



LAUDERDALE · BY · THE · SEA

Agenda Item Memorandum

Town Attorney

Susan L. Trevarthen

Department

Department Head

|   |                               |
|---|-------------------------------|
| <b>COMMISSION MEETING DATE - 7:00 PM</b>                              | <b>Deadline to Town Clerk</b> |
| <input checked="" type="checkbox"/> Sept 11 - Regular Meeting 7:00 PM | Sept 5                        |

\*Subject to Change

- Presentation     Reports     Consent     Ordinance  
 Resolution     Quasi-Judicial     Old Business     New Business

FY2012 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC

**SUBJECT TITLE: Firefighters Pension Trust Fund Board of Trustees**

**EXPLANATION:** The Town Commission appointed its two resident members to this Board, Linda Collins and Robert Polyasko, at its meeting on March 13, 2012. The VFD appointed Mark Conn and Judson Hopping to the Board as the firefighter members. All terms expire September 30, 2013, unless one Town member and one VFD member resign this year to allow reappointment and staggering of terms, as the Town Commission approved on March 13 and as the VFD has apparently accepted.

Section 175.061(1)(a) of the Florida Statutes (**Exhibit B**) and Section 2-127 of the Town Code of Ordinances (**Exhibit C**) both require that the Town-appointed Board members meet with the VFD-appointed Board members and select the fifth member. The fifth member is not required to be a resident. A meeting occurred on August 29, 2012, and the Board members present selected Miguel San Miguel as the fifth member. See **Exhibit D**, minutes. The Board and its attorney have requested that the Town Commission proceed to ratify this selection. Both the statute and the Code state that the Town Commission has the ministerial duty to appoint the fifth member.

As noted previously in agenda items on February 27 and March 13, 2012, the Board of Trustees has been advised to consider an item of business at its next meeting for the ratification of all actions taken by the Board appointed in 2009 through the date of that meeting, due to the possible irregularities in the appointment process affecting that Board.

- EXPECTED OUTCOME:**
1. Recommendation to approve the Board's selection of its fifth member, and appoint Miguel San Miguel to the Firefighters Pension Trust Fund Board of Trustees.
  2. Request for the Board to ratify all actions taken by the Board that was appointed in 2009 through the date of the ratification vote.

- EXHIBITS:**
- A. Resolution 2012-41
  - B. Section 175.061(1)(a), Florida Statutes
  - C. Section 2-137, Town Code of Ordinances
  - D. August 29, 2012 Minutes of the Board of Trustees

Reviewed by Town Attorney  
 Yes     No

Town Manager Initials CHA

**RESOLUTION 2012-41**

**A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, PROVIDING FOR THE APPOINTMENT OF THE FIFTH MEMBER SELECTED BY THE FIREFIGHTERS PENSION TRUST FUND BOARD OF TRUSTEES; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Section 2-137(a) of the Town of Lauderdale-By-The-Sea Code of Ordinances (“Code”) and Section 175.061(1)(a), Florida Statutes, the Town Commission must, as a ministerial duty, ratify the selection of the fifth member of the Volunteer Firefighters Pension Trust Fund Board of Trustees (the “Board”) by the members appointed by the Town and the Volunteer Firefighters Department, and appoint that person to the Board; and

**WHEREAS**, the Board selected Miguel San Miguel as their fifth member at their meeting on August 29, 2012; and

**WHEREAS**, Section 2-137(f) of the Code and Section 175.061(1)(a), Florida Statutes, provide that members of the Board shall serve two-year terms, and that the member being ratified by this Resolution shall serve from the effective date of this Resolution through September 30, 2013.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA THAT:**

**SECTION 1. Recitals.** The foregoing "WHEREAS" clauses are true and correct and hereby ratified and confirmed by the Town Commission and incorporated herein.

**SECTION 2. Appointment.** The Town Commission hereby ratifies the Board’s choice for its fifth member, and officially designates Miguel San Miguel a member of the Firefighters Pension Trust Fund Board of Trustees.



**Exhibit B**

**Statute Governing the Appointment of the  
Board of Trustees of the Firefighters Pension Fund**

2011 Florida Statutes Title XII MUNICIPALITIES  
Chapter 175 FIREFIGHTER PENSIONS

175.061 Board of trustees; members; terms of office; meetings; legal entity; costs; attorney's fees.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) In each municipality and in each special fire control district there is hereby created a board of trustees of the firefighters' pension trust fund, which shall be solely responsible for administering the trust fund. Effective October 1, 1986, and thereafter:

