

ORDINANCE NO. 06-16

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 33, "POLICE AND FIRE-RESCUE DEPARTMENTS", SUBHEADING "PENSIONS", OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING SECTION 33.60, "DEFINITIONS", AMENDING SECTION 33.62(J)(1)(c) "BENEFIT AMOUNTS AND ELIGIBILITY", TO PROVIDE FOR REQUIRED PAYMENT OF PENSION BENEFIT; AMENDING SECTION 33.70, "DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS AMENDING SECTION 33.71, "SEPARATION FROM EMPLOYMENT FOR MILITARY SERVICE", TO PROVIDE FOR PAYMENT OF DEATH BENEFIT AND DIFFERENTIAL WAGE PAYMENT; PROVIDING A GENERAL REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That Chapter 33, "Police and Fire-Rescue Departments", subheading, "Pensions", of the Code of Ordinances of the City of Delray Beach is hereby amended by amending Section 33.60, "DEFINITIONS", to read as follows:

Sec. 33.60. DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Actuarial equivalence or Actuarially equivalent. This term shall mean that any benefit payable under the terms of the pension fund in a form other than the normal retirement pension shall have the same actuarial present value on the date payment commences as the normal retirement pension. For purposes of establishing the actuarial present value of any form of payment, all future payments shall be discounted for interest and mortality by using seven (7) percent interest and the 1983 Group Annuity Mortality Table for Males, with ages set ahead five (5) years in the case of disability retirees.

Agreement. The written instrument setting forth the provisions of the retirement system.

Average monthly earnings.

- (1) One thirty-sixth of the arithmetical average for the highest consecutive thirty-six-month period preceding the actual retirement or termination of a member; provided, however, the benefit derived shall not be less than the benefit that would have been paid based on a definition of average

monthly earnings of one twenty-fourth of the arithmetical average for the highest consecutive twenty-four-month period, as calculated prior to the effective date of Ordinance No. 17-04.

- (2) Notwithstanding paragraph (1) above, for police officer members hired after July 7, 2015, average monthly earnings means one-sixtieth of the arithmetical average for the highest five (5) years of the last ten (10) years preceding the actual retirement or termination of the member.
- (3) In addition to other applicable limitations set forth in the plan, and notwithstanding any other provisions of the plan to the contrary, for the plan years beginning on or after January 1, 1996, the annual compensation of each member taken into account under the plan shall not exceed the annual compensation limit of Section 401(a)(17)(B) of the Internal Revenue Code, as amended for cost of living increases, which is incorporated herein by reference.

Beneficiary. The person entitled to receive benefits hereunder at the death of a member who has been designated in writing by the member and filed with the Board of Trustees. If no designation is in effect at the time of death of the member, or if no person so designated is living at that time, the beneficiary shall be the estate of the member.

Board. The Board of Trustees which shall administer and manage the system herein provided and serve as Trustee of the Trust Fund.

Continuous service.

- (1) Uninterrupted service by a member (expressed as years and completed months) from the date he last entered employment as an employee until the date his employment is terminated by death, disability, retirement, resignation or discharge.
- (2) However, the continuous service of any member shall not be deemed to be interrupted by:
 - (a) Any authorized leave of absence or vacation, provided all members similarly situated in similar circumstances shall be treated alike pursuant to uniform, nondiscriminatory rules. No credit for benefit eligibility for computation purposes under the system shall be allowed for any such period of leave of absence.
 - (b) Any service, whether voluntary or involuntary, in the armed forces of the United States, provided the member is legally entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 and any amendments thereto, or any law applicable to such reemployment, and provided that a member shall apply for reemployment within three (3) months following termination of such service, or as otherwise allowed by the Uniformed Services Employment and Reemployment Rights Act of 1994, and any amendments thereto. Nothing aforementioned shall serve to reduce the accrued accredited services of the members on the effective date of the plan.
- (3) Continuous service shall also include, for reemployed members, those years and completed months for which the reemployed member had withdrawn his contributions to the Trust Fund, where the reemployed member repays into the Fund the contributions he had withdrawn, with interest based upon the plan's annual total rate of return for the pension funds, as computed by the actuaries or the City, for those years and completed months, within ninety (90) days after his reemployment date. A reemployed member may also repay only a portion of the withdrawn funds with interest and receive

a like credit for continuous service; however, repayments, whether partial or total, shall only be permitted once within the ninety-day limit.

