

ORDINANCE NO. 9813-25

AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA; AMENDING CHAPTER 2, ARTICLE V, DIVISION 3, EMPLOYEES' PENSION PLAN, AMENDING SECTION 2.413 PLAN ADMINISTRATION; AMENDING SECTION 2.418 DISABILITY BENEFITS; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Clearwater Employees' Pension Plan (the "Plan") governs the payment of retirement benefits for City employees; and

WHEREAS, the City and labor unions have agreed to a change in the disability process for all members; and

WHEREAS, the Plan's actuary has studied the cost of this amendment; and

WHEREAS, the City has determined that the adoption of this Ordinance to be in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEARWATER, FLORIDA, THAT:

Section 1: Section 2.413 of the Code of Ordinances of the City of Clearwater is hereby amended to read as follows:

Section 2.413. – Plan Administration.

- (a) *Administration of the plan.* The trustees, in conjunction with the committee, shall control and manage the operation and administration of the plan as provided in this section.
- (b) *Trustees.*
 - (1) The members of the city council of the employer, whether elected or appointed, shall serve as the trustees. The term of office of each trustee shall be consistent with his term of office as a member of the city council.
 - (2) The finance director of the employer shall be the treasurer for the trustees and shall provide such bond as may be prescribed by the trustees.
 - (3) Each trustee shall be entitled to one vote. Three affirmative votes shall be necessary for any decision by the trustees at a meeting of the trustees. A trustee shall have the right to recuse himself from voting as the result of a

conflict of interest provided that the trustee states in writing the nature of the conflict.

- (4) The trustees shall not receive any compensation for service as a trustee, but may be reimbursed expenses as provided by law; provided, however, that the trustees may receive compensation for services as a member of the city council.
- (c) *Powers and duties of trustees.* The trustees shall have final authority and control over the administration of the plan herein embodied, with all powers necessary to enable them to carry out their duties in that respect. Not in limitation, but in amplification of the foregoing, the trustees shall have the power and discretion to interpret or construe this plan and to determine all questions that may arise as to the status and rights of the participants and others hereunder. The trustees shall be deemed the named fiduciary of the plan and shall discharge their responsibilities solely in the interest of the members and beneficiaries of the plan for the exclusive purpose of providing benefits to the members and their beneficiaries and to defray the reasonable expenses of the plan. The trustees shall exercise those fiduciary responsibilities with the care, skill, prudence and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a similar character and with similar aims under the circumstances then prevailing.

The trustees may:

- (1) Invest and reinvest the assets of the pension fund to the extent permitted by Florida law. Notwithstanding any provision to the contrary, direct investments, including real estate investments, in businesses or property located within the City of Clearwater shall be prohibited;
- (2) Maintain such records as are necessary for calculating and distributing retirement benefits;
- (3) Maintain such records as are necessary for financial accounting and reporting of retirement plan funds;
- (4) Maintain such records as are necessary for actuarial evaluation of the retirement plan, including investigations into the mortality, service and compensation experience of its members and beneficiaries;
- (5) Compile such other administrative or investment information as is necessary for the management of the retirement plan;
- (6) Process, certify and respond to all correspondence, bills and statements received by the retirement plan, as well as all applications submitted to the board for retirement benefits;

- (7) Establish and maintain communication with city departments and other agencies of government as is necessary for the management of the retirement plan, including preparing, filing and distributing such reports and information as are required by law to be prepared, filed or distributed on behalf of the retirement plan;
- (8) Determine all questions relating to, and process all applications for, eligibility, participation and benefits;
- (9) Distribute at regular intervals to employees a comprehensive summary plan description and periodic reports, not less than biennially, regarding the financial and actuarial status of the plan;
- (10) Retain and compensate such professional and technical expertise as is necessary to fulfill its fiduciary responsibilities;
- (11) Make recommendations regarding changes in the provisions of the plan;
- (12) Assure the prompt deposit of all member contributions, city contributions, and investment earnings;
- (13) Establish a uniform set of rules and regulations for the management of the trust;
- (14) Take such other action as the trustees shall deem, in their sole and exclusive discretion, as being necessary for the efficient management of the plan;
- (15) Cause any pension fund investment in securities 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 pension fund;
- (16) Vote upon any stocks, bonds, or securities of any corporation, association, or trust comprising the pension fund, and give general or specific proxies or powers of attorney with or without power of substitution; participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; deposit such stock or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the pension fund which it may deem to be in the best interest of the pension fund to exercise;

