

**ORDINANCE NO. 2022-03**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF CLEWISTON, HENDRY COUNTY, FLORIDA, CREATING A NEW “FIREFIGHTERS RETIREMENT SYSTEM” UNDER CHAPTER 2, ARTICLE IV; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Commission of the City of Clewiston desires to create a retirement plan for firefighters;

**NOW THEREFORE, BE IT ENACTED** by the City Commission of Clewiston, Florida as follows:

**SECTION 1.** Chapter 2, Article IV, of the City of Clewiston City Code is hereby amended as follows:

**ARTICLE IV**

**FIREFIGHTERS RETIREMENT SYSTEM**

**Sec. 2-112. - CREATION OF FIREFIGHTERS PENSION TRUST FUND**

There is hereby created and established a trust fund for the benefit of the Firefighters of the City of Clewiston, Florida to be known as the City of Clewiston Firefighters Retirement System.

**Sec. 2-113. - DEFINITIONS.**

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

*Accumulated Contributions* means a Member’s own contributions with interest at a rate to be determined from time to time by the Board.

*Actuarial Equivalent* means a benefit or amount of equal value, based upon the MP-2018 combined healthy mortality table, blended 50% male and 50% female, with no projection, and an interest rate equal to seven percent (7%) per year.

*Average Final Compensation* means the average Salary of the best five (5) years of the last ten (10) years of Credited Service prior to retirement, termination or death.

*Beneficiary* means the person or persons entitled to receive benefits hereunder at the death of a Member who has or have been designated in writing by the Member and filed with the Board. If no such designation is in effect or if no person so designated is living at the time of death of the Member, the Beneficiary shall be the estate of the Member.

*Board* means the Board of Trustees, which shall administer and manage the System herein provided and serve as trustees of the Fund.

*City* means the City of Clewiston, Florida.

*Code* means the Internal Revenue Code of 1986, as amended from time to time.

*Credited Service* means the total number of years and fractional parts of years of employment with the City as a Firefighter (including service prior to the implementation of the pension plan).

The years of fractional parts of years that a Member serves in the military service of the Armed Forces of the United States, voluntarily or involuntarily, for the purpose of going on active duty, shall be added to his years of Credited Service for all purposes, including vesting, pursuant to conditions that are required or permitted under state and federal law, as amended from time to time, provided that the Firefighter must return to his employment as a Firefighter within one (1) year from the date of his military discharge or release from active service under honorable conditions and in the case of non-intervening service must make a payment to the System in the amount that he or she would have contributed had he or she not entered the military. No contribution shall be required to purchase intervening military service. This Section is intended to meet or exceed the minimum requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA), (P.L. 1032-353). To the extent that this Section does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

*Effective Date* means January 1, 2022, upon adoption of this Ordinance.

*Fire Department* means the Fire Department of the City.

*Firefighter* means an actively employed full-time person or volunteer employed by the city, including his initial probationary employment period,

who is certified as a firefighter as a condition of employment in accordance with the provisions of § 633.408, Florida Statutes, and whose duty it is to extinguish fires, to protect life and to protect property. The term includes all certified, supervisory, and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time firefighters, part-time firefighters, volunteer firefighters or auxiliary firefighters but does not include part-time firefighters or auxiliary firefighters.

*Fund* means the trust fund established herein as part of the System.

*Masculine Gender*, as used herein, unless the context specifically requires otherwise, shall include both feminine and masculine genders.

*Member* means an actively employed Firefighter who fulfills the prescribed membership requirements. Any benefit improvements which might be made in the future shall apply prospectively and shall not apply to Members who terminate employment or who retire prior to the effective date of any ordinance adopting such benefit improvements, unless such ordinance specifically provides to the contrary.

*Salary* means the total amount of W-2 compensation plus tax exempt, tax sheltered and tax deferred items of income, but excluding overtime, extra duty or special detail work performed on behalf of a second party employer, and payments for unused sick or annual leave at termination of employment.

*Spouse* means the lawful wife or husband of a Member at the time of pre-retirement death or retirement.

*System* means the City of Clewiston Firefighters Retirement System as contained herein and all amendments thereto.

*Vesting* means ten (10) years of Credited Service before the Member is entitled to 100% of his service benefits.

## Sec. 2-114. - MEMBERSHIP

### (a) *Conditions of Eligibility*

- (1) Full-time employees who are classified as full-time sworn Firefighters and Volunteer Firefighters shall participate in the System as a condition of employment.

(b) *Membership*

Each Firefighter shall complete a form prescribed by the Board providing the following information:

- (1) Designation of a Beneficiary for Beneficiaries, and
- (2) Authorization of payroll deduction, and
- (3) Any other information deemed necessary or appropriate by the Board.

(c) *Change in Designation of 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 benefits under the System shall cease.

Sec. 2-115. - BOARD OF TRUSTEES

- (a) The sole and exclusive administrative of and responsibility for the proper operation of the System and for making effective the provisions of this ordinance are hereby vested in a Board of Trustees. The Board of Trustees is hereby designated as the plan administrator. The Board of Trustees shall consist of five (5) Trustees, two (2) of whom, unless otherwise prohibited by law, shall be legal residents of the municipality who shall be appointed by the City Council, two (2) of whom who shall be full-time Firefighter Members of the System who shall be elected by a majority of the Firefighters who are Members of the System. The fifth Trustee shall be chosen by a majority of the previous four Trustees as provided for herein, and such person's name shall be submitted to the City Council. Upon receipt of the fifth person's name, the City Council shall, as a ministerial duty, appoint such person to the Board of Trustees as its fifth Trustee. The fifth Trustee shall have the same rights as each of the other four (4) Trustees appointed or elected as herein provided and shall serve a four (4) year term unless he sooner vacates the office. Each resident Trustee shall serve as Trustee for a period of four (4) years, unless he sooner vacates the office or is sooner replaced by the City Council at whose pleasure he shall serve. Each Firefighter Trustee shall serve as Trustee for a period of four (4) years, unless he sooner leaves the employment of the City as a Firefighter or otherwise vacates his office as Trustee, whereupon a successor shall be chosen in the same manner as the departing Trustee. Each Trustee may succeed himself

in office. The Board shall establish and administer the nominating and election procedures for each election. The Board of Trustees shall meet at least quarterly each year. The 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.