- (4) For members who are employed by the City on or after the effective date of this Section who have five (5) or more years of continuous service based on City employment, continuous service shall also include up to three (3) years of active service in the U.S. armed forces or full-time employment as a police officer or firefighter with another governmental entity prior to employment by the City, purchased by the member in accordance with this paragraph; provided the member has not received and will not receive a benefit from another retirement plan based on such prior employment. Such a member may purchase continuous service under the plan, in years and tenths of a year, for all or a portion of the period of their active service in the U.S. armed forces or full-time employment as a police officer or firefighter with another governmental entity prior to employment by the City, by paying into the plan the full actuarial cost of such continuous service, as determined by the plan actuary. Such payment may be made at any time after employment by the City, and must be made in full prior to entering the DROP or separation from City employment, whichever occurs earlier. In the event full payment is not made prior to such date, the member shall receive only the amount of continuous service, as determined by the actuary, for which the payment made, excluding interest, is the full actuarial cost. In the event a member makes payment for additional continuous service in accordance with this paragraph prior to attaining five (5) years of continuous service based on City employment, and separates from City employment before attaining five (5) years of continuous service based on City employment, such member shall receive a full refund of all payments made, plus interest based on the assumed rate of return of the plan. A member purchasing such additional continuous service must pay the full cost of any actuarial calculations required. Payment for the purchase of continuous service pursuant to this paragraph may be made using any one or a combination of the following options:
- a) [*Cash Payment.*] Cash lump sum payment.
 - b) [*Direct Transfer; Rollover.*] Direct transfer or rollover of an eligible rollover distribution from a qualified plan, in accordance with Section 33.70.
 - c) *Time Payment Plan.* Under this option the member may elect to pay any remaining balance due for the purchase of continuous service through payroll deduction on a time payment plan over a period of not more than five (5) years, as approved by the Retirement Committee. Interest on such payments shall be paid based on the assumed rate of return of the plan. Payments deducted from an employee's pay shall be designated as employer contributions pursuant to Section 414(h) of the Internal Revenue Code.

Earnings. Prior to October 1, 2006, earnings shall mean base wages paid to a member, including state education compensation, police basic education and police and fire career education compensation, but excluding overtime, bonuses and any other payments. Effective October 1, 2006, earnings for firefighter members shall mean base wages paid to the member including state education compensation and fire career education compensation, but excluding overtime, bonuses and any other payments. Effective October 1, 2006, earnings for police officer members, shall mean base wages paid to the member including state education compensation, police basic education, police career education compensation and up to twenty-five (25) hours of overtime compensation per fiscal year, but excluding bonuses and any other payments.

Effective July 7, 2015, earnings for police officer members who are employed and have less than ten (10) years of continuous service on July 7, 2015, shall mean base wages paid to the member including state education compensation, police basic education, police career education compensation and up to twenty-five (25) hours per fiscal year of overtime compensation earned through July 7, 2015, but excluding overtime compensation earned after July 7, 2015, bonuses and any other payments. Earnings for police officer members hired after July 7, 2015 shall mean basic wages paid to the member including state education compensation, police basic education, police career education compensation, but excluding overtime compensation, bonuses and any other payments.

Effective date. April 22, 1974.

Eligible retired public safety officer. A member who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer.

Employee. All employees of the City classified as full-time, sworn police officers, as defined on the effective date in F.S. Section 185.02, or classified as police officers in training, or classified as volunteer or regular, full-time firefighters, as defined on the effective date in F.S. Section; 175.032, but shall exclude all civilian members of the Police Department or Fire-Rescue Department, and the Police Chief and Fire-Rescue Chief upon their written election not to participate in the system.

Fund. The Trust Fund established herein as part of the system.

Member. An employee who fulfills the prescribed participation requirements.

Public Safety Officer. The term “public safety officer” shall have the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A).

Qualified Health Insurance Premiums. Premiums for coverage for the eligible retired public safety officer, his spouse, and dependents (as defined in Section 152 of the Internal Revenue Code), by an accident or health plan or qualified long-term care insurance contract (as defined in Section 7702B(b) of the Internal Revenue Code).

Qualified Military Service. Any service in the uniformed service (as defined in chapter 43 of title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service (Section 414(u)(5) of the Internal Revenue Code).

Police Officer Member. A police officer member is any employee classified as a full time sworn police officer or police officer in training who is included in the police officers and sergeants bargaining unit or not included in any bargaining unit on the effective date of this ordinance. A police officer member shall also include members of the police lieutenants bargaining unit upon ratification of a collective bargaining agreement containing the provisions of this ordinance.

Spouse. The lawful wife or husband of a member at time of retirement and death.

System. The City Police and Firefighters Retirement System as contained herein and all amendments thereto.

USERRA. Uniformed Services Employment and Reemployment Rights Act (P.L. 103-353).

Section 2. That Chapter 33, "Police and Fire-Rescue Departments", subheading, "Pensions", of the Code of Ordinances of the City of Delray Beach is hereby amended by amending Section 33.62, "BENEFIT AMOUNTS AND ELIGIBILITY", to read as follows:

Sec. 33.62. BENEFIT AMOUNTS AND ELIGIBILITY.

(A) *Normal Retirement Date.* This term shall have the following meanings:

- (1) For employees who are eligible to become members of the system as of its effective date, the normal retirement date shall be the date of their fifty-second (52nd) birthday, regardless of the number of years of continuous service.
- (2) For employees who are members of the system and terminate employment prior to October 1, 1989, the normal retirement date shall be the first day of the month coincidental with or subsequent to their fifty-second (52nd) birthday and the completion of twenty (20) years of continuous service.
- (3) For employees who are members of the system and elect to retire or terminate employment on or subsequent to October 1, 1989, the normal retirement date shall be the first day of the month coincidental with or subsequent to completion of twenty (20) years of continuous service.
- (4) For employees who are members of the system and retire or terminate employment on or after December 31, 1999, the normal retirement date shall also be the first day of the month coincidental with or subsequent to age fifty-five (55) and the completion of ten (10) years of continuous service.
- (5) For police officer members hired after July 7, 2015, the normal retirement date shall be the first day of the month coincidental with or subsequent to age fifty-five (55) and the completion of ten (10) years of continuous service, or completion of twenty-five (25) years of continuous service, regardless of age.