- (17) Retain in cash and keep unproductive of income such amount of the pension fund as it may deem advisable, having regard for the cash requirements of the plan; and
- (18) Retain the services of a custodian bank, an investment advisor registered under Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, trust company 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 trustees, in the investment of all pension fund assets.
- (19) Arrange for the necessary physicians to pass upon all medical examinations required under this plan. Such physicians shall report in writing to the trustees their conclusions and recommendations.
- (20) Investigate and determine the eligibility of participants for disability pension as provided in [section 2.418](#).

(d) *Pension advisory committee.*

- (1) a. There shall be a pension advisory committee comprised of seven persons. Three members of the committee shall be employees who are active employees and participants in the plan; three members shall be city council members or appointees of the city council; and the seventh member, who shall be a resident of the City of Clearwater, shall be appointed by the other six members.
- b. Except as provided in subparagraph (3) below, terms of members shall be for two years.
- (2) Committee members representing the employees shall be elected by a majority of the active employees who are participants in the plan. Committee members representing the city council shall be appointed by a majority vote of the city council. The seventh member shall be appointed by a majority vote of the other six members of the committee.
- (3) Terms of office of employee elected committee members shall overlap, with two of the members to be initially elected for two years and the third member to be initially elected for one year. Terms of office of city council appointed members shall overlap, with two of the members to be initially appointed for two years and the third member to be initially appointed for one year.
- (4) a. Members of the committee last elected by employees on the date of adoption of this amended and restated plan shall continue to serve as the

employee elected committee members for the remainder of their respective terms.

- b. Not less than 60 days before each election to be scheduled for an employee elected committee member, the existing employee elected committee members shall select and appoint a nomination group composed of five persons from employees participating in the plan to conduct the election process. The department of the city clerk shall provide necessary assistance to the employees for the administration of elections.
 - (5) Any vacancy on the committee, whether employee elected, city council appointed, or the committee appointed seventh member, shall be filled for the remainder of the term and in the same manner as the original committee member who vacated the position.
 - (6) Members of the committee shall serve without compensation additional to that earned in their respective capacities as regular employees or elected city council members.
 - (7) Each committee member shall be entitled to one vote. Four affirmative votes shall be necessary for any decision by the committee at any meeting. A committee member shall have the right to recuse himself from voting as a result of a conflict of interest provided that the committee member states in writing the nature of the conflict.
- (e) *Powers and duties of committee.*
- (1) The committee shall have authority to:
 - a. ~~Arrange for the necessary physicians to pass upon all medical examinations required under this plan. Such physicians shall report in writing to the committee their conclusions and recommendations.~~
 - b. a. Investigate and recommend to the trustees, in conjunction with the actuaries, such mortality/service and other tables as shall be deemed necessary for the operation of the plan.
 - c. b. Make recommendations to the trustees for improvements or changes in the plan.
 - d. c. Receive all applications for benefits under this plan and determine all facts that are necessary to establish the right of an applicant to benefits under the plan.
 - e. d. Prepare and distribute to the participants information relating to the plan.

