



Legislation Details (With Text)

File #: 230640 **Version:** 2 **Name:**
Type: Ordinance **Status:** Passed
File created: 7/26/2023 **In control:** Council
On agenda: 8/10/2023 **Final action:** 8/10/2023
Title: Sponsor: Director of Human Resources Department

Amending Chapter 2, Article IX, Division 4 of the Code of Ordinances, entitled Pensions for Firefighters, by repealing Sections 2-1251, 2-1253, 2-1255, 2-1257, 2-1264, 2-1265, 2-1267, and 2-1268 and enacting in lieu thereof sections of like numbers and subject matters to change the composition of the Board of Trustees of the Firefighters' Pension System Trust, change the required distribution age, increase the health care subsidy contribution by the City to four percent, add medical conditions that qualify for duty disability, and make other changes approved by the Board of Trustees.

Sponsors:

Indexes:

Code sections:

Attachments: 1. 230640 Compared Version, 2. 230640 Docket Memo, 3. 230640 Ordinance, 4. Authenticated Ordinance 230640 C.S.

Date	Ver.	Action By	Action	Result
8/10/2023	1	Council	Passed as Substituted	Pass
8/9/2023	1	Finance, Governance and Public Safety Committee		
8/3/2023	1	Council	referred	

[COMMITTEE SUBSTITUTE FOR] ORDINANCE NO. 230640

Sponsor: Director of Human Resources Department

Amending Chapter 2, Article IX, Division 4 of the Code of Ordinances, entitled Pensions for Firefighters, by repealing Sections 2-1251, 2-1253, 2-1255, 2-1257, 2-1264, 2-1265, 2-1267, and 2-1268 and enacting in lieu thereof sections of like numbers and subject matters to change the composition of the Board of Trustees of the Firefighters' Pension System Trust, change the required distribution age, increase the health care subsidy contribution by the City to four percent, add medical conditions that qualify for duty disability, and make other changes approved by the Board of Trustees.

WHEREAS, the City entered into collective bargaining agreements with IAFF Locals 42 and 3808 changing their membership in the Board of Trustees of the Firefighters' Pension System Trust; and

WHEREAS, in 2022, the U.S. Congress passed SECURE 2.0 Act of 2022 that changed the ages for required distributions of the City's pensions; and

WHEREAS, on February 24, 2023, the Board of Trustees of the Firefighters Pension System Trust met and approved changes to the Pensions for Firefighters Pension System, including the increase to the City's contribution to the health care subsidy, and directed that an ordinance be prepared to effectuate those changes; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 2, Article IX, Division 4 of the Code of Ordinances, entitled of the Code of Ordinances of the Kansas City, Missouri, Pensions for Firefighters, by repealing Sections 2-1251, 2-1253, 2-1255, 2-1257, 2-1264, 2-1265, 2-1267, and 2-1268 and enacting in lieu thereof sections of like numbers and subject matter, to read as follows.

Sec. 2-1251. Definitions.

The following words and phrases as used in this division, unless a different meaning is plainly required by the context, shall have the following meanings:

Accumulated contributions means the sum of all amounts deducted from the compensation of the member and credited to the member's individual account in the pension fund, together with regular interest thereon, excluding, however, the service charges required by this division.

Annual compensation means compensation defined in section 415(c)(3) of the Internal Revenue Code and section 1.415-2(d) of the Treasury Regulations, but in no event more than \$200,000.00 per calendar year (as adjusted annually under section 401(a)(17) of the Internal Revenue Code). Annual compensation also includes amounts contributed by the employer pursuant to a salary reduction agreement which are excludable from a member's gross income under sections 125, 401(a)(8), 402(h), or 403(b) of the Internal Revenue Code.

Effective on and after January 1, 1996, in addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the plan to the contrary, for plan years beginning on or after January 1, 1996, and only for employees who were not members before January 1, 1996, the annual compensation of each member taken into account under the plan shall not exceed to OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$150,000.00, as adjusted by the commissioner for increases in the cost of living in accordance with section 401(a)(17) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

For plan years beginning on or after January 1, 1996, and only for employees who were not members before January 1, 1996, any reference in this pension system plan to the limitation under section 401(a)(17) of the Internal Revenue Code shall mean the OBRA '93 annual compensation limit set forth in this provision.

