

**ORDINANCE NO. 02-16**

**AN ORDINANCE OF THE CITY OF AVON PARK, AMENDING CHAPTER 50, FIRE PREVENTION AND PROTECTION, ARTICLE II, FIRE DEPARTMENT, DIVISION 2, FIREFIGHTERS= RETIREMENT SYSTEM, OF THE CODE OF ORDINANCES OF THE CITY OF AVON PARK; AMENDING SECTION 50-51, DEFINITIONS; AMENDING SECTION 50-55, CONTRIBUTIONS; AMENDING SECTION 50-56, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 50-58, DISABILITY; AMENDING SECTION 50-59, VESTING; AMENDING SECTION 50-60, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 50-65, MAXIMUM PENSION; AMENDING SECTION 50-66, MINIMUM DISTRIBUTION OF BENEFITS; AMENDING SECTION 50-74, DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS; ELIMINATION OF MANDATORY DISTRIBUTIONS; AMENDING SECTION 50-76, MILITARY SERVICE PRIOR TO EMPLOYMENT; AMENDING SECTION 50-77, PRIOR FIRE SERVICE; AMENDING SECTION 5-78, DEFERRED RETIREMENT OPTION PLAN; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AVON PARK, FLORIDA, THAT;**

**SECTION 1:** That Chapter 50, Fire Prevention and Protection, Article II, Fire Department, Division 2, Firefighters= Retirement System, of the Code of Ordinances of the City of Avon Park is hereby amended by amending Section 50-51, Definitions, to amend the definitions of "*Actuarial Equivalent*", "*Credited Service*", "*Firefighter*", "*Retirement*", "*Salary*", and "*Spouse*", to read as follows:

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*Actuarial equivalent* means a benefit or amount of equal value, based upon the ~~1983 Group Annuity~~ RP 2000 Combined Healthy Mortality Table Unisex, with disabled lives set forward five (5) years and an interest rate of ~~eight seven and three quarters~~ percent per annum. This definition may only be amended by the city pursuant to the recommendation of the board using assumptions adopted by the board with the advice of the plan's actuary, such that actuarial assumptions are not subject to City discretion.

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*Credited service* means the total number of years and fractional parts of years of service as a firefighter with member contributions, when required, omitting intervening years or fractional parts of years when such member was not employed by the city as a firefighter. A member may voluntarily leave his accumulated contributions in the fund for a period of five years after leaving the employ of the fire department pending the possibility of being reemployed as a firefighter, without losing credit for the time that he was a member of the system. If a vested member leaves the employ of the fire department, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a firefighter with the fire department within five years, his accumulated contributions, if less than \$1,000.00, shall be returned. If a member who is not vested is not reemployed within five years, his accumulated contributions, of \$1,000.00 or more, will be returned only upon the written request of the member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the board. Upon return of a member's accumulated contributions, all of his rights and benefits under the system are forfeited and terminated. Upon any reemployment, a firefighter shall not receive credit for the years and fractional parts of years of service for which he has withdrawn his accumulated contributions from the fund, unless the firefighter repays into the fund the contributions he has withdrawn, with interest, as determined by the board, within 90 days after his reemployment.

The years or fractional parts of a year that a member performs "qualified military service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L. 103-353), after separation from employment as a firefighter with the city to perform training or service, shall be added to his years of credited service for all purposes, including vesting, provided that:

- (1) The member is entitled to reemployment under the provisions of USERRA.
- (2) The member returns to his employment as a firefighter within one year from the earlier of the date of his military discharge or his release from active service, unless otherwise required by USERRA.

- (3) The maximum credit for military service pursuant to this definition shall be five years.
- (4) This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a member dies on or after January 1, 2007, while performing USERRA qualified military service, the beneficiaries of the member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the member had resumed employment and then died while employed.

Beginning January 1, 2009, to the extent required by Section 414(u)(12) of the Code, an individual receiving differential wage payments (as defined under Section 3401(h)(2) of the Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Leave conversions of unused accrued paid time off shall not be permitted to be applied toward the accrual of credited service either during each plan year of a member's employment with the City or in the plan year in which the member terminates employment.

