

ORDINANCE NO. 16-61

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 54-191, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 54-214, DEFERRED RETIREMENT OPTION PLAN; AMENDING 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 54-190, 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.

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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 54-191, Benefit Amounts and Eligibility, subsection subsection (b), Normal Retirement Benefit, to read as follows:

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(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 all years of credited service, 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.~~

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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 54-214, Deferred Retirement Option Plan, subsections (a) through (d), to read as follows:

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(a) Definitions. As used in this section 54-214, the following definitions apply:

(1) "DROP" -- The City of City of Winter Garden Pension Plan for Firefighters and Police Officers - ~~Firefighters'~~ Deferred Retirement Option Plan.

(2) "DROP account" -- The account established for each DROP participant under subsection (c).

(3) "Total return of the assets" -- For purposes of calculating earnings on a member's DROP 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 DROP.~~ In lieu of terminating his employment as a police officer or 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 DROP.
 - (2) Election to participate. A member's election to participate in the DROP must be made in writing in a time and manner determined by the board and shall be effective on the first day of the first calendar month which is at least 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 firefighter member who had first reached age fifty-five (55) prior to ~~the effective date of this ordinance November 10, 2016~~ shall be permitted, within 6 months of ~~the effective date of this ordinance November 10, 2016~~, to make a one-time irrevocable election to participate in the DROP for a period of thirty-six (36) months. Notwithstanding the above, any police officer member who had first reached the age of fifty-five (55) prior to December 8, 2016 shall be permitted, within 6 months of December 8, 2016, to make a one-time irrevocable election to participate in the DROP for a period of thirty-six 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 police officer or 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 police officer or 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 police officer or firefighter, no amounts shall be paid to him from the system until he terminates his employment as a police officer or 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 police officer or 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 police officer or 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 police officer or 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 police or fire department. A member employed by the police or 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 police officer or 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 police officer or 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.

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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 54-215, 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 ~~firefighter~~ members in the form of a supplemental retirement, termination, death and disability ~~benefits~~ 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 ~~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 or 185 tax revenues described above, forfeitures and income and expense adjustments relating thereto. The board shall maintain separate member share accounts, however, the maintenance of separate accounts is for accounting purposes only and a segregation of the assets of the trust fund to each account shall not be required or permitted.

(b) Share Account Funding.

- (1) Individual member share accounts shall be established as of September 30, ~~2015~~16 for all ~~firefighter~~ members and ~~firefighter~~ DROP participants who were actively employed as of October 1, ~~2014~~15. 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~~16.
- (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, 2015~~16~~, 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~~15~~ and prior to September 30, 2015~~16~~ 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 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) ~~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 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 ~~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~~ 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 ~~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 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 ~~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 5: 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 6: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 7: 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 8: That this Ordinance shall become effective upon adoption.

PASSED ON FIRST READING, this _____ day of _____, 2016.

PASSED AND ADOPTED ON SECOND READING, this _____ day of _____, 2016.

APPROVED:

/s/

JOHN REES, MAYOR/COMMISSIONER

ATTEST:

/s/

KATHY GOLDEN, CITY CLERK