(B) *Normal Retirement Benefit*

(1) *Normal Retirement Benefit for Firefighter Members.*

- (a) *Duration, Survivor Benefits.* A firefighter member retiring on his normal retirement date shall receive a monthly benefit which shall commence on his normal retirement date and be continued thereafter during his lifetime. Upon his death the full retirement benefit shall be continued to his spouse for one year and sixty (60) percent of that amount continued thereafter until the earlier of death or remarriage.
- (b) *Amount.* Normal retirement benefits shall be in the amount of two and one-half (2½) percent of average monthly earnings for each year of continuous service for firefighter members with more than ten (10) but less than twenty (20) years of continuous service. Normal retirement benefits shall be in the amount of three (3) percent of average monthly earnings for each year of continuous service if a firefighter member has attained twenty (20) or more years of continuous service, subject to a maximum of seventy-five (75) percent of average monthly earnings. Provided, however, that in no event shall a firefighter member's total benefit be less than two (2) percent of average monthly earnings for each year of continuous service. However, firefighter members as of the effective date shall receive at their normal retirement date (age

fifty-two (52) regardless of years of service) the greater of the benefit provided by the formula above or fifty (50) percent of average monthly earnings.

(c) *Firefighter Members — Optional Enhanced Multiplier.*

- (1) Notwithstanding any provision of the System to the contrary, a firefighter member who is actively employed by the City on March 15, 2004, but who is not participating in the deferred retirement option plan (DROP), may elect a normal retirement benefit in the amount of three and one-half (3.5) percent of average monthly earnings for each year of continuous service if the member attains twenty (20) or more years of continuous service, subject to a maximum of eighty-seven and one-half (87.5) percent of average monthly earnings. Firefighter members electing this enhanced multiplier shall thereafter contribute three (3) percent of earnings to the Trust Fund in addition to the member contribution specified in Section 33.64(A), and shall receive the enhanced multiplier for all periods of continuous service. An election under this subparagraph must be on or before April 15, 2004.
- (2) Notwithstanding any provision of the System to the contrary, a firefighter member who is actively employed by the City on March 15, 2004, but does not elect the enhanced multiplier in accordance with subparagraph (a), above, and who is not participating in the deferred retirement option plan (DROP), may thereafter elect a normal retirement benefit in the amount of three and one-half (3.5) percent of average monthly earnings for all future continuous service after making such election if the member attains twenty (20) or more years of continuous service, subject to a maximum of eighty-seven and one-half (87.5) percent of average monthly earnings. Firefighter members electing this enhanced multiplier shall thereafter contribute three (3) percent of earnings to the Trust Fund in addition to the member contribution specified in Section 33.64(A). Such member may also elect to purchase the enhanced multiplier for some or all periods of continuous service prior to the date of the election, by paying the full actuarial cost of the enhanced multiplier, plus the full cost of any actuarial or other professional services required.
- (3) Notwithstanding any provision of the System to the contrary, a firefighter member who is hired after March 15, 2004 and before April 9, 2013, and who is not participating in the deferred retirement option plan (DROP) may elect a normal retirement benefit in the amount of three and one-half (3.5) percent of average monthly earnings for all future continuous service after making such election if the member attains twenty (20) or more years of continuous service, subject to a maximum of eighty-seven and one-half (87.5) percent of average monthly earnings. Firefighter members electing this enhanced multiplier shall thereafter contribute three (3) percent of earnings to the Trust Fund in addition to the member contribution specified in Section 33.64(A). Such member may also elect to purchase the enhanced multiplier for some or all periods of continuous service prior to the date of the election, by paying the full actuarial cost of the enhanced multiplier, plus the full cost of any actuarial or other professional services required. Firefighter members hired on or after April 9, 2013 shall not be eligible for the optional enhanced multiplier provided in this paragraph (3).