If compensation for any prior determination period is taken into account in determining a member's benefits accruing in the current plan year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the plan year beginning on or after January 1, 1996, or OBRA '93 annual compensation limit is \$150,000.00.

Average final compensation means the monthly average of the two highest years of compensation of the member in the last ten years, whether or not such years are consecutive. Such average final compensation shall include any sick leave or vacation leave credited at retirement date.

Beneficiary means any person in receipt of a pension, retirement allowance or other benefit, or

designated by any member to receive benefits upon the member's death.

Board of trustees means the board provided for in section 2-1255 to administer the pension system.

Compensation means the basic monthly wage or salary paid an employee excluding bonuses, overtime, expense allowance and other extraordinary compensation. Compensation shall include amounts contributed to any plan maintained by the employer pursuant to a salary reduction agreement where the member could have elected to receive such amount as case compensation.

Creditable service means prior service plus membership service, if continuous. If member who terminates and withdraws accumulated contributions and interest is subsequently employed as firefighter, the member must repay total withdrawal plus interest as described in section 2-1253(d) before years prior to termination are considered creditable service.

Division means this division, as amended, and as this division may hereafter be amended.

Firefighter means any officer or employee of the fire department of the city employed for the duty of fighting fires, but not anyone employed in a clerical or any other capacity not involving firefighting duties. It shall, however, include all persons originally employed for firefighting duties, and who actually performed such duties, but for various reasons were transferred to other divisions of the fire department. In case of doubt as to whether any person is a firefighter within the meaning of this division, the decision of the board of trustees shall be final.

Fiscal year means the fiscal year of the city.

Medical board means the board of physicians and clinical psychologists provided for in this division.

Member means a member of the pension system as defined in section 2-1252.

Membership service means service as a firefighter rendered since last becoming a member after July 1, 1953.

Pension means a monthly payment for life. The first payment shall be made at the end of the month after the effective date of the benefit as established by the board of trustees. The final payment of all pensions and any child's allowance shall be made at the end of the month in which the event causing cessation of the payment occurs and shall be made for the full monthly amount without reduction.

Pension fund means the fund resulting from contributions made thereto by the city, by members of the pension system and from other sources, together with the earnings thereon.

Pension system means the firefighter's pension system as set out in this division.

Prior service means all service as a firefighter prior to the date the pension became effective.

Regular interest means interest at such rate as may be set by the board of trustees, not to exceed three percent per annum, compounded annually.

Spouse means the wife or husband, lawfully married in any jurisdiction, of a member

Surviving spouse means the spouse of a member surviving the member's death.

Tier 1 Member means a member of the pension system whose membership began prior to April 20, 2014.

Tier 2 Member means a member of the pension system whose membership began on or after April 20, 2014.

Sec. 2-1253. Creditable service.

(a) *Generally.* As defined in section 2-1251, creditable service shall be the total of service as a firefighter rendered since last becoming a member after July 1, 1953.

(b) *Portability.* The board of trustees may enter into cooperative agreements to transfer creditable service from one retirement plan to another in accordance with provisions set forth in RSMo § 105.691.

(c) *Military leave.*

(1) To the extent required by the Uniformed Services Employment and Reemployment Rights Act of 1994, a member shall be entitled to creditable service considering each month of military service as a month of employment with the city.

(2) A termination refund of contributions and interest shall not be paid to a member on military leave.

(d) *Leave of absence.*

(1) A member may be granted a leave of absence as set forth in section 2-1105. Such member shall receive membership service if the member makes contributions in the manner set forth in section 2-1105.

(2) A termination refund of contributions and interest shall not be paid to a member on leave of absence.

(e) *Reemployment.*

(1) Provided election is made within three years of reemployment, a member who terminated and withdrew accumulated contributions and interest, and was later reemployed, may receive credit for prior service and previous membership service after reemployment of two consecutive years.

(2) The member shall repay in one lump sum all contributions and interest withdrawn, plus interest calculated from date of withdrawal to date of repayment at the rate then assumed for actuarial calculation.

(3) In addition to the above, any reemployed member shall be entitled to receive credit for prior membership service and maintain the same tier level of service held by the member prior to his date of separation from service, provided the member is reemployed within (2) years from the date of their last separation from service.

