

Law Offices
Christiansen & Dehner, P.A.

Scott R. Christiansen

63 Sarasota Center Blvd., Suite 107
Sarasota, Florida 34240
941-377-2200
Fax 941-377-4848

H. Lee Dehner
(1952-2019)

May 6, 2019

Ms. Ferrell Jenne
West Manatee Fire & Rescue District Firefighters' Retirement Plan
c/o Foster & Foster, Inc.
2503 Del Prado Blvd S, Suite 502
Cape Coral, FL 33904

Re: West Manatee Fire & Rescue District Firefighters' Retirement Plan - Proposed Ordinance

Dear Ferrell:

As previously discussed with the Board, enclosed please find a proposed ordinance amending the West Manatee Fire & Rescue District Firefighters' Retirement Plan. With changes to the Internal Revenue Code (IRC) and its associated Regulations, as well as guidance from the Internal Revenue Service (IRS) and recent litigation, the following amendments to the pension plan are proposed:

1. Section 5, Contributions, is being amended by amending subsection 1., Member contributions, to include the additional member contribution rate of 2.1% that was recently agreed to in the collective bargaining unit.
2. Section 8, Disability, is being amended to more clearly identify those individuals who may be eligible to apply for a disability pension in the event that they have resigned or their employment is terminated. This clarification does not change the way in which this provision has been applied or interpreted in the past. This change is being made because the current language has been challenged in litigation as being unclear and has resulted in unintended application of the language. The recommended change clarifies the language with no change in the intended application. Subsection 7., Workers' Compensation, is also being amended to clearly identify the new minimum benefit accrual rate of 2.75%, as provided for in Chapter 175, Florida Statutes.
3. Section 15, Maximum Pension, is being amended by amending subsection (8) to comply with IRC changes.

Ms. Ferrell Jenne
May 6, 2019
Page 2

4. Section 17, Miscellaneous Provisions, is being amended to add subsection 10., Missing Benefit Recipients. This provision is in accordance with a recent IRS Programs Compliance Memorandum that requires plans to have an approved method for locating terminated individuals who are due benefits from the plan.

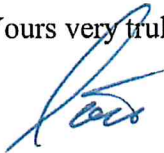
Proposed revised Operating Rules and Procedures, outlining the specifics of this procedure, as well as updates to many other sections will be provided for the Board's consideration.

5. Section 27, Deferred Retirement Option Plan, is being amended to remove subsection 6.H., Prevention of Escheat and re-number the remaining subsections. The information contained in this subsection is being expanded in accordance with IRS guidance and moved to the Miscellaneous Provisions Section of the Plan where it will apply to all benefit recipients rather than just DROP recipients.
6. Section 28, Reemployment After Retirement, is being amended to make several changes as required by the Internal Revenue Code to satisfy the qualification requirements applicable to the reemployment of a disability retiree. Additional changes have been made to clarify reemployment after DROP participation.

By copy of this letter to the Board's actuary, Foster & Foster, Inc., I am requesting that they provide you with a letter indicating that there is no cost associated with the adoption of this ordinance.

Please provide copies of these documents to each member of the Board for review at the next meeting.

Yours very truly,



Scott R. Christiansen

SRC/ksh
enclosure

cc: Patrick Donlan, with enclosure

June 4, 2019

Ms. Ferrell Jenne, Plan Administrator
2503 Del Prado Blvd. S.
Suite 502
Cape Coral, FL 33904

Re: West Manatee Fire and Rescue District
Firefighters' Retirement Plan

Dear Board:

In response to the email from Kristin Hill dated May 6, 2019, we have reviewed the proposed Ordinance (identified on page 6 as ksh\wm\01-21-19.ord rev 04-30-19) including the following proposed changes:

1. Section 5, Contributions, is being amended by amending subsection 1., Member contributions, to include the additional member contribution rate of 2.1 % that was recently agreed to in the collective bargaining unit.
2. Section 8, Disability, is being amended to more clearly identify those individuals who may be eligible to apply for a disability pension in the event that they have resigned or their employment is terminated. This clarification does not change the way in which this provision has been applied or interpreted in the past. This change is being made because the current language has been challenged in litigation as being unclear and has resulted in unintended application of the language. The recommended change clarifies the language with no change in the intended application. Subsection 7., Workers' Compensation, is also being amended to clearly identify the new minimum benefit accrual rate of 2.75%, as provided for in Chapter 175, Florida Statutes.
3. Section 15, Maximum Pension, is being amended by amending subsection (8) to comply with IRC changes.
4. Section 17, Miscellaneous Provisions, is being amended to add subsection 10., Missing Benefit Recipients. This provision is in accordance with a recent IRS Programs Compliance Memorandum that requires plans to have an approved method for locating terminated individuals who are due benefits from the plan.
5. Section 27, Defined Retirement Option Plan, is being amended to remove subsection 6.H., Prevention of Escheat and re-number the remaining subsections. The information contained in this subsection is being expanded in accordance with IRS guidance and moved to the Miscellaneous Provisions Section of the Plan where it will apply to all benefit recipients rather than just DROP recipients.
6. Section 28, Reemployment After Retirement, is being amended to make several changes as required by the Internal Revenue Code to satisfy the qualification requirements applicable to the reemployment of a disability retiree. Additional changes have been made to clarify reemployment after DROP participation.

