

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 100606

Amending Chapter 2, Code of Ordinances, by repealing Sections 2-1253, "Creditable Service", 2-1255, "Membership and organization of board of trustees", 2-1265, "Pension benefits generally", 2-1267, "Disability retirement", and 2-1268, "Death benefits generally", and enacting in lieu thereof, new sections of like number and subject matter.

WHEREAS, what is commonly referred to as "The Firefighters' Pension System" is codified in Division 4, entitled " PENSIONS FOR FIREFIGHTERS" of Article IX of Chapter 2, Code of Ordinances; and

WHEREAS, on May 22, 2008, the Council passed Resolution No. 080519 which adopted Collective Bargaining Agreement between the City and Local 3808, I.A.F.F., which memorialized the agreement between the City and Local 3808 concerning compensation, benefits and working conditions; and

WHEREAS, on May 28, 2009, the Council passed Resolution No. 090466 which adopted Collective Bargaining Agreement between the City and Local 42, I.A.F.F., which memorialized the agreement between the City and Local 42 concerning compensation, benefits and working conditions; and

WHEREAS, Article IX, Section 3, entitled "Retiree Health Insurance" of the above Articles provides that, in pertinent part:

. . . In addition to the above-referenced Health Insurance Subsidy, upon the effective date of this Agreement, a special committee, including representatives from Local 42, shall be convened to construct a plan tailored to better meet the needs of retirees. This committee will consider such things as an additional monetary subsidy for years two (2) and three (3) of this Agreement, extended access to a network of physicians and hospitals outside the Kansas City Metropolitan Area and/or varied co-pays. The enumerated considerations are not intended to limit the committee's consideration of other options for improvement. . . . ; and

WHEREAS, by amending Sec. 2-1267, entitled "Disability retirement" of Division 4, Article IX of Chapter 2, Code of Ordinances, will provide for additional oversight by the board of trustees when requiring proof of continuing disability; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 2, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Sections 2-1253, "Creditable Service", 2-1255, "Membership and organization of board of trustees", 2-1265, "Pension benefits generally", 2-1267, "Disability retirement", and 2-1268, "Death benefits generally", and enacting in lieu thereof, new sections of like number and subject matter, to read as follows:

Sec. 2-1253. Creditable service.

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

(b) *Portability.* The board of trustees may enter into cooperative agreements to transfer creditable service from one retirement plan to another in accordance with provisions set forth in RSMo 105.985.

(c) *Military leave.*

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

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

(d) *Leave of absence.*

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

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

(e) *Reemployment.*

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

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

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

(1) At retirement date, a member may elect to convert credited sick leave or vacation leave to creditable service of this pension system to be added to creditable service calculated as provided in subsection (a) of this section.

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

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

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

- (1) The Fire Chief, ex officio;
- (2) The director of finance, ex officio;
- (3) The director of human resources, ex officio;
- (4) The city treasurer, ex officio;
- (5) Three members to be elected by the members of the pension system with nominations and vote by secret written ballot, at an election supervised by the ex officio members of the board of trustees, for terms of three years each, respectively; provided however, one of the first three members so elected shall serve for one year, one member for two years, and the third member for three years from the date such pension system becomes operative, and thereafter all members so elected shall serve for terms of three years each, respectively; and
- (6) One retiree member to be jointly appointed by Local 42 and Local 3808 of the International Association for Fire Fighters; provided however, the retiree member shall have all the rights and responsibilities of the trustees on the board, but non-voting, and therefore shall not be counted towards a quorum.

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

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

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

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

Sec. 2-1265. Pension benefits generally.

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

(b) *Optional forms of payment.*

(1) *Withdrawal of contributions.*

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

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- (2) *Joint options.*
- a. A member with 25 or more years of service may elect a reduced lifetime pension. A percentage (100 percent, 75 percent, or 66 2/3 percent), as specified in the election, shall be paid to the surviving spouse instead of the amount specified in subsection 2-1268(a)(1) of this section.
 - b. This shall be calculated by multiplying the amount otherwise payable by the appropriate factor adopted by the board of trustees upon the recommendation of the pension system's consulting actuary.
 - c. This option is irrevocable after the effective date of the member's pension. It shall be effective only if the spouse was married to the member on the effective date of the member's pension and shall become ineffective if either the spouse or the member dies prior to the effective date of the pension.
 - d. This election will not affect the amount of the cost-of-living adjustment.
 - e. The member's spouse, if any, must sign appropriate forms attesting consent; however, in no event shall a member be required to obtain the consent of an approved domestic partner in choosing pension options contained in this section.
- (3) *Required distribution.* Distribution of a member's interest in the pension system shall commence not later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70 1/2 or the calendar year in which the member retires under the plan.
- a. If a death benefit is being paid to a designated beneficiary other than the member's spouse, payments shall either:
 1. Be completed by December 31 of the fifth calendar year following the year of the member's death; or
 2. If there is no designated beneficiary, payment of a death benefit shall commence no later than December 31 of the fifth calendar year following the year of the member's death.
 - b. If the designated beneficiary is the member's spouse, death benefit payments shall commence no later than December 31 of the year the member would have attained age 70 1/2 paid over the life or life expectancy of the spouse, as determined under table V of

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Treasury Regulations 1.79-2 as of the date the payments commence, and benefits shall be actuarially increased for the delay.

