



AGENDA ITEM MEMORADUM

Town Attorney

Department

Susan Trevarthen

Department Director

COMMISSION MEETING DATE -	Deadline to Town Clerk
<input checked="" type="checkbox"/> Feb 27, 2012 Organizational Meeting	Feb 17

*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: While searching the Code for guidance on Board of Adjustment and Planning & Zoning Board appointments, the Town staff noted that the Commission must also appoint two members of the Firefighters Pension Trust’s Board of Trustees. See Section 2-137, Code of Ordinances. They researched the minutes and backup on the last time the Commission made those appointments and asked me for guidance on whether the Town Commission needs to make any appointments at the current time. We have reviewed the matter and also consulted with the Board’s attorney, Ms. Bonnie Jensen, Esq. to determine the situation. The Town Clerk obtained the records of the Board’s activities.

History

An item of new business was brought before the Town Commission on September 10, 2009 from the Board of Trustees, seeking Town appointees. See Exhibit B. As requested by the Board, the Town Commission appointed Linda Collins and Robert Polyasko. Ms. Collins was a new trustee; Mr Polyasko was a reappointment. The item was not sent to the Town Attorney for review.

The request from the Board stated that the existing terms ended on September 30, 2009, and asked that Mr. Polyasko and Ms. Collins be appointed to the Board by the Town for the new fiscal year, which would be October 1, 2009. The minutes are silent on the length of the term, but the request asked the Town to appoint these persons to four year terms. The Board of Trustees has two-year terms pursuant to Section 2-137(f) of the Town Code as required by statute prior to 2009, and the appointees’ terms are not staggered. The statutes changed in 2009 allowing terms to be extended to four years if all terms remain the same length, and if the Town adopts an ordinance authorizing such an extension of the terms. See Section 175.061(1)(a), Florida Statutes. The request contained a description of the change in statutes. No ordinance was requested from the Town, and none was adopted by the Town Commission. Section 2-137(f) still provides for two year terms. Therefore, the terms of the 2009 appointees expired in 2011, and new terms should have started on October 1, 2011.

Also, the statute requires that the two Town trustees and two VFD trustees meet and select the fifth trustee, and that the Town Commission then ratify the selection of that fifth trustee. The minutes of the October 13, 2009 meeting of the Board of Trustees just recite the names of all five trustees and do not describe any selection process. The Town Clerk has not located any documents of the Town Commission ever approving the selection of the fifth trustee subsequent to the October 13, 2009 meeting. However, the Town Commission’s Sept. 10 minutes and agenda item include a listing of all five members of the Board of Trustees starting on October 1, 2009.



Current Status

The current trustees remain in office until they resign or until they are replaced, pursuant to the Florida Constitution, Article II, Section (5)(b). Officers of the state, including trustees of fire or police pension boards, are legally deemed to hold over until they resign or their replacements are appointed, so they are deemed to still be in office. See, e.g., AGO 99-25.

From the documents received, it appears that the Board of Trustees last met on September 30, 2011. Therefore, it appears that the Board of Trustees has not met or attempted to take any actions outside of their original two-year terms.

Next Steps

The Town Commission may proceed to appoint its members to the Board of Trustees for two-year terms at its next meeting. Candidates must be legal residents of the Town. The Town Clerk has requested applications for reappointment from its current appointees, and advertised the availability of these positions. The Volunteer Fire Department will be informed of this item and the intended course of action, and can appoint its two members in March also. At the next meeting of the Board of Trustees, those four trustees can choose the fifth trustee, and that name can be brought back to the Town Commission for ratification in accordance with the statute.

If the Town Commission desired to go with four-year terms, it would need to adopt an ordinance authorizing that change to Section 2-137, and the Volunteer Fire Department would also have to follow the appropriate procedures are for it to appoint its members. All terms must be of the same length per statute.

Ms. Jensen suggested that the Town could ask one of its appointees to resign at the end of the first year of the term, to allow for the Town Commission to stagger its appointments and avoid having all the members expiring on the same calendar.

Finally, I have advised, and Ms. Jensen concurred, that it would be appropriate for the Board of Trustees to consider an item of business at its next meeting for the ratification of all actions taken by the Board appointed in 2009. If there is any doubt or concern about the legitimacy of what was done by that Board or how it was constituted, such ratification will set the record straight, and can be used to defend against any challenges to actions previously taken by the Board.

EXPECTED OUTCOME: Approval of the scheduling of an item for March 13 Town Commission meeting to appoint two members to the Fire Pension Fund Board of Trustees for two year terms

- EXHIBIT(S):**
- A. Section 175.061, Florida Statutes
 - B. September 10, 2009 Town Commission Agenda Item and Minutes
 - C. October 13, 2009 Minutes of the Board of Trustees
 - D. Sections 2-136 – 2-155, Town Code of Ordinances

Reviewed by Town Attorney
 Yes No

Town Manager Initials OS

EXHIBIT A

Exhibit A

**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

Exhibit A

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

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 A

**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.

EXHIBIT B



Item No. 160A

TOWN OF LAUDERDALE-BY-THE-SEA

AGENDA ITEM REQUEST FORM

Town Clerk

Department Submitting Request

June White

Dept Head's Signature *[Signature]*

<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>	<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>	<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>
<input type="checkbox"/> April 28, 2009	April 17 (5:00 p.m.)	<input type="checkbox"/> June 23, 2009	June 12 (5:00 p.m.)	<input checked="" type="checkbox"/> Sept 9, 2009	Aug 28 (5:00 p.m.)
<input type="checkbox"/> May 12, 2009	May 1 (5:00 p.m.)	<input type="checkbox"/> July 14, 2009	July 2 (5:00 p.m.)	<input type="checkbox"/> Sept 22, 2009	Sept 11 (5:00 p.m.)
<input type="checkbox"/> May 26, 2009	May 15 (5:00 p.m.)	<input type="checkbox"/> July 28, 2009	July 17 (5:00 p.m.)	<input type="checkbox"/> Oct 13, 2009	Oct 2 (5:00 p.m.)
<input type="checkbox"/> June 9, 2009	May 29 (5:00 p.m.)	<input type="checkbox"/> August 2009	Commission Recess	<input type="checkbox"/> Oct 27, 2009	Oct 16 (5:00 p.m.)