\* \* \* \* \*

*Firefighter* means an actively employed person employed full-time 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 F.S. ' ~~633.35~~ 633.408, and whose duty it is to extinguish fires, to protect life and 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, or auxiliary firefighters but does not include part-time firefighters or auxiliary firefighters.

\* \* \* \* \*

*Retirement* means a member's separation from city employment with eligibility for immediate receipt of benefits under the system or entry into the Deferred Retirement Option Plan.

\* \* \* \* \*

*Salary* means the total compensation for services rendered to the city as a firefighter reportable on the member's W-2 form, excluding lump sum payments of accrued sick and vacation time, but including all tax deferred, tax sheltered or tax exempt items of income derived from elective employee payroll deductions or salary reductions. For service earned after March 12, 2014, Salary shall not include more than three hundred (300) hours of overtime per calendar year ~~and shall also not include payments for accrued unused sick or annual leave.~~ Provided however, in any event, payments for overtime in excess of three hundred (300) hours per year ~~or accrued unused sick or annual leave~~ accrued as of the effective date and attributable to service earned prior to the effective date, may still be included in Salary for pension purposes even if the payment is not actually made until on or after the effective date. ~~In any event, with respect to unused sick leave and unused annual leave accrued prior to the effective date, Salary will include the lesser of the amount of sick or annual leave time accrued on the effective date or the actual amount of sick or annual leave time for which the retiree receives payment at the time of retirement, regardless of whether the amount of sick or annual leave was, at some time prior to retirement, reduced below the amount on the effective date.~~

Compensation in excess of the limitations set forth in section 401(a)(17) of the Code as of the first day of the plan year shall be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each member taken into account in determining benefits or employee contributions for any plan year beginning on or after January 1, 2002, may not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B). Compensation means compensation during the fiscal year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an

amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The limitation on compensation for an eligible employee shall not be less than the amount which was allowed to be taken into account under this definition as in effect on July 1, 1993. "Eligible employee" is an individual who was a member before the first plan year beginning after December 31, 1995.

\* \* \* \* \*

*Spouse* means the ~~lawful wife or husband of a member or retiree~~ member's or retiree's spouse under applicable law at the time benefits become payable.

\* \* \* \* \*

**SECTION 2:** That Chapter 50, Fire Prevention and Protection, Article II, Fire Department, Division 2, Firefighters Retirement System, of the Code of Ordinances of the City of Avon Park is hereby amended by amending Section 50-55, Contributions, subsection (c), City Contributions, to read as follows:

\* \* \* \* \*

(c) *City contributions.* As long as this system is in effect, the city shall make quarterly contributions to the fund in an amount equal to the ~~difference in each year, between the total aggregate member contributions for the year, plus state contributions for such year, and the total cost for the year,~~ required city contribution, as shown by the ~~most recent~~ applicable actuarial valuation of the system, but in no event shall the city's annual contribution be less than five percent of the total salary of members. ~~The "total cost for any year" shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded past service liability as provided in F.S. ch. 112, pt. VII.~~

\* \* \* \* \*

**SECTION 3:** That Chapter 50, Fire Prevention and Protection, Article II, Fire Department, Division 2, Firefighters= Retirement System, of the Code of Ordinances of the City of Avon Park is hereby amended by amending Section 50-56, Benefit Amounts and Eligibility, subsection (a), Normal Retirement Date, to read as follows:

\* \* \* \* \*

(a) *Normal retirement age and date.* ~~A member's normal retirement date shall be the first day of the month coincident with or next following the earlier of the attainment of age 55 and the completion of ten years of credited service, or the attainment of age 52 and the completion of 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 100 percent vested in his accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date.~~ A member's normal retirement age is the earlier of the attainment of age 55 and the completion of ten years of credited service, or the attainment of age 52 and the completion of 25 years of credited service. Each member shall become one hundred percent (100%) vested in his accrued benefit at normal retirement age. A member's normal retirement date shall be the first day of the month coincident with or next following the date the member retires from the city after attaining normal retirement age.