- f. ~~Investigate and determine the eligibility of participants for disability pension as provided in [section 2.418](#).~~
- (2) The committee shall, from time to time as it deems appropriate, submit recommendations to the trustees as to rules, procedures, forms and general administrative procedures relating to the responsibilities of the committee.
- (3) No benefits or relief shall be provided to any participant under the plan unless the same has been reviewed by the committee and a recommendation provided to the trustees.
- (4) The pension advisory committee members shall discharge their responsibilities solely in the interest of the members and beneficiaries of the plan and, in so doing, shall exercise their fiduciary responsibilities with the care, skill, prudence and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a similar character and with similar aims under the circumstances then prevailing.
- (f) *Conflict in terms.* In the event of any conflict between the terms of this plan and any explanatory booklet or other material, this plan shall control.
- (g) *Final authority.* Except to the extent otherwise required by law or by this plan, the decision of the trustees in matters within their jurisdiction shall be final, binding and conclusive upon the employer, the committee, each employee and beneficiary, and every other interested or concerned person or party.
- (h) *Appointment of advisors.* The trustees may appoint such actuaries, accountants, professional investment counsel, legal counsel, specialists, third party pension administrators, and other persons that they deem necessary and desirable in connection with the administration of this plan or to assist them in the performance of their duties as trustees. The trustees are authorized to pay for such services from the pension fund.
- (i) *Actuarial valuation; actuarial standards.*
- (1) At least once in each six-year period, the trustees shall cause an actuarial investigation to be made into the mortality, service and compensation experience of the members of the retirement plan. Taking into account the result of such investigation, the trustees shall adopt for the retirement plan such mortality, service and other tables as are necessary and proper. On the basis of these tables, an annual actuarial valuation of the assets and liabilities of the retirement plan shall be made.
- (2) Actuarial assumptions based on the six-year experience analysis may be modified by the trustees at such times as they deem appropriate.

(j) *Defense of actions; trustee liability; indemnification.*

- (1) The board is authorized to prosecute or defend actions, claims or proceedings of any nature or kind for the protection of the fund assets or for the protection of the board in the performance of its duties.
- (2) Neither the board nor any of its individual members shall have any personal liability for any action taken in good faith. The trustees individually and the board as a whole shall be entitled to the protections in F.S. § 768.28. The trustees shall also be authorized to purchase from the assets of the fund, errors and omission insurance to protect the trustees and staff in the performance of their duties. Such insurance shall not provide the individual trustees and staff with protection against a fiduciary's fraud, intentional misrepresentation, willful misconduct or gross negligence.
- (3) To the extent not covered by insurance contracts in force from time to time, the employer shall indemnify and hold harmless the trustees and the members of the committee from all personal liability for damages and costs, including court costs and attorneys' 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 trustees or members of the committee. The employer reserves the right, in its sole discretion, to settle or not settle the claim at any time, and to appeal or to not appeal from any adverse judgment or ruling, and in either event will indemnify and hold harmless any trustees or members of the committee from the judgment, execution, or levy thereon.
- (4) This section shall not be construed so as to relieve from liability any insurance company or other entity liable to defend the claim or liable for payment of the judgment or claim, nor does this paragraph waive any provision of law affording the employer immunity from any suit in whole or part, or waive any other substantive or procedural rights the employer may have.
- (5) This section shall not apply to, nor shall the employer be responsible in any manner to defend or pay for claims arising out of, acts or omissions of the trustees or members of the committee which constitute felonies or gross malfeasance or gross misfeasance in office.

Section 2: Section 2.418 of the Code of Ordinances of the City of Clearwater is hereby amended to read as follows:

Sec. 2.418. – Disability benefits.

- (1) a. A participant who is vested in his accrued benefit and who terminates employment by reason of his disability shall be entitled to receive, at the time and in the manner described in [section 2.424](#), a disability benefit equal to his accrued benefit as of the date of termination of his employment. A disability application must be filed while the individual is still a participant in the plan.
- b. A participant who is deemed by the ~~committee~~ trustees to be disabled by reason of an injury suffered or an illness contracted in the line of duty need not satisfy the vesting requirement set forth in subparagraph (1)a. above; provided, further, that the monthly amount of the disability benefit payable to a participant described in this subparagraph (1)b. shall be 42 percent of such participant's average monthly compensation for a non-hazardous duty participant who is not eligible to retire as of the effective date of this restatement, and the monthly amount of the disability benefit payable to a participant described in this subparagraph (1)b. shall be 66⅔ percent of such participant's average monthly compensation for all hazardous duty participants and for non-hazardous duty participants who are eligible to retire as of the effective date of this restatement.
- (2) A participant shall be considered disabled for purposes of the plan if, in the opinion of the ~~committee~~ trustees, the participant is disabled due to sickness or injury, such disability is likely to be continuous and permanent from a cause other than specified in subparagraph (3) below, and such disability renders the participant unable to perform any useful, meaningful and necessary work for the employer in an available position for which the participant is reasonably qualified or for which the participant may be reasonably trained to perform, subject to the limitations below.
- a. Any police officer or firefighter participant 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 police officer or firefighter, shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension provided for in subparagraph (1) above. Terminated persons, either vested or non-vested, are not eligible for disability benefits, except that those terminated by the city for medical reasons may apply for a disability pension within 30 days after termination.
- b. If a participant employed in a position other than as a sworn and state certified police officer or a sworn and state certified firefighter is disabled to the extent that he cannot reasonably continue to perform the functions of his specific position, but remains capable of performing useful, meaningful and necessary work, he may be assigned to an alternate position with the employer in lieu of receiving disability benefits under the plan. For this purpose, the participant may be assigned to any other position with the employer that is available for which the participant has the skill and knowledge to perform or for which the participant can reasonably be trained to perform, such assignment to be with no loss of base pay