- (b) The Trustees shall, by a majority vote, elect a Chairman and a Secretary. The Secretary of the Board shall keep a complete minute book of the actions, proceeding, or hearings of the Board. The Trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by the law.
- (c) Each Trustee shall be entitled to one vote on the Board. A majority of the Board shall be necessary for any decision by the Trustees at any meeting of the Board. A Trustee shall have the right to abstain from voting as the result of a conflict of interest provided that Trustee complies with the provisions of Section 112.3143, Florida Statutes.
- (d) The duties and responsibilities of the Board shall include, but not necessarily be limited to, the following:
  - (1) To construe the provisions of the System and determine all questions arising thereunder.
  - (2) To determine all questions relating to eligibility and membership.
  - (3) To determine and certify the amount of all retirement allowances or other benefits hereunder.
  - (4) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the System.
  - (5) To distribute to Members, from time to time, information concerning the System.
  - (6) To receive and process all applications for benefits.
  - (7) To authorize all payments whatsoever from the Fund, and to notify the disbursing agent, in writing, of approval benefit payments and other expenditures arising through operation of the System and Fund.

- (8) To have performed actuarial studies and valuations at least as often as required by law, and make recommendations regarding any and all changes in the provisions of the System.
- (9) To retain the services of an administrator to assist the Board in the administration of the System.
- (10) To perform such other duties as are necessary or appropriate prudently to administer the System.
- (11) To invest and re-invest the assets of the pension system.

Sec. 2-116. - FINANCES AND FUND MANAGEMENT.

*Establishment and Operation of the Fund*

- (a) As part of the System, there is hereby established the Fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the System.
- (b) The actual custody and supervision of the Fund (and assets thereof) shall be vested in the Board. Payment of benefits and disbursements from the Fund shall be made by written authorization from the Board.
- (c) All funds of the System may be deposited by the board with the Finance Director of the municipality, acting in a ministerial capacity only, who shall be liable in the same manner and to the extent as he is liable for the safekeeping of funds for the municipality. However, any funds so deposited with the Finance Director of the municipality shall be kept in a separate fund by the Finance Director or clearly identified as such funds of the System. In lieu thereof, the Board shall deposit the funds of the System in a qualified public depository as defined in 280.02, Florida Statutes, which depository with regard to such funds shall conform to and be bound by all of the provisions of Chapter 280, Florida Statutes. In order to fulfill its investment responsibilities as set forth herein, the Board may retain the services of a custodian bank, and investment advisor registered under the Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company licensed to do business in Florida, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the Board, in the investment of all Fund assets.

- (d) All funds and securities of the System 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 regards to the following:
  - (1) Current amounts of Accumulated Contributions of Members on both an individual and aggregate account basis, and
  - (2) Receipts and disbursements, and
  - (3) Benefit payments, and
  - (4) Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the City, and
  - (5) All interest, dividends and gains (or losses) whatsoever, and
  - (6) Such other entries as may be properly required so as to reflect a clear and complete financial report of the Fund.
  
- (e) An audit shall be performed annually by a certified public accountant for the most recent fiscal year of the City showing a detailed listing of assets and liabilities, and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete valuation of assets as well as other items normally included in a certified audit.
  
- (f) The Board shall have the following investment powers and authority:
  - (1) The Board shall be vested with full legal title to said Fund. No amendment, legislative act, or ordinance shall be adopted which shall have the effect of reducing the then-vested accrued benefits of the Firefighters, retirees, or their beneficiaries. 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) All monies paid into or held in the Fund shall be invested and reinvested by the Board. The Board shall have the authority to

invest in all investments allowed under the provisions of Florida Statutes Chapters 112 and 175.

- (3) No person or entity shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the Fund, except that due to his or its own negligence, willful misconduct or lack of good faith.
- (4) The Board may cause any investment in securities held by it to be registered in or transferred into its name as Trustee or into the name of such nominee as it may direct, or it 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 Fund.
- (5) 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 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 with the Trustees or with depositories 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 an owner with respect to stocks, bonds, or other investments comprising the Fund which it may deem to be the best interest of the Fund to exercise.
- (6) The Board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of the court for the exercise of any power contained herein.
- (7) 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 herein or under the general law applicable to it as Trustee under this ordinance, can reasonably be taken or performed only after receipt by it from a Member, the City, 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.



- (8) 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 in such a manner that the actuarial equivalent of the benefit to which the Member or Beneficiary was correctly entitled to, shall be paid. Overpayments shall be charged against payments next succeeding the correction or collected in another manner if prudent. Underpayments shall be made up from the Fund in a prudent manner.
- (9) The Board shall sustain no liability whatsoever for the sufficiency of the Fund to meet the payments and benefits herein provided for. However, nothing herein is to be construed as relieving the Board from its fiduciary liability to the Fund.
- (10) In any application to or proceeding or action in the courts, only the Board shall be a necessary party, and no Member or other person having an interest in the Fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.
- (11) Any of the foregoing powers and functions 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; provided further, that legal title to said Fund shall always remain in the Board.

Sec. 2-117. - CONTRIBUTIONS.

(a) Member Contributions.

- (1) *Amount.* Beginning on January 1, 2022, each Member of the System shall be required to make regular contributions to the Fund in the amount of five percent (5%) of his Salary. 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.