\* \* \* \* \*

**SECTION 4:** That Chapter 50, Fire Prevention and Protection, Article II, Fire Department, Division 2, Firefighters= Retirement System, of the Code of Ordinances of the City of Avon Park is hereby amended by amending Section 50-58, Disability, subsection (c), *Disability Benefits Not-in-Line of Duty*, to read as follows:

\* \* \* \* \*

(c) *Disability benefits not-in-line of duty.* Any Member with ten years or more credited service who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability is not directly caused by the performance of his duties as a

firefighter shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to three and sixteen hundredths percent of his average final compensation multiplied by the total years of credited service if the member was hired before November 1, 2013, and two percent of his average final compensation multiplied by the total years of credited service if the member was hired on or after November 1, 2013, but in any event, the minimum amount paid to the member shall be twenty-five percent of the average final compensation of the member. Terminated persons, either vested or non-vested, are not eligible for disability benefits. Notwithstanding the previous sentence, if a member is terminated by the city for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the board within thirty (30) days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the board otherwise determines that he is totally and permanently disabled as provided for above.

\* \* \* \* \*

**SECTION 5:** That Chapter 50, Fire Prevention and Protection, Article II, Fire Department, Division 2, Firefighters= Retirement System, of the Code of Ordinances of the City of Avon Park is hereby amended by amending Section 50-59, Vesting, to read as follows:

**Sec. 50-59. - Vesting.**

If a member terminates his employment as a firefighter, either voluntarily or by discharge, and is not eligible for any other benefits under this system, the member shall be entitled to the following:

- (1) If the member has less than ten years of credited service upon termination, the member shall be entitled to a refund of his accumulated contributions or the member may leave such accumulated contributions deposited with the fund.
- (2) If the member has ten or more years of credited service upon termination, on or after January 1, 1985, the member shall be entitled to a monthly retirement benefit, determined in the same manner as for normal or early retirement and based upon the member's credited service, average final compensation and the benefit accrual rate as of the date of termination, payable to him commencing at the member's

otherwise normal or early retirement date, determined based on his actual years of credited service, provided he does not elect to withdraw his accumulated contributions and provided the member survives to his otherwise normal or early retirement date. In no event, however, shall such rate be less than three percent for each year of credited service. If the member does not withdraw his accumulated contributions and does not survive to his otherwise normal or early retirement date, his designated beneficiary shall be entitled to a benefit as provided in this article for a deceased member, vested or eligible for retirement under pre-retirement death.

- (3) Any vested member of the system whose position is terminated, for whatever reason, but who remains 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 under this article, or later, in accordance with the provisions of this system; ~~provided, however, that benefits shall not be payable under this system during any period of continued employment by the city.~~

**SECTION 6:** That Chapter 50, Fire Prevention and Protection, Article II, Fire Department, Division 2, Firefighters= Retirement System, of the Code of Ordinances of the City of Avon Park is hereby amended by amending Section 50-60, Optional Forms of Benefits, subsection (b), to read as follows:

\* \* \* \* \*

(b) The member, upon electing any option under this section, will designate the joint pensioner (see subsection (a)(2) of this section) or beneficiary to receive the benefit, if any, payable under the system in the event of the member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. A member may change his beneficiary at any time. If a member has elected an option with a joint pensioner and the member's retirement income benefits have

commenced, the member may thereafter change his designated beneficiary at any time, but may only change his joint pensioner twice. Subject to this restriction, a member may substitute a new joint pensioner for a deceased joint pensioner. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume that the joint pensioner has deceased for purposes of calculating the new payment.

\* \* \* \* \*

**SECTION 7:** That Chapter 50, Fire Prevention and Protection, Article II, Fire Department, Division 2, Firefighters= Retirement System, of the Code of Ordinances of the City of Avon Park is hereby amended by amending Section 50-65, Maximum Pension, subsections (e)(2), (f), (h) and (l)(2), and by adding subsection (m), to read as follows:

\* \* \* \* \*

(e) (2) In the event the member's benefit is based on at least fifteen (15) years of credited service as a full-time employee of the police or fire department of the City, the adjustments provided for in (e)(1) above shall not apply.