regardless of whether the assignment to such position is at an equal or lower level.

- c. 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 participant's employment. Extra duty assignments for police officers and firefighters shall be considered to be in the line of duty for disability benefit purposes.
 - d. The trustees of the plan shall make the determination in each instance if a participant who has been found disabled may be assigned to an alternate position with the employer.
- (3)a. Each participant who is not a police officer or firefighter who is claiming disability benefits shall establish, to the satisfaction of the ~~committee~~ trustees, that such disability was not occasioned primarily by:
- 1. Excessive or habitual use of any drugs, intoxicants, or alcohol;
 - 2. Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections;
 - 3. Injury or disease sustained while committing a crime;
 - 4. Injury or disease sustained while serving in any branch of the Armed Forces;
 - 5. Injury or disease sustained after his employment as an employee with the employer shall have terminated;
 - 6. Willful, wanton or gross negligence of the participant;
 - 7. Injury or disease sustained by the participant while working for anyone other than the employer and arising out of such employment; or
 - 8. A condition pre-existing the participant's participation in the plan. No participant shall be entitled to a disability pension, whether in line of duty or not in line of duty, because of or due to the aggravation of a specific injury, impairment or other medical condition pre-existing at the time of participation in the plan, provided that such pre-existing condition and its relationship to a later injury, impairment or other medical condition be established by competent substantial evidence.
- b. Each police officer or firefighter participant who is claiming disability benefits shall establish, to the satisfaction of the ~~committee~~ trustees, that such disability was not occasioned primarily by (except that paragraph 5. is only applicable to police officers):

1. Excessive or habitual use of any drugs, intoxicants or narcotics.
 2. Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections or while committing a crime.
 3. Injury or disease sustained while serving in any branch of the Armed Forces.
 4. Injury or disease sustained by the participant after his employment as a police officer or firefighter with the City of Clearwater shall have terminated.
 5. For police officer participants, injury or disease sustained by the participant while working for anyone other than the city and arising out of such employment.
- (4)a. A participant shall not become eligible for disability benefits until and unless he undergoes an examination by a qualified physician or physicians, who shall be selected by the ~~committee~~ trustees for that purpose.
- b.1. Any former participant receiving disability benefits under provisions of this plan may be periodically re-examined by a qualified physician or physicians who shall be selected by the ~~committee~~ trustees to determine if such disability has ceased to exist or if the former participant may be employed in an available position for which the participant is reasonably qualified. If the ~~committee~~ trustees finds that the former participant is no longer disabled or is capable of performing service for the employer, the ~~committee-trustees~~ may request the former participant to return to the employ of the employer. If the former participant returns to the performance of duty as an employee, he shall again be eligible to participate in the plan. In the event a former participant is no longer disabled or is deemed capable of returning to employment with the employer and he does not return to employment with the employer pursuant to the ~~committee's~~ trustee's request, he shall forfeit the right to his disability benefit; provided further, that if an employee accepts employment with another employer in an occupation or line of work similar to the occupation or line of work that resulted in the employee being eligible for a disability benefit hereunder, he shall forfeit the right to his disability benefit.
2. A participant who returns to employment with the employer and recommences participation in the plan shall not receive credited service for the period during which he received disability benefits under the plan.
- c. The cost of the medical examination and/or re-examination of the employee claiming and/or receiving disability benefits shall be borne by the plan.
- (5) A participant whose employment is terminated by reason of his death in the line of duty shall, for purposes of the plan, be deemed to have been disabled in the

line of duty, and the participant's beneficiary shall be entitled to receive a disability benefit as described in paragraph (1) above.