(f) *Vacation and sick leave conversion on retirement.*

- (1) At retirement date or the date of separation of service if a deferred pension is elected, a member may elect to convert credited sick leave or vacation leave to creditable service of this pension system to be added to creditable service calculated as provided in subsection (a) of this section.
- (2) Effective for member deaths on or after December 1, 2009, the surviving spouse or approved domestic partner, as recognized by the city, of a deceased member may convert accrued vacation and/or sick leave of the member, or accept donations of vacation and sick leave of other members donated within a reasonable time after the date of the member's death, and convert such leave to creditable service calculated as provided in subsection (a) of this section.
- (3) Such conversion shall be made in units of full months with 215 hours equaling one month of creditable service, up to the maximum number of hours allowed for conversion under the collective bargaining agreement between the city and Local 42 of the International Association for Fire Fighters, but not to exceed 25 years of credited service for Tier 1 members and 27 years of service for Tier 2 members.
- (4) All hours converted to creditable service shall be deducted from those compensated under section 2-1099, and all hours donated by members pursuant to subsection (f)(2) of this section shall be paid by the City to the pension system, equal to the amount of employer and employee contributions for service hours.

Sec. 2-1255. Membership and organization of board of trustees.

(a) *Membership.* The general administration and the responsibility for the proper operations of the pension system shall be vested in a board of trustees of nine persons, which board shall be constituted as follows:

- (1) The fire chief, ex officio;
- (2) The director of finance, ex officio;
- (3) The director of human resources, ex officio;
- (4) One member to be appointed by the director of finance from their immediate staff, including deputy director, city treasurer, commissioner of revenue, or city controller;
- (5) Three members who are current members of Local 42 and one member who is a current member of Local 3808 to be elected by the members of the pension system with nominations and vote by secret written ballot, at an election supervised by the ex officio members of the board of trustees, for terms of three years each respectively; except that for the first election following April 1, 2014, the initial term of the newly-elected third member trustee from Local 42 shall be two years; and provided however, one of the original three members so elected shall serve for one year, one member for two years, and the third member for three years from the date such pension system becomes operative; and thereafter all members so elected shall serve for terms of three years each, respectively; and

- (6) One retiree member to be jointly appointed by Local 42 and Local 3808 of the International Association for Fire Fighters; provided however, the retiree member shall have all the rights and responsibilities of the trustees on the board, but non-voting, and therefore shall not be counted towards a quorum.
- (7) One alternate trustee may be appointed by Local 3808. The alternate trustee shall have all of the rights and responsibilities of the trustees on the board, but non-voting, and therefore shall not be counted towards a quorum. However, in the event that the trustee who is a current member of Local 3808 is absent from a meeting of the board of trustees, the alternate trustee shall assume voting responsibilities and be counted towards a quorum for the duration of the trustee's absence.
- (8) One alternate trustee may be appointed by Local 42. The alternate trustee shall have all of the rights and responsibilities of the trustees on the board, but non-voting, and therefore shall not be counted towards a quorum. However, in the event that the trustee who is a current member of Local 42 is absent from a meeting of the board of trustees, the alternate trustee shall assume voting responsibilities and be counted towards a quorum for the duration of the trustee's absence.

(b) *Vacancies.* If a vacancy occurs in the office of an elected trustee, the vacancy shall be filled for the unexpired term by the remaining trustees from the membership of the pension system.

(c) *Compensation.* Trustees shall serve without compensation, but they shall be reimbursed from the pension fund for all necessary expenses which they may incur through service on the board.

(d) *Oath of office.* Each trustee shall, within ten days after the trustee's appointment or election, take an oath of office before the director of records that, so far as it devolves upon him, he will diligently and honestly administer the affairs of the board and that he will not knowingly violate or willingly permit to be violated any of the provisions of this division as it is now written or as it may hereafter be amended. Such oath shall be subscribed to by the member making it, certified by the director of records, and filed in the office of the director of records.

(e) *Vote.* Each trustee shall be entitled to one vote on the board. The majority vote of the quorum present shall be necessary for a decision by the trustees at any meeting of the board. A quorum of the board shall be five trustees; because the non-voting member will not be counted towards determining a quorum.

Sec. 2-1257. Officers and employees of board of trustees; expenses.

