

ORDINANCE NO. 2019-2165

AN ORDINANCE OF THE CITY OF NEW PORT RICHEY, FLORIDA, PROVIDING FOR AMENDMENT OF ARTICLE III OF CHAPTER 17 OF THE CODE OF ORDINANCES OF THE CITY OF NEW PORT RICHEY, PERTAINING TO THE FIREFIGHTERS' RETIREMENT SYSTEM; PROVIDING FOR AMENDMENT OF SECTION 17-43, PERTAINING TO DISABILITY; PROVIDING FOR ELIGIBILITY CRITERIA FOR MEMBERS NO LONGER EMPLOYED BY THE CITY; PROVIDING FOR AMENDMENT OF SUBSECTION (h) OF SECTION 17-50, PERTAINING TO THE \$10,000.00 MAXIMUM PENSION; PROVIDING FOR AMENDMENT OF SECTION 17-50.2, PERTAINING TO MISCELLANEOUS PROVISIONS, BY ADDING SUBSECTION (j) THERETO; PROVIDING FOR MISSING BENEFIT RECIPIENTS; PROVIDING FOR AMENDMENT OF SUBSECTION (f) OF SECTION 17-50.17, PERTAINING TO GENERAL PROVISIONS IN THE DEFERRED RETIREMENT OPTION PLAN; PROVIDING FOR REPEAL OF PARAGRAPH (8) THEREOF, PERTAINING TO ESCHEAT OF DROP BENEFITS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council deems it advisable to amend the City's Firefighters' Retirement System to address the benefits provided thereby; and

WHEREAS, it is declared as a matter of legislative determination and public policy that the provisions and prohibitions herein are necessary in the public interest; and it is further declared that the provisions and prohibitions herein are in pursuance of and for the purpose of securing and promoting the public health, safety, welfare and quality of life in the City in accordance with the City's police powers.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW PORT RICHEY, FLORIDA:

Section 1. Chapter 17, Article III, Section 17-43 of the Code of Ordinances, pertaining to disability, is hereby amended as follows (strikeout text is deleted and underlined text is added):

Sec. 17-43. - Disability.

(a) *Disability benefits in line of duty.* Any member who shall become totally and permanently disabled to the extent he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability was directly caused by the performance of his duty as a firefighter, shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to sixty (60) percent of his regular base salary in effect as of the date of disability, but such monthly installment shall not be less than forty-two (42) percent of his average final compensation at the time of disability. The benefits shall be paid from the date of disability until recovery, as determined by the board, or for life and continued to the spouse for life upon death of the retiree. In the event of death of the disabled

member without a surviving spouse, or upon the subsequent death of the spouse, the benefits shall be continued to the member's children in equal shares until each such child has attained the eighteenth birthday, or the twenty-second birthday if enrolled in a fully accredited college or university. An additional benefit of one hundred dollars (\$100.00) per month, ceasing at the earlier of age sixty-five (65) or death, shall be paid to all disabled retirees. ~~Terminated persons, either vested or nonvested, are not eligible for disability benefits. Notwithstanding the previous sentence, if a member is terminated by the city for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the board within thirty (30) days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the board otherwise determines that he is totally and permanently disabled as provided for above.~~ Eligibility requirements for disability benefits are set forth in subsection (h), below.

(b) *In-line-of-duty presumptions.*

(1) *Presumption.* Any condition or impairment of health of a firefighter caused by tuberculosis, hypertension or heart disease shall be presumed to have been suffered in line of duty unless the contrary is shown by competent evidence, provided that such firefighter shall have successfully passed a physical examination upon entering into such service, which examination failed to reveal any evidence of such condition; and provided further, that such presumption shall not apply to benefits payable or granted in a policy of life insurance or disability insurance.

(2) *Additional presumption.* The presumption provided for in this subparagraph (2) shall apply only to those conditions described in this subparagraph (2) that are diagnosed on or after January 1, 1996.

a. *Definitions.* As used in this subsection (b)(2), the following definitions apply:

1. "Body fluids" means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the Centers for Disease Control apply. For purposes of potential transmission of meningococcal meningitis or tuberculosis, the term "body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, and saliva, mucous, and other fluids through which infectious airborne organisms can be transmitted between persons.
2. "Emergency rescue or public safety member" means any member employed full time by the city as a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who, in the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis, or tuberculosis and who is not employed elsewhere in a similar capacity. However, the term "emergency rescue or public safety member" does not include any person employed by a public hospital licensed under chapter 395, Florida Statutes, or any person employed by a subsidiary thereof.
3. "Hepatitis" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C, or any other strain of hepatitis generally recognized by the medical community.
4. "High risk of occupational exposure" means that risk that is incurred because a person subject to the provisions of this subsection, in performing the basic duties associated with his employment;