(a) The membership of the board of trustees for a chapter plan consists of five members, **two of whom, unless otherwise prohibited by law, must be legal residents of the municipality or special fire control district and must be appointed by the governing body of the municipality or special fire control district, and two of whom must be full-time firefighters as defined in s. 175.032 who are elected by a majority of the active firefighters who are members of such plan.** With respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired firefighters to vote in such elections, retirees may continue to vote in such elections. **The fifth member shall be chosen by a majority of the previous four members as provided herein, and such person's name shall be submitted to the governing body of the municipality or special fire control district. Upon receipt of the fifth person's name, the governing body of the municipality or special fire control district shall, as a ministerial duty, appoint such person to the board of trustees.** The fifth member shall have the same rights as each of the other four members, shall serve as trustee for a period of 2 years, and may succeed himself or herself in office. **Each resident member shall serve as trustee for a period of 2 years, unless sooner replaced by the governing body at whose pleasure he or she serves, and may succeed himself or herself as a trustee.** Each firefighter member shall serve as trustee for a period of 2 years, unless he or she sooner leaves the employment of the municipality or special fire control district as a firefighter, whereupon a successor shall be chosen in the same manner as an original appointment. Each firefighter may succeed himself or herself in office. *The terms of office of the appointed and elected members may be amended by municipal ordinance, special act of the Legislature, or resolution adopted by the governing body of the special fire control district to extend the terms from 2 years to 4 years. The length of the terms of office shall be the same for all board members.*

(b) The membership of boards of trustees for local law plans shall be as follows:

1. If a municipality or special fire control district has a pension plan for firefighters only, the provisions of paragraph (a) apply.
2. If a municipality has a pension plan for firefighters and police officers, the provisions of paragraph (a) apply, except that one member of the board must be a firefighter and one member of the board must be a police officer as defined in s. 185.02, respectively elected by a majority of the active firefighters or police officers who are members of the plan.
3. A board of trustees operating a local law plan on July 1, 1999, which is combined with a plan for general employees shall hold an election of the firefighters, or firefighters and police

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officers, if included, to determine whether a plan is to be established for firefighters only, or for firefighters and police officers where included. Based on the election results, a new board shall be established as provided in subparagraph 1. or subparagraph 2., as appropriate. The municipality or fire control district shall enact an ordinance or resolution to implement the new board by October 1, 1999. The newly established board shall take whatever action is necessary to determine the amount of assets attributable to firefighters, or firefighters and police officers where included. Such assets include all employer, employee, and state contributions made by or on behalf of firefighters, or firefighters and police officers where included, and any investment income derived from such contributions. All such moneys shall be transferred into the newly established retirement plan, as directed by the board.

With respect to a board of trustees operating a local law plan on June 30, 1986, this paragraph does not permit the reduction of the membership percentage of firefighters, or of firefighters and police officers where a joint or mixed fund exists. However, for the sole purpose of changing municipal representation, a municipality may by ordinance change the municipal representation on the board of trustees operating a local law plan by ordinance, only if such change does not reduce the membership percentage of firefighters, or firefighters and police officers, or the membership percentage of the municipal representation.

(c) Whenever the active firefighter membership of a closed chapter plan or closed local law plan as provided in s. 175.371 falls below 10, an active firefighter member seat may be held by either a retired member or an active firefighter member of the plan who is elected by the active and retired members of the plan. If there are no active or retired firefighters remaining in the plan or capable of serving, the remaining board members may elect an individual to serve in the active firefighter seat. Upon receipt of such person's name, the legislative body of the municipality or special fire control district shall, as a ministerial duty, appoint such person to the board of trustees. This paragraph applies only to those plans that are closed to new members under s. 175.371(2), and does not apply to any other municipality or fire control district having a chapter or local law plan.

(2) The trustees shall by a majority vote elect from their number a chair and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by Florida law.

(3) The board of trustees shall meet at least quarterly each year.

(4) Each board of trustees shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.

(5) In any judicial proceeding or administrative proceeding under chapter 120 brought under or pursuant to the provisions of this chapter, the prevailing party shall be entitled to recover the costs thereof, together with reasonable attorney's fees.

**Exhibit B**

**Statute Governing the Appointment of the  
Board of Trustees of the Firefighters Pension Fund**

(6) The provisions of this section may not be altered by a participating municipality or special fire control district operating a chapter plan or local law plan under this chapter.

(7) The board of trustees may, upon written request of the retiree of the plan, or by a dependent, if authorized by the retiree or the retiree's beneficiary, authorize the plan administrator to withhold from the monthly retirement payment funds that are necessary to pay for the benefits being received through the governmental entity from which the employee retired, to pay the certified bargaining agent of the governmental entity, and to make any payments for child support or alimony. Upon the written request of the retiree of the plan, the board may also authorize the plan administrator to withhold from the retirement payment those funds necessary to pay for premiums for accident, health, and long-term care insurance for the retiree and the retiree's spouse and dependents. A retirement plan does not incur liability for participation in this permissive program if its actions are taken in good faith.