The board of trustees shall annually, at their July meeting or the first meeting after July if no July meeting is held, elect from its membership a chairman and appoint a secretary who may, but need not, be a member. The board may engage such actuarial, legal, investment, and other services as may be required to transact the business of the pension system. The compensation of all persons engaged by the board of trustees and all other expenses of the board necessary for the operation of the pension system shall be paid at such rates and in such amounts as the board of trustees shall approve.

Sec. 2-1264. Conditions for retirement.

(a) *Voluntary retirement - Tier 1.* Any Tier 1 member in service as a firefighter for compensation or on authorized sick leave not exceeding one year, or who shall hereafter enter service as a firefighter, may retire

when the member has completed 25 or more years of creditable service or, if the member first enters the pension system as fire chief and retires as fire chief, when the member has completed 10 or more years of creditable service.

(b) *Voluntary retirement - Tier 2.* Any Tier 2 member in service as a firefighter for compensation or on authorized sick leave not exceeding one year, or who shall hereafter enter service as a firefighter, may retire when the member has completed 27 or more years of creditable service or, if the member first enters the pension system as fire chief and retires as fire chief, when the member has completed 10 or more years of creditable service.

(c) *Disability retirement.* If a member, while a participant in this plan, contracts an illness or suffers an accident rendering him permanently and totally disabled, he shall be entitled to pension benefits in accordance with the terms and provisions of section 2-1267

(d) *Application for retirement.* Any member eligible for retirement as provided in this division may retire upon written application to the board of trustees, which shall establish the retirement date, but not later than the first day of the month following the happening of the event set out in this division as a condition for the type of retirement.

Sec. 2-1265. Pension benefits generally.

(a) *Amount of retirement pension.* Effective for retirement on or after December 31, 1999, upon retirement, a member shall receive a monthly pension equal to two and one-half percent of the member's average final compensation times the number of years and months of creditable service, not to exceed 80 percent of the member's average final monthly compensation.

(b) *Optional forms of payment.*

(1) *Withdrawal of contributions.*

- a. A Tier 1 member retiring with 25 or more years of creditable service, or a Tier 2 Member retiring with 27 years of creditable service, or a member who first enters the pension system as fire chief and retires as fire chief with ten or more years of creditable service may elect to withdraw all or a portion of the member's accumulated contributions and receive a reduced lifetime pension. This election will not affect the amount of the surviving spouse's pension or the cost-of-living adjustment.
- b. The pension calculated in subsection (a) will be reduced by applying factors to the amount withdrawn as adopted by the board of trustees upon the recommendation of the pension system's consulting actuary.
- c. The member's spouse, if any, must sign appropriate forms attesting consent.

(2) *Joint options.*

- a. A Tier 1 member retiring with 25 or more years of creditable service, or a Tier 2 Member retiring with 27 years of creditable service, or a member who both first enters the pension system as fire chief and retires as fire chief with ten or more years of creditable service may elect a reduced lifetime pension. A percentage (100 percent, 75 percent, or 66 2/3

percent), as specified in the election, shall be paid to the surviving spouse instead of the amount specified in subsection 2-1268(a)(1) of this section.

- b. This shall be calculated by multiplying the amount otherwise payable by the appropriate factor adopted by the board of trustees upon the recommendation of the pension system's consulting actuary.
- c. This option is irrevocable after the effective date of the member's pension. It shall be effective only if the spouse was married to the member on the effective date of the member's pension and shall become ineffective if either the spouse or the member dies prior to the effective date of the pension.
- d. Notwithstanding (b)(2)c, above, effective for deaths on or after the last day of the next fiscal year after enactment of this ordinance, for which the funding ratio is determined to be equal to or greater than 80%, if a member's spouse predeceases the spouse, after the joint option has commenced, the joint option shall cease to be effective after the date of the spouse's death. The member shall then have the member's pension increased to the full pension the member would have received, had the member not elected the joint option. The increase in the amount of the monthly pension shall commence following the month in which proof of the spouse's death has been filed with the Firefighters Pension System.
- e. This election will not affect the amount of the cost-of-living adjustment.
- f. The member's spouse, if any, must sign appropriate forms attesting consent; however, in no event shall a member be required to obtain the consent of an approved domestic partner in choosing pension options contained in this section.