- i. Provides emergency medical treatment in a non-health-care setting where there is a potential for transfer of body fluids between persons;
 - ii. At the site of an accident, fire, or other rescue or public safety operation, or in an emergency rescue or public safety vehicle, handles body fluids in or out of containers or works with or otherwise handles needles or other sharp instruments exposed to body fluids;
 - iii. Engages in the pursuit, apprehension, and arrest of law violators or suspected law violators and, in performing such duties, may be exposed to body fluids; or
 - iv. Is responsible for the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, while on work detail outside the facility, or while being transported and, in performing such duties, may be exposed to body fluids.
5. Occupational exposure, in the case of hepatitis, meningococcal meningitis, or tuberculosis, means an exposure that occurs during the performance of job duties that may place a worker at risk of infection.
- b. *Presumption.* Any emergency rescue or public safety member who suffers a condition or impairment of health that is caused by hepatitis, meningococcal meningitis, or tuberculosis that requires medical treatment and that results in total or partial disability or death shall be presumed to have a disability suffered in the line of duty, unless the contrary is shown by competent evidence; however, in order to be entitled to the presumption, the member must, by written affidavit as provided in F.S. § 92.50, verify by written declaration that, to the best of his knowledge and belief:
- 1. In the case of a medical condition caused by or derived from hepatitis, he has not:
 - i. Been exposed, through transfer of bodily fluids, to any person known to have sickness or medical conditions derived from hepatitis, outside the scope of his employment;
 - ii. Had a transfusion of blood or blood components, other than a transfusion arising out of an accident or injury happening in connection with his present employment, or received any blood products for the treatment of a coagulation disorder since last undergoing medical tests for hepatitis, which tests failed to indicate the presence of hepatitis;
 - iii. Engaged in unsafe sexual practices or other high-risk behavior, as identified by the Centers for Disease Control or the Surgeon General of the United States or had sexual relations with a person known to him to have engaged in such unsafe sexual practices or other high-risk behavior; or
 - iv. Used intravenous drugs not prescribed by a physician.
 - 2. In the case of meningococcal meningitis, in the ten (10) days immediately preceding diagnosis he was not exposed, outside the scope of his employment, to any person known to have meningococcal meningitis or known to be an asymptomatic carrier of the disease.

3. In the case of tuberculosis, in the period of time since the member's last negative tuberculosis skin test, he has not been exposed, outside the scope of his employment, to any person known by him to have tuberculosis.
- c. *Immunization.* Whenever any standard, medically recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is granted under this section, if medically indicated in the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the U.S. Public Health Service, an emergency rescue or public safety member may be required by the city to undergo the immunization or prophylaxis unless the member's physician determines in writing that the immunization or other prophylaxis would pose a significant risk to the member's health. Absent such written declaration, failure or refusal by an emergency rescue or public safety member to undergo such immunization or prophylaxis disqualifies the member from the benefits of the presumption.
- d. *Record of exposures.* The city shall maintain a record of any known or reasonably suspected exposure of an emergency rescue or public safety member in its employ to the disease described in this section and shall immediately notify the member of such exposure. An emergency rescue or public safety member shall file an incident or accident report with the city of each instance of known or suspected occupational exposure to hepatitis infection, meningococcal meningitis, or tuberculosis.
- e. *Required medical test; preemployment physical.* In order to be entitled to the presumption provided by this section:
 1. An emergency rescue or public safety member must, prior to diagnosis, have undergone standard, medically acceptable tests for evidence of the communicable disease for which the presumption is sought, or evidence of medical conditions derived therefrom, which tests fail to indicate the presence of infection. This paragraph does not apply in the case of meningococcal meningitis.
 2. On or after June 15, 1995, an emergency rescue or public safety member may be required to undergo a preemployment physical examination that tests for and fails to reveal any evidence of hepatitis or tuberculosis.

(3) Firefighter Cancer Presumption. The presumption provided for in this paragraph (3) shall apply only to "cancer", as defined in F.S. § 112.1816(1)(a), as amended from time to time, diagnosed after July 1, 2019. Any member who becomes totally and permanently unable to perform useful and efficient service as a firefighter due to a diagnosis of cancer or circumstances that arise out of the treatment of cancer will be conclusively presumed to be disabled in-line of duty.