NATURE OF AGENDA ITEM

- | | | |
|---|---|--|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Resolution | <input checked="" type="checkbox"/> New Business |
| <input type="checkbox"/> Report | <input type="checkbox"/> Ordinance | <input type="checkbox"/> Manager's Report |
| <input type="checkbox"/> Consent Agenda | <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Attorney's Report |
| <input type="checkbox"/> Bids | <input type="checkbox"/> Old Business | <input type="checkbox"/> Other |

EXPLANATION: Appointment of Two (2) Trustees to the LBTS Volunteer Fire Department Pension Plan Board

STAFF RECOMMENDATION: N/A

BOARD/COMMITTEE RECOMMENDATION: N/A

FISCAL IMPACT AND APPROPRIATION OF FUNDS: N/A

- | | |
|---|--|
| <input type="checkbox"/> Amount \$ _____ | <input type="checkbox"/> Acct # _____ |
| <input type="checkbox"/> Transfer of funds required | <input type="checkbox"/> From Acct # _____ |
| <input type="checkbox"/> Bid | <input type="checkbox"/> Grant <input type="checkbox"/> Amount represents matching funds |

Town Attorney review required

- Yes No

Town Manager's Initials: *[Signature]*

Memo

To: Esther Colon, Town Manager
From: June White, Town Clerk *JW*
CC:
Date: August 31, 2009
Re: VFD Pension Board Member Appointment

The current members of the Fire Fighters Pension Board are:

*Mark Conn - Chairman
Douglas Smyth - Trustee
Robert Polyosko - Trustee (up for re-appointment)
**William Weymueller - Trustee (seat is up for appointment)
Mike San Miguel - Secretary

*Joseph Patton has resigned as Chairman. Mark Conn is to sit in Joseph Patton's place to the end of September to complete the term.

**Linda Collins will replace William Weyhmueller on October 1, 2009.

F A X

FROM Mike San Miguel, E.A.

954-492-4099

TO: JUNE - TOWN CLERK FAX 954-776-1857

SUBJECT: BOARD OF TRUSTEES VFD - LBTS

DATE: AUGUST 25, 2009 PAGE 1 OF 5

MARK CONN	Chairman
DOUGLAS Smyth	Trustee
Robert Polysko	"
William Weyh mueller	"
Mike SAN MIGUEL	Secretary

Will be replace by:

LINDA COLLINS on Oct 1, 2009

FROM: L.B.T.S. VOLUNTEER FIREFIGHTERS' PENSION
4442 SEA GRAPE DRIVE
LAUDERDALE BY THE SEA, FL 33308
Telephone 954-647-7752 – Fax 954-492-4099.

TO Mrs. Esther Colon, Town Manager
Town of Lauderdale By The Sea

DATE: August 7, 2009.

SUBJECT: Appointment of Trustees for the Board of Trustees of Lauderdale
By The Sea Volunteer Firefighters' Pension Plan.

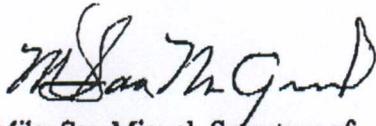
It is time for the Town Commission to appoint the two citizens members to the Board of
Trustee of the above Pension PlanP, which terms ends on September 30, 2009...

The new appointed members should be for a period of four fiscal years, beginning 2009-
2010, according to the new Florida Statute 175.

Mr. Robert Polyasko and Mrs. Linda Collins, they are willing to serve for the above
mentioned period.

If you need any additional information, please, do not hesitate to contact us.

With best regards,



Mike San Miguel, Secretary of
The Board of Trustees.

NOTE
4 year
Term

THE LAW OFFICES OF
PERRY & JENSEN, LLC

ANN H. PERRY
aperry@perryjensenlaw.com

BONNI SPATARA JENSEN
bsjensen@perryjensenlaw.com

MEMORANDUM

To: Board of Trustees
Lauderdale-by-the-Sea Firefighters' Pension Fund

From: Bonni S. Jensen *ms*
LAW OFFICES OF PERRY & JENSEN, LLC

Subject: State Legal Updates

Date: June 19, 2009

On June 1, 2009, Governor Crist signed into law Chapter 2009-97 which contains some significant changes to Chapter 175/185 of the Florida Statutes. These changes take effect July 1, 2009. This law was considered in the legislature as Senate Bill 538 and was substantially similar to House Bill 5. Below is an outline of the changes to the current law.

The law amended the **Definition of "Creditable service" or "Credited service."** The amendment allows a pension plan to provide for the purchase of credited service for federal, other state, and county firefighting and police officer services, if the service meets the definition of firefighter or police officer under Chapters 175 and 185. Sections 175.032(4) and 185.02(5).

The **Definition of "Firefighter"** was also amended to clarify that firefighter includes all certified supervisory personnel whose duties include supervision, training, guidance and management but does not include part-time or auxiliary firefighters. Section 175.032(8)(a).

The law allows municipalities to expand the **Trustee Terms** from the current 2 year term to a 4 year term by passage of an ordinance, special act or resolution. If the terms are expanded, they must be 4 years for all Trustees. Sections 175.061(1)(a) and 185.05(1)(a).