- (6) If a participant receives a disability benefit under the plan and workers' compensation benefits pursuant to F.S. Ch. 440 for the same disability, and the total monthly benefits received from both exceed 100 percent of the participant's average monthly wage as defined in F.S. Ch. 440, excluding overtime, the disability benefit shall be reduced so that the total monthly amount received by the participant does not exceed 100 percent of such wage. The amount of any lump sum workers' compensation payment shall be converted to an equivalent monthly benefit payable for ten years certain by dividing the lump sum amount by 83.9692. Notwithstanding the foregoing, in no event shall the disability pension benefit of a police officer or firefighter participant be reduced below the greater of 42 percent of average final compensation or two percent of average final compensation times years of credited service.

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

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

- b. *Additional presumption.* The presumption provided for in this paragraph b. shall apply only to those conditions described in this paragraph b. that are diagnosed on or after January 1, 1996.

1. *Definitions.* As used in this subsection (7)b., the following definitions apply:

- (i) *"Body fluids"* means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the Centers for Disease Control, apply. For purposes of potential transmission of meningococcal meningitis or tuberculosis, the term "body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, and saliva, mucous, and other fluids through which infectious airborne organisms can be transmitted between persons.

- (ii) *"Emergency rescue or public safety member"* means any participant employed full time by the city as a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who, in the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis, or tuberculosis and who is not employed elsewhere in a similar capacity. However, the term "emergency rescue or public safety member" does not include any person employed by a public hospital licensed under F.S. Ch. 395, or any person employed by a subsidiary thereof.
- (iii) *"Hepatitis"* means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C, or any other strain of hepatitis generally recognized by the medical community.
- (iv) *"High risk of occupational exposure"* means that risk that is incurred because a person subject to the provisions of this subsection, in performing the basic duties associated with his employment:
 - a) Provides emergency medical treatment in a non-health-care setting where there is a potential for transfer of body fluids between persons;
 - b) At the site of an accident, fire, or other rescue or public safety operation, or in an emergency rescue or public safety vehicle, handles body fluids in or out of containers or works with or otherwise handles needles or other sharp instruments exposed to body fluids;
 - c) Engages in the pursuit, apprehension, and arrest of law violators or suspected law violators and, in performing such duties, may be exposed to body fluids; or
 - d) Is responsible for the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, while on work detail outside the facility, or while being transported and, in performing such duties, may be exposed to body fluids.
- (v) *"Occupational exposure,"* in the case of hepatitis, meningococcal meningitis, or tuberculosis, means an

exposure that occurs during the performance of job duties that may place a worker at risk of infection.

2. *Presumption.* Any emergency rescue or public safety participant who suffers a condition or impairment of health that is caused by hepatitis, meningococcal meningitis, or tuberculosis, that requires medical treatment and that results in total or partial disability or death, shall be presumed to have a disability suffered in the line of duty, unless the contrary is shown by competent evidence; however, in order to be entitled to the presumption, the participant must, by written affidavit as provided in F.S. § 92.50, verify by written declaration that, to the best of his knowledge and belief:

- (i) In the case of a medical condition caused by or derived from hepatitis, he has not:
 - a) Been exposed, through transfer of bodily fluids, to any person known to have sickness or medical conditions derived from hepatitis, outside the scope of his employment;
 - b) Had a transfusion of blood or blood components, other than a transfusion arising out of an accident or injury happening in connection with his present employment, or received any blood products for the treatment of a coagulation disorder since last undergoing medical tests for hepatitis, which tests failed to indicate the presence of hepatitis;
 - c) Engaged in unsafe sexual practices or other high-risk behavior, as identified by the Centers for Disease Control or the Surgeon General of the United States or had sexual relations with a person known to him to have engaged in such unsafe sexual practices or other high-risk behavior; or
 - d) Used intravenous drugs not prescribed by a physician.
- (ii) In the case of meningococcal meningitis, in the ten days immediately preceding diagnosis he was not exposed, outside the scope of his employment, to any person known to have meningococcal meningitis or known to be an asymptomatic carrier of the disease.
- (iii) In the case of tuberculosis, in the period of time since the participant's last negative tuberculosis skin test, he has not

been exposed, outside the scope of his employment, to any person known by him to have tuberculosis.