\* \* \* \* \*

(f) *Less than Ten (10) Years of Participation ~~or Service~~.* The maximum retirement benefits payable under this section to any member who has completed less than ten (10) years of ~~credited service with the City~~ participation shall be the amount determined under subsection (a) of this section multiplied by a fraction, the numerator of which is the number of the member's years of ~~credited service~~ participation and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits paid pursuant to Sec. 50-58, or pre-retirement death benefits paid pursuant to Sec. 50-57.

\* \* \* \* \*

(h) *Ten Thousand Dollar (\$10,000) Limit; Less Than Ten Years of Service.* Notwithstanding anything in this section 50-65, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection (h) of section 50-65 if the benefits

payable, with respect to such member under this system and under all other qualified defined benefit pension plans to which the City contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year ~~and~~ or for any prior limitation year, and the City has not at any time maintained a qualified defined contribution plan in which the member participated; provided, however, that if the member has completed less than ten (10) years of credited service with the City, the limit under this subsection (h) of section 50-65 shall be a reduced limit equal to ten thousand dollars (\$10,000) multiplied by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten (10).

\* \* \* \* \*

- (l)           (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 a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter ~~67~~ 1223, Title 10, U.S. Code.

(m)   Effect of Direct Rollover on 415(b) Limit. If the plan accepts a direct rollover of an employee's or former employee's benefit from a defined contribution plan qualified under Code Section 401(a) which is maintained by the employer, any annuity resulting from the rollover amount that is determined using a more favorable actuarial basis than required under Code Section 417(e) shall be included in the annual benefit for purposes of the limit under Code Section 415(b).

**SECTION 8:** That Chapter 50, Fire Prevention and Protection, Article II, Fire Department, Division 2, Firefighters= Retirement System, of the Code of Ordinances of the City of Avon Park is hereby amended by amending Section 50-66, Minimum Distribution of Benefits, subsection (b)(2)d., to read as follows:

\* \* \* \* \*

- d. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subsection (b)(2), other than subsection (b)(2)a, will apply as if the surviving spouse were the member.

For purposes of this subsection (b)(2) ~~and subsection (e)~~, distributions are considered to begin on the member's required beginning date or, if this subsection applies, the date of distributions are required to begin to the surviving spouse under subsection (b)(2)a. If annuity payments irrevocably commence to the member before the member's required beginning date or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(2)a, the date distributions are considered to begin is the date distributions actually commence.

\* \* \* \* \*

**SECTION 9:** That Chapter 50, Fire Prevention and Protection, Article II, Fire Department, Division 2, Firefighters= Retirement System, of the Code of Ordinances of the City of Avon Park is hereby amended by amending Section 50-74, Direct Transfers of Eligible Rollover Distributions; Elimination of Mandatory Distributions, to read as follows:

**Sec. 50-74. - Direct transfers of eligible rollover distributions; elimination of mandatory distributions.**

(a) Rollover distributions.

- (a 1) *General.* This section applies to distributions made on or after January 1, 2002. 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) 2 *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

a. *Eligible rollover distribution* means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income. Effective January 1, 2002, any portion of any distribution which would be includible in gross income as after-tax employee contributions will be an eligible rollover distribution if the distribution is made to an individual retirement account described in section 408(a); to an individual retirement annuity described in section 408(b); to a qualified defined contribution plan described in section 401(a) or 403(a) that agrees to separately account for amounts so transferred (including earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is

includible in gross income and the portion of the distribution that is not so includible.

b. *Eligible retirement plan* means 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; effective January 1, 2002, an eligible deferred compensation plan described in section 457(b) of the Code which is maintained by an eligible employer described in section 457(e)(1)(A) of the Code and which agrees to separately account for amounts transferred into such plan from this plan; effective January 1, 2002, an annuity contract described in section 403(b) of the Code; a qualified trust described in section 401(a) of the Code; or effective January 1, 2008, a Roth IRA described in Section 408A of the Code, that accepts the distributee's eligible rollover distribution. This definition shall also apply in the case of an eligible rollover distribution to the surviving spouse.

c. *Distributee* includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse. Effective January 1, 2007, it further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

d. *Direct rollover* means a payment by the plan to the eligible retirement plan specified by the distributee.