Ms. Ferrell Jenne
June 4, 2019
Page 2

We have determined that adoption of the proposed ordinance will have no impact on the assumptions used in determining the funding requirements of the program. Because the changes do not result in a change in the valuation results, it is our opinion that a formal Actuarial Impact Statement is not required in support of its adoption. However, since the Division of Retirement must be aware of the current provisions of all public pension programs, it is recommended that you send a copy of this letter and a copy of the fully executed Ordinance to each of the following offices:

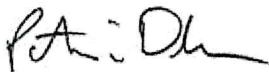
Mr. Keith Brinkman
Bureau of Local Retirement Systems
Division of Retirement
P. O. Box 9000
Tallahassee, FL 32315-9000

Mr. Steve Bardin
Municipal Police and Fire
Pension Trust Funds
Division of Retirement
P.O. Box 3010
Tallahassee, FL 32315-3010

The undersigned is familiar with the immediate and long-term aspects of pension valuations and meets the Qualification Standards of the American Academy of Actuaries necessary to render the actuarial opinions contained herein.

If you have any questions, please let me know.

Sincerely,



Patrick T. Donlan

Cc: Scott Christiansen, Plan Attorney

ORDINANCE NO. 2019-03

AN ORDINANCE OF THE WEST MANATEE FIRE AND RESCUE DISTRICT, MANATEE COUNTY, FLORIDA, AMENDING ORDINANCE NO. 2013-04 AMENDING AND RESTATING THE WEST MANATEE FIRE AND RESCUE DISTRICT FIREFIGHTERS' RETIREMENT PLAN; AS SUBSEQUENTLY AMENDED; AMENDING SECTION 5, CONTRIBUTIONS; AMENDING SECTION 8, DISABILITY; AMENDING SECTION 15, MAXIMUM PENSION; AMENDING SECTION 27, DEFERRED RETIREMENT OPTION PLAN; AMENDING SECTION 28, RE-EMPLOYMENT AFTER RETIREMENT; PROVIDING FOR SEVERABILITY OF PROVISIONS; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF FIRE COMMISSIONERS OF THE WEST MANATEE FIRE AND RESCUE DISTRICT, MANATEE COUNTY, FLORIDA, THAT;

Section 1. Ordinance No. 2013-04, amending and restating the West Manatee Fire and Rescue District Firefighters' Retirement Plan, as subsequently amended, is hereby amended by amending Section 5, Contributions, subsection 1., Member Contributions, to read as follows:

1. Member Contributions.

- A. Amount. Each Member of the System shall be required to make regular contributions to the Fund in the amount of two and nine-tenths percent (2.9%) of his Salary. Effective October 1, 2019, each member shall contribute three and nine tenths percent (3.9%) of his Salary. Effective October 1, 2020, each member shall contribute five percent (5%) of his Salary. The additional two and one tenth percent (2.1%) increases in contributions shall be utilized by the Board to offset negative actuarial experience in a manner determined by the Board. Member contributions withheld by the District on behalf of the Member shall be deposited with the Board immediately after each pay period. The contributions made by each Member to the Fund shall be designated as employer contributions pursuant to §414(h) of the Code. Such designation is contingent upon the contributions being excluded from the Members' gross income for Federal Income Tax purposes. For all other purposes of the System, such contributions shall be considered to be Member contributions.

* * *

Section 2. Ordinance No. 2013-04, amending and restating the West Manatee Fire and Rescue District Firefighters' Retirement Plan, as subsequently amended, is hereby amended by amending Section 8, Disability, subsection 1. Disability Benefits In-Line of Duty, subsection 3. Disability Benefits Not-in-Line of Duty, subsection 7., Workers' Compensation and adding subsection 8., Eligibility for Disability Benefits, to read as follows:

1. Disability Benefits In-Line of Duty.

Any Member 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 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 three and one-half percent (3.5%) of his Average Final Compensation multiplied by the total years of Credited Service, but in any event the minimum amount paid to the Member shall be forty-two percent (42%) of his Average Final Compensation. Notwithstanding the previous sentence, in the event a Member is determined by the Board to be disabled in-line of duty and the Member is unable to render useful and efficient service as an officer or employee of the District, the minimum amount paid to the Member shall be sixty-five percent (65%) of the Average Final Compensation of the Member. ~~Terminated persons, either vested or non-vested, 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 8., below.~~

