under subsection (c).
  - (3) "Total return of the assets" -- For purposes of calculating earnings on a member's DROPP account pursuant to subsection (c)(2)b., for each fiscal year quarter, the percentage increase in the interest and dividends earned on investments, including realized and unrealized gains, of the total Plan assets.
- (b) Participation.
- (1) Eligibility to participate. Only firefighters are eligible to enter the DROPP. In lieu of terminating his employment as a firefighter, a firefighter member who is eligible for normal retirement under the system may elect to defer receipt of such service retirement pension and to participate in the DROPP.
  - (2) Election to participate. A member's election to participate in the DROPP must be made in writing in a time and manner determined by the board and shall be effective on the first day of the first calendar month which is at least fifteen (15) business days after it is received by the board.

- (3) Period of participation. A member who elects to participate in the DROP under subsection (b)(2), shall participate in the DROP for a period not to exceed thirty-six (36) months beginning at the time his election to participate in the DROP first becomes effective, but in no event can a member remain in the DROP once he attains age fifty-eight (58). An election to participate in the DROP shall constitute an irrevocable election to resign from the service of the city not later than the date provided for in the previous sentence. Notwithstanding the above, any member who had first reached age fifty-five (55) prior to the effective date of this ordinance shall be permitted, within 6 months of the effective date of this ordinance, to make a one-time irrevocable election to participate in the DROP for a period of thirty-six (36) months. A member may participate only once.
- (4) Termination of participation.
- a. A member's participation in the DROP shall cease at the earlier of:
1. the end of his permissible period of participation in the DROP as determined under subsection (b)(3); or
  2. termination of his employment as a Firefighter.
- b. Upon the member's termination of participation in the DROP, pursuant to subsection 1 above, all amounts provided for in subsection (c)(2), including monthly benefits and investment earnings, shall cease to be transferred from the system to his DROP account. Any amounts remaining in his DROP account shall be paid to him in accordance with the provisions of subsection (d) when he terminates his employment as a Firefighter.
- c. A member who terminates his participation in the DROP under this subsection (b)(4) shall not be permitted to again become a participant in the DROP.
- (5) Effect of DROP participation on the system.
- a. A member's credited service and his accrued benefit under the system shall be determined on the date his election to participate in the DROP first becomes effective. The member shall not accrue any additional credited service or any additional benefits under the system (except for any supplemental benefit payable to DROP participants or any additional benefits provided under any cost-of-living adjustment for retirees in the system) while he is a participant in the DROP. After a member commences participation, he shall not be permitted to again contribute to the system nor shall he be eligible for disability or pre-retirement death benefits, except as provided for in Sec. 54-213.
- b. No amounts shall be paid to a member from the system while the member is a participant in the DROP. Unless otherwise specified in the system, if a member's participation in the DROP is terminated other than by terminating his employment as a Firefighter, no amounts shall be paid to him from the system until he terminates his employment as a Firefighter. Unless otherwise specified in the system, amounts transferred from the system to the member's DROP account shall be paid directly to the member only on the termination of his employment as a Firefighter.

(c) Funding.

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

(2) Transfers from retirement system.

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

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

The average daily balance in a member's DROP account shall be credited at a rate equal to the net investment return realized by the system for that quarter, but not less than zero percent (0.0%). "Net investment return" for the purpose of this paragraph is the total return of the assets in which the member's DROP account is invested by the board net of brokerage commissions, transaction costs and management fees.

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

c. A member's DROP account shall only be credited with earnings and monthly benefits while the member is a participant in the DROP. A member's final DROP account value for distribution to the member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation plus any monthly periodic additions made to the DROP account subsequent to the end of the previous quarter and prior to distribution. If a member fails to terminate employment after participating in the DROP for the permissible period of DROP participation, then beginning with the member's first month of employment following the last month of the permissible period of DROP participation, the member's DROP account will no longer be credited with

earnings, nor will monthly benefits be transferred to the DROP account. All such non-transferred amounts shall be forfeited and continue to be forfeited while the member is employed by the fire department. A member employed by the fire department after the permissible period of DROP participation will still not be eligible for pre-retirement death or disability benefits and will not accrue additional credited service except as provided for in section 54-213.