(2) *Method.* Such contributions shall be made by payroll deduction.

(b) *State Contributions.*

Any monies received or receivable by reason of laws of the State of Florida, for the express purpose of funding and paying for retirement benefits for Firefighters of the City shall be deposited in the Fund comprising part of this System immediately and under no circumstances more than five (5) days after receipt by the City.

(c) *City Contributions.*

So long as this System is in effect, the City shall make contributions to the Fund in an amount equal to the total normal costs plus the additional amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in part VII of Chapter 112, Florida Statutes.

(d) *Other.*

Private donations, gifts and contributions shall 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 shall be used to reduce Member contributions.

Sec. 2-118. - BENEFIT AMOUNTS AND ELIGIBILITY.

(a) *Normal Retirement Date.*

A Member's normal retirement date shall be the first day of the month coincident with or the next following the earlier of attainment of age fifty-five (55) and the completion of ten (10) years of Credited Service or the attainment of age fifty-two (52) and the completion of twenty-five (25) years of Credited Service. A Member may retire on his normal retirement date or on the first day of any month thereafter, and each Member shall become one hundred percent (100%) vested in his accrued benefit on the Member's normal retirement date. Normal Retirement under the System is retirement from employment with the Fire Department on or after the normal retirement date.

(b) *Normal Retirement Benefit.*

A Member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on his

retirement date and be continued thereafter during his lifetime, but at least one hundred and twenty (120) monthly payments. The monthly retirement benefit shall equal two and three-fourths 2.75 percent of Average Final Compensation multiplied by Credited Service.

(c) *Early Retirement Date.*

A Member may retire on his early retirement date which shall be the first day of any month coincident with or next following the later of the attainment of age fifty (50) and the completion of ten (10) years of Credited Service. Early retirement under the System is retirement from employment with the Fire Department on or after the early retirement date and prior to the normal retirement date.

(d) *Early Retirement Benefit.*

A Member retiring hereunder on his early retirement date may receive either a deferred or an immediate monthly retirement benefit payable in the same form as for normal retirement as follows:

- (1) A deferred monthly retirement benefit which shall commence on what would have been his normal retirement date had he continued employment as a Firefighter and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement on his normal retirement date except that Credited Service and Average Final Compensation shall be determined as of his early retirement date; or
- (2) An immediate monthly retirement benefit which shall commence on his early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in paragraph (1) above, reduced by 3% for each year by which his early retirement date precedes the date which would have been his normal retirement date had he continued employment as a Firefighter.

Sec. 2-119. - PRERETIREMENT DEATH.

(a) *Benefit Payable in the Event of Death Prior to Ten (10) Years of Service*

If the service of a Member is terminated by reason of his death prior to his tenth year of service in the Plan, there shall be payable to the Member's designated Beneficiary the Member's Accumulated Contributions.

(b) *Benefit Payable in Event of Death on or After Ten (10) Years of Service*

If the service of a Member is terminated by reason of his death on or after ten (10) years of service, there shall be payable to the Member's designated Beneficiary beginning on the first date of the month coincident with or next following the date of death for a period of ten (10) years. The benefit will be calculated as for Normal Retirement based on the deceased Member's Credited Service and Average Final Compensation, and actuarially reduced to reflect the commencement of benefits prior to the Normal Retirement Date. If the sole Beneficiary is the surviving Spouse, then the Spouse may elect to receive the full accrued benefit payable for ten (10) years beginning on the Member's otherwise Normal Retirement Date or Early Retirement Date (benefit will be reduced for Early Retirement).

Sec. 2-120. - DISABILITY.

(a) *Disability Benefits On-Duty.*

Each 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 the accrued pension benefit as of the date of disability. However, in no event shall the benefit be less than forty-two percent (42%) of his or her average monthly compensation as of the Firefighter's disability retirement date.

Any condition or impairment of health of a Member caused by tuberculosis, hypertension, heart disease, or hardening of the arteries, resulting in total or partial disability or death, shall be presumed to be accidental and suffered in line of duty unless the contrary is shown by

competent evidence. Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the Firefighter, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty, provided that such Firefighter shall have successfully passed a physical examination upon entering such service, which physical examination including electrocardiogram failed to reveal any evidence of such condition and, further that such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance.

A line-of-duty disability based upon a mental injury shall not be granted unless it is proven by clear and convincing evidence that the injury was the result of sudden, unexpected and extraordinary stress directly related to the Member's employment. Extra duty assignments for Firefighters shall be considered in the line of duty for disability purposes.

(b) *Disability Benefits Off-Duty.*

Each Member with ten (10) 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 the accrued pension benefit as of the date of disability. However, in no event shall the benefit be less than twenty-five percent (25%) of his or her average monthly compensation as of the Firefighter's disability retirement date.

(c) *Disability Application.*

An application for disability must be filed while the Member is employed by the City of Clewiston.

(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 or narcotics.

- (2) Injury or disease sustained while willfully and illegally participating in fights, riots, and 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 with the Fire Department shall have terminated.
- (5) Injury or disease sustained while working for anyone other than the Fire Department and arising out of such employment.

(e) *Physical Examination Requirement.*

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 person receiving disability benefits under provisions of this ordinance may be periodically re-examined 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 he had at the time he was placed upon disability 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. However, any such Member who recovers from disability and whose retirement income is discontinued by the Board and who, as of the date of termination of his service due to disability, had both attained the age of fifty (50) years and completed at least ten (10) years of Credited Service, shall, if he does not re-enter the service of the Fire Department, be entitled to the early retirement income or the benefit on termination of service as provided in Sections 2-118 and 2-121 hereof, respectively, based on his Average Final Compensation and Credited Service as of the date of termination of his service due to disability and upon his attained age as of the date of his recovery

from disability, and the amount of the retirement income upon early retirement will be reduced to take into account the Member's younger age and earlier commencement of retirement income payments as provided in Section 2-118 hereof.