The new amendment expands the power of the Board to allow the local plan to be amended to allow a retiree to request that the Board make **Payment of Third-Party Insurance Premiums** for the retiree, their spouse and dependents. This allows the retirees to take advantage of the federal \$3,000 tax deduction for insurance premiums (accident, health, and long-term care) paid by the pension fund. The law gives the Board

NOTE
Special
ACT -
Commission
VOTE TO
APPROVE

400 EXECUTIVE CENTER DRIVE, SUITE 207 ♦ WEST PALM BEACH, FLORIDA 33401-2922
PH: 561.686.6550 ♦ FX: 561.686.2802



Immunity from liability for participating the voluntary program if the Board's actions are taken in good faith. Sections 175.061(7) and 185.05(6).

The law clarifies that the Board's investments are subject to the **Fiduciary Standards of Florida Statutes 112.656, 112.661, 518.11 and the Code of Ethics (112.311-112.3187). Sections 175.071(1) and 185.06(1).**

The amendment allows **Investments In Foreign Securities to 25% at market value. Section 175.071(1)(b) and 185.06(1)(b).**

The new changes require **all Drafts to be Signed by Two Fiduciaries. Section 185.071(1)(c) and 185.06(1)(c).**

A significant new responsibility for the Board was added to require **Identification and Divestiture of "Scrutinized Companies"** under Florida Statutes §215.473. The law

¹(t) "Scrutinized company" means any company that meets any of the following criteria:

1. The company has business operations that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has any direct or indirect equity share, consortiums or projects commissioned by the government of Sudan, or companies involved in consortiums or projects commissioned by the government of Sudan, and:
 - a. More than 10 percent of the company's revenues or assets linked to Sudan involve oil-related activities or mineral-extraction activities; less than 75 percent of the company's revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral-extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and the company has failed to take substantial action; or
 - b. More than 10 percent of the company's revenues or assets linked to Sudan involve power-production activities; less than 75 percent of the company's power-production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action.
2. The company is complicit in the Darfur genocide.
3. The company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict. Examples of safeguards include post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.
4. The company has business operations that involve contracts with or provision of supplies or services to the government of Iran, companies in which the government of Iran has any direct or indirect equity share, consortiums, or projects commissioned by the government of Iran, or companies involved in consortiums or projects commissioned by the government of Iran and

requires that beginning January 1, 2010, Board must identify and publicly report any direct or indirect holdings in scrutinized companies. The Board must also begin the process of divestiture of those holdings, which must be completed by September 10, 2010. The law provides that the Board and the investment advisors may not be deemed to have breached their fiduciary duty for their actions to divest, if divestiture is in compliance with Florida Statutes 215.473. The State has promised some guidance and we will keep you informed as to the status of this responsibility. Sections 175.071(8) and 185.06(7).

The law added some new clarifications for **Boundaries of a Special Fire Control District** to include an area that has been annexed until the 4 -year period as provided for in Florida Statutes §171.093(4) (or an agreed upon extension) or there is an interlocal agreement pursuant to Florida Statutes §171.093(3). Section 175.101(1).

The amendment clarifies that retirees may **Change their Designated Beneficiary** up to twice without approval of the Board or the current joint annuitant or beneficiary. The retiree does not have to show that the beneficiary being removed is alive or that the beneficiary is in good health. However, in accordance with Florida Statutes §175.333, the retirees benefit may be actuarially reduced to account for the change. Sections 175.171(1)(c)4 and 185.161(1)(c).

The law also clarified the law regarding **Termination of Pension Plans** in accordance with the decisions of Board of Trustees of the Town of Lake Park Firefighters' Pension Plan v. Town of Lake Park. A municipality that terminates a pension plan is responsible to fund all of the non-forfeitable benefits available under the Plan. Section 175.361 and 185.37.

A copy of the full law is available from our office. Please email Karen Amenita karen@perryjensenlaw.com or Angela Twomey at angela@perryjensenlaw.com and request a copy.

H:\Laud by sea 0112\BOARD\2009\State Legal Updates HB 538.wpd

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- a. More than 10 percent of the company's total revenues or assets are linked to Iran and involve oil-related activities or mineral-extraction activities; and the company has failed to take substantial action; or
 - b. The company has, with actual knowledge, on or after August 5, 1998, made an investment of \$20 million or more, or any combination of investments of at least \$10 million each, which in the aggregate equals or exceeds \$20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.

TOWN OF LAUDERDALE-BY-THE-SEA

TOWN COMMISSION

Continued from September 9, 2009

MINUTES

Jarvis Hall

4505 Ocean Drive

Thursday, September 10, 2009

7:00 P.M.

1. CALL TO ORDER, MAYOR ROSEANN MINNET

Mayor Roseann Minnet called the meeting to order at 7:00 p.m. Also present were Vice Mayor Jerry McIntee, Commissioner Jim Silverstone, Commissioner Stuart Dodd, Commissioner Birute Clotey, Town Attorney Susan L. Trevarthen, Town Manager Esther Colon, Town Clerk June White, and Deputy Clerk Nekisha Smith.

2. NEW BUSINESS

a. Appointment of Trustee to the LBTS Volunteer Fire Department Pension Plan (Town Clerk)

Commissioner Dodd questioned whether the appointments were made by the Town or the Volunteer Fire Department. Commissioner Silverstone explained that Chapter 175 of the Florida Statutes regulated that some members were to be from the VFD and some from Town. He said it balanced out to be a fair and equal investment.

Commissioner Silverstone recommended the selection as suggested by Miquel San Miquel.

Mr. San Miguel explained that per Florida Statute 175 only 2 citizens were appointed by the Town Commission. He added that the Board tried to get people with experience in order to advise the trustees and the only requirement to be a member of the Board was to be appointed by the VFD.

Vice Mayor McIntee asked how much money Mr. San Miguel made from the Board. Mr. Miguel replied that no money was made.

Mayor Minnet asked if a Commissioner received funds should they recuse themselves. Attorney Trevarthen said they did not.

