

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

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**M E M O R A N D U M**

**TO:** Gloria Johnson, Retirement Board Secretary  
**FROM:** James T. Walker, Assistant City Attorney  
**SUBJECT:** Amendment of Section 13-172 (Claims Procedure)  
**DATE:** December 1, 2014

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This memo serves to attach a memorandum with its attachment as addressed to Tom Perona in his capacity as Chair of the Retirement Board. Its inclusion in the Agenda packet for the next meeting of the Retirement Board will be appreciated. Please let me know of any questions.

*s/ James T. Walker*

James T. Walker, Esq.  
Assistant City Attorney

/mlp

Attachment

cc: Robert V. Schwerer, City Attorney

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**MEMORANDUM**

**TO:** Thomas K. Perona, Retirement Board Chair  
**FROM:** James T. Walker, Assistant City Attorney  
**SUBJECT:** Amendment of Section 13-172 (Claims Procedure)  
**DATE:** December 1, 2014

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Section 13-172 (Claims Procedure) sets out procedural provisions relating to handling of appeals before the 185 Board. Much of the material there is required as a matter of due course so as to protect due process expectations of those wishing to appeal a ruling of the 185 Board. This code language is also helpful to the Board Chair in providing instruction on how to conduct a “contested” hearing. Unfortunately there is no equivalent provision governing our own Board as created by Code Section 13-71. This has occasionally made for past difficulty in preparing the Board and its Chair in connection with hearings presenting more than the usual degree of complication. Hence it comes to mind that our own Board would benefit from extending operation of Code Section 13-172 beyond the 185 Board to include the Board of the Fort Pierce Retirement System. A proposed amendment to Section 13-172 is therefore prepared for consideration by the Board. Should the Board determine that the amendment as proposed is appropriate, it is suggested that the Board move to forward such amendment to the Commission with a recommendation of adoption. Thank you for your attention.

*s/ James T. Walker*  
James T. Walker, Esq.  
Assistant City Attorney

/mlp  
Attachment  
cc: Robert V. Schwerer, City Attorney



**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF FORT PIERCE, FLORIDA; AMENDING CODE SECTION 13-172 (CLAIMS PROCEDURE); PROVIDING THAT PROCEDURE SET FORTH THEREIN BE THE PROCEDURE GOVERNING ALL APPEALS OR PETITION FOR RECONSIDERATION ARISING UNDER CHAPTER 13 OF THE CODE OF ORDINANCES; REPEALING ORDINANCES OR PARTS THEREOF IN CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.

**BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, AS FOLLOWS:**

**SECTION 1.** Section 13-172 (Claims Procedure) of the Code of Ordinances of the City of Fort

Pierce is and the same shall be amended as to read herein after as follows:

Sec. 13-172 (Claims Procedure).

- (a) The applicant for benefits under this plan may, within twenty (20) days after being informed of the denial of his or her request for pension benefits, appeal the denial by filing a reply to the proposed denial with the pension plan board of trustees. If no appeal is filed within the time period specified, then the denial is final. The procedures provided by this section shall apply to all appeals or petitions for reconsideration arising under Chapter 13 of the Code of Ordinances.
- (b) The board shall hold a hearing within forty-five (45) days after receipt of the appeal. Written notice of the hearing shall be sent by certified mail to the applicant ten (10) days prior to the hearing, at the address listed on the application.
- (c) The board shall have the power to subpoena, require the attendance of witnesses, and the production of documents for discovery, prior to and at any proceedings provided for in the plan. The claimant may request in writing the issuance of subpoenas by the board. A reasonable fee may be charged for the issuance of any subpoenas, not to exceed the fees set forth in the Florida Statutes.
- (d) The procedures at the hearing shall be as follows:
  - (1) All parties shall have an opportunity to respond, to present physical and testimonial evidence and argument, on all issues involved, to conduct cross-examination, to submit rebuttal evidence, and to be represented by counsel. Medical depositions may be accepted in lieu of live testimony, at the board's discretion.
  - (2) All witnesses shall be sworn.
  - (3) The applicant and the board shall have an opportunity to question all witnesses.
  - (4) The formal rules of evidence and the formal rules of civil procedures shall not apply. The proceedings shall comply with the essential requirements of due process of law.
  - (5) The record in a case governed by this subsection shall consist only of:
    - a. A tape recording of the hearing, to be taped and maintained as part of the official files of the board of trustees by the pension's secretary.
    - b. Evidence received or considered.
    - c. All notices, pleadings, motions and intermediate rulings.
    - d. Any decisions, opinions, proposed or recommended orders or reports by the board of trustees.

- (e) Within ten (10) days after the hearing, the board shall take one of the following actions:
- (1) Grant the pension benefits by overturning the denial by majority vote;
  - (2) Deny the benefits and confirm the denial.

The board's decision shall be in writing set forth as an order.

- (f) Findings of fact by the board shall be based on competent, substantial evidence on the record.
- (g) Upon rendering its order, the board shall send by certified mail a copy of the order to the applicant.
- (h) The applicant may seek review of the order of the board by filing a petition for writ of certiorari with the circuit court within thirty (30) days of the order being rendered.

**SECTION 2.** All Ordinances or parts of Ordinances in conflict herewith are and the same shall be repealed and shall be of no further force or effect whatsoever.

**SECTION 3.** This Ordinance is and the same shall become effective immediately upon final adoption hereof.

**ATTEST:**

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Linda Cox, City Clerk

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Linda Hudson, Mayor

**APPROVED AS TO FORM AND CORRECTNESS:**

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Robert V. Schwerer, Esq.  
City Attorney