(3) *Required distribution.* Distribution of a member's interest in the pension system shall commence not later than April 1 of the calendar year following the later of the calendar year in which the member attains age 72 or the calendar year in which the member retires under the plan. Beginning January 1, 2023, distribution of a member's interest in the pension system shall commence not later than April 1 of the calendar year following the later of the calendar year in which the member attains the applicable age, as defined in this section, or the calendar year in which the member retires under the plan.

- a. If a death benefit is being paid to a designated beneficiary other than the member's spouse, payments shall either:
 - 1. Be completed by December 31 of the fifth calendar year following the year of the member's death; or
 - 2. If there is no designated beneficiary, payment of a death benefit shall commence no later than December 31 of the fifth calendar year following the year of the member's death.
- b. If the designated beneficiary is the member's spouse, death benefit payments shall commence no later than December 31 of the year the member would have attained the

applicable age, paid over the life or life expectancy of the spouse, as determined under table V of Treasury Regulations 1.79-2 as of the date the payments commence, and benefits shall be actuarially increased for the delay.

- c. For the purposes of this section, applicable age shall mean:
1. In the case of an individual who attains age 72 after December 31, 2022, and age 73 before January 1, 2030, the applicable age is 73.
 2. In the case of an individual who attains age 73 after December 31, 2029, and age 74 before January 1, 2033, the applicable age is 74.
 3. In the case of an individual who attains age 74 after December 31, 2032, the applicable age is 75.

(c) *Duty disability pension.* Upon duty disability retirement, a member shall receive a monthly pension equal to 62.5 percent of the member's average final compensation per month, but not less than 62.5 percent of the then current maximum salary payable to the rank of a firefighter.

(d) *Nonduty disability pension.* Upon nonduty disability retirement, a member shall receive a monthly pension equal to 25 percent of the average final compensation per month plus two and one-half percent per year of the member's average final compensation per month for the number of years and months of creditable service in excess of ten years, not to exceed to any event, a maximum monthly pension equal to 80 percent of the member's average final compensation per month.

(e) *Minimum benefit.* A minimum benefit of \$600.00 per month is established for voluntary, compulsory and disability retirees. Such minimum shall apply to current as well as future retired members, effective with pension checks dated August 1, 1986. Any annual cost-of-living adjustment related to prior calculated benefits shall be based on the original amount without reference to this minimum. The provisions of section 2-1279, when applicable to certain disability retirements, shall apply even if the net payments are less than the minimum stated herein.

(f) *Cost-of-living adjustment - Tier 1.* A cost-of-living adjustment is authorized under these conditions:

(1) *Effective date of adjustment and applicability.* An annual cost-of-living adjustment shall be payable on pension checks to be dated May 1 of the current year and shall remain unchanged until the next effective date of adjustment. Effective for retirements after January 1, 2021, the adjustment shall apply to all beneficiaries receiving benefits, except no pension of any member or beneficiary retiring after February 1 of any year shall be adjusted until May 1 of the succeeding year. The cost-of-living adjustment shall not apply to any funeral benefit.

(2) *Amount of adjustment.* The adjustment shall be three percent, each year, non compounded.

(g) *Cost-of-living adjustment - Tier 2.* A cost-of-living adjustment is authorized under these conditions:

(1) *Effective date of adjustment and applicability.* An annual cost-of-living adjustment shall be payable on pension checks to be dated May 1 of the current year and shall remain unchanged until the next effective date of adjustment. For retirements occurring on or after January 1, 2021, the adjustment shall apply to all beneficiaries receiving benefits, but no sooner than the May 1

following the 27th anniversary of the Tier 2 Members employment, except no pension of any member or beneficiary retiring after February 1 of any year shall be adjusted until May 1 of the succeeding year. The cost-of-living adjustment shall not apply to any funeral benefit.

- (2) *Amount of adjustment.* The adjustment for a Tier 2 Member shall be paid if the prior year funding ratio of the pension fund is equal to or greater than 80%, and will be equal to the percentage increase in the prior 12 months of the final national consumer price index for all urban consumers published prior to December 31 in advance of the next year's adjustment, but shall not exceed 2.5% and shall be non-compounded.