(e b) *Rollovers or transfers into the fund.* On or after January 1, 2002, the system will accept, solely for the purpose of purchasing credited service as provided herein, permissible member

requested transfers of funds from other retirement or pension plans, member rollover cash contributions and/or direct cash rollovers of distributions made on or after January 1, 2002, as follows:

- (1) Transfers and direct rollovers or member rollover contributions from other plans. The system will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in section 401(a) or 403(a) of the Code, from an annuity contract described in section 403(b) of the Code or from an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The system will also accept legally permissible member requested transfers of funds from other retirement or pension plans.
- (2) Member rollover contributions from IRAs. The system will accept a member rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over.

(3 c) *Elimination of mandatory distributions.* Notwithstanding any other provision herein to the contrary, in the event this plan provides for a mandatory (involuntary) cash distribution from the plan not otherwise required by law, for an amount in excess of \$1,000.00, such distribution shall be made from the plan only upon written request of the member and completion by the member of a written election on forms designated by the board, to either receive a cash lump sum or to rollover the lump sum amount.

**SECTION 10:** That Chapter 50, Fire Prevention and Protection, Article II, Fire Department, Division 2, Firefighters= Retirement System, of the Code of Ordinances of the City of Avon Park is hereby amended by amending Section 50-76, Military Service Prior to Employment, subsection (2), to read as follows:

\* \* \* \* \*

- (2) Multiple requests may be made at any time prior to retirement, ~~but no purchase is permitted for a period of less than one year.~~

\* \* \* \* \*

**SECTION 11:** That Chapter 50, Fire Prevention and Protection, Article II, Fire Department, Division 2, Firefighters= Retirement System, of the Code of Ordinances of the City of Avon Park is hereby amended by amending Section 50-77, Prior Fire Service, subsections (2) and (5), to read as follows:

\* \* \* \* \*

- (2) Multiple requests may be made at any time prior to retirement, ~~but no purchase is permitted for a period of less than one year.~~

\* \* \* \* \*

- (5) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal or special district or county fire department, if such prior service forms or will form the basis of a retirement benefit or pension from a different employer's retirement system or plan as set forth in section ~~50-65(i)(2)~~ 50-65(1)(2).

\* \* \* \* \*

**SECTION 12:** That Chapter 50, Fire Prevention and Protection, Article II, Fire Department, Division 2, Firefighters= Retirement System, of the Code of Ordinances of the City of Avon Park is hereby amended by amending Section 50-78, Deferred Retirement Option Plan, to read as follows:

**Sec. 50-78. - Deferred retirement option plan.**

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*DROP* means the Avon Park Firefighters' Retirement System Deferred Retirement Option Plan.

*DROP account* means the account established for each DROP participant under subsection (c) of this section.

"Total return of the assets" -- For purposes of calculating earnings on a member's DROP account pursuant to subsection (c)(2)b.2., for each fiscal year quarter, the percentage increase (or decrease) in the interest and dividends earned on investments, including realized and unrealized gains (or losses), of the total Plan assets.

(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 provided that the election to participate in the DROP is made within 12 months following the date on which the member first becomes eligible for normal retirement, or for a member who first reached eligibility for normal retirement prior to the effective date of the ordinance from which this section is derived, the election to participate is made within 12 months from the effective date of the ordinance from which this section is derived. A member who fails to make the election within such 12-month limitation period shall forfeit all rights 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 which is at least 15 business days after it is received by the board.
- (3) *Period of participation.* A Member who elects to participate in the DROP under subsection (b)(2) of this section shall participate in the DROP for a period not to exceed 60 months beginning at the time his election to participate in the DROP first becomes effective. An election to participate in the DROP shall constitute an irrevocable election to resign from the service of the city not later than the date provided for in the previous sentence. A member may participate only once.
- (4) *Termination of participation.*
  - a. A member's participation in the DROP shall cease by:

1. Continuation of his employment as a firefighter at the end of his period of participation in the DROP as determined under subsection (b)(3) of this section; or
  2. Termination of his employment as a firefighter.
- b. Upon the member's termination of participation in the DROP, pursuant to subsection a above, all amounts provided for in subsection (c)(2) of this section, including monthly benefits and investment earnings or losses, 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 subsection (d) of this section when he terminates his employment as a firefighter.
  - c. A member who terminates his participation in the DROP under this subsection (b)(4) of this section shall not be permitted to again become a participant in the DROP.
- (5) *Effect of DROP participation on the system.*
- a. 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 supplemental benefit payable to DROP participants or additional benefits provided under any cost-of-living adjustment in the system, 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, except as provided for in Sec. 50-79.
  - b. No amounts shall be paid to a member from 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.