(c) *Disability benefits not in line of duty.* Any member with one (1) year or more credited service who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability is not directly caused by the performance of his duties as a firefighter shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to thirty (30) percent of his regular base salary in effect as of the date of disability, but such monthly installment shall not be less than twenty-five (25) percent of his average final compensation at the time of disability. The benefit shall be paid from the date of disability and be continued thereafter during his lifetime, or until the earlier of recovery, as determined by the board, or death,

but with one hundred twenty (120) monthly payments guaranteed in any event. An additional benefit of one hundred dollars (\$100.00) per month, ceasing at age sixty-five (65), shall be paid to all disabled retirees. An optional form of benefit may be elected by member. ~~Terminated persons, either vested or nonvested, are not eligible for disability benefits. Notwithstanding the previous sentence, if a member is terminated by the city for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the board within thirty (30) days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the board otherwise determines that he is totally and permanently disabled as provided for above. Eligibility requirements for disability benefits are set forth in subsection (h), below.~~

Provided, however, the disability retiree may select, at any time prior to the date on which benefit payments begin, an optional form of benefit payment as described in subsection 17-45(a)(1) or (a)(2), which shall be the actuarial equivalent of the normal form of benefit.

- (d) *Conditions disqualifying disability benefits.* Each member who is claiming disability benefits shall establish, to the satisfaction of the board, that such disability was not occasioned primarily by:
- (1) Excessive or habitual use of any drugs, intoxicants, tobacco or alcohol.
 - (2) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections, or while committing a crime.
 - (3) Injury or disease sustained while serving in any branch of the Armed Forces.
 - (4) Injury or disease sustained after his employment as a firefighter with the city shall have terminated.
- (e) *Physical examination requirements.* A member shall not become eligible for disability benefits until and unless he undergoes a physical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the board for that purpose. The board shall not select the member's treating physician or surgeon for this purpose except in an unusual case where the board determines that it would be reasonable and prudent to do so.

Any retiree receiving disability benefits under provisions of this article may be required by the board to submit sworn statements of his condition accompanied by a physician's statement (provided at the retiree's expense) to the board annually and may be required by the board to undergo periodic re-examinations by a qualified physician or physicians and/or surgeon or surgeons who shall be selected by the board to determine if such disability has ceased to exist. If the board finds that the retiree is no longer permanently and totally disabled to the extent that he is unable to render useful and efficient service as a firefighter, the board shall recommend to the city that the retiree be returned to performance of duty as a firefighter, and the retiree so returned shall enjoy the same rights that member had at the time he was placed upon pension. In the event the retiree so ordered to return shall refuse to comply with the order within thirty (30) days from the issuance thereof, he shall forfeit the right to his pension.

The cost of the physical examination and/or reexamination of the member claiming or the retiree receiving disability benefits shall be borne by the fund. All other reasonable costs as determined by the board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the fund.

If the retiree recovers from disability and reenters the service of the city as a firefighter, his service will be deemed to have been continuous, but the period beginning with the first month for Ordinance 2019-2165

which he received a disability retirement income payment and ending with the date he re-entered the service of the city will not be considered as credited service for the purposes of the system.

The board shall have the power and authority to make the final decisions regarding all disability claims.

- (f) *Disability payments.* The monthly benefit to which a member is entitled in the event of the member's disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date of board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment.

Provided, however, the disability retiree may select, at any time prior to the date on which benefit payments begin, an optional form of benefit payment as described in subsection 17-45(a)(1) or (a)(2), which shall be the actuarial equivalent of the normal form of benefit.

- (g) *Workers' compensation.* When a retiree is receiving a disability pension and workers' compensation benefits pursuant to F.S. chapter 440, for the same disability, and the total monthly benefits received from both exceed one hundred (100) percent of the member's average monthly wage, as defined in F.S. chapter 440, the disability pension benefits shall be reduced so that the total monthly amount received by the retiree does not exceed one hundred (100) percent of such wage. The amount of any lump sum workers' compensation payment shall be converted to an equivalent monthly benefit payable for ten (10) years certain by dividing the lump sum amount by 83.9692. Notwithstanding the foregoing, in no event shall the disability pension benefit be reduced below the greater of forty-two (42) percent of average final compensation and two and three-quarters (2.75) percent of average final compensation times years of credited service.

(h) Eligibility for disability benefits. Subject to sub-paragraph (4) below, only active members of the system on the date the board determines entitlement to a disability benefit are eligible for disability benefits.

- (1) Terminated persons, either vested or non-vested, are not eligible for disability benefits.
- (2) If a member voluntarily terminates his employment, either before or after filing an application for disability benefits, he is not eligible for disability benefits.
- (3) If a member is terminated by the city for any reason other than for medical reasons, either before or after he files an application for disability benefits, he is not eligible for disability benefits.
- (4) The only exception to sub-paragraph (1) above is:
 - a. If the member is terminated by the city for medical reasons and he has already applied for disability benefits before the medical termination, or;
 - b. If the member is terminated by the city for medical reasons and he applies within 30 days after the medical termination date.

If either (4) a., or (4) b. above applies, the member's application will be processed and fully considered by the board.