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

(1) *Eligibility for benefits.* A member shall receive the balance in his DROP account in accordance with the provisions of this subsection (d) upon his termination of employment as a Firefighter. Except as provided in subsection (d)(5), no amounts shall be paid to a member from the DROP prior to his termination of employment as a Firefighter.

(2) *Form of distribution.*

a. Unless the member elects otherwise, distribution of his DROP account shall be made in a lump sum, subject to the direct rollover provisions set forth in subsection (d)(6). Elections under this paragraph shall be in writing and shall be made in such time or manner as the board shall determine.

b. Notwithstanding the preceding, if a member dies before his benefit is paid, his DROP account shall be paid to his beneficiary in such optional form as his beneficiary may select. If no beneficiary designation is made, the DROP account shall be distributed to the member's estate.

(3) *Date of payment of distribution.*

Except as otherwise provided in this subsection (d), distribution of a member's DROP account shall be made as soon as administratively practicable following the member's termination of employment. Distribution of the amount in a Member's DROP account will not be made unless the Member completes a written request for distribution and a written election, on forms designated by the Board, to either receive a cash lump sum or a rollover of the lump sum amount.

(4) *Proof of death and right of beneficiary or other person.* The board may require and rely upon such proof of death and such evidence of the right of any beneficiary or other person to receive the value of a deceased member's DROP account as the board may deem proper and its determination of the right of that beneficiary or other person to receive payment shall be conclusive.

(5) *Distribution limitation.* Notwithstanding any other provision of subsection (d), all distributions from the DROP shall conform to the "Minimum Distribution Of Benefits" provisions as provided for herein.

(6) *Direct rollover of certain distributions.* This subsection applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the DROP to the contrary, a distributee may elect to have any portion of an eligible rollover distribution paid in a direct rollover as otherwise provided under the system in section 54-209.

(e) *Administration of DROP.*

- (1) Board administers the DROP. The general administration of the DROP, the responsibility for carrying out the provisions of the DROP and the responsibility of overseeing the investment of the DROP's assets shall be placed in the board. The members of the board may appoint from their number such subcommittees with such powers as they shall determine; may adopt such administrative procedures and regulations as they deem desirable for the conduct of their affairs; may authorize one or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical, accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP; and may allocate among themselves or delegate to other persons all or such portion of their duties under the DROP, other than those granted to them as trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A trustee shall not vote on any question relating exclusively to himself.
- (2) Individual accounts, records and reports. The board shall maintain records showing the operation and condition of the DROP, including records showing the individual balances in each member's DROP account, and the board shall keep in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The board shall prepare and distribute to members participating in the DROP and other individuals or file with the appropriate governmental agencies, as the case may be, all necessary descriptions, reports, information returns, and data required to be distributed or filed for the DROP pursuant to the Code and any other applicable laws.
- (3) Establishment of rules. Subject to the limitations of the DROP, the board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The board shall have discretionary authority to construe and interpret the DROP (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in the DROP). The determination of the board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law.
- (4) Limitation of liability.
  - a. The trustees shall not incur any liability individually or on behalf of any other individuals for any act or failure to act, made in good faith in relation to the DROP or the funds of the DROP.
  - b. Neither the board nor any trustee of the board shall be responsible for any reports furnished by any expert retained or employed by the board, but they shall be entitled to rely thereon as well as on certificates furnished by an accountant or an actuary, and on all opinions of counsel. The board shall be fully protected with respect to any action taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.
- (f) General provisions.