- (4) The election to receive the enhanced multiplier under this paragraph must be made in writing on a form provided by the City. Such election shall be irrevocable. If an eligible member does not elect an optional enhanced multiplier under this paragraph, or if an eligible member elects the enhanced multiplier for only a portion of his total continuous service, then the benefit provided in paragraph (2) shall be used to calculate the benefit for all continuous service to which the enhanced multiplier does not apply. If an eligible member elects the enhanced multiplier and attains more than ten (10) but less than twenty (20) years of continuous service, the member's benefit shall be determined in accordance with paragraph (b), and the member shall receive a refund of all additional contributions and amounts paid for the enhanced multiplier, without interest. In no event shall a member's total benefit be less than two (2) percent of average monthly earnings for each year of continuous service.
- (d) Upon becoming eligible for normal retirement, a firefighter member shall be one hundred (100) percent vested in his accrued benefit.
- (2) *Normal Retirement Benefit for Police Officer Members.*
 - (a) *Duration, Survivor Benefits.* A police officer member retiring on his normal retirement date shall receive a monthly benefit which shall commence on his normal retirement date and be continued thereafter during his lifetime. Upon his death the full retirement benefit shall be continued to his spouse for one year and sixty (60) percent of that amount continued thereafter until the earlier of death or remarriage.
 - (b) *Amount.* Normal retirement benefits shall be in the amount of two and one-half (2½) percent of average monthly earnings for each year of continuous service for employees with more than ten (10) but less than twenty (20) years of continuous service. Normal retirement benefits shall be in the amount of three (3) percent of average monthly earnings for each year of continuous service if a police officer member has attained twenty (20) or more years of continuous service, subject to a maximum of seventy-five (75) percent of average monthly earnings. Provided, however, that in no event shall a police officer member's total benefit be less than two (2) percent of average monthly earnings for each year of continuous service. However, police officer members employed on July 7, 2015 shall receive at their normal retirement date the greater of the benefit provided by the formula above or fifty (50) percent of average monthly earnings.
 - (c) *Police Office Members—Optional Enhanced Multiplier.*
 - (1) Notwithstanding any provision of subsection (B)(2)(b) to the contrary, a police officer member who is actively employed by the City on March 15, 2004, but who is not participating in the deferred retirement option plan (DROP), may elect a normal retirement benefit in the amount of three and one-half (3.5) percent of average monthly earnings for each year of continuous service if the member attains twenty (20) or more years of continuous service, subject to a maximum of eighty-seven and one-half (87.5) percent of average monthly earnings. Police officer members electing this enhanced multiplier shall thereafter contribute three (3) percent of earnings to the Trust Fund in addition to the member contribution specified in Section 33.64(A), until July 7, 2015; and shall receive the

enhanced multiplier for all periods of continuous service. An election under this subparagraph must be on or before April 15, 2004.

- (2) Notwithstanding any provision of subsection (B)(2)(b) to the contrary, a police officer member who is actively employed by the City on March 15, 2004, but does not elect the enhanced multiplier in accordance with subparagraph (a), above, and who is not participating in the deferred retirement option plan (DROP), may thereafter elect a normal retirement benefit in the amount of three and one-half (3.5) percent of average monthly earnings for all future continuous service after making such election if the member attains twenty (20) or more years of continuous service, subject to a maximum of eighty-seven and one-half (87.5) percent of average monthly earnings. Police officer members electing this enhanced multiplier shall thereafter contribute three (3) percent of earnings to the Trust Fund in addition to the member contribution specified in Section 33.64(A), until July 7, 2015. Such member may also elect to purchase the enhanced multiplier for some or all periods of continuous service prior to the date of the election, by paying the full actuarial cost of the enhanced multiplier, plus the full cost of any actuarial or other professional services required.
 - (3) Notwithstanding any provision of subsection (B)(2)(b) to the contrary, a police officer member who is hired after March 15, 2004 and before April 9, 2013, and who is not participating in the deferred retirement option plan (DROP) may elect a normal retirement benefit in the amount of three and one-half (3.5) percent of average monthly earnings for future continuous service after making such election if the member attains twenty (20) or more years of continuous service, subject to a maximum of eighty-seven and one-half (87.5) percent of average monthly earnings. Police officer members electing this enhanced multiplier shall thereafter contribute three (3) percent of earnings to the Trust Fund in addition to the member contribution specified in Section 33.64(A), through July 7, 2015. Such member may also elect to purchase the enhanced multiplier for some or all periods of continuous service prior to the date of the election, by paying the full actuarial cost of the enhanced multiplier, plus the full cost of any actuarial or other professional services required. Police officer members hired on or after April 9, 2013 shall not be eligible for the optional enhanced multiplier provided in this paragraph (3).
 - (4) If an eligible member elects the enhanced multiplier and attains more than ten (10) but less than twenty (20) years of continuous service, the member's benefit shall be determined in accordance with subsection (B)(2)(b), and the member shall receive a refund of all additional contributions and amounts paid for the enhanced multiplier, without interest. In no event shall a member's total benefit be less than two (2) percent of average monthly earnings for each year of continuous service.
- (d) *Normal Retirement Benefit for Police Officer Members Effective July 7, 2015.*
- (1) Notwithstanding any other provision of this section 33.62, the normal retirement benefit for police officer members employed on July 7, 2015, and police officer members hired after July 7, 2015 shall be determined in accordance with this subparagraph (d).