The cost of the physical examination and/or re-examination of the retiree claiming and/or receiving disability benefits 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 which he received a disability retirement income payment and ending with the date he reentered 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 the Board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment. Payments will continue until

- (1) recovery (as determined by the Board)
- (2) for life and ten years certain

(g) *Workers' Compensation.*

When a Member 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 Members' Average Final Compensation, the disability pension benefit shall be reduced so that the total monthly amount received by the Member does not exceed one hundred percent (100%) of such Average Final Compensation.

Sec. 2 -121. - VESTING.

- (a) A Member will become 100% vested upon the attainment of ten (10) years of Credited Service.
- (b) If a Member terminates his employment with the Fire Department, either voluntarily or by discharge, and is not eligible for any other benefits under this System, he shall be entitled to the following:
  - (1) Any Member upon termination of employment shall be entitled to a refund of his Accumulated Contributions or the Member may leave it deposited with the Fund for up to five (5) years.
  - (2) Any vested Member of the System whose position is terminated, for whatever reason, but who remains employed by the Fire Department in some other capacity, shall have all retirement benefits accrued up to the date of such termination under this System preserved, provided he does not elect to withdraw his Accumulated Contributions from this System. Such accrued retirement benefits shall be payable at his otherwise early (reduced as for early retirement) or normal retirement date hereunder, determined as if he had remained employed, or later, in accordance with the provisions of this System; provided further, however, that benefits shall not be payable under this System during any period of continued employment by the City, except as provided for in Section 2-140.
  - (3) Any vested Member of the System whose position is terminated, for whatever reason, but who does not remain employed by the City in some other capacity, shall have all retirement benefits accrued up to the date of such termination under this System preserved, provided he does not elect to withdraw his Accumulated Contributions from this System. Such accrued retirement benefits shall be payable at his otherwise early (reduced as for early retirement) or normal retirement date hereunder, determined as if he had remained employed, or later, in accordance with the provisions of this System; provided further, however, that benefits shall not be payable under this System during any period of continued employment by the City, except as provided for in Section 2-140.

Sec. 2-122. - OPTIONAL FORMS OF BENEFITS.

- (a) In lieu of the amount and form of retirement income payable in the event of normal or disability retirement as specified herein, a Member,



upon written request to the Board, may elect to receive the Actuarial Equivalent payable in accordance with one of the following options:

- (1) A retirement income of a greater monthly amount, payable to the Member for his lifetime only.
  - (2) A retirement income of a modified monthly amount, payable to the Member during his lifetime and following his death, one hundred percent (100%), seventy-five percent (75%), sixty-six and two-thirds percent (66 2/3%) or fifty percent (50%) of such monthly amount payable to a joint pensioner for his lifetime.
- (b) The Member, upon electing any option of this Section, must designate the joint annuitant or beneficiary to receive the benefit, if any, payable under the plan in the event of his death, and may change such designation, but any change will be deemed a new election and is subject to approval by the Board. If a Member has elected an option with a joint annuitant or beneficiary and his retirement income benefits have commenced, the retired Member may change the designated joint annuitant or beneficiary only twice.
- (c) The consent of a Member's joint pensioner or Beneficiary to any such change shall not be required. The rights of all previously-designated Beneficiaries to receive benefits under the System shall thereupon cease.
- (d) Upon change of a Member's Beneficiary or joint pensioner in accordance with this Section, the Board shall adjust the Member's monthly benefit by application of actuarial calculations to insure that the benefit paid is the Actuarial Equivalent of the Member's then current benefit. Any such Member shall pay the actuarial recalculation expenses and shall make repayment of any overage of previously-paid pension benefits as a result of said recalculations. Each request for a change will be made in writing on a form prepared by the Board and on completion will be filed with the Board. In the event that no designated Beneficiary survives the Member, such benefits as are payable in the event of the death of the Member subsequent to his retirement shall be paid as provided in Section 2-123.
- (e) Retirement income payments shall be made under the option elected in accordance with the provisions of this Section and shall be subject to the following limitations:

- (1) If a Member dies prior to his normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under Section 2-119.
  - (2) If the designated Beneficiary or joint pensioner dies before the Member's retirement under the System, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the Member upon his retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this Section or a new Beneficiary is designated by the Member prior to his retirement.
  - (3) If both the retired Member and the Beneficiary designated by a Member die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, the Board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with Section 2-123.
  - (4) If a Member continues beyond his normal retirement date pursuant to the provisions of Section 2-118(a) and dies prior to his actual retirement and while an option made pursuant to the provisions of this Section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a Beneficiary designated by the Member in the amount or amounts computed as if the Member had retired under the option on the date on which his death occurred.
- (f) A Member may not change his retirement option after the date of cashing or depositing his or her first check.

Sec. 2-123. - BENEFICIARIES.

- (a) Each Member shall, on a form provided for that purpose, signed and filed with the Board, designate a Beneficiary to receive the benefit, if any, which may be payable in the event of his death; and each designation may be revoked by such Member by signing and filing with the Board a new designation-of-beneficiary form.
- (b) If a deceased Member fails to name a Beneficiary in the manner prescribed in subsection (a), or if the Beneficiary named by a deceased Member predeceases the Member, the death benefit, if

any, which may be payable under the System with respect to such deceased Member shall be paid to the estate of the Member.

Sec. 2-124. - CLAIMS PROCEDURES.

The Board shall adopt procedures to be followed in processing claims for benefits. There shall be timely adequate written notice given to any Member or Beneficiary whose claim for benefits has been denied, setting forth the specific reasons for such denial. The Board shall provide a full and fair review in those cases when a Member or Beneficiary has had his or her claim for benefits denied.