- (1) The DROP is not a separate retirement plan. Instead, it is a program under which a member who is eligible for normal retirement under the system may elect to accrue future retirement benefits in the manner provided in this section 54-214 for the remainder of his employment, rather than in the normal manner provided under the plan. Upon termination of employment, a member is entitled to a lump sum distribution of his or her DROP account balance or may elect a rollover. The DROP account distribution is in addition to the member's monthly benefit.
- (2) Notional account. The DROP account established for such a member is a notional account, used only for the purpose of calculation of the DROP distribution amount. It is not a separate account in the system. There is no change in the system's assets, and there is no distribution available to the member until the member's termination from the DROP. The member has no control over the investment of the DROP account.
- (3) No employer discretion. The DROP benefit is determined pursuant to a specific formula which does not involve employer discretion.
- (4) IRC limit. The DROP account distribution, along with other benefits payable from the system, is subject to limitation under Internal Revenue Code Section 415(b).
- (5) Amendment of DROP. The DROP may be amended by an ordinance of the city at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP account of any member.
- (6) Facility of payment. If a member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or is a minor, the board shall direct that any benefit due him shall be made only to a duly appointed legal representative. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.
- (7) Information. Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the DROP, shall file with the board the information that it shall require to establish his rights and benefits under the DROP.
- (8) Prevention of escheat. If the board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the board may, no earlier than three (3) years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the board or the city. If such person has not made written claim therefor within three (3) months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the system, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the system. Upon such cancellation, the system shall have no further liability therefor except that, in the event such person or his beneficiary later notifies the board of his whereabouts and requests the payment or payments due to him under

the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.

(9) Written elections, notification.

a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the board in a time and manner determined by the board under rules uniformly applicable to all employees similarly situated. The board reserves the right to change from time to time the manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.

b. Each member or Retiree who has a DROP account shall be responsible for furnishing the board with his current address and any subsequent changes in his address. Any notice required to be given to a member or Retiree hereunder shall be deemed given if directed to him at the last such address given to the board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or Retiree notifies the board of his address.

(10) Benefits not guaranteed. All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP account and neither the city nor the board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.

(11) Construction.

a. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.

b. The titles and headings of the subsections in this section 54-214 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

(12) Forfeiture of retirement benefits. Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.

(13) Effect of DROP participation on employment. Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

**SECTION 13:** 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 adding 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; Chapter 175 share accounts.**

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

(a) *Individual Member Share Accounts.* The board shall create individual "member share accounts" for all actively employed firefighter plan members and firefighter 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 tax revenues described above, forfeitures and income and expense adjustments relating thereto. The board shall maintain separate member share accounts, however, the maintenance of separate accounts is for accounting purposes only and a segregation of the assets of the trust fund to each account shall not be required or permitted.

(b) *Share Account Funding.*

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

(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 Contributions.*

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

b. On each valuation date, each current actively employed firefighter member of the plan not participating in the DROP, each firefighter DROP participant and each firefighter retiree who retires or firefighter 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 firefighter 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 firefighter 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 firefighter 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 tax revenues except at the

time or times, to the extent, and subject to the terms and conditions provided in this Section.

(5) Firefighter members and firefighter DROP participants shall be provided annual statements setting forth their share account balance as of the end of the plan year.

(d) Forfeitures. Any firefighter 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 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 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 firefighter 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 firefighter 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 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 firefighter 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 firefighter member or firefighter DROP participant dies while actively employed as a firefighter, 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 firefighter member or firefighter 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 firefighter member or firefighter DROP participant until the firefighter member's or firefighter DROP participant's termination from employment. The firefighter member or firefighter 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 14:** 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 15:** All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

**SECTION 16:** 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 17:** That this Ordinance shall become effective upon adoption.

PASSED ON FIRST READING, this 13th day of October, 2016.

PASSED AND ADOPTED ON SECOND READING AND PUBLIC HEARING, this  
10th day of November, 2016.

APPROVED:

\_\_\_\_\_  
/S/  
JOHN REES, MAYOR/COMMISSIONER

ATTEST:

\_\_\_\_\_  
/S/  
KATHY GOLDEN, CITY CLERK

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