Vice Mayor McIntee made a motion to approve the recommendation. Commissioner Silverstone seconded the motion. The motion carried 5 - 0.

The members of the LBTS Volunteer Fire Department as of October 1, 2009 were as follows: Mark Conn, Chairman (to complete the term for Joseph Patton)
Linda Collins, Trustee (newly appointed)
Robert Polakso Trustee (re-appointed)
Douglas Smyth, Trustee,
Miguel San Miguel, Secretary,

b. Commission selection of contractor and award of RFP 09-06-02 - IT Services (Manager Colon)

Manager Colon explained that the proposal numbers submitted were verified. She advised that Brazart was currently our vendor and had been for the past 3 years.

Commissioner Dodd was disappointed that a recommendation was not made by staff. Manager Colon stated that the last time staff made a recommendation it was frowned upon. She added that she was willing to answer any questions.

Commissioner Dodd stated that the Town Manager was to make a recommendation on the vendor. He said he was not in a position to evaluate the grids.

Manager Colon said the last time she put an RFP on the agenda she was told to go out and re-bid. She added that the grid was there for Commission review and if the Commission wanted her to give her recommendation she would.

Commissioner Dodd stated that he was not in a position to determine how many hours have been spent on IT services.

Mayor Minnet recognized the vendors that submitted their proposals.

Chris DeRose said that should the Commission go out for re-bid they should ask the vendors what their numbers were for the previous year for equivalent service and/or try the monthly rate.

Vice Mayor McIntee asked whether Mr. DeRose went to all meetings when he placed a bid. He said he did.

Juan Cortez, Brazart stated he was the current vendor and ready to answer any questions. There were no questions. There were no other vendors present.

Commissioner Silverstone said that the Town Manager stated that she had a recommendation. He said that had he wanted to have the Town Manager's recommendation or any other information in the backup, he would have called the Town Manager prior to the meeting. Commissioner Silverstone asked Manager Colon for her recommendation.

EXHIBIT C

**BOARD OF TRUSTEES OF THE TOWN OF LAUDERDALE BY THE
SEA VOLUNTEER FIREFIGHTERS' PENSION PLAN
4442 SEA GRAPE DRIVE – LAUDERDALE BY THE SEA – FL. 33308-4417**

MINUTES

The Regular Quarterly Meeting of the Board of Trustees of the Town of Lauderdale By T

The Sea Volunteer Firefighters 'Pension Plan was called to order by its Secretary Mike

San Miguel at 6:00 p.m. on October 13, 2009 at the Volunteer Firefighters offices

Located at 4513 N. Ocean Blvd. in Lauderdale By The Sea, Florida, 33308.

The following members of the Board were presents:

Mark E. Conn, Jobson Hopping, Linda Collins, Robert Polyasko and Mike San Miguel

Also present was our Legal Counsel Bonni S. Jensen, of Perry & Jensen, LLC.

The Secretary welcomes all the new members of the Board and proceeds to the election
of

the Chair of the Board.

By motion made by Mark E. Conn, duly seconded by Robert Polyasko, was elected

Chairman Jobson Hopping,

By motion made by Robert Polyasko duly seconded by Mark E. Conn , Mike San

Miguel was elected Secretary of the Board.

After the elections the Legal Counsel made a complete report about the Contract

Agreement between the Town of Lauderdale By The Sea and the Volunteer Fire

Department and its implication with the Pension Plan, also explaining that according to

the last modification made in the FS175 the Trustees shall serve for four (4) years.

The Legal Counsel answered some questions from the Trustees at full satisfaction.

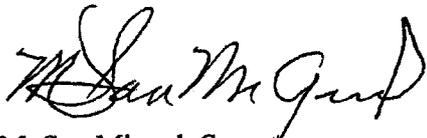
The Trustees agree to have the next Quarterly Meeting in January 2010.

Page -2-

By motion made by Mark E. Conn duly seconded by Robert Polyasko it was agreed to recognize William Weyhmueller and Joseph W. Padden for their years served on this Board during the last few years.

By motion made by Robert Polyasko duly seconded by Judson Hopping the meeting was adjourned at 7:55 p.m.

Respectfully submitted,

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

M. San Miguel, Secretary
Of the Board of Trustees.:

EXHIBIT D

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

DIVISION 3. - VOLUNTEER FIREFIGHTERS' PENSION PLAN ^[7]

⁽⁷⁾ **Cross reference**— Fire department, F.S. § 8-21 et seq.

Sec. 2-136. - Definitions.

Sec. 2-137. - Board of Trustees.

Sec. 2-138. - Conditions for eligibility.

Sec. 2-139. - Application for membership.

Sec. 2-140. - Contributions.

Sec. 2-141. - Change in beneficiary.

Sec. 2-142. - Limitation on benefits.

Sec. 2-143. - Normal retirement benefit.

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Sec. 2-136. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accrued benefit means the monthly normal retirement benefit payable commencing at the date which would have been the member's normal retirement date had he remained in the Volunteer Fire Department. For purposes of computing this normal retirement benefit, the member's credited service as of the date of determination shall be used.

Actuarial equivalence or actuarially equivalent means that any benefit payable under the terms of this plan in a form other than the normal form of benefit shall have the same actuarial present value on the date payment commences as the normal form of benefit. For purposes of establishing the actuarial present value of any form of payment, other than a lump sum distribution, all future payments shall be discounted for interest and mortality by using seven percent interest and the 1983 Group Annuity Mortality Table for males, with ages set ahead five years for disability retirees. For a lump sum distribution, the actuarial present value shall be determined on the basis of the same mortality rates described in this definition and the Pension Benefit Guaranty Corporation's interest rates for terminating single-employer plans which rates are in effect:

- (1) Ninety days prior to the member's date of termination if distribution is made within six months

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of such date of termination; or

(2) Ninety days prior to the distribution date if distribution is made later than six months after the member's date of termination.