History.—s. 1, ch. 63-249; s. 2, ch. 81-168; s. 3, ch. 86-41; s. 15, ch. 93-193; s. 919, ch. 95-147; s. 5, ch. 99-1; s. 3, ch. 2002-66; s. 7, ch. 2004-21; s. 4, ch. 2009-97; s. 5, ch. 2011-216.

PART II - CODE OF ORDINANCES  
Chapter 2 - ADMINISTRATION  
ARTICLE V. - EMPLOYEE BENEFITS  
DIVISION 3. - VOLUNTEER FIREFIGHTERS' PENSION PLAN

(Ord. No. 273, § 1, 9-10-85; Ord. No. 04-1, § 1, 3-12-04)

**Sec. 2-137. - Board of Trustees.**

(a) *Composition.* The general administration and responsibility for the proper operation of the Volunteer Firefighters' Pension Plan and for making effective the provisions of this division are hereby vested in a Board of Trustees consisting of five persons as follows:

- (1) Two legal residents of the Town to be appointed by the Town Commission;
- (2) Two firefighters who are elected by a majority of the firefighters who are members of the plan; and
- (3) A fifth person chosen by a majority of the other four members of the Board of Trustees. The name of the fifth person shall be submitted to the Town Commission which shall, as a ministerial duty, appoint him to the Board.

(b) *Election of Firefighter-Trustee.* The elective Firefighter-Trustee shall be elected by vote of all actively employed members at meetings to be held at places designated by the Board. All qualified members entitled to vote shall be notified of such meetings in person or by written notice ten days in advance of the meetings. The two candidates receiving the highest number of votes shall be declared elected and shall take office immediately upon the commencement of the term of office for which elected or as soon thereafter as they shall qualify therefor. An election shall be held not more than 30 and not less than ten days prior to the commencement of the terms for which Trustees are to be elected. The Board shall establish and administer the election procedure for each election.

(c) *Oath.* Each Trustee shall, within ten days after his appointment or election, take an oath of office before the Town Clerk that, so far as it develops 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 the law applicable to the plan. Such oath shall be subscribed to by the members making it and certified by the Town Clerk and filed in the Office of the Clerk.

(d) *Election of Chairman and Secretary; duties of Secretary; meetings.* The Board shall by majority vote elect from its members a Chairman and a Secretary. The Secretary shall keep a complete minute book of the actions, proceedings or hearings of the Board. The Board shall meet at least once during each calendar quarter of each year.

(e) *Compensation.* The Trustees shall serve without compensation, but they may be reimbursed from the fund for all necessary expenses which they may actually expend through service on the Board.

(f) *Term of office.* Each resident member shall serve for a period of two years, unless sooner replaced by the Town Commission. The resident member shall serve at the pleasure of the Town Commission and may succeed himself in office. Each member elected by other members of the plan shall serve for a period of two years unless he sooner leaves the employment of the Town as a Firefighter, whereupon the Town Commission shall choose his successor in the same manner as an original appointment. Each Firefighter-Member may succeed himself in office. The fifth member of the Board shall have the same rights as each of the other four members and may succeed himself in office.

(g) *Removal of member.* By four concurring votes among the Board members, the Board may recommend the removal of a member who neglects the duties of his office. The recommendation would be submitted to the body which was responsible for the appointment or election of the member.

PART II - CODE OF ORDINANCES  
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(h) *Filling vacancies.* If a vacancy occurs in the office of Trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(i) *Employees.* The Board of Trustees shall engage such persons, agents or entities as shall be required to transact the business of the plan. The compensation of all persons engaged by the Board and all other expenses of the Board necessary for the operation of the plan shall be paid at such rates and in such amounts as the Board shall agree.

(j) *Rules of procedure.* Subject to the limitations of this division, the Board of Trustees shall from time to time establish uniform rules and regulations for the administration of funds created by this division and for transactions of its business, including provisions for expulsion due to nonattendance of its members which could result in a vacancy.

(k) *Voting.* Each Trustee shall be entitled to one vote on the Board. Three affirmative votes shall be necessary for a decision by the Trustees at any meeting of the Board. The Chairman shall have the right to one vote only.

(l) *Duties and responsibilities.* The duties and responsibilities of the Board shall include, but not necessarily be limited by, the following:

- (1) To construe the provisions of the plan and determine all questions arising thereunder;
- (2) To determine all questions relating to eligibility and participation;
- (3) To determine and certify the amount of all retirement allowances or other benefits;
- (4) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the plan;
- (5) To distribute at regular intervals information concerning the plan;
- (6) To receive and process all applications for participation and benefits;
- (7) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the plan and fund;
- (8) To review reports of and have meetings with the custodian and investment agent or advisor; to require written reports from the custodian on fund assets and transactions on a semiannual or more frequent basis if deemed advisable by the Board; to require written and oral reports from the investment agent or advisor on at least a semiannual basis, such reports to reflect trust fund investment performance, investment recommendations and overall review of fund investment policies;
- (9) To determine or have determined that the plan complies at all times with the provisions of State law, both substantively and in operation, and including the following:
  - a. Have prepared annually and distributed to all members a plan description and a summary of pertinent updated financial and actuarial information;
  - b. Ensure that member contributions are deposited into the trust fund at least monthly, Town contributions at least quarterly and State refund monies immediately;