- (2) The normal retirement benefit for police officer members with twenty (20) or more years of continuous service on July 7, 2015 shall be determined in accordance with paragraphs (b) and (c) above.
 - (3) The normal retirement benefit for police officer members who are employed and have less than twenty (20) years of continuous service on July 7, 2015 shall be determined in accordance with paragraphs (b) and (c) above for continuous service through July 7, 2015, and three (3) percent of average monthly earnings for continuous service after July 7, 2015, subject to a maximum annual starting benefit of one hundred eight thousand dollars (\$108,000.00).
 - (4) The normal retirement benefit for police officer members hired after July 7, 2015 shall be two and three-fourths (2.75) percent of average monthly earnings for each year of continuous service, subject to a maximum annual starting benefit of one hundred eight thousand dollars (\$108,000.00) and further subject to a maximum benefit of sixty-eight and three-fourths (68.75) percent of average monthly earnings.
- (e) Upon becoming eligible for normal retirement, a police officer member shall be one hundred (100) percent vested in his accrued benefit.
- (C) *Early Retirement Date.* On or after December 31, 1999, a police officer member hired on or before July 7, 2015, or a firefighter member may retire on or after the early retirement date, which shall be the first day of any month coincident with or next following the attainment of age fifty (50) and the completion of ten (10) years of continuous service. Early retirement is retirement from active employment with the City on or after the early retirement date and prior to the normal retirement date. A police officer member hired after July 7, 2015 shall not be eligible for early retirement.
- (D) *Early Retirement Benefit.* The amount of the early retirement benefit shall be determined in the same manner as the normal retirement benefit, except that continuous service and average final compensation shall be determined as of the early retirement date. The benefit payable shall be reduced by three (3) percent for each year by which the commencement of benefits precedes the normal retirement date. The early retirement benefit provided in this subsection (D) shall have no application to the early retirement incentive provided in Section 33.687.
- (E) *Disability Retirement Provisions.*
- (1) (a) For purposes of this system, "total and permanent disability" shall mean an injury, disease or condition which totally and permanently incapacitates a member, either physically or mentally, from his regular and continuous duty as a police officer or firefighter. A "total and permanent disability" arising directly from the performance of service to the City by a member as a police officer or firefighter shall be considered to be a service incurred disability. A "total and permanent disability" arising from any other cause or source, other than as modified below, shall be considered to be a nonservice incurred disability. A member shall not be entitled to receive a disability retirement benefit from the system if the disability is a result of:
 - (1) Excessive and habitual use of drugs, intoxicants or narcotics;

- (2) Injury or disease sustained by the member while willfully and illegally participating in fights, riots, civil insurrections, or while committing a crime;
 - (3) Injury or disease sustained by a member while serving in any of the armed forces;
 - (4) Injury or disease sustained by the member after his employment with the City has been terminated.
- (b) A member shall not receive a service incurred disability benefit for injury or disease sustained by the member while working (either as an employee or through some other contractual arrangement) for anyone other than the City, performing a job function the same as or related to the member's City job function, and arising out of the scope of any other employment or contractual arrangement, excepting injuries sustained by members while performing duties on behalf of the City and while within the City's jurisdiction although those injuries occurred at an outside employer's job site. In addition, a member shall not be entitled to receive a disability retirement benefit from the system on the basis of any condition which existed prior to the member's employment or which was evidenced during the member's pre-employment physical.
- (2) *Application for Benefits.* In order for the Board to consider a member's request for disability retirement benefits, the member must apply in writing to the Board. Upon receipt of proper application by the Board of Trustees, the Board of Trustees shall arrange for a physical examination of the applicant by the medical board. A further condition for receipt of disability retirement benefits from the system is that the applicant must apply for and diligently pursue disability benefits from social security and workers' compensation. Written proof of application must be submitted to the Board of Trustees. Failure of the applicant to qualify as being disabled under either the social security or workers' compensation laws may be considered by the Board of Trustees in review of that member's application or recovery from disability.
 - (3) *Medical Board.* When a member submits proper application for a disability retirement benefit, the Board of Trustees shall designate a medical board to be composed of at least one physician. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this subchapter, shall investigate all essential statements or certificates made by or on behalf of a member in connection with an application for disability retirement and shall report in writing to the Board of Trustees its conclusions and recommendations upon all matters referred to it. The payment of those services shall be determined by the Board of Trustees.
 - (4) *Determination of Disability.* All questions relating to eligibility for initial payment or continuance of disability benefits shall be determined by the Board of Trustees, taking into consideration the recommendations of the medical board and any other evidence of which the Board of Trustees may avail itself. The general steps which the Board of Trustees shall follow in its determination shall be as listed below, provided however, that the Board of Trustees may, in its discretion, alter or modify these steps:
 - (a) Determine whether the member's application is proper;
 - (b) If application is for a nonservice incurred disability, determine whether the ten (10) years of continuous service requirement has been met;