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

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

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

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

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

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

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

(1) *Funding.* A separate fund will be established within the firefighters' pension system for the purpose of providing a health insurance subsidy to eligible annuitants pursuant to subsection (g)(4) of this section. Members will contribute one percent beginning May 20, 1991, toward the establishment of this fund. Beginning May 1, 1992, the city will contribute

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one percent toward funding. Effective July 25, 1994, the city and members will each contribute one-half percent toward funding. Effective June 23, 1996, the city and active members will each again contribute one percent toward funding. Effective January 1, 2000, the city shall contribute an additional one percent toward funding. Contributions funding this subsidy shall be in addition to contributions required in section 2-1272. The dollar value of these percentage contributions will be calculated and collected by the methods used in section 2-1272.

- (2) *Effective date.* The board of trustees before April 1 of each year shall determine the dollar value of the annual health insurance subsidy. In addition to the amount determined by the board each year, the City shall pay:
- a. Effective November 1, 2010, a \$100.00 monthly retiree health subsidy to all retired members; and
 - b. Effective November 1, 2011 and continuing thereafter, a \$200.00 monthly retiree health insurance subsidy to all retired members.

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

- (3) *Method of determination.*
- a. Contributions to the fund for the current fiscal year will be estimated based upon members' payroll.
 - b. This estimated amount plus earnings, forecasted at the rate assumed in the then most current actuarial valuation performed for the firefighters' pension system, as of January 1 of the current year will serve as the basis for distributions. The fund's balance after distribution must equal one percent of member's annual payroll or \$270,000.00, whichever is greater. If the fund's balance is reported by the custodian to be below \$270,000.00 at the end of any month, then all distributions from the fund shall cease until the next succeeding May 1.
 - c. The basis as determined in subsection (g)(3) of this section will be equally divided by all members eligible on January 1 of the current year. In no event will subsidy be greater than carrier premiums.
- (4) *Eligibility requirements.* The health insurance subsidy shall be payable under the following conditions. The annuitant must:

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- a. Have retired with at least 25 years of creditable service; or
- b. Meet eligibility requirements for a duty disability retirement as detailed in section 2-1267(a), (c), (d) and (e).

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

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

- (1) *Eligible rollover distributions.* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities).
- (2) *Eligible retirement plan.* An eligible retirement plan is an individual retirement account described in section 408(a) of the Internal Revenue Code, an individual retirement annuity described in section 408(b) of the Internal Revenue Code, an annuity plan described in section 403(b) of the Internal Revenue Code, or a qualified trust described in section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
- (3) *Distributee.* A distributee includes a member or former member. In addition, the member's or former member's surviving spouse and the

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member's former spouse who is the alternative payee under a state domestic relations order determined by the board of trustees, based on written procedures, to be a qualified domestic relations order, are distributees with regard to the interest of the spouse or former spouse.

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

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

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

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

Sec. 2-1267. Disability retirement.

- (a) *Duty disability.*

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

(2) After five years' service, any disability caused by disease of the lungs or respiratory tract, hypertension or disease of the heart shall be presumed to have been suffered in line of duty, if the member successfully passed a physical examination within five years prior to date of application, unless the contrary be shown by competent evidence.

- (b) *Nonduty disability.*

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

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

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

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

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

The board may follow its fact finding procedures in developing proof of continued disability. If a member fails to respond to board requests for evidence of a continuing disability, or fails to submit to further medical examination, the board may terminate payment of disability retirement payments. If the board of trustees determines that disability no longer exists, it shall promptly terminate payment of the disability retirement payments. In that event, the member shall be considered terminated from the retirement system unless he promptly returns to full-time service as a firefighter. If the member promptly returns to service as a

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firefighter following termination of disability, the period of disability retirement will not be counted as creditable service for determining further benefits under this division, but such period of disability shall not be construed as interrupting continuous creditable service. All disability retirement payments received shall be charged against the member's accumulated contributions as defined in this division for the purpose of determining the accumulated contributions under this plan.

Sec. 2-1268. Death benefits generally.

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

(1) *Surviving spouse's pension.*

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

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children eligible, as provided in subsection (a)(2) of this section for a child's allowance.

(2) *Child's allowance.*

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

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

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

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

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

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

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

Approved as to form and legality:

Galen P. Beaufort
City Attorney