(h) *Health insurance subsidy.* There is hereby established a plan to provide health insurance subsidy payments to retired members of the firefighters' pension system as provided herein:

- (1) *Funding.* A separate fund will be established within the firefighters' pension system for the purpose of providing a health insurance subsidy to eligible annuitants pursuant to subsection (h) (4) of this section. Members will contribute one percent beginning May 20, 1991, toward the establishment of this fund. Beginning May 1, 1992, the city will contribute one percent toward funding. Effective July 25, 1994, the city and members will each contribute one-half percent toward funding. Effective June 23, 1996, the city and active members will each again contribute one percent toward funding. Effective January 1, 2000, the city shall contribute an additional one percent toward funding. Effective July 16, 2023, the contribution rates will increase to two percent by members and four percent by the City. Contributions funding this subsidy shall be in addition to contributions required in section 2-1272. The dollar value of these percentage contributions will be calculated and collected by the methods used in section 2-1272

- (2) *Effective date.* The board of trustees before April 1 of each year shall determine the dollar value of the annual health insurance subsidy. In addition to the amount determined by the board each year, the city shall pay:

- a. Effective November 1, 2010, a \$100.00 monthly retiree health subsidy to all retired members; and
- b. Effective November 1, 2011 and continuing thereafter, a \$200.00 monthly retiree health insurance subsidy to all retired members.

The subsidy shall be payable on pension checks of eligible annuitants pursuant to subsection (h) (4) of this section, to be dated May 1 of the current year, beginning 1992, and shall remain unchanged until the next effective date of adjustment. This benefit shall be provided so long as funds are available in the health insurance subsidy fund.

- (3) *Method of determination.*

- a. Contributions to the fund for the current fiscal year will be estimated based upon members' payroll.
- b. This estimated amount plus earnings, forecasted at the rate assumed in the then most current actuarial valuation performed for the firefighters' pension system, as of January 1 of the current year will serve as the basis for distributions. The fund's balance after distribution must equal one percent of member's annual payroll or \$270,000.00,

whichever is greater. If the fund's balance is reported by the custodian to be below \$270,000.00 at the end of any month, then all distributions from the fund shall cease until the next succeeding May 1.

c. The basis as determined in subsection (h)(3) of this section will be equally divided by all members eligible on January 1 of the current year. In no event will subsidy be greater than carrier premiums.

(4) *Eligibility requirements.* The health insurance subsidy shall be payable under the following conditions.

a. Tier 1 Members must have retired with at least 25 years of creditable service and Tier 2 Members must have retired with at least 27 years of creditable service; or

b. Meet eligibility requirements for a duty disability retirement as detailed in section 2-1267 (a), (c), (d) and (e).

The surviving spouse of a member who dies in the performance of duty as a firefighter becomes eligible for the health insurance subsidy described above. If there is no surviving spouse, a minor child, or children, eligible for pension benefits under section 2-1268(a)(2) will receive the health insurance subsidy payment following the death of a qualified member as long as the child qualifies for pension benefit payments. Only one subsidy is payable per member. If more than one child qualifies as a surviving minor, the subsidy shall be paid in equal shares to all of the qualifying children.

(i) *Direct rollover.* This provision applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the pension system to the contrary that would otherwise limit a distributee's election under this provision, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) *Eligible rollover distributions.* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities).

(2) *Eligible retirement plan.* An eligible retirement plan is an individual retirement account described in section 408(a) of the Internal Revenue Code, an individual retirement annuity described in section 408(b) of the Internal Revenue Code, an annuity plan described in section 403(b) of the Internal Revenue Code, or a qualified trust described in section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) *Distributee*. A distributee includes a member or former member. In addition, the member's or former member's surviving spouse and the member's former spouse who is the alternative payee under a state domestic relations order determined by the board of trustees, based on written procedures, to be a qualified domestic relations order, are distributees with regard to the interest of the spouse or former spouse.

(4) *Direct rollover*. A direct rollover is a payment by the fund to the eligible retirement plan specified by the distributee.

(j) *Pension adjustment for previous beneficiaries*. Effective for each payment made on or after March 1, 2000, the pension payment for each beneficiary shall be increased one percent for each year such beneficiary was receiving benefits prior to January 1, 1990.