(c) *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 under subsection (c)(2) of this section 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 under the system shall be transferred to his DROP account, except as otherwise provided for in subsection (b)(4)b. of this section. A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (b)(3) and (b)(4) of this section, but in no event shall it continue past the date the member terminates his employment as a firefighter.

b. Except as otherwise provided in subsection (b)(4)b. of this section, a member's DROP account under this subsection shall be debited or credited ~~after each fiscal year quarter~~ with either:

1. Interest at an effective rate of 6.5 percent per annum, compounded monthly determined on the last business day of the prior month's ending balance and credited to the member's DROP Account as of such date (to be applicable to all current and future DROP participants); or

2. Earnings, to be credited or debited to the member's DROP Account, determined as of the last business day of each fiscal year quarter and debited or credited as of such date, determined as follows:

The average daily balance in a member's DROP account shall be credited or debited at a rate equal to the net investment return realized by the system for that quarter. "Net investment return" for the purpose of this paragraph is the total return of the assets in which the member's DROP account is invested by the board net of brokerage commissions, transaction costs and management fees.

For purposes of calculating earnings on a member's DROP account pursuant to this subsection (c)(2)b.2., brokerage commissions, transaction costs, and management fees shall be determined for each quarter by the investment consultant pursuant to contracts with fund managers as reported in the custodial statement. The investment consultant shall report these quarterly contractual fees to the Board. The investment consultant shall also report the net investment return for each manager

Upon electing participation in the DROP, the member shall elect to receive either interest or earnings on his account to be determined as provided above. The member may, in writing, elect to change his election only once during his DROP participation. An election to change must be made prior to the end of a quarter and shall be effective beginning the following quarter.

- 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. A member's final DROP account value for distribution to the

member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation for participants electing the net plan return and at the end of the month immediately preceding termination of participation for participants electing the flat interest rate return, plus any monthly periodic additions made to the DROP account subsequent to the end of the previous quarter or month, as applicable, and prior to distribution. If a member is employed by the city fire department after participating in the DROP for five years, then beginning with the member's 61st 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 by the city fire department. A member employed by the fire department after five years of DROP participation will still not be eligible for pre-retirement death or disability benefits, nor will he accrue additional credited service, except as provided for in Sec. 50-79.

(d) *Distribution of DROP accounts on termination of employment.*

(1) *Eligibility for benefits.* A member shall receive the balance in his DROP account in accordance with the provisions of this subsection (d) upon his termination of employment as a firefighter. Except as provided in subsection (d)(5), no amounts shall be paid to a member from the DROP prior to his termination of employment as a firefighter.

(2) *Form of distribution.*

a. Unless the member elects otherwise, distribution of his DROP account shall be made in a cash lump sum subject to the direct rollover provisions set

forth in subsection (d)(6). Elections under this paragraph shall be in writing and shall be made in such time or manner as the board shall determine. A member may elect, in such time and manner as the board shall prescribe, to receive an optional form of benefit ~~described below.~~ as follows:

~~1.~~ Until the value of the member's DROP account is completely depleted, payments in approximately equal quarterly or annual installments over a period, designated by the member, not to exceed the life expectancy of the last survivor of the member and his beneficiary. In the event that the member dies before all installments have been paid, the remaining balance in his DROP account shall be paid in an immediate cash lump sum to his beneficiary, or if none is designated, then to the member's estate.

~~2. The purchase of a nonforfeitable fixed annuity payable in such form as the member may elect. Elections under this subsection (d)(2)a.2 shall be in writing and shall be made in such time or manner as the board shall determine.~~

b. Notwithstanding the preceding, if a member dies before his benefits commence, 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.

(3) *Date of payment of distribution.* Except as otherwise provided in this subsection (d), distribution of a member's DROP account shall be made as soon as administratively practicable following the member's termination of employment. Distribution of the amount in a member's DROP account will not be made unless the member completes a written request for distribution and a written election on forms designated by the board to either receive a cash lump sum or a rollover of the lump sum amount.