Beneficiary means the person entitled to receive benefits upon the death of a member who has been designated in writing by the member and the member has filed such designation with the Board. If no such 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 means the Board of Trustees which shall administer and manage the plan and serve as trustee of the fund.

Credited service means, for each member, the number of plan years after December 31, 1971, in which the member accumulates at least 30 service credits. One service credit shall be awarded for each of the following services:

- (1) Attendance at a meeting of the Volunteer Fire Department;
- (2) Attendance at a drill of the Volunteer Fire Department;
- (3) Responding to a fire alarm; or
- (4) Responding to a false fire alarm.

No credit for benefit eligibility, vesting or computation purposes under the plan shall be allowed for any plan year in which less than 30 service credits are awarded. In no event shall a member be permitted to accumulate more than 30 years of credited service.

Firefighter means any person who is a member of the Volunteer Fire Department of the Town and whose responsibility is the prevention and extinguishment of fires, the protection of life and property, and the enforcement of Town, County and State fire prevention codes as well as any law pertaining to the prevention and control of fires.

Fund means the trust fund established in this division as part of the plan.

Member means a firefighter who fulfills the prescribed participation requirements of this division.

Normal retirement date means for each member the first day of the month coincident with or next following the attainment of age 55 and the completion of ten years of credited service or attainment of age 52 with 25 years of credited service. A member may retire on this normal retirement date or on the first day of any month thereafter. A former member who is entitled to a vested deferred retirement may retire on the date on which he or she would otherwise be eligible to retire.

Plan means the Town Volunteer Firefighters' Pension Plan as contained in this division and all amendments thereto.

Plan year means each year commencing on January 1 and ending on December 31.

Predecessor plan means the pension plan for Firefighters of the Town that was in effect up to the day before September 10, 1985.

Spouse means the lawful wife or husband of a member at time of preretirement death or retirement.

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(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.

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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;

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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

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the fund in an amount at least equal to the difference in each year as between the State contributions for the year and the total cost for the year as shown by the most recent actuarial valuation report for the plan. The total cost for any year shall be defined as the total of normal cost plus the additional amount sufficient to amortize the unfunded actuarial liability in accordance with applicable laws of the State. The Town's contribution shall be deposited on at least a quarterly basis.

(d) *Other.* Private donations, gifts and contributions may be deposited to the fund, but such deposits must be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used only for additional benefits for members, as determined by the Board, and may not be used to reduce what would have otherwise been required Town contributions.

(Ord. No. 273, § 5, 9-10-85; Ord. No. 280, § 1, 3-10-87)

Sec. 2-141. - Change in beneficiary.

A member may from time to time change his designated beneficiary by written notice to the Board upon forms provided by the Board. Upon such change, the rights of all previously designated beneficiaries to receive any benefit under the plan shall cease.

(Ord. No. 273, § 2(3), 9-10-85)

Sec. 2-142. - Limitation on benefits.

(a) *Definitions.* In this section, the following definitions shall apply:

Annual benefit means a benefit payable annually in the form of a straight life annuity with no ancillary or incidental benefits and with no member or rollover contributions.

Average annual compensation for a member's three highest paid consecutive years means the member's greatest aggregate compensation during the period of three consecutive years in which the individual was an active member of the plan.

(b) *Maximum benefits.* In no event may a member's annual benefit exceed the lesser of:

(1) \$90,000.00, adjusted for cost of living in accordance with Internal Revenue Code (IRC) section 415(d), but only for the year in which such adjustment is effective; or

(2) 100 percent of the average annual compensation for the member's three highest paid consecutive years; however, benefits of up to \$10,000.00 a year can be paid without regard to the 100 percent limitation if the total retirement benefits payable to a member under all defined benefit plans, as defined in IRC section 414(j), maintained by the Town for the present and any prior year do not exceed \$10,000.00 and the Town has not at any time maintained a defined contribution plan, as defined in IRC section 414(i), in which the employee was a member.

(c) *Less than ten years of service.* If the member has less than ten years of service with the Town, as defined in IRC section 415(b)(5) and as modified by IRC section 415(b)(6)(D), the applicable limitation in subsection (b) of this section shall be reduced by multiplying such limitation by a fraction, not to exceed one. The numerator of such fraction shall be the number of years or part thereof of service with the Town; the denominator shall be ten years.

(d) *Effect of ancillary benefits.* To the extent that ancillary benefits are provided, the limits set forth in subsection (b) of this section will be reduced actuarially, using an interest rate assumption equal to the

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greater of five percent or the interest rate used in the most recent annual actuarial valuation, to reflect such ancillary benefits.

(e) *Increase or decrease of dollar limitation.* If distribution of retirement benefits begins before age 62, the dollar limitation as described in subsection (b)(1) of this section shall be reduced actuarially using an interest rate assumption equal to the greater of five percent or the interest rate used in the most recent annual actuarial valuation; however, retirement benefits shall not be reduced below \$75,000.00 if payment of benefits begins at or after age 55 and not below the actuarial equivalent of \$75,000.00 if payment of benefits begins before age 55. If retirement benefits begin after age 65, the dollar limitation of subsection (b)(1) of this section shall be increased actuarially using an interest assumption equal to the lesser of five percent or the interest rate used in the most recent annual actuarial valuation.

(Ord. No. 273, § 3(5), 9-10-85)

Sec. 2-143. - Normal retirement benefit.

(a) *Amount.* Each member of the pension plan who retires on or after his normal retirement date shall be eligible to receive a normal retirement benefit commencing on his actual retirement date. The monthly normal retirement benefit shall be an amount equal to \$10.00 multiplied by the number of years of credited service, however, effective for retirements after March 1, 2003, the benefit shall be at least two percent of average monthly earnings for each year of credited service.

