

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF FORT PIERCE, FLORIDA; AMENDING SECTION 13-16; PROVIDING A DEFINITION FOR "IN LINE OF DUTY"; PROVIDING DEFINITION FOR ADMINISTRATOR; AMENDING CODE SECTION 13-36; MODIFYING PROVISIONS RELATING TO PERMANENT AND TOTAL DISABILITY FOR PURPOSES OF DISABILITY RETIREMENT; AMENDING CODE SECTION 13-37 DISABILITY ANNUITY; AMOUNT OF; AMENDING PROVISIONS RELATING TO IN LINE OF DUTY DISABILITY; PROVIDING REDUCTION AND DISABILITY PAYMENTS IN PROPORTION TO PREEXISTING CHARACTER OF CONDITION AND FURTHER PROVIDING OFFSET FOR RECEIPT OF SOCIAL SECURITY DISABILITY; REPEALING ORDINANCES AND PARTS THEREOF IN CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, a Municipal Corporation, AS FOLLOWS:

SECTION 1. Sec. 13-16 Definitions., is hereby amended to add these additional definitions and these new definitions to be added shall read as follows

In Line of Duty Means an injury or illness arising out of and in the actual performance of duties required a member's employment, during such members regularly scheduled working hours or irregular working hours as required by the City. The Administrator may require such proof as he or she deems necessary as to the time, date and cause of any such injury or illness, including evidence from any available witnesses. Workers' Compensation records under the provisions of Chapter 440 may also be used. Disability arising from drug or alcohol abuse or use of tobacco products shall not be considered in the line of duty.

Administrator, means the director of finance for the City of Fort Pierce, or such directors designate.

SECTION 2. Section 13-36 Disability Retirement; conditions for., is hereby amended so that the same shall read hereinafter as follows:

Sec. 13-36. - Disability retirement; conditions for.

The retirement board may retire a member on account of disability if all of the following requirements have been met:

- (1) The member has five (5) or more years of credited service, ~~or no fewer than ten (10) years if the individual became a member on or after October 1, 2012;~~
- (2) The member was a member at the time the disability was incurred;
- (3) A written application for disability retirement, in the form and containing the information prescribed by the retirement board, has been filed with the retirement system by the member or the member's department head;
- (4) Membership is terminated prior to the selected date of disability retirement;
- (5) The participant submits to all medical examinations and tests and furnishes copies of all medical reports requested by the retirement board;
- (6) The retirement board determines the member to be totally and permanently incapacitated for duty in the employ of the member's participating employer, by reason of a personal injury or disease;
 - (a) Such incapacity must be sufficient to render the employee incapable of performing any gainful, sedentary work on a sustained basis for pay within a fifty (50) mile radius of the member's residence, or the distance between the member's residence and City Hall, whichever is greater, and where the member is wholly and continuously unable to perform the essential duties of his or her employment, with or without a reasonable accommodation, or of any position to which he or she may be assigned upon the recommendation of the disability review committee, as approved by the administrative department head, by reason of a physical or mental impairment, as document by objective medical evidence.
 - (b) It is the intent of this section to provide whenever practical and feasible for placement within the city of employees who may become unable to perform duties of a particular job. If placement in another position with the City is not practical or possible, this fact does not in and of itself determine disability.
- (7) ~~Two (2) physicians, one of whom shall be selected by the retirement board and paid by the retirement system, and one of whom shall be selected~~

~~by the member and paid by the member, both report to the retirement board, in writing, that the member is mentally or physically totally incapacitated for duty in the employ of the member's participating employer, the incapacity will probably be permanent, and the member should be retired.~~

The administrator shall require proof that the member is totally and permanently disabled as provided herein:

- i.) Two physicians, one of whom shall be selected by the retirement board and paid by the retirement system, and another of whom shall be selected by the member and paid by the member, shall both report to the retirement board on the members physicals limitations, on a form typed by the board, and certify that the limitations are permanent. The administrator may further require, at the board's expense, a functional capacity evaluation, reports from vocational rehabilitation evaluation, or testing specialist, including examinations or tests conducted when the employee or member was evaluated originally for employment;
- ii.) There must be documentation that the members medical condition occurred or became symptomatic during the time the member was employed as a regular employee of the City;
- iii.) There must be documentation that the member was totally and permanently disabled at the time he or she terminated employment with the City.