Section 2. Chapter 17, Article III, Section 17-50, Subsection (h) of the Code of Ordinances, pertaining to the \$10,000.00 maximum pension, is hereby amended as follows (strikeout text is deleted and underlined text is added):

(h) *Ten Thousand Dollar (\$10,000) Limit; Less Than Ten Years of Service.* Notwithstanding anything in this section 17-50, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection (h) of section 17-50 if the benefits payable, with respect to such member under this system and under all other qualified defined benefit pension plans to which the City contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year ~~and or~~ for any prior limitation year, and the City has not at any time maintained a qualified defined contribution plan in which the member participated; provided, however, that if the member has completed less than ten (10) years of credited service with the City, the limit under this subsection (h) of section 17-50 shall be a reduced limit equal to ten thousand dollars (\$10,000) multiplied by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten (10).

Section 3. Chapter 17, Article III, Section 17-50.2 of the Code of Ordinances, pertaining to miscellaneous provisions of the retirement system, is hereby amended by adding Subsection (j) thereto, as follows (strikeout text is deleted and underlined text is added):

(j) *Missing benefit recipients.* The system shall follow the procedures outlined in the IRS Employee Plans Compliance Resolution System (EPCRS) Program and other applicable IRS guidance to locate any missing individuals to whom a full unreduced benefit payment is due and if, at the conclusion of such efforts, the individual cannot be located, the existing procedure of cancelling payments otherwise due (provided that, if the individual is later located, the benefits due shall be paid) will apply.

Section 4. Chapter 17, Article III, Section 17-50.17, Subsection (f) of the Code of Ordinances, pertaining to general provisions in the deferred retirement option plan, is hereby amended by repealing Paragraph (8) thereof, pertaining to escheat of DROP benefits, as follows (strikeout text is deleted and underlined text is added):

(f) *General provisions.*

- (1) *The DROP is not a separate retirement plan.* Instead, it is a program under which a member who is eligible for normal retirement under the system may elect to accrue future retirement benefits in the manner provided in this section 17-50.17 for the remainder of his employment, rather than in the normal manner provided under the plan. Upon termination of employment, a member is entitled to a lump sum distribution of his or her DROP account balance or may elect a rollover. The DROP account distribution is in addition to the member's monthly benefit.
- (2) *Notional account.* The DROP account established for such a member is a notional account, used only for the purpose of calculation of the DROP distribution amount. It is not a separate account in the system. There is no change in the system's assets, and there is no distribution available to the member until the member's termination from the DROP. The member has no control over the investment of the DROP account.

- (3) *No employer discretion.* The DROP benefit is determined pursuant to a specific formula which does not involve employer discretion.
- (4) *IRC limit.* The DROP account distribution, along with other benefits payable from the system, is subject to limitation under Internal Revenue Code Section 415(b).
- (5) *Amendment of DROP.* The DROP may be amended by an ordinance of the city at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP account of any member.
- (6) *Facility of payment.* If a member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or is a minor, the board shall direct that any benefit due him shall be made only to a duly appointed legal representative. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.
- (7) *Information.* Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the DROP, shall file with the board the information that it shall require to establish his rights and benefits under the DROP.
- ~~(8) *Prevention of escheat.* If the board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the board may, no earlier than three (3) years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the board or the city. If such person has not made written claim therefor within three (3) months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the System, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the System. Upon such cancellation, the System shall have no further liability therefor except that, in the event such person or his beneficiary later notifies the board of his whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.~~

(98) *Written elections, notification.*

- a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the board in a time and manner determined by the board under rules uniformly applicable to all employees similarly situated. The board reserves the right to change from time to time the manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.
- b. Each member or retiree who has a DROP account shall be responsible for furnishing the board with his current address and any subsequent changes in

his address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him at the last such address given to the board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the board of his address.

~~(409)~~ *Benefits not guaranteed.* All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP account and neither the city nor the board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.

~~(410)~~ *Construction.*

- a. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.
- b. The titles and headings of the subsections in this section 17-50.17 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

~~(421)~~ *Forfeiture of retirement benefits.* Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.

~~(4312)~~ *Effect of DROP participation on employment.* Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

Section 5. Conflict with Other Ordinances and Codes. All ordinances or parts of ordinances of the City of New Port Richey, Florida, in conflict with the provisions of this ordinance, are hereby repealed to the extent of such conflict.

Section 6. Severability. If any provision or portion of this ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this ordinance shall remain in full force and effect.

Section 7. Effective Date. This ordinance shall take effect immediately upon its adoption as provided by law.

Section 8. Codification. Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of New Port Richey.

The foregoing Ordinance was duly read and approved on first reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida this 15th day of October, 2019, and read and adopted on second reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida this 5th day of November, 2019.

ATTEST:

By: _____
Judy Meyers, CMC, City Clerk

By: _____
Robert Marlowe, Mayor-Council Member

(Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE SOLE
USE AND RELIANCE OF THE CITY OF NEW PORT RICHEY,
FLORIDA:

Timothy P. Driscoll, City Attorney