- (4) *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.
  - (5) *Distribution limitation.* Notwithstanding any other provision of this subsection (d), all distributions from the DROP shall conform to the "minimum distribution of benefits" provisions as provided for herein.
  - (6) *Direct rollover of certain distributions.* This subsection applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the DROP to the contrary, a distributee may elect to have any portion of an eligible rollover distribution paid in a direct rollover as otherwise provided under the system in section 50-74
- (e) *Administration of DROP.*
- (1) *Board to administer 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 or 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.

- (2) *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, all necessary descriptions, reports, information returns and data required to be distributed or filed for the DROP pursuant to the code, the applicable portions of the act and any other applicable laws.
- (3) *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.
- (4) *Limitation of liability.*
- a. The trustees shall not incur any liability individually or on behalf of any other individuals for any act or failure to act, made in good faith, in relation to the DROP or the funds of the DROP.
  - b. Neither the board nor any trustee of the board shall be responsible for any reports furnished by any expert retained or employed by the board, but they shall be entitled to rely on such expert as well as on certificates furnished by an accountant or an actuary, and on all opinions of counsel. The board shall be fully protected

with respect to any action taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.

(f) *General provisions.*

- (1) *The DROP is not a separate retirement plan.* Instead, it is a program under which a member who is eligible for normal retirement under the system may elect to accrue future retirement benefits in the manner provided in this section 50-80 for the remainder of his employment, rather than in the normal manner provided under the plan. Under termination of employment, a member is entitled to a lump sum distribution of his or her DROP account balance or may elect a rollover. The DROP account distribution is in addition to the member's monthly benefit.
- (2) *Notional account.* The DROP account established for such a member is a notional account, used only for the purpose of calculation of the DROP distribution amount. It is not a separate account in the system. There is no change in the system's assets, and there is no distribution available to the member until the member's termination from the DROP. The member has no control over the investment of the DROP account.
- (3) *No employer discretion.* The DROP benefit is determined pursuant to a specific formula which does not involve employer discretion.
- (4) *IRC limit.* The DROP account distribution, along with other benefits payable from the system, is subject to limitation under Internal Revenue Code Section 415(b).
- (~~4~~ 5) *Amendment of DROP.* The DROP may be amended by an ordinance of the city at any time and from time to time, and retroactively, if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP account of any member.

- (2 6) *Facility of payment.* If the board shall find that a member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or is a minor, the board may direct that any benefit due him, unless claim shall have been made for the benefit by a duly appointed legal representative, be paid to his spouse, a child, a parent or other blood relative, or to a person with whom he resides. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.
- (3 7) *Information.* Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the DROP, shall file with the board the information that it shall require to establish his rights and benefits under the DROP.
- (4 8) *Prevention of escheat.* If the board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the board may, no earlier than three years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the board or the city. If such person has not made written claim therefor within three 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 therefor except that, in the event such person or his beneficiary later notifies the board of his whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.
- (5 9) *Written elections, notification.*
- a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the board in a time and manner determined by the board under rules uniformly

applicable to all employees similarly situated. The board reserves the right to change from time to time the manner for making notifications, elections or designations by members under the DROP if it determines, after due deliberation, that such action is justified in that it improves the administration of the DROP. If a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures arises, those new administrative procedures shall prevail.

- b. Each member or retiree who has a DROP account shall be responsible for furnishing the board with his current address and any subsequent changes in his address. Any notice required to be given to a member or retiree under this section 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.

(6 10) *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.

(7 11) *Construction.*

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

(8 12) *Forfeiture of retirement benefits.* Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions

applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.

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

**SECTION 13:** Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Avon Park.

**SECTION 14:** All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

**SECTION 15:** If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

**SECTION 16:** That this Ordinance shall become effective upon adoption.

PASSED ON FIRST READING, this 11<sup>th</sup> day of January, 2016.

PASSED AND ADOPTED ON SECOND READING, this \_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY MANAGER

Approved as to form:

\_\_\_\_\_  
CITY ATTORNEY