Sec. 2-125. - REPORTS TO DIVISION OF RETIREMENT.

Each year the Board shall file a report with the Division of Retirement containing the information required by Chapters 175, Florida Statutes.

Sec. 2-126. - ROSTER OF RETIREES.

The Secretary of the Board shall keep a record of all person enjoying a pension under the provisions of this ordinance in which it shall be noted the time when the pension is allowed and when the same shall cease to be paid. Additionally, the Secretary shall keep a record of all Members employed by the Fire Departments in such a manner as to show the name, address, date of employment and date of termination of employment.

Sec. 2-127. - BOARD OF ADVISORS.

The Board shall engage such actuarial, accounting, legal, and other services as shall be necessary or advisable to transact the business of the System. The compensation of all persons engaged by the Board and all other expenses of the Board necessary for the operation of the System shall be paid from the Fund at such rates and in such amounts as the Board shall agree.

Sec. 2-128. - MAXIMUM PENSION.

(a) *Basic Limitation.*

In accordance with the benefit limitations provided for Code Section 415 and subject to the adjustments hereinafter set forth, the maximum amount of annual retirement income payable with respect to a Member under this System shall not exceed \$160,000 (adjusted for cost of living in accordance with the Internal Revenue Code

Section 415(d)). For purposes of this section, "limitation year" shall be the calendar year.

For purposes of applying the above limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by Treasury Regulations, so that such benefits are the Actuarial Equivalent of a straight life annuity.

(b) *Participation in Other Defined Benefit Plans.*

The limitation of this Section with respect to any Member who at any time has been a Member in any other defined benefit plan (as defined in §414(j) of the Code) maintained by the City shall apply as if the total benefits payable under all defined benefit plans in which the Member has been a Member were payable from one plan.

(c) *Additional Limitations on Pension Benefits.*

Notwithstanding anything herein to the contrary:

- (1) The normal retirement benefit or pension payable to a retiree shall not exceed 100 percent (100%) of his Average Final Compensation. However, nothing contained in this Section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.
- (2) No Member of the System shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the Member is already receiving, or will receive in the future, a retirement benefit or pension from another retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

Sec. 2-129. - COMMENCEMENT OF BENEFIT.

- (a) Unless the Member otherwise elects, with such election being in writing and delivered to the Board and specifying the form of retirement income and date on which the retirement income is to commence, the payment benefits under the System to the Member shall commence not later than the 60<sup>th</sup> day after the close of the plan year in which the latest of the following events occur:

- (1) The attainment of the Member of age 55, and the 10th anniversary of the date on which the Member commenced participation in the System; or
  - (2) The attainment of the Member of age 52, and the 25<sup>th</sup> anniversary of the date on which the Member commenced participation in the System; or
  - (3) The termination of the Member's service with the Fire Department.
- (b) If the payment of a Member's retirement income cannot begin on the date required under subsection (a) of this Section because the Board either cannot ascertain the amount of the Member's retirement income or cannot locate the Member after making reasonable efforts to do so, the payment of the Member's benefit shall begin no later than sixty (60) days after the date on which the amount can be ascertained or the Member is located, whichever is applicable. Any such payment shall be made retroactive to a date which is not earlier than the date on which the payment of the Member's benefit was scheduled to begin but which is not later than the date specified under subsection (a) of this Section.

Sec. 2-130. - DISTRIBUTION OF BENEFITS.

Notwithstanding any other provision of this System to the contrary, a form of retirement income payable from this System after the Effective Date of this ordinance, shall satisfy the following conditions:

- (a) If the retirement income is payable before the Member's death,
  - (1) It shall either be distributed or commence to the Member not later than April 1 of the calendar year following the later of the calendar year in which the Member attains age 70½, or the calendar year in which Member retires.
  - (2) The distributions shall commence not later than the calendar year defined above; and a), shall be paid over the life of the Member or over the lifetimes of the Member and Spouse, issue or dependent, or b), shall be paid over the period extending not beyond the life expectancy of the Member and Spouse, issue or dependent.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the Member

dies before his entire interest in the System has been distributed, the remaining portion of such interest in the system shall be distributed no less rapidly than under the form of distribution in effect at the time of the Member's death.

- (b) If the Member's death occurs before the distribution of his interest in the System has commenced, Member's entire interest in the System shall be distributed within five (5) years of Member's death, unless it is to be distributed in accordance with the following rules:
  - (1) The Member's remaining interest in the System is payable to his Spouse, issue or dependent;
  - (2) The remaining interest is to be distributed over the life of the Spouse, issue or dependent or over a period not extending beyond the life expectancy of the Spouse, issue or dependent; and
  - (3) Such distribution begins within one year of the Member's death unless the Member's Spouse, issue or dependent shall receive the remaining interest in which case the distribution need not begin before the date on which the Member would have attained age 70½ and if the Spouse, issue or dependent dies before the distribution to the Spouse, issue or dependent begins, this Section shall be applied as if the Spouse, issue or dependent were the Member.

Sec. 2-131. - MISCELLANEOUS PROVISIONS.

- (a) *Interest of Members in System.*

All assets of the Fund shall be used exclusively for the benefit of Members or their Beneficiaries. At no time shall any part of the corpus or income of the Fund be used for or diverted to any purpose other than for the exclusive benefit of Members and their Beneficiaries.

- (b) No amendment or ordinance shall be adopted by the City Council which shall have the effect of reducing the then accrued benefits of Members or a Member's Beneficiaries.

Sec. 2-132. - REPEAL OR TERMINATION OF SYSTEM.

- (a) This ordinance establishing the System and Fund, and subsequent ordinances pertaining to said System and Fund, may be modified,

terminated, or amended, in whole or in part by amendment, legislative act of the City or ordinance with a vote of approval of sixty six and two-thirds percent (66 2/3%) of the City Council. If this or any subsequent ordinance shall be amended or repealed in its application to any person benefitting hereunder, the amount of benefits which at any time of any such alteration, amendment, or repeal shall have accrued to the Member or Beneficiary shall not be affected thereby.