(b) *Form of benefit.* The normal retirement benefit shall commence on the member's actual retirement date and be payable on the first day of each month thereafter with the last payment being the one next preceding the retiree's death.

(c) *Optional forms of benefit.* In lieu of the form of benefit described in subsection (b) of this section, a member may choose an optional form of benefit as provided in this division.

(d) *Vesting.* Each member who attains his normal retirement date shall be 100 percent vested in his accrued benefit.

(Ord. No. 273, § 3(1), 9-10-85; Ord. No. 335, § 1, 6-23-92; Ord. No. 04-1, § 2, 3-12-04; Ord. No. 2005-03, 1-11-05)

Sec. 2-144. - Death benefits.

(a) *Death prior to retirement.* If the death of a member occurs prior to his normal retirement date, no benefit shall be paid from the fund. If a member dies on or after his normal retirement date but before his actual retirement, a death benefit shall be paid from the fund to his beneficiary for a period of 120 months. The amount of the benefit shall be computed as though the member had retired on his date of death and had chosen a ten-year certain and life annuity.

(b) *Death subsequent to retirement.* For the death of a retiree, death benefits, if any, shall be paid in accordance with the form of benefit chosen at the time of retirement.

(Ord. No. 273, § 3(3), 9-10-85)

Sec. 2-145. - Benefits upon termination.

Each member who terminates his membership in the Volunteer Fire Department and who is not eligible for any of the retirement, disability or death benefits set forth in this division shall receive no benefits

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from the fund. However, if at the time of his termination of membership the member has ten or more years of credited service, he shall receive his accrued benefit payable commencing at the date which would have been his normal retirement date had he remained a member of the Volunteer Fire Department. If a terminated member with ten or more years of credited service dies before the commencement of his vested retirement benefit, no further benefit shall be paid from the fund.

(Ord. No. 273, § 3(4), 9-10-85)

Sec. 2-146. - Optional forms of benefits.

Each member entitled to a normal or vested retirement benefit shall have the right at any time prior to the date on which benefit payments begin to elect to have his benefit payable under any one of the options set forth in this section in lieu of the benefits otherwise provided in this section, and to revoke any such elections and make a new election at any time prior to the actual beginning of payments. The value of optional benefits shall he [be] actuarially equivalent to the value of benefits otherwise payable, and the present value of payments to the retiring member must be at least equal to 50 percent of the total present value of payments to the retiring member and his beneficiary. The member shall make such an election by written request to the Board, such request being retained in the Board's files.

(1) *Option 1, joint and last survivor option.* The member may elect to receive a benefit, which has been adjusted to the actuarial equivalent of the normal form of benefit, during his lifetime and have such adjusted benefit or a designated fraction thereof continued after his death to and during the lifetime of his beneficiary. The election of Option 1 shall be null and void if the designated beneficiary dies before the member's benefit payments commence.

(2) *Option 2, ten-year certain and life annuity.* The member may elect to receive a benefit, which has been adjusted to the actuarial equivalent of the normal form of benefit, with 120 monthly payments guaranteed. If the member should die before the 120 monthly payments are made, payments are then continued to his designated beneficiary until 120 payments in all have been made, at which time benefits cease. After expiration of the 120 monthly guaranteed payments, should the retired member be then alive, payments shall be continued during his remaining lifetime.

(3) *Option 3, single life annuity.* The member may elect to receive a retirement benefit, which has been adjusted to the actuarial equivalent of the normal form of benefit, which will continue during his lifetime and cease upon his death.

(4) *Option 4, other.* In lieu of the other optional forms enumerated in this section, benefits may be paid in any form approved by the Board so long as actuarial equivalence with the benefits otherwise payable is maintained.

(Ord. No. 273, § 4, 9-10-85)

Sec. 2-147. - Disability retirement.

(a) *Definition of disability.* For purposes of this pension plan, total and permanent disability shall mean an injury, disease or condition, resulting from an act occurring in the performance of service to the Town, which permanently incapacitates a member, either physically or mentally, from his regular and continuous duty as a Firefighter.

(b) *Exclusions.* A member shall not be entitled to receive a disability retirement benefit from the plan if

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the disability is a result of:

- (1) Excessive and habitual use of drugs, intoxicants and 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 the member while serving in any of the Armed Forces;
- (4) Injury or disease sustained by the member after his employment with the Town has been terminated;
- (5) Any condition evidenced during the member's preemployment physical.

(c) *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. This application must be made as soon as is practicable following the date when the disability condition arose. Unless extenuating circumstances can be proven to the satisfaction of the Board, an application dated more than six months following the date when the disability condition arose or first became evident shall be grounds for the denial of the application by the Board. Upon receipt of proper application by the Board, the Board shall arrange for a physical examination of the applicant by the Medical Board.

(d) *Medical Board.* When a member submits proper application for a disability retirement benefit, the Board shall designate a Medical Board to be composed of at least one but not more than three physicians. The choice of physicians shall be made in accordance with the condition or conditions for which the member is applying for disability retirement. The Medical Board shall arrange for and pass upon all medical examinations required under the provisions of this plan, 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 its conclusions and recommendations upon all matters referred to it. The payment for such services shall be determined by the Board.

(e) *Determination of disability.* All questions relating to eligibility for initial payment or continuance of disability benefits shall be determined by the Board, taking into consideration the recommendations of the Medical Board and such other evidence of which the Board may avail itself. The general steps which the Board shall follow in its determination shall be as follows; provided, however, that the Board may in its discretion alter or modify these steps:

- (1) Determine whether the member's application is proper and timely;
- (2) Based on all evidence submitted to the Board, determine whether applicant satisfies the definition of disability, including the listed exclusions;
- (3) Establish a date of disability which may be the date of injury causing the disability, the date when the member could no longer perform his regular and continuous duties or such other date as determined by the Board.