~~The five (5) years of credited service requirement, or the ten (10) years of credited service required for individuals who became members on or after October 1, 2012, contained in this section shall be waived in the case of a member whom the retirement board finds to be in receipt of weekly workers; compensation on account of disability arising out of and in the course of his employment by a participating employer.~~

SECTION 3. Section 13-37 Disability Retirement; conditions for., is hereby amended so that the same shall read hereinafter as follows:

Sec. 13-37. - Disability annuity; amount of.

- (a) The amount of a disability retirement annuity under the standard form of payment shall be calculated as provided in section 13-31, subject to subsections (b) and (c) below.
- (b) If a member is retired on account of disability as provided in section 13-36 for a disability arising out of and in the course of the member's employment by a participating employer, the following additional provisions shall apply:

(1) Subject to subsection (c), the amount of disability annuity under the standard form of payment during the member's duty disability period shall be seventy-five (75) per cent of the member's final average salary for all coverage plans.

(2) The member's duty disability retirement period begins on the date of the member's disability retirement.

(3) The member's duty disability retirement period ends on the first to occur of the following dates: the date the pension is terminated as provided in section 13-38; or the end of the month in which the retired member dies; or, the date the annuity has been paid for the maximum duty disability retirement period.

(4) The maximum duty disability retirement period is the number of months in the period from the date of the member's duty disability retirement and the first to occur of the following dates: The date the member would have acquired twenty-five (25) years of credited service had employment continued with a participating employer; the date the member attains age sixty-five (65) years but not prior to the date which is sixty (60) months after the date of duty disability retirement.

(5) Credited service shall not be projected for the purpose of calculating the amount of a disability annuity.

(6) At the end of the disability period the disability benefit would convert to a regular retirement benefit with service credit granted for the duty disability period.

(7) A finding under the workers' compensation system that a member is or is not permanently and totally disabled shall not be proof that the member either is or is not permanently and totally disabled for purposes of this Chapter, or that the illness or injury was incurred in line of duty. For purposes of in line of duty disability, the employment must be the major contributing cause of the members illness or injury. The term "major contributing cause" means the cause which is more than 50% responsible for the injury or illness as compared to all other causes combined for which treatment or benefits are sought. In those instances involving occupational disease or repetitive exposure, both causation and sufficient exposure to support causation must be established by clear and convincing evidence. Pain or other subjective complaints alone, in the absence of objective relevant medical findings, are not a basis for determining entitlement to in line of duty disability. Establishment of the causal relationship between employment and illness or injury which is not readily observable must be by medical evidence only, as demonstrated by physical examination findings or diagnostic testing. Major contributing cause may be demonstrated only by medical evidence.

(c) The amount of a disability retirement annuity shall not exceed the difference between one hundred (100) per cent of the member's final

average salary and the monthly equivalent of any weekly worker's compensation paid the retired member.

(d) In no case shall the amount of the duty disability annuity under the standard form of payment for a police officer member be less than forty-two (42) per cent of final salary, nor shall the amount of the non-duty disability annuity under the standard form of payment for a police officer member who has ten (10) or more years of service be less than twenty-five (25) per cent of final salary.

(e) In the event any portion of the condition giving rise to disability preexisted the employment then the disability retirement annuity otherwise payable shall be reduced in proportion to the same degree as the condition preexisted the employment.

(f) The amount of the disability retirement annuity shall be reduced by his or her disability benefit percent up to a maximum of 50% multiplied by the monthly Social Security primary insurance amount (PIA) which the member is initially receiving from the Social Security Administration as a disabled worker, or the amount to which he or she would initially be entitled as a disability worker if the employee has willfully failed or refused to apply for, and in good faith pursue, obtaining such Social Security disability benefit, unless this requirement is waived by the administrator for good cause. This reduction, once determined, shall not be further adjusted by subsequent increases in Social Security primary insurance amounts.

SECTION 4. 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 5. This Ordinance is and the same shall become effective immediately upon final passage hereof.

Linda Hudson, Mayor

ATTEST:

Linda Cox, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

~~Robert V. Schwerer, Esq.~~

City Attorney