- (b) If this ordinance shall be repealed, or if contributions to the System are discontinued, the Board shall continue to administer the System in accordance with the provisions of this ordinance, for the sole benefit of the then Members, any Beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this ordinance who are designated by any of said Members. In the event of repeal, or if contributions to the System are discontinued, there shall be full vesting (100%) of benefits accrued to date of repeal and the assets of the System shall be allocated in accordance with Chapter 175.361, Florida Statutes.
- (c) If, at any time during the first ten (10) years after the effective date of the ordinance originally establishing this System, the System shall be terminated or the full current costs of the System shall not have been met, anything in the System to the contrary notwithstanding, City contributions which may be used for the benefit of any one of the twenty-five (25) highest paid Firefighters on the effective date, whose anticipated annual retirement allowance provided by the City's contributions at Member's normal retirement date would exceed \$1,500, shall not exceed the greater of either a) \$20,000, or b), an amount computed by multiplying the smaller of \$10,000 or twenty percent (20%) of such Firefighter's average annual earnings during his last five (5) years of service by the number of years of service since the effective date. In the event that it shall hereafter be determined by statute, court decision, ruling by the Commissioner of Internal Revenue, or otherwise, that the provisions of this paragraph are not then necessary to qualify the System under the Internal Revenue Code, this paragraph shall be ineffective without the necessity of further amendment of this ordinance.

**Sec. 2-133. - EXEMPTION FROM EXECUTION, NON-ASSIGNABILITY.**

Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this ordinance and the Accumulated Contributions and the cash securities in the Fund created under this ordinance are hereby exempted from any state,

county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable, however, the Fund is subject to an income deduction order for alimony and child support.

Sec. 2-134. - PENSION VALIDITY.

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

Sec. 2-135. - FORFEITURE OF PENSION.

- (a) A Member's benefit is subject to forfeiture as set forth in Florida Statute §112.3173.
- (b) Any Member who has received benefits from the System in excess of his Accumulated Contributions after Member's rights were forfeited shall be required to pay back to the Fund the amount of the benefits received in excess of his Accumulated Contributions. The Board may institute all legal action necessary to recover such funds.
- (c) False or misleading statements made to obtain retirement benefits are prohibited.
  - (1) It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with or urge another to make, or cause to be made, any false, fraudulent or misleading oral or written statement or withhold or conceal material information to obtain any benefit under this plan.
    - (2.A.) A person who violates subparagraph (1) commits a misdemeanor of the first degree, punishable as provided in Florida Statutes Section 775.083 or 775.082.
    - (2.B.) In addition to any applicable penalty, upon conviction for a violation described in subparagraph (1), a participant or Beneficiary of this plan may, in the discretion of the Board of Trustees, be required to forfeit the right to receive any or all



benefits to which the person would otherwise be entitled to under this plan. For purposes of this subparagraph (1) "conviction" means a determination of guilt that is the result of a plea or a trial regardless of whether adjudication is withheld.

Sec. 2-136. - INDEMNIFICATION.

- (a) To the extent not covered by insurance contracts in force from time to time, and to the extent allowed by law, the City shall indemnify and hold harmless Members of the Board from all personal liability from damages and costs, including court costs and trial and appellate attorney's fees, arising out of claims, suits, litigation, or threat of same, herein referred to as "claims", against these individuals because of acts or circumstances connected with or arising out of their official duty as Members of the Board. The City reserves the right, in its sole discretion, to settle the claim at any time, and to appeal or not appeal from any adverse judgment or ruling, and in either event will indemnify and hold harmless any Members of the Board from the judgment, execution, or levy thereon. This Section will not operate to waive any protection the City is afforded under Florida Statute Section 768.28, et seq.
- (b) This Section shall not apply nor shall the City be responsible in any manner to defend or pay for claims arising out of acts or omissions of Members of the Board which constitute felonies or gross malfeasance or gross misfeasance in office.

Sec. 2-137. - DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS.

- (a) *General.*

Notwithstanding any provision of the System to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

- (b) *Definitions.*

- (1) *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 frequent 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 (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income.

- (2) *Eligible Retirement Plan:* An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity 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.
- (3) *Distributee:* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving Spouse is a distributee with regard to the interest of the Spouse.
- (4) *Direct Rollover:* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

#### Sec. 2-138. - DEFERRED RETIREMENT OPTION PLAN.

(a) *Definitions.*

As used in this Ordinance, the following definitions apply:

- (1) "DROP" - The City of Clewiston Firefighters Deferred Retirement Option Plan
- (2) "DROP Account" - The account established for each DROP participant

(b) *Participation.*

- (1) *Eligibility to Participate.*

In lieu of terminating his employment as a Firefighter, any Member who is eligible for normal retirement under the System

may elect to defer receipt of such service retirement pension and to participate in the DROP.

(2) *Election to Participate.*

A Member's election to participate in the DROP must be made in writing in a time and manner determined by the Board and shall be effective on the first day of the first calendar month after it is received by the Board.

(3) *Period of Participation.*

(a) A Member who elects to participate in the DROP may participate in the DROP for a period beginning at the time his election to participate in the DROP first becomes effective ("participation date") and ending not later than sixty (60) months from his participation date

(b) A Member may participate only once.

(4) *Rate of Return*

(a) A Member shall select one of the following investment rates of be attributed to his DROP Account at the time of entry into the DROP:

1. 3.0% per year, or

2. actual net rate of investment return (total return net of brokerage commissions, management fees and transaction cost) credited each fiscal quarter.

(b) A Member may change his or her rate of return option once during DROP period.