PART II - CODE OF ORDINANCES  
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- c. Ensure that all regular and special actuarial reports are filed with the State Division of Retirement and the Department of Insurance within 60 days of receipt;
- d. Have actuarial valuations performed on a regular basis and have special actuarial work performed in advance so as to determine costs of any plan changes or amendments prior to their adoption, with such valuations and impact statements performed at least as often as is required by applicable State law;
- e. Establish a uniform procedure for prompt review and rehearing of all claims by members or beneficiaries;

(10) To maintain a minute book containing the minutes and records of proceedings and meetings of the Board;

(11) To perform such other duties as are specified in this division.

(12) *Disbursement of funds.* Funds may be disbursed by the Finance Department or other disbursing agent as determined by the Board, but only upon written authorization by the Board.

(Ord. No. 273, § 6, 9-10-85; Ord. No. 280, §§ 2—7, 3-10-87)

**Sec. 2-138. - Conditions for eligibility.**

Each person who is a Firefighter on September 10, 1985, shall be a member of the pension plan as of such date. Each person who becomes a Firefighter after September 10, 1985, shall be considered a member as of the date he becomes a member of the Volunteer Fire Department upon completion of his application for membership.

(Ord. No. 273, § 2(1), 9-10-85)

**Sec. 2-139. - Application for membership.**

Each eligible Firefighter shall, within 30 days of becoming eligible for this pension plan, complete an application form covering the following information, as well as such other information as may be prescribed by the Board:

- (1) Acceptance of the terms and conditions of the plan;
- (2) Designation of a beneficiary or beneficiaries;
- (3) Acceptable evidence of his date of birth.

(Ord. No. 273, § 2(2), 9-10-85)

**Sec. 2-140. - Contributions.**

- (a) *Member contributions.* Members shall not be required to make contributions to the plan.
- (b) *State contributions.* Any monies received or receivable because of the laws of the State for the express purpose of funding and paying for retirement benefits for Firefighters of the Town shall be deposited in the fund comprising part of this plan within five days of their receipt.
- (c) *Town contributions.* So long as this plan is in effect, the Town shall make an annual contribution to

# EXHIBIT D

L.B.T.S. VOLUNTEER FIREFIGHTERS' PENSION PLAN  
4442 SEA GRAPE DRIVE  
LAUDERDALE BY THE SEA, FL 33308  
Telephone: 954-647-7752 Fax 954-941-6024

## MINUTES

The Regular Quarterly Meeting of the Board of Trustees of the Town of Lauderdale By The Sea Volunteer Firefighters' Pension Plan was called to order by the Chairman Mr. Judson Hopping at 5:00 PM August 29, 2012 at the Volunteers Firefighters Office located at 4513 N. Ocean Drive in the Town of Lauderdale By The Sea, Florida. The following trustees were present: Linda Collins, Judson Hopping, and Miguel San Miguel, the other two trustees were absent. Also present was James Silverstone, Treasurer of the Volunteer Fire Department .

The Chairman explained that the purpose of the meeting was to appoint the fifth member of Board of Trustees and Secretary of the Board.

A motion was made by Linda Collins, duly seconded by Judson Hopping and it was passed the appointment of Miguel San Miguel as the fifth trustee member of the Board and Secretary 2 to 0 as provided by FS-175.

Miguel San Miguel thanked all the members present for his re-appointment.

The Secretary reported that since the last meeting when the Fiscal Year's Annual Report was mailed a few weeks later a letter was received from Tallahassee requesting additional information .

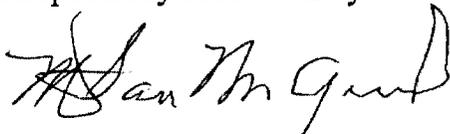
We just completed a review of the entire report and it will be back in Tallahassee by this coming week.

Our attorney notified the Board by E-mail that the distribution of the tax money for the past year is over \$79,000.

The Trustees discussed that the actuarial firm never replied about reducing the rate of return of investments. We will request the information again.

Having no other matter to bring to the Meeting by motion duly made by Judson Hopping, duly seconded by Linda Collins, and Miguel San Miguel. The meeting was adjourned at 6:20 PM.

Respectfully submitted by:

A handwritten signature in black ink, appearing to read "Miguel San Miguel". The signature is written in a cursive style with a large initial "M" and "S".

Miguel San Miguel, Secretary  
of the Board of Trustees