(k) *Rights of domestic partner*. Except as provided in (b)(2) above, a member's approved domestic partner, as recognized by the city, shall have all the rights and responsibilities of a member's spouse as provided in this section 2-1265

(l) *Children of domestic partnership*. For the purposes of this section 2-1265, children and step children of domestic partnerships shall have the same rights as children and step children of marital relationships.

Sec. 2-1267. Disability retirement.

(a) *Duty disability*.

(1) A member, regardless of age or years of creditable service, who becomes totally and permanently disabled, as defined in this division, prior to the time he is otherwise entitled to pension under this division, and substantially caused by actual performance of duty as a firefighter, as determined by the board of trustees in accordance with its fact finding procedures, shall be retired on the first day of the month following determination by the board of such disability. Such fact finding procedures may require review of the facts regarding the line of duty incident by a subcommittee of the board; or by an independent fact finder appointed by the board; and in consultation with a legal advisor retained by the board. The city, and any employee or official of the city, shall cooperate with the fact finding procedures, and shall divulge information as requested by the board in determining the duty disability of a member.

(2) After five years' service, any disability caused by any infectious disease., disease of the lungs or respiratory tract, hypotension, hypertension or disease of the heart shall be presumed to have been suffered in line of duty, if the member successfully passed a physical examination within five years prior to date of application, , which examination failed to reveal any evidence of such condition. In order to receive the presumption that an infectious disease was contracted in the line of duty, the member shall submit to an annual physical examination, at which a blood test is administered. For purposes of this paragraph, the term "infectious disease" means the human immunodeficiency virus (HIV), acquired immunodeficiency syndrome (AIDS), tuberculosis, hepatitis A, B, C, and D, diphtheria, meningococcal meningitis, methicillin-resistant staphylococcus aureus (MRSA), hemorrhagic fever, plague, rabies, and secure acute respiratory syndrome (SARS). Such presumptions are rebuttable upon the showing of competent evidence to the contrary.

(3) Any condition of cancer affecting the skin or the central nervous, lymphatic, digestive,

hematological, urinary, skeletal, oral, breast, testicular, genitourinary, liver or prostate systems, as well as any condition of cancer which may result from exposure to heat or radiation or to a known or suspected carcinogen as determined by the International Agency for Research on Cancer, which results in the disability of a member who successfully passed a physical examination within five years prior to the time that a claim is made for disability, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in the line of duty unless the contrary is shown by competent evidence and it can be proven to a reasonable degree of medical certainty that the condition did not result nor was contributed to by the voluntary use of tobacco.

(b) *Nonduty disability.*

- (1) A member under the age of 65 years with ten or more years of creditable service, who becomes totally and permanently disabled, as defined in this division, prior to the time he is otherwise entitled to a pension under this division, shall be retired on the first day of the month following determination by the board of such disability.
- (2) No benefit shall be payable if the disability is caused while engaging in any occupation or performing any work for remuneration or profit while in service of another employer or in self-employment.
- (3) Should a member be disabled while serving another employer, or in self-employment, he shall be treated as a terminated member.

(c) *Determination of disability status.* A member shall be deemed to have become totally and permanently disabled when the member is in a state or condition of disability which presumably prevents the member from performing the duties of a firefighter for the rest of the member's life. Such disability, whether duty or nonduty, must not have been contracted, suffered or incurred while the member was engaged in or result from having been engaged in a criminal act or enterprise, or result from habitual drunkenness or addiction to narcotics or from self-inflicted injury, or from disability incurred while in the service in the armed forces of the United States or any foreign country.

(d) *Authority of board of trustees.* The board of trustees in its sole judgment shall determine whether the status of total and permanent disability exists, and its determination shall be binding and conclusive, subject to any right of review provided by this division. In making such determination, the board of trustees shall rely upon the findings of a medical board, as defined in this division. The written opinion of any two members of the medical board shall be required. The medical board shall be appointed by the board of trustees, and the expenses of an examination by the medical board shall be paid from the funds of the retirement system.

(e) *Recovery from disability.* From time to time, the board of trustees shall have the right to require proof of continuing disability, which may include:

- (1) Further examination by the medical board; or
- (2) Submission of additional information by the member regarding employment and other personal activities.