* * *

3. Disability Benefits Not-In-Line of Duty.

Any Member with eight (8) years 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 three and one-half percent (3.5%) of his Average Final Compensation multiplied by the total years of Credited Service. ~~Terminated persons, either vested or non-vested, 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 8., below.~~

* * *

7. Workers' Compensation.

When a Retiree is receiving a disability pension and workers' compensation benefits pursuant to Florida Statute Chapter 440, for the same disability, and the total monthly benefits received from both exceed one hundred percent (100%) of the Member's average monthly wage, as defined in Chapter 440, Florida Statutes, the disability pension benefit shall be reduced so that the total monthly amount received by the Retiree does not exceed one hundred percent (100%) of such average monthly 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 percent (42%) of Average Final Compensation and two and three quarters percent (2.75%) of Average Final Compensation times years of Credited Service.

8. Eligibility for Disability Benefits.

Subject to 8.(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 District 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 (1) above is:
 - a. If the Member is terminated by the District for medical reasons and he has already applied for disability benefits before the medical termination, or:
 - b. If the Member is terminated by the District 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 3. Ordinance No. 2013-04, amending and restating the West Manatee Fire and Rescue District Firefighters' Retirement Plan, as subsequently amended, is hereby amended by amending Section 15, Maximum Pension, subsection 8., Ten Thousand Dollar (\$10,000) Limit; Less Than Ten Years of Service, to read as follows:

* * *

8. Ten Thousand Dollar (\$10,000) Limit; Less Than Ten Years of Service.

Notwithstanding anything in this Section 15, the retirement benefit payable with respect to a Member shall be deemed not to exceed the limit set forth in this subsection 8. of Section 15 if the benefits payable, with respect to such Member under this System and under all other qualified defined benefit pension plans to which the District contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year and or for any prior limitation year, and the District 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 District, the limit under this subsection 8. of Section 15 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 4. Ordinance No. 2013-04, amending and restating the West Manatee Fire and Rescue District Firefighters' Retirement Plan, as subsequently amended, is hereby amended by amending Section 17, Miscellaneous Provisions, adding subsection 10., Missing Benefit Recipients, to read as follows:

* * *

10. 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 5. Ordinance No. 2013-04, amending and restating the West Manatee Fire and Rescue District Firefighters' Retirement Plan, as subsequently amended, is hereby amended by amending Section 27, Deferred Retirement Option Plan, amending subsection 6.H. and renumbering the remaining subsections, to read as follows:

* * *

6. General Provisions.

* * *

~~_____~~ H. 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.

I H. Written Elections, Notification.

- (1) 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.
- (2) 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.

¶ I. 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 District 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.

Ⓚ J. Construction.

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

Ⓛ K. 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.

Ⓜ L. 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 6. Ordinance No. 2013-04, amending and restating the West Manatee Fire and Rescue District Firefighters' Retirement Plan, as subsequently amended, is hereby amended by amending Section 28, Re-Employment After Retirement, to read as follows:

SECTION 28. RE-EMPLOYMENT AFTER RETIREMENT.

1. Any retiree under this system, ~~except for disability retirement as previously provided for,~~ may be reemployed by any public or private employer, ~~except the District,~~ and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this system. Re-employment Notwithstanding the previous sentence, reemployment by the District shall be subject to the limitations set forth in this section.

* * *

5. After Disability Retirement.

- A. Subject to paragraph B. below, any Retiree who is retired under Section 8., Disability ("disability retiree"), may, subject to subsection 5., Physical Examination Requirement, of that section, be reemployed by any public or private employer, and may receive compensation from that employment without limiting or restricting in any way, the retirement benefits payable under this system.
- B. Any disability Retiree who subsequently becomes an employee of the District in any capacity, except as a Firefighter, shall discontinue receipt of disability benefits from the system for the period of any such employment.
- C. If a disability Retiree is reemployed as a Firefighter for the District, his disability benefit shall cease and Section 8., subsection 5. shall apply.

5 6. Reemployed terminated vested persons shall not be subject to the provisions of this section until such time as they begin to actually receive benefits. Upon receipt of benefits, terminated vested persons shall be treated as normal or early retirees for purposes of applying the provisions of this section and their status as an early or normal retiree shall be determined by the date they elect to begin to receive their benefit.

6 7. DROP Participants. ~~Members or r~~ Retirees who ~~are or were~~ in the Deferred Retirement Option Plan shall, following termination of employment after DROP participation, have the options provided for in this section for reemployment.

Section 7. All Resolutions or ordinances or parts of Resolutions or ordinances in conflict herewith be and the same are hereby repealed.

Section 8. If any section, subsection, sentence, clause, phrase of this Ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

Section 9. That this Ordinance shall become effective upon adoption.

ADOPTED BY MOTION AT A REGULAR MEETING THIS ____ DAY OF _____, 2019.

WEST MANATEE FIRE AND RESCUE DISTRICT

CHAIRMAN

SECRETARY