- (c) Based on all evidence submitted to the Board of Trustees, determine whether the applicant satisfies the definition of disability, including the absence of listed exclusions;
 - (d) Determine whether the disability is to be considered a service-incurred disability or a nonservice disability, taking into consideration F.S. Chapters 175.231 and 185.34.
 - (e) *Establish a date of disability.* This date may be the date of injury causing the disability, the date when the member could no longer perform his regular and continuous duties, the date when his sick pay and vacation pay are exhausted or such other date as determined by the Board of Trustees.
- (5) *Disability Retirement Benefits.*
- (a) *Eligibility.* Each member shall be eligible for service incurred disability benefits, regardless of length of continuous service. Each member who completes ten (10) years of continuous service prior to becoming disabled shall be eligible for nonservice incurred disability benefits.
 - (b) *Initial Amount of Service Incurred Disability Benefit.* The greater of sixty (60) percent of the member's average monthly earnings in effect on the date of disability or the member's accrued pension benefit. Effective for disability applications filed on or after May 3, 2011, the initial amount of service incurred disability benefit for firefighters shall be the greater of sixty-one (61) percent of the member's average monthly earnings in effect on the date of disability or the member's accrued pension benefit.
 - (c) *Amount of Nonservice Incurred Disability Benefit.* Two (2) percent of average monthly earnings in effect on the date of disability for each year of continuous service; provided, however, the minimum shall not be less than twenty-five (25) percent of average monthly earnings.
 - (d) *Terms of Payments.* Disability benefits shall commence on or as of the first day of the month coincident with or next following the date of disability, as established by the Board of Trustees, and shall continue to be paid on the first day of each subsequent month until the death or recovery of the disability retiree. The same survivorship percentages which apply to normal retirement benefits shall also apply to disability retirement benefits.
 - (e) *Eligibility for Other Benefits.* In the event that a member applying for disability benefits is also eligible for either early or normal retirement, the Board may, upon the request of the member, pay the early or normal retirement benefit instead of a disability retirement benefit.
- (6) *Report by Disability Retiree.*
- (a) Each person currently receiving disability retirement benefits and each person who first qualifies for disability retirement benefits shall be required to submit to the Board of Trustees, upon a request by the Board of Trustees, a signed and notarized report which includes, but is not limited to:
 - (1) A medical report from the disability retiree's physician stating whether the retiree is still totally incapacitated to perform the regular and continuous duties of a police officer or firefighter shall be submitted to the Board. The required physician's statement must be dated within four (4) months of the request.

- (2) A statement to the effect that the disability retiree understands that if the report is incomplete or incorrect, his disability benefits may be suspended or discontinued.
 - (b) In the event that the required reports are not submitted to the Board on a timely basis, or are incomplete or incorrect, the Board may, in its discretion, suspend or discontinue the disability retirement benefits.
- (7) *Disability Affidavit.* No member otherwise eligible to receive disability benefits shall be paid those benefits unless and until that member files a disability affidavit with the Board on a form furnished by the Board. By the disability affidavit, the prospective retiree shall affirm that he is acquainted and familiar with the terms and conditions of his disability retirement. In particular, he shall acknowledge the authority of the Board to require him to undergo periodic future physical examinations in order to determine whether he has recovered from disability.
- (8) *Authority for Reexamination.* Each person who first qualifies for or is then receiving disability retirement benefits on or after the effective date of this subchapter shall be subject to periodic reexamination by a medical board selected by the Board of Trustees to determine if the disability has ceased to exist.
- (9) *Recovery from Disability.*
 - (a) In the event a member who has been retired on a disability benefit regains his health and is able to perform his duties in the Police Department or Fire Department, the Board shall discontinue the pension; and further, the City shall, subject to budget and qualification of the member for the position, offer the member a position with the City as a police officer or firefighter.
 - (b) If a member shall resume his employment with the City, as a police officer or firefighter, then he may pay into the Fund an amount equal to the aggregate contributions plus interest at a rate to be determined by the Board (computed upon his annual earnings at the time of his disability retirement) he would have been required to make hereunder, as determined by the Board, during the period of his disability retirement had he not been retired, and shall thereupon receive creditable service for the period of the disability retirement. In any event, that member shall retain credit for the period of continuous service to the date of disability.
- (F) *Preretirement Death.*
 - (1) *Service Incurred.* A death benefit shall be payable on behalf of any member who dies as a direct result of an occurrence arising in the performance of service. These benefits are not to be limiting to other benefits available under State law. The benefits shall be payable as follows:
 - (a) To the spouse, until the earlier of death or remarriage, a monthly benefit equal to fifty (50) percent of the member's average monthly earnings; or to a designated beneficiary or beneficiaries other than the spouse, until death, a monthly benefit equal to the actuarial equivalent of a lifetime benefit payable to the member if the amount of fifty (50) percent of the member's average monthly earnings at date of death, plus
 - (b) (1) For each unmarried child until he or she shall have reached the age of eighteen (18) years, and for each unmarried child from age eighteen (18) until age twenty-two (22) who is a full-time student in a fully accredited high school, college or university, there shall be paid in

equal monthly installments, an amount equal to five (5) percent of the average monthly earnings subject to an overall limitation of a total of sixty (60) percent of average monthly earnings for the spouse and children combined. The nonstudent child's pension shall terminate on the earlier of death, marriage or the attainment of age eighteen (18). The pension of a child who is a student shall terminate on the earlier of death, marriage or the attainment of age twenty-two (22). Legally adopted children shall be eligible the same as natural children.