The board may follow its fact finding procedures in developing proof of continued disability. If a member fails to respond to board requests for evidence of a continuing disability, or fails to submit to

further medical examination, the board may terminate payment of disability retirement payments. If the board of trustees determines that disability no longer exists, it shall promptly terminate payment of the disability retirement payments. In that event, the member shall be considered terminated from the retirement system unless the member promptly returns to full-time service as a firefighter. If the member promptly returns to service as a firefighter following termination of disability, the period of disability retirement will not be counted as creditable service for determining further benefits under this division, but such period of disability shall not be construed as interrupting continuous creditable service. All disability retirement payments received shall be charged against the member's accumulated contributions as defined in this division for the purpose of determining the accumulated contributions under this plan.

Sec. 2-1268. Death benefits generally.

(a) *Amount.* Upon receipt of the proper proofs of death of a member, there shall be paid the following amounts:

(1) Surviving spouse's pension.

- a. There shall be paid to the eligible surviving spouse, if any, beginning the month following a member's death, one-half of the member's accrued pension at date of death as provided in section 2-1265(a), but not less than 25 percent of the member's average final compensation per month unless the deceased member had elected the joint option provided in section 2-1265(b)(2).
- b. However, if the member dies before retirement as the natural and proximate result of an accident sustained in the performance of duty as a firefighter, the member's surviving spouse shall receive 100 percent of the member's accrued pension, but not less than 62.5 percent of the member's average final compensation per month, or 62.5 percent of the then current maximum salary payable to the rank of firefighter per month, whichever is greater.
- c. If a Tier 1 member having 25 years or more of creditable service, or a Tier 2 member having 27 years or more of creditable service, dies before retirement, the member's surviving spouse shall receive a pension calculated as if the member retired on the date of the member's death, electing a 100 percent joint option without lump sum withdrawal, as calculated in section 2-1265(b)(2).
- d. A minimum of \$275.00 per month is established for current and future spouse's pension payments, effective with pension checks dated August 1, 1986. Any annual cost-of-living adjustment related to prior calculated benefits shall be based on the original amount without reference to this minimum. The provisions of section 2-1279, when applicable to certain disability benefits, shall apply even if the net payments are less than the minimum stated in this subsection.
- e. If there be no surviving spouse, or if such surviving spouse dies, the surviving spouse's pension shall be divided equally among any children eligible, as provided in subsection (a)(2) of this section for a child's allowance.

(2) *Child's allowance.*

- a. There shall be paid to a member's child or children under the age of 18 years at the time of the member's death, \$100.00 a month each until such child shall attain the age of 18 years, unless the child is a full-time student at an accredited institution of higher learning, in which case the payments shall continue until the child shall attain the age of 21 years.
- b. Any child 18 years of age or older, who is physically or mentally incapacitated from earning a livelihood, shall, so long as such incapacity exists as certified by a member of the medical board, be entitled to the same benefits as a child under the age of 18. If any so incapacitated child shall marry, such child shall not thereafter be entitled to any benefits under this division.

(3) *Funeral benefit.* Effective May 3, 1993, there shall be paid a funeral benefit of \$2,000.00, whether death occurred in service or after retirement.

(b) *Qualification of surviving spouse.* No surviving spouse shall be entitled to receive any benefits or payment of any pension under this division unless the spouse is married to the member as of the effective date of the member's benefit and as of the date of the member's death.

(c) *Other payments.* If there be no surviving spouse, or child qualifying for child's allowance, surviving such deceased member, the member's accumulated contributions shall be paid to the member's estate or named beneficiary. If the payments received by such member, or the member's surviving spouse or children, did not equal the amount of the accumulated contributions, then the remaining balance of the accumulated contributions shall be paid to the member's named beneficiary or estate.

(d) *Rights of domestic partner.* A member's approved domestic partner, as recognized by the city, shall have all the rights and responsibilities of a member's spouse as provided in this section 2-1268

(1) *Qualification of domestic partner.* No domestic partner shall be entitled to receive any benefits or payment of any pension under this division unless the domestic partner's status as such had been approved prior to effective date of the member's benefit and continues in such status as of the date of the member's death.

Children of domestic partnership. For the purposes of this section 2-1268, children and step children of domestic partnerships shall have the same rights as children and step children of marital relationships.

Approved as to form:

Katherine Chandler
Senior Associate City Attorney