(c) *Termination of Participation.*

(1) A Member participating in the DROP shall cease participating in the DROP by:

(a) continuing to be employed as a Firefighter at the end of his period of participation in the DROP, or

(b) terminating his employment as a Firefighter.

- (2) Upon the Member's termination of participation in the DROP pursuant to subsection (1)(a) above, all amounts, including monthly benefits and investment earnings and losses or interest, shall cease to be transferred from the System to his DROP Account. Any amounts remaining in his DROP Account shall be paid to him in accordance with the provisions of subsections (f) and (g) when he terminates his employment as a Firefighter.
- (3) A Member who terminates his participation in the DROP shall not be permitted to again become a participant in the DROP.

(d) *Effect of DROP Participation on the System.*

- (1) A Member's credited service and his accrued benefit under the System shall be determined on the date his election to participate in the DROP first becomes effective. The Member shall not accrue any additional Credited Service or any additional benefits under the System (except for any additional benefits provided under any cost-of-living adjustment in the System or any other benefit improvements which are made specifically applicable to Retirees or DROP participants) while he is a participant in the DROP. After a Member commences participation, he shall not be permitted to again contribute to the System nor shall he be eligible for disability or pre-retirement death benefits.
- (2) No amounts shall be paid to a Member of the System while the Member is a participant in the DROP. Unless otherwise specified in the System, if a Member's participation in the DROP is terminated other than by terminating his employment as a Firefighter, no amounts shall be paid to him from the System until he terminates his employment as a Firefighter. Unless otherwise specified in the System, amounts transferred from the System to the Member's DROP Account shall be paid directly to the Member only on the termination of his employment as a Firefighter.

(e) *Funding.*

(1) *Establishment of DROP Account.*

A DROP Account shall be established for each Member participating in the DROP. A Member's DROP Account shall

consist of amounts transferred to the DROP and earnings or interest on those amounts.

(2) *Transfers from Retirement System.*

- (a) As of the first day of each month of a Member's period of participation in the DROP, the monthly retirement benefit he would have received under the System had he terminated his employment as a Firefighter and elected to receive monthly benefit payments thereunder shall be transferred to his DROP Account. A Member's period of participation in the DROP shall be determined, but in no event shall it continue past the date he terminates his employment as a Firefighter.
- (b) A Member's DROP account shall be debited or credited with earnings:
  - 1. at an effective rate of three percent (3.0%) per annum compounded monthly on the prior month's ending balance, or
  - 2. at a rate equal to the actual net rate of investment return realized by the System for that quarter (total return net of brokerage commissions, management fees and transaction cost).
- (c) A Member's DROP Account shall only be credited or debited with earnings or interest and monthly benefits while the Member is a participant in the DROP. If a Member is employed by the City Fire Department as a Firefighter after participating in the DROP for five (5) years, then beginning with the Member's 61<sup>st</sup> month of DROP participation, the Member's DROP Account will no longer be credited or debited with earnings or interest, nor will monthly benefits be transferred to the DROP account. All such non-transferred amounts shall be forfeited and continue to be forfeited while the Member is employed as a Firefighter by the Fire Department beyond the 60<sup>th</sup> month. A Member employed as a Firefighter by the Fire Department after five (5) years of DROP participation will still not be eligible for pre-retirement death or disability benefits, nor will he accrue additional Credited Service.

(f) *Distribution of DROP Accounts on Termination of Employment.*

(1) *Eligibility for Benefits.*

A Member shall receive the balance in his DROP Account upon termination of employment as a Firefighter. No amounts shall be paid to a Member from the DROP prior to his termination of employment as a Firefighter.

(g) *Form of Distribution.*

(1) Unless the Member elects otherwise, distribution of his DROP Account shall be made in a cash lump sum, subject to direct rollover provisions. Elections under this paragraph shall be in writing and shall be made in such time or manner as the Board shall determine.

(2) If a Member dies before his benefit is paid, his DROP Account shall be paid to his Beneficiary in such optional form as his Beneficiary may select. If no Beneficiary designation is made, the DROP Account shall be distributed to the Member's estate.

(h) *Date of Payment Distribution.*

(1) Distribution of a Member's DROP Account shall be made as soon as administratively practicable following the Member's termination of employment.

(2) In lieu of a distribution as described in paragraph (1) above, a Member may, in accordance with such procedures as the Board shall prescribe, elect to have the distribution of his DROP Account made as of the first day of any month coincident with or following his termination of employment as a Firefighter; provided, however, payments shall be made before the distribution date elected by the Member.

(i) *Age Seventy and One-Half (70½) Required Distribution.*

In no event shall the provisions of this section operate so as to allow the distribution of a Member's DROP Account to be later than the April 1 following the later of the calendar year in which he terminates his employment as a Firefighter or he attains age seventy and one-half (70½). In the event a Member is required to receive payment while in service, he shall receive one lump sum payment on or before his required beginning date equal to his entire DROP Account balance

and annual lump sum payments thereafter of amounts credited to his DROP Account during each calendar year. Payment shall be made upon the Member's subsequent termination of employment.

(j) *Proof of Death and Right of Beneficiary or Other Person.*

The Board may require and rely upon such proof of death and such evidence of the right of any Beneficiary or other person to receive the value of a deceased Member's DROP Account as the Board may deem proper and its determination of the right of that Beneficiary or other person to receive payment shall be conclusive.

(k) *Administration of DROP.*

(1) *Board Administers the DROP.*

The general administration of the DROP, the responsibility for carrying out the provisions of the DROP, and the responsibility of overseeing the investment of the DROP's assets shall be placed in the Board. The Members of the Board may appoint from their number such subcommittees with such powers as they shall determine; may adopt such administrative procedures and regulations as they deem desirable for the conduct of their affairs; may authorize one or more of their number of any agent to execute or deliver any instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP, and may allocate among themselves or delegate to other persons all or such portion of their duties under the DROP, other than those granted to them as Trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A Trustee shall not vote on any question relating exclusively to himself.