- (2) Upon remarriage or death of the spouse, the five (5) percent child allowance shall be increased to ten (10) percent for each child, not to exceed a combined total of thirty-five (35) percent of the member's average monthly earnings. The trusteeship and disbursements of the pension to any child shall be determined by the Board of Trustees.
- (c) Notwithstanding any provision of this subsection to the contrary, the surviving spouse of any member killed in the line of duty shall not lose death benefits upon remarriage.
- (2) *Nonservice Incurred.* If any member shall die in active service from causes not attributable to active duty or service, a death benefit shall be payable as follows:
 - (a) With less than one year of continuous service, a single sum amount of two thousand five hundred dollars (\$2,500.00) to the member's spouse or other designated beneficiary or beneficiaries, as the case may be.
 - (b) With one but less than five (5) years of continuous service, a single sum amount of five thousand dollars (\$5,000.00) to the member's spouse or other designated beneficiary or beneficiaries, as the case may be.
 - (c) With five (5) or more years of continuous service:
 - (1) A single sum amount of five thousand dollars (\$5,000.00) to the member's spouse or other designated beneficiary or beneficiaries, as the case may be, plus
 - (2) To the spouse until remarriage or death, in equal monthly payments, a pension equal to sixty-five (65) percent of that member's accrued pension as of date of death, subject to a minimum of twenty (20) percent of average monthly earnings; or to a designated beneficiary or beneficiaries other than the spouse, until death, a monthly benefit equal to the actuarial equivalent of a lifetime benefit payable to the member in the amount of sixty-five (65) percent of such member's accrued pension as of date of death, plus
 - (3) To the child of the deceased member, the same benefits as are payable by reason of service incurred death, subject however, to a maximum combined limitation of monthly payments to the spouse and children of fifty (50) percent of average monthly earnings and thirty-five (35) percent after remarriage or death of spouse.
- (3) In the event more than one beneficiary is designated by the member, the death benefits provided in this Section shall be apportioned equally among the beneficiaries.

(G) *Vesting.*

- (1) If a member terminates his employment with the Police or Fire Departments, either voluntarily or by lawful discharge, and is not eligible for any other benefits under this system, he shall be entitled to the following:
 - (a) Effective September 1, 1999, with less than ten (10) years of continuous service, refund of member contributions with a noncompounded simple interest rate of three (3) percent per year applied to the principal balance of the participant's contribution as accrued on December 31 of each year, per year. In the event the amount of member contributions with interest exceeds one thousand dollars (\$1,000.00), the refund of member contributions and interest shall be made only upon the written request of a member or designated beneficiary.
 - (b) With ten (10) or more years of continuous service:
 - (1) The pension benefit accrued to his date of termination, payable commencing on the date which would have been his earliest normal retirement date had he remained in employment, provided he does not elect to withdraw his member contributions; or
 - (2) Effective September 1, 1999, refund of member contributions with a noncompounded simple interest rate of five (5) percent per year applied to the principal balance of the participant's contribution as accrued on December 31 of each year.
 - (2) Any member of this system who, for whatever reason, has his employment with the City as a police officer or firefighter terminated, but who remains with or was previously employed by the City in some other capacity so that his total period of employment with the City is ten (10) years or more, shall have all benefits accrued under this system preserved, provided he does not elect to withdraw his member contributions. These accrued benefits shall be payable at his otherwise normal retirement date, in accordance with the provisions of this system. For purposes of determining normal retirement date under this vesting provision, continuous service shall include all continuous employment with the City as an employee as herein defined as well as the period of time subsequent to termination as a member of this system; however, benefits shall not be payable under this system during any period of continued employment by the City. Upon the written election of the Police Chief or Fire Chief not to participate in the system, the employment of the Police Chief or Fire Chief shall be deemed terminated for the purpose of applying the provisions of this system. A Police Chief or Fire Chief who terminates his participation in this system shall not thereafter be eligible to receive benefits through this system while actively employed by the City.
- (H) *Application of Section.* The provisions set forth herein shall be applicable to all current and future members of the plan, except those members who retired, entered the DROP plan, or terminated employment prior to the effective date of this ordinance. Members who retired, entered the DROP plan, or terminated employment prior to the effective date of this ordinance shall receive benefits in accordance with the plan provisions in effect on the date of their retirement, entry into the DROP plan, or termination, whichever is earliest.
- (I) *Maximum Benefits.* A member may not receive a pension or disability benefit which exceeds the lesser of:
- (1) One hundred (100) percent of the member's average compensation for the highest three (3) consecutive years as a member in the pension fund; or

- (2) The maximum amount allowed under Section 415 of the Internal Revenue Code (increased to reflect the cost-of-living adjustment factor prescribed under Section 415(d) of the Internal Revenue Code), that is incorporated herein by reference. Notwithstanding any other provision of the system to the contrary, the annual benefit to which a member is entitled under the system shall not, in any limitation year, be in an amount which would exceed the applicable limitations under Section 415 of the Internal Revenue Code and the regulations issued thereunder. If the benefit payable under the system would (but for this section) exceed the limitations of Section 415 of the [Internal Revenue] Code by reason of a benefit payable under another defined benefit plan aggregated with this system under [Internal Revenue] Code Section 415(f), the benefit under this system shall be reduced only after all reductions have been made under such other plan. As of January 1 of each calendar year commencing on or after January 1, 2008, the dollar limitation as determined by the Commissioner of the Internal Revenue Service for that calendar year, adjusted for the member's age in accordance with the applicable IRS regulations, shall become effective as the maximum permissible dollar amount of benefit payable under the system during the limitation year ending within that calendar year.
- (J) *Required Payment of Pension Benefits.* Pension benefits shall begin no later than April 1 of the calendar year following the calendar year in which the member retires, or in which the member attains age seventy and one-half (70½), even if the member has not filed a claim for pension benefits. In addition, payment of benefits shall be made in accordance with the applicable provisions of Section 401(a)(9) of the Internal Revenue Code, which is incorporated herein by reference. Notwithstanding any other provision of this plan to the contrary, a form of retirement income payable from this plan, shall satisfy the following conditions:
- (1) If the retirement income is payable before the member's death:
- a. It shall either be distributed or commence to the member not later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½, or the calendar year in which the member retires;
 - b. The distribution shall commence not later than the calendar year defined above; and (i) shall be paid over the life of the member or over the lifetimes of the member and spouse, issue or dependent, or (ii) shall be paid over the period extending not beyond the life expectancy of the member and spouse, issue or dependent.
 - c. Upon the written request of the member, a distribution hereunder, or part thereof, shall be paid directly to an insurer on account of the qualified health insurance premiums payable by such member who is an eligible retired public safety officer, in accordance with the applicable provisions and limitations in Section 402 of the Internal Revenue Code.