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

(8) *Disability Retirement Process.*

- (a) Upon receipt of a complete application for a disability pension, which includes the most recent medical conclusions known to the applicant at the time of submittal, the trustees shall request and obtain an independent medical evaluation ("IME"). If disabilities are claimed that involve multiple specialties, one IME per specialty shall be selected. Any costs directly or indirectly relating to IME's shall be paid by the pension plan.
- (b) After receiving the completed IME report(s), the application and any other records the trustees deem relevant to the application, the city attorney's office shall either review or arrange for outside legal counsel to review, on behalf of the trustees, the merits of the application. The city attorney's office, or legal counsel hired by the city attorney's office for this purpose, shall recommend to the city manager either a stipulated approval or an evidentiary hearing. The city manager shall take the recommendation under advisement and consider any other factors he/she deems relevant to the application and determine on behalf of the trustees whether to enter a stipulated approval, or whether to schedule an evidentiary hearing. If the city manager enters into a stipulated approval, an agenda item shall be brought before the trustees confirming the stipulation. The role of the trustees in said approval shall be ministerial in nature. Upon approval by the trustees, the pension plan shall finalize and distribute the disability pension benefits to which the applicant is entitled.
- (c) If the city manager opts for an evidentiary hearing, the hearing shall be conducted by the State of Florida Division of Administrative Hearings ("DOAH"). The trustees will enter into a contract with DOAH for this purpose. It shall be the duty of the hearing officer to review the application for a disability retirement, determine whether the claim meets the criteria for awarding a disability pension benefit, and issue a recommended order.
- (d) During the formal hearing, the applicant and city shall have the right to be heard, to be represented by a person of their choice, and to present evidentiary facts. Each party shall pay its own expense for its representative, counsel, and witnesses. At the formal hearing, the technical rules of evidence shall not apply. The hearing officer shall have the power to administer oaths, issue subpoenas, compel the production of books, papers and other documents and receive evidence. The hearing officer shall utilize a procedure similar to that set forth in F.S. §§ 120.569 and 120.57. The hearing officer shall have no authority to award attorney's fees to the prevailing party. All recommended orders prepared by the hearing officer shall conform with the requirements for such orders as set forth in F.S. §§ 120.569 and 120.57. The hearing officer shall then transmit the recommended order composed of findings of fact, conclusions of law, and disposition to the trustees.

- (e). The trustees may adopt the recommended order as the final order. The trustees in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the trustees must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The trustees may not reject or modify the findings of fact unless the trustees first determine from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The trustees may accept the recommendation in the recommended order but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefore in the order, by citing to the record in justifying the action.
- (f). Any party adversely affected shall have the right to have the administrative proceeding reviewed by filing a petition for certiorari with the circuit court of Pinellas County as provided by Rule 9.100 of the Florida Rules of Appellate Procedure.

Coding: Words in strikethrough type are deletions from existing text.
Words in underline type are additions.

Section 3: It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City Clearwater, that the sections of the Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 4: If any clause, section, or other part or application of this Ordinance shall be held in any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and shall not affect the validity of the remaining portions or applications which shall remain in full force and effect.

Section 5: All ordinances or parts of ordinances, resolutions or parts of resolutions in

conflict herewith are hereby repealed to the extent of such conflict.

Section 6: This Ordinance shall become effective immediately upon adoption, unless otherwise provided.

PASSED ON FIRST READING 1/16/2025

PASSED ON SECOND AND FINAL
READING AND ADOPTED _____

Bruce Rector
Mayor

Approved as to form: Attest:

David Margolis
City Attorney

Rosemarie Call
City Clerk