(f) *Benefits.*

- (1) *Eligibility.* All members are eligible for disability benefits, regardless of their length of credit service.
- (2) *Amount of disability benefit.* The monthly disability retirement benefit shall be an amount

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equal to \$10.00 multiplied by the number of the member's years of credited service, however, the benefit shall be at least two percent of average monthly earnings for each year of credited service.

(3) *Term 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, and shall continue to be paid on the first day of each subsequent month until the death or recovery of the disability retiree.

(4) *Eligibility for other benefits.* If a member applying for disability benefits is also eligible for normal retirement, the normal retirement benefit shall be payable instead of a disability retirement benefit.

(g) *Authority for reexamination.* Each person who first qualifies for disability retirement benefits on or after September 10, 1985, shall be subject to periodic reexamination by a Medical Board selected by the Board of Trustees to determine if such disability has ceased to exist. Such reexaminations shall not be permitted more often than twice in any calendar year.

(h) *Recovery from disability.* If a member who has been retired on a disability benefit regains his health and is able to perform his duties in the Volunteer Fire Department, the Board shall discontinue the pension. If such member shall resume his employment with the Town as a Firefighter, then he shall receive credited service for the period of such disability retirement. In addition, such member shall retain credit for the period of credited service prior to the date of disability.

(Ord. No. 273, § 3(2), 9-10-85; Ord. No. 335, §§ 2, 3, 6-23-92; Ord. No. 04-1, § 2, 3-12-04)

Sec. 2-148. - Establishment and operation of fund.

(a) As part of the Volunteer Firefighters' Pension Plan, there is hereby established the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the plan, including the assets attributable to the predecessor plan.

(b) The actual custody and supervision of the fund and assets thereof shall be vested in the Board of Trustees. Payment of benefits and disbursements from the fund shall be made by the disbursing agent on authorization from the Board.

(c) The Board shall be required to appoint a national or State bank or a brokerage firm with trust powers for the purpose of serving as custodian of the fund, and all assets of the fund shall be promptly and continually deposited therewith. In order to fulfill its investment responsibilities as set forth in this division, the Board shall be required to retain the services of a custodian bank, an investment adviser registered under the Investment Advisors Act of 1940, an insurance company or a combination of these for purposes of investment decisions and management. Such investment manager shall have full discretion, within any broad guidelines prescribed by the Board, in the investment of all fund assets.

(d) All funds and securities of the plan may be commingled in the fund provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regard the following:

- (1) Receipts and disbursements;
- (2) Benefit payments;
- (3) Town and State contributions;

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- (4) All interest, dividends and gains or losses whatsoever; and
 - (5) Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.
- (e) The Board of Trustees shall have the following investment powers and authority:
- (1) The Board of Trustees shall be vested with full legal title to the fund; subject, however, and in any event to the authority and power of the Town Commission to amend or terminate this trust, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this plan. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the Board or its agent in the fund and the Board shall not be required to segregate or invest separately any portion of the fund.
 - (2) The fund may be invested and reinvested in such securities or property, real or personal, wherever situated and of whatever kind, as shall be approved by the Board of Trustees, including but not limited to stocks, common or preferred, and bonds and other evidences of indebtedness or ownership.
 - (3) The Board of Trustees may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the plan.
 - (4) Part of the fund may be invested in deposits which bear a reasonable rate of interest in a bank or similar financial institution, even though such institution is a custodian or investment advisor with respect to the plan.
 - (5) The fund may be invested in a common or collective trust fund or pooled investment fund maintained by a bank or trust company or a pooled investment fund of an insurance company qualified to do business in the State even though such bank, trust company or insurance company is a custodian or investment advisor with respect to the plan, provided such bank, trust company or insurance company receives not more than reasonable compensation.
 - (6) No person shall be liable for the making, retention or sale of any investment or reinvestment made nor for any loss or diminishment of the fund, except due to his own negligence, willful misconduct or lack of good faith.
 - (7) The Board shall cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of the custodian's nominee as it may direct or the custodian may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the trust fund.
 - (8) The Board is empowered, but is not required, to vote upon any stocks, bonds or securities of any corporation, association or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee or with the trustees or with depositaries designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and, generally, to exercise any of the powers of the owner with respect to stocks, bonds or other investments comprising the fund which it may deem to be to the best interest of the fund to exercise.

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(9) The Board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power contained in this division.

(10) Where any action which the Board is required to take or any duty or function which it is required to perform, either under the terms of this division or under the general law applicable to it as trustee under this division, can reasonably be taken or performed only after receipt by it from a member, the Town or any other entity of specific information, certification, direction or instructions, the Board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.

(11) Any overpayments or underpayments from the fund to a member or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the Board. Overpayment shall be charged against payments next succeeding the correction. Underpayments shall be made up from the trust fund.

(12) The Board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits provided for in this division.

(13) In any application to or proceeding or action in the courts, only the Town and the Board shall be necessary parties, and no member or other person having an interest in the fund shall be entitled to any notice of service or process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.

(f) Any of the powers and functions of this section reposed in the Board may be performed or carried out by the Board through duly authorized agents, provided that the Board at all times maintains continuous supervision over the acts of any such agent and provided further, that legal title to the fund shall always remain in the Board of Trustees.

(Ord. No. 273, § 7, 9-10-85)

Sec. 2-149. - Distribution of funds in plan years beginning after certain date.

Commencing with the first plan year beginning after December 31, 1984, the entire interest of a member shall either be distributed to him not later than April 1 of the calendar year in which he attains age 70½ or the calendar year in which he retires, whichever is later. In the alternative, distribution shall commence no later than such commencement date and be distributable over a period of time not exceeding the limitations as follow:

(1) Distributions to a member shall not extend beyond the life of the member or the lives of the member and his designated beneficiary or over a period not extending beyond the life expectancy of the member or the life expectancies of the member and his designated beneficiary.