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

- (2) If the member's death occurs before the distribution of his interest in the plan has commenced, member's entire interest in the plan shall be distributed within five (5) years of member's death, unless it is to be distributed in accordance with the following rules:
 - a. The member's remaining interest in the plan is payable to his spouse, issue or dependent;
 - b. The remaining interest is to be distributed over the life of the spouse, issue or dependent or over a period not extending beyond the life expectancy of the spouse, issue or dependent; and
 - c. Such distribution begins within one year of the member's death unless the member's spouse, is the sole designated beneficiary, in which case the distribution need not begin before the date on which the member would have attained age 70½ and if the member's spouse dies before the distribution to the spouse begins, this section shall be applied as if the spouse were the member.

Section 3. That Chapter 33, "Police and Fire-Rescue Departments", subheading, "Pensions", of the Code of Ordinances of the City of Delray Beach is hereby amended by amending Section 33.70, "DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS", to read as follows:

Sec. 33.70. DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS.

- (A) *General.* This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the system to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (B) *Definitions.*
 - (1) *Eligible Rollover Distribution.* 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 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 (10) 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.
 - (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 (a) of the Internal Revenue Code, a qualified trust described in Section 401 (a) of the Internal Revenue Code, an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code which is maintained by an eligible employer described in Section 457(e)(1)(A) of the Internal Revenue Code, or an annuity contract described in Section 403 (b) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution.
 - (3) *Distributee.* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse.

Effective as of January 1, 2008, an Employee's or former Employee's non-spouse Beneficiary is a distributee with regard to the interest of the Employee or former Employee.

- (4) *Direct Rollover.* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee. Effective as of January 1, 2008, a non-spouse Beneficiary may make a direct rollover only to an "inherited" individual retirement account as described in Section 408(b) of the Internal Revenue Code. If a non-spouse Beneficiary receives a distribution from the plan, the distribution is not eligible for a 60-day (non-direct) rollover.

- (C) *Rollovers or Transfers into the Fund.* On or after the effective date of this Section, the fund will accept member rollover cash contributions and/or direct cash rollovers of distributions for the purchase of continuous service or an enhanced multiplier as authorized under the plan, as follows: the fund will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code, from an annuity contract described in Section 403(b) of the Internal Revenue Code, or from an eligible plan under Section 457(b) of the Internal Revenue Code, which is maintained by a State, political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State.

Section 4. That Chapter 33, "Police and Fire-Rescue Departments", subheading, "Pensions", of the Code of Ordinances of the City of Delray Beach is hereby amended by amending Section 33.71, "SEPARATION FROM EMPLOYMENT FOR MILITARY SERVICE", to read as follows:

Sec. 33.71. SEPARATION FROM EMPLOYMENT FOR MILITARY SERVICE.

(A) *Accrual of Benefits During Qualified Military Service.* The years or parts of a year that a member serves in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily, after separation from city employment, shall be added to his years of credited service for all purposes, including vesting, provided that:

- (1) The member must return to City employment within one year from the earlier of the date of his military discharge or his release from service.
- (2) The maximum credit for military service pursuant to this Section shall be five (5) years.
- (3) In order to qualify for credited service pursuant to this Section, the member must have been discharged or released from service under honorable conditions. This Section is intended to meet or exceed the minimum requirements of ~~the USERRA~~ Uniformed Services Employment and Reemployment Rights Act ("USERRA", P.L. 103-353). To the extent that this Section does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards of USERRA shall apply.

- (B) *Death Benefits.* In the case of a death or disability occurring on or after January 1, 2007, if a participant dies while performing qualified military service (as defined in Section 414(u) of the Internal Revenue Code), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan as if the participant had resumed and then terminated employment by the City on account of death.

(C) Differential Wage Payments. For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined in Section 3401(h)(2) of the Internal Revenue Code, shall be treated as an employee of the employer making the payment, (ii) the differential wage payment shall be treated as compensation, and (iii) the plan shall not be treated as failing to meet the requirements of any provision described in Section 414(u)(1)(C) of the Internal Revenue Code by reason of any contribution or benefit which is based on the differential wage payment.

Section 5. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 6. That if any section, subsection, paragraph, sentence or word or other provision of this ordinance, or any portion thereof, or its application to any person or circumstance, be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of any other section, subsection, paragraph, sentence or word or provision or its application to other persons or circumstances and shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 7. That this ordinance shall become effective immediately upon passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2016.

ATTEST:

MAYOR

City Clerk

First Reading _____

Second Reading _____