

ORDINANCE NO. 12-2021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 2, ADMINISTRATION, ARTICLE VIII, FIREFIGHTERS' RETIREMENT PLAN, OF THE CODE OF ORDINANCES OF THE CITY OF COCOA BY AMENDING SECTION 2-271, DEFINITIONS; AMENDING SECTION 2-324, DISABILITY; AMENDING SECTION 2-325, PRERETIREMENT DEATH; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Cocoa established the Firefighters' Retirement Plan pursuant to Ordinance No. 9-93, in accordance with Chapter 175, Florida Statutes for the benefit of the City's firefighters.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA AS FOLLOWS:

SECTION 1: That Section 2-271, Definitions; in Article VIII of Chapter 2, Part II of the City Code of the City of Cocoa, Florida, is amended to read as follows (Underlined type are additions and ~~strikeout~~ type are deletions to the City Code):

Sec. 2-271. - Definitions.

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

* * *

Death in line of duty: Death arising out of and in the actual performance of duty required by a member's employment during his or her regularly scheduled working hours or irregular working hours as required by the city. The Board may require such proof as deemed necessary as to the time, date, and cause of death, including evidence from any available witnesses. Workers' Compensation records under the provisions of chapter 440, Florida Statutes may also be used. Death in the line of duty shall not include death resulting from conduct found in deliberate violation or disregard of standards of behavior which the city has the right to expect of an employee; or carelessness or negligence by the member of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of the city's interests or of the member's duties and obligations to the city. As provided in, and subject to the limitations of, section 112.1816, Florida Statutes, any member whose death results from cancer initially diagnosed on or after July 1, 2019, or from circumstances arising from the treatment of such cancer, shall be considered to have died in the line of duty for all purposes under the Plan.

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SECTION 2: That Section 2-324, Disability, in Article VIII of Chapter 2, Part II of the City Code of the City of Cocoa, Florida, is amended to read as follows (Underlined type are additions and ~~strikeout~~ type are deletions to the City Code):

* * *

Sec. 2-324. - Disability.

- (a) *Service incurred.* Any member who receives a service-connected injury, disease or disability, which, in the opinion of the board in accordance with Section 175.191, Florida Statutes permanently incapacitates the member, physically or mentally from rendering useful and efficient service as a firefighter, shall, effective December 31, 1999, receive monthly, a disability benefit in an amount equal to the member's accrued retirement benefit (accrued at the statutory two percent (2%) minimum; provided such amount is not less than forty-two percent (42%) of the member's average monthly earnings salary at the time of disability. Effective October 1, 2021, the disability benefit payable under this subsection (a) shall be an amount equal to the member's accrued retirement benefit accrued at three percent (3%) of average monthly earnings; provided such amount is not less than forty-two percent (42%) of the member's average monthly earnings at the time of disability. If the service-connected disability occurred during an active shooter event (defined as an individual actively engaged in killing or attempting to kill people in a confined and populated area) or mass killing event, as defined in 28 U.S.C. s. 530C, and as the direct result of the unlawful and intentional act of the perpetrator of such event, the disability benefit shall equal the member's accrued retirement benefit (accrued at the statutory two percent (2%) minimum) provided such amount is not less than sixty percent (60%) of the member's average monthly earnings at the time of disability. The benefit shall be paid beginning when the member's sick pay and accrued vacation have expired and will continue until the payment due next preceding the date of recovery, as determined by the board, or if the member dies without recovery from the disability, the payment due next preceding the member's death or the one hundred twentieth (120th) monthly payment, whichever is later. An optional form of benefit providing death benefits, may be elected.
- (b) *Nonservice incurred.* Any member who receives a nonservice connected injury, disease or disability, which, in the opinion of the board in accordance with Section 175.191, Florida Statutes permanently incapacitates the member, physically or mentally, from useful and efficient service as a firefighter, shall receive monthly, a disability benefit in an amount equal to one-twelfth (1/12) of twenty-five percent (25%) of the member's rate of regular base salary in effect as of the date of disability. The benefit shall be paid beginning six (6) months from

the date of disability until the earlier of recovery, as determined by the board, or death. An optional form of benefit, providing death benefits may be elected.