(2) If distribution has commenced to a member, and such member dies before receiving his entire interest, the remainder of such interest shall be distributed over a period at least as rapidly as under the method of distribution in effect prior to such member's death.

(3) Any method of distribution selected and made in writing by a member prior to January 1, 1984, and which is in compliance with plan provisions prior to such date, shall be permitted even though not in accordance with the provisions of this section as applied to plan years beginning after December 31, 1983.

(Ord. No. 273, § 3(6), 9-10-85)

Sec. 2-150. - Effect on discharged members.

Members entitled to a pension shall not forfeit the pension upon dismissal from the department, but shall be retired as described in this division.

(Ord. No. 273, § 9(1), 9-10-85)

Sec. 2-151. - Minors and incompetents.

If any member or beneficiary is a minor or is, in the judgment of the Board, otherwise incapable of personally receiving and giving a valid receipt for any payment due him under the plan, the Board may, unless and until claims shall have been made by a duly appointed guardian or committee of such person, make such payment or any part thereof to such person's spouse, children or other person deemed by the Board to have incurred expenses or assumed responsibility for the expenses of such person. Any payment so made shall be a complete discharge of any liability under the plan for such payment.

(Ord. No. 273, § 9(4), 9-10-85)

Sec. 2-152. - Repeal or termination of plan.

(a) This division establishing the Volunteer Firefighters' Pension Plan and fund and subsequent ordinances pertaining to the plan and fund may be modified, terminated or amended, in whole or in part, provided that if this division or any subsequent ordinance shall be amended or repealed in its application to any person benefiting under the terms of this division or any subsequent ordinance, the amount of benefits which at the time of any such alteration, amendment or repeal shall have accrued to the member or beneficiary shall not be affected thereby except to the extent that the assets of the fund may be determined to be inadequate.

(b) If this division shall be repealed or if contributions to the plan are discontinued, the Board shall continue to administer the plan in accordance with the provisions of this division for the sole benefit of the then members, the beneficiaries then receiving retirement allowances and any persons who would in the future be entitled to receive benefits under one of the options provided for in this division who are designated by any such members. In the event of repeal or if contributions to the plan are discontinued, there shall be full 100 percent vesting of benefits accrued to date of repeal, and the assets of the plan shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled to benefits in accordance with the provisions of this division.

(c) The following shall be the order of priority for purposes of allocating the assets of the plan upon repeal of this division or if contributions to the plan are discontinued:

- (1) Members already retired under the retirement and disability provisions of the plan and those eligible for normal retirement but not actually retired, and their beneficiaries, in proportion to and to the extent of the then actuarially determined present value of the benefits payable. If any funds remain, then;
- (2) Members who have at least ten years of credited service, in proportion to and to the extent of the then actuarially determined present value of their accrued benefits. If any funds remain, then;
- (3) The accumulated contributions of the active members, if any, less any benefits received and less amounts apportioned in paragraphs (2) and (3) of this subsection in proportion to and to the extent of the then amount of such accumulated contributions. If any funds remain, then;

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(4) All other members whose present value of accrued benefits have not been covered in a previous category in the same manner as in paragraph (2) of this subsection. After all the accrued benefits have been paid and after all other liabilities have been satisfied, then and only then shall any remaining funds revert to the general fund of the Town or to the State.

(d) The allocation of the fund provided for in this section may, as decided by the Board, be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this section. The fund may be distributed in one sum to the persons entitled to the benefits or the distribution may be carried out in such other equitable manner as the Board may direct. The trust may be continued in existence for purposes of subsequent distributions. If, at any time during the first ten years after September 10, 1985, the plan shall be terminated or the full current costs of the plan, consisting of the normal costs and interest on any accrued liability, shall not have been met, anything in the plan to the contrary notwithstanding, Town contributions which may be used for the benefit of any one of the 25 highest paid members of the plan on September 10, 1985, whose anticipated annual retirement allowance provided by the Town's contributions at his normal retirement date would exceed \$1,500.00, shall not exceed the greater of either \$20,000.00 or an amount computed by multiplying the smaller of \$10,000.00 or 20 percent of such member's average annual earnings during his last five years of service by the number of years of service since September 10, 1985. If it shall be determined by statute, court decision, ruling by the Commissioner of Internal Revenue or otherwise that the provisions of this subsection are not then necessary to qualify the plan under the Internal Revenue Code, this subsection shall be ineffective without the necessity of further amendment of this division.

(Ord. No. 273, § 8, 9-10-85)

Sec. 2-153. - Nonassignability.

No pension benefit provided for in this division shall be assignable or subject to garnishment for debt or for other legal process.

(Ord. No. 273, § 9(2), 9-10-85)

Sec. 2-154. - Validity.

The Board of Trustees shall have the power to examine into the facts upon which any pension has been granted under any prior or existing law or which shall be granted or obtained erroneously, fraudulently or illegally for any reason. The Board is empowered to purge the pension rolls of any person granted a pension under prior or existing law or under this division if the pension is found to be erroneous, fraudulent or illegal for any reason. The Board is further empowered to reclassify any pensioner who has, under any prior or existing law, or who shall, under this division, be erroneously, improperly or illegally classified.

(Ord. No. 273, § 9(3), 9-10-85)

Sec. 2-155. - Tax provisions.

This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at any time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For the purposes of this section the following definitions shall apply:

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Eligible rollover distribution. 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) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, 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 of 1986 as amended (the "Code"); and the portion of any distribution that is not includable in gross income.

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

Distributee. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse are distributees with regard to the interest of the spouse.

Direct rollover. A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(Ord. No. 360, § 1, 12-13-94)

⁽⁷⁾ **State Law reference**— Municipal firefighters pension trust fund, F.S. § 175.021 et seq. (Back)