(l) *Individual Accounts, Records and Reports.*

The Board shall maintain, or cause to be maintained, records showing the operation and condition of the DROP, including records showing the individual balances in each Member's DROP Account, and the Board shall keep, or cause to be kept, in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The Board shall prepare or cause to be prepared and distributed to Members participating in the DROP and other individuals or filed with the appropriate governmental agencies, as the

case may be distributed or filed for the DROP pursuant to the Ordinance, the applicable portions of the Act and any other applicable laws.

(m) *Establishment of Rules.*

Subject to the limitations of the DROP, the Board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The Board shall have discretionary authority to construe and interpret the DROP (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in the DROP). The determination of the Board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law. The Board shall also oversee the investment of the DROP's assets.

(n) *General Provisions.*

(1) *Amendment of the DROP.*

The DROP may be amended by 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 this provision 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.

(2) *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.

(3) *Prevention of Escheat.*

- (a) The Board, upon the death of a Member and if no beneficiary designation is made, shall pay the benefits



in the Member's DROP account to the personal representative of the estate of the deceased Member or as otherwise directed by a court order.

- (b) 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 therefore 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 DROP, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the DROP. Upon such cancellation, the DROP shall have no further liability therefore except that, in the event such person or his Beneficiary later notified the Board of his whereabouts and request 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.

(o) *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 the time and 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 administration 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.

(p) *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.

(q) *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 Ordinance are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

(r) *Forfeiture or 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.

Sec. 2-139. - SHARE PLAN

(a) Share Plan Established.

Pursuant to the requirements of Florida Statutes Section 175.351(6), a defined contribution plan component ("Share Plan") is established in addition to the defined benefit component of this local law plan. This Share Plan is not currently funded and does not currently pay benefits. When and if the Share Plan is ever required to be funded under Chapters 175, or by virtue of a future agreement between the City and Bargaining Units, the Board of Trustees shall have the authority to adopt rules regarding the operation of the Share Plan.

Sec. 2-140. - RE-EMPLOYMENT AFTER RETIREMENT.

- (a) Any retiree who is retired under this plan, except for disability retirement as previously provided for, may be re-employed by any public or private employer, except the city, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this plan. Re-employment by the city on or after the effective date of this section shall be subject to the limitations set forth in this section.

(b) *Re-employment after normal retirement outside Fire Department*

Any retiree who is retired under normal retirement pursuant to this Plan and who is re-employed by the city after that retirement, shall upon being re-employed continue receipt of benefits, provided the retiree is not hired into the Fire Department. Upon re-employment, the re-employed retiree is eligible to participate in the plan covering the employees of that department and the retiree shall be deemed a new employee subject to any vesting and contribution requirements of that plan. The benefit paid under this Plan shall not be changed in any way.

(c) *Re-employment after normal retirement in Fire Department.*

Any retiree who is retired under normal retirement pursuant to this system and who is re-employed as a Firefighter and, by virtue of that re-employment, is eligible to participate in this system, shall upon being re-employed, discontinue receipt of benefits. Upon re-employment, the Member shall be deemed to be fully vested and the additional credited service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon retirement shall be based upon the benefit accrual rate, average compensation, and credited service provided for in the Plan as of the date of the termination of the subsequent employment period. Upon re-employment, the Member contribution rate for the re-employed retiree shall be as provided for in this Plan. The amount of any death in performance of duties or disability in-line of duty or not-in-line of duty benefit received during a subsequent period of employment shall be reduced by the amount of accrued benefit eligible to be paid for a prior period of employment. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the retiree may select a different optional form and joint pensioner applicable only to the subsequent retirement benefit.

(d) *Re-employment of terminated vested persons.*

Re-employed terminated vested persons shall not be subject to the provisions of this section until such time as they begin to actually receive benefits, but shall be subject to section 2-120(d). Upon receipt of benefits, terminated vested persons shall be treated as normal retirees for purposes of applying the provisions of this section.

(e) *DROP participants*

Members or retirees who were in the deferred retirement option plan shall have the options provided for in this section for reemployment following termination of employment, as if the retiree was a retiree under normal retirement.

Sec. 2-141. EFFECTIVE DATE.

This Ordinance shall take effect on January 1, 2022.

**SECTION 2. 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 3. COPY OF ORDINANCE ON FILE.** A Copy of this Ordinance shall be kept on file in the office of the Clewiston City Clerk.

**SECTION 4. CONFLICTS WITH OTHER ORDINANCES.** That portion of any Ordinance which may be in conflict with this Ordinance is hereby repealed with the adoption of this Ordinance.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall take effect upon its approval and publication are required by law.

**INTRODUCED, PASSED AND DULY ADOPTED ON FIRST READING** by the City Commission of the City of Clewiston, Florida, meeting in Regular Session this 24<sup>th</sup> day of January, 2022.

CITY COMMISSION OF CLEWISTON, FLORIDA

By: *K. Petersen*  
Kristine Petersen, Mayor

ATTEST:

By: *Mary K. Combass*  
Mary K. Combass, City Clerk

**INTRODUCED, PASSED AND DULY ADOPTED ON SECOND READING** by the City Commission of the City of Clewiston, Florida, meeting in Regular Session this 21<sup>st</sup> day of February, 2022.

CITY COMMISSION OF CLEWISTON, FLORIDA

By: *K. Petersen*  
Kristine Petersen, Mayor

ATTEST:

By: *Mary K. Combass*  
Mary K. Combass, City Clerk

APPROVED AS TO FORM:

By:  \_\_\_\_\_  
Dylan Brandenburg, City Attorney