- (c) *Determination of disability.* All questions relating to eligibility for initial payment or continuance of disability benefits shall be determined by the board taking into consideration the recommendations of the duly qualified physician or surgeon selected by the board to examine the member and based upon the methods and procedures established by the board. In the event that any disabled member could otherwise still be employed, or be reemployed as an employee except that the position for which the member is qualified is not available due to being currently filled, the benefit shall be payable only until such position again becomes available. The board may require, at its expense, periodic medical reexamination of disabled members.
- (d) *Exclusions.* Disability benefits shall not be payable in cases where the disability is a result of:
- (1) Excessive and habitual use of drugs, intoxicants, or narcotics;
 - (2) Injury or disease sustained while willfully and illegally participating in fights, riots, civil insurrections or while committing a felony;
 - (3) Injury or disease sustained while serving in the armed forces;
 - (4) Injury or disease sustained after employment as a firefighter has terminated, whether voluntarily or involuntarily.
 - (5) Injury or disease sustained while working for anyone other than the city and arising out of such employment during the first ten (10) years of credited service.
- (e) *Recovery.* In the event of recovery from disability as determined by the board and immediate reemployment by the city as an employee, the period of time while disabled shall be included as credited service. In the event of recovery, or the refusal by the member to submit to medical reexamination, but without immediate reemployment as an employee, the member's future benefits shall be determined as though the member initially terminated employment on the member's date of disability.
- (f) *Cancer presumption.* Subject to the requirements and limitations under s. 112.1816, F.S., if a firefighter is totally and permanently disabled due to cancer diagnosed on or after July 1, 2019, or circumstances that arise out of the treatment of such cancer, the disability shall be deemed by the Board to have been directly caused by the performance of his or her duty as a firefighter.

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SECTION 3: That Section 2-325, Preretirement Death, in Article VIII of Chapter 2, Part II of the City Code of the City of Cocoa, Florida, is amended to read as follows (Underlined type are additions and ~~strikeout~~ type are deletions to the City Code):

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- (a) Prior to eligibility for retirement. ~~The~~ Except as provided under subsection (c), the death benefit payable on behalf of a member who dies prior to being eligible for early, normal, or delayed retirement shall equal the member's accumulated contributions with interest.
- (b) Deceased employees eligible for retirement. The beneficiary of any actively employed member who is eligible for but dies prior to early, normal, or delayed retirement, shall, effective December 31, 1999, be entitled to the benefits otherwise payable to the member at early or normal retirement age, accrued at the statutory two percent (2%) minimum.
- (c) Death in line of duty. Effective October 1, 2021, if a member, other than a participant in the Deferred Retirement Option Plan, dies in the line of duty, a death benefit shall be paid as follows:
 - (1) If the member is married at the time of death, the member's spouse shall receive the greater of, a monthly benefit equal to forty-two percent (42%) of the member's average monthly earnings at the time of the member's death, or if the member was vested, the member's accrued retirement benefit (calculated at 3% of average monthly earnings), payable for the life of the spouse. If the surviving spouse of a member killed in the line of duty dies, or if the member killed in the line of duty leaves no surviving spouse but is survived by a child or children under 18, the monthly payment that would have been payable to such surviving spouse had such surviving spouse lived shall be paid for the use and benefit of such member's child or children under 18 years of age and unmarried or, until the 25th birthday of any child of the member if the child is unmarried and enrolled as a full-time student.
 - (2) If the member is not married at the time of death, a monthly benefit equal to forty-two percent (42%) of the member's average monthly earnings at the time of the member's death shall be split equally among the member's beneficiaries. Benefit payments to a beneficiary under this paragraph shall continue for twenty (20) years or until the death of the beneficiary, whichever occurs first.
 - (3) If a member's line-of-duty death occurred during an active shooter event (defined as an individual actively engaged in killing or attempting to kill people in a confined and populated area) or mass killing event, as defined in 28 U.S.C. s. 530C, and was the direct

result of the unlawful and intentional act of the perpetrator of such of event, the benefit payable to the member's beneficiary or beneficiaries as provided in this subsection (c) shall equal the greater of, sixty percent (60%) of the member's average monthly earnings at the time of death, or if the member was vested, the member's accrued retirement benefit (calculated at 3% of average monthly earnings).

(4) The benefit provided under this subsection (c) shall commence on the first day of the month coincident with or next following the date of the member's death and shall supersede any other distribution that may have been provided by the member's designation of beneficiary.

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SECTION 4: Incorporation into the Code. Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Cocoa.

SECTION 5: Severability. Should any section or provision of this Ordinance or any portion thereof, or any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereto as a whole or part thereof other than the part to be declared invalid.

SECTION 6: Repeal of Prior Inconsistent Ordinances and Resolutions. All City Code provisions or laws inconsistent with this Ordinance are hereby repealed to the extent of any conflict.

SECTION 7: Effective Date. That this Ordinance shall become effective upon its adoption.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF COCOA, FLORIDA, IN
A REGULAR MEETING ASSEMBLED ON THE _____ DAY OF _____ 2021.**

Michael C. Blake, Mayor

ATTEST:

Carie Shealy, MMC, City Clerk

1ST READING: November 9, 2021

2ND READING AND ADOPTION: _____