

ORDINANCE 2024 - 03

AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES BY AMENDING CHAPTER 2, ARTICLE V, DIVISION 3, VOLUNTEER FIREFIGHTERS' PENSION PLAN TO TERMINATE THE TOWN OF LAUDERDALE-BY-THE-SEA VOLUNTEER FIREFIGHTERS' PENSION PLAN; AMENDING SECTION 2-136 "PENSION PLAN CONTINUED, DEFINITION," 2-137, "BOARD OF TRUSTEES," 2-149 "DISTRIBUTION OF BENEFITS," AND 2-143.1, "DEFINED CONTRIBUTION COMPONENT" TO ADOPT PROCEDURES AND CRITERIA FOR TERMINATING THE PLAN; PROVIDING FOR SEVERABILITY, PROVIDING FOR CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lauderdale-By-The-Sea (the "Town") maintains a defined benefit pension plan for its volunteer firefighters, which is known as the Town of Lauderdale-By-The-Sea Volunteer Firefighters' Pension Plan (the "Plan"); and

WHEREAS, due to the transition of fire rescue, emergency medical, suppression and prevention services from its volunteer firefighters to a neighboring municipality, the Town provided notice to the Board of Trustees of the Plan that it is initiating the process of terminating the Pension Plan in accordance with Section 2-152 of the Town's Code of Ordinances (the "Code") and Section 175.361, Florida Statutes, and

WHEREAS, the Plan's Board of Trustees has approved the termination of the Plan; and

WHEREAS, Section 2-152 of the Code and Section 175.361, Florida Statutes, both provide that the accrued benefits of the Plan Members are nonforfeitable in the event the Plan is terminated; and

WHEREAS, the Town Commission desires to amend and clarify the provisions of the

Plan related to its termination as provided for in this Ordinance, but only if such amendments will take effect in a way that includes the distribution of nonforfeitable accrued benefits to the Members and any eligible Beneficiaries.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AS FOLLOWS:¹

Section 1. Recitals. The foregoing “Whereas” clauses are ratified and confirmed as being true, correct and reflective of the legislative intent underlying this Ordinance and are hereby made a specific part of this Ordinance

Section 2. Amending Chapter 2. Chapter 2, “Administration,” Article V, Employee Benefits, Division 3, Volunteer Firefighters’ Pension Plan, is hereby amended to read as follows:

DIVISION 3. - VOLUNTEER FIREFIGHTERS' PENSION PLAN

Sec. 2-136. Pension plan ~~continued~~ terminated; definitions.

- (a) *Pension plan ~~created and continued~~ termination.* The Town of Lauderdale-By-The-Sea Volunteer Firefighters' Pension Plan established September 10, 1985, as amended, is was created ~~and continued~~ for the purpose of providing retirement income to volunteer firefighter members of the plan, certain former volunteer firefighters and survivor income to joint annuitants and beneficiaries where applicable. The plan is intended to be a tax qualified plan under Code Section 401(a) and meet the requirements of a governmental plan as defined by Code Section 414(d). Effective September 1, 2023, the Pension Plan is terminated in accordance with F.S. §175.361 and section 2-152. The Town contracted with another provider to provide fire rescue, emergency medical, suppression and prevention services within its municipal boundaries and effective September 1, 2023, no longer maintained a contractual relationship with the Town’s Volunteer Fire Department. In accordance with the provisions of F.S. §175.361 and section 2-152, the Board of Trustees has determined to distribute the members’ nonforfeitable benefits in the form of a lump sum payment as soon as administratively practicable following June 1, 2024, but no later than September 1, 2025. Additionally, at the time of termination excess Chapter

¹ Additions to existing text are shown in underline. Deletions are shown in ~~strikethrough~~.

175 premium tax revenues existed, which the Town agreed would be allocated to the members and retirees in a Share Plan as provided for in section 2-143.1.

(1) As of September 1, 2023, no further Credited Service or pension benefits will accrue.

(2) Members who were active Volunteer Firefighters on August 31, 2023 are vested in a benefit from the Plan regardless of their number of years of Credited Service.

(3) Lump sum payment amounts will be actuarially calculated based on the following:

a. For terminated vested participants, the lump sum amounts represent the actuarial present value of each participant's accrued benefit, payable under the 10- Year- Certain & Life normal form of payment, commencing on their respective normal retirement dates (but in no event less than each participant's employee contribution balance); and

b. For retirees and beneficiaries, the lump sum amounts represent the actuarial present value (as of June 1, 2024) of the remaining annuity payments under the selected benefit options.

c. Actuarial equivalence assumptions to be used when converting monthly retirement benefits to a lump sum:

1. the select and ultimate interest rates used by the Pension Benefit Guarantee Corporation for determining the present value of annuities in involuntary and distress terminations of single- employer pension plans (per 29 CFR 4044) as of August 31, 2023, which are: 5.24% per year in each of the first 20 years following the valuation date and 4.58% per year thereafter; and

2. The mortality tables used by the Pension Benefit Guarantee Corporation for determining the present value of annuities in involuntary and distress terminations of single- employer pension plans (per 29 CFR 4044) for valuation dates in 2023, with a blend of 50% healthy male mortality rates and 50% healthy female mortality rates.

(4) All distributions made pursuant to this termination shall be full settlement for the accrued benefits due under this Plan.

(5) In accordance with F.S. §175.361(4) and section 2-152(4), if there is asset value remaining after the full distribution specified in this section, and after the payment of any expenses incurred with such distribution, such excess shall be returned to the Town, less return to the State of the State's contributions, provided that, if the excess is less than the total contributions made by the Town and the State to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the Town and the State.

(6) Once all liabilities of the Plan have been paid, the Board of Trustees shall proceed with the liquidation of any residual assets of the Plan in accordance with federal and state law. Following the distribution of residual assets, the Board shall, as its final act,

prepare a summary of the actions taken to terminate the Plan and liquidate its residual assets.

(7) If, after 24 months after the date the Plan terminated, the Town or the Board of Trustees has not complied with all the provisions in this section, the Department of Management Services shall effect the termination of the Plan in accordance with F.S. §175.361.

(8) The remainder of the Plan provisions contained in the Plan are for historical documentation of the benefits in the Plan. Nothing in this Plan creates any rights to benefits which were not earned before September 1, 2023.

Sec. 2-137. Board of Trustees.

(a) The Plan is terminated effective September 1, 2023 with an anticipated distribution date of June 1, 2024, and no later than September 1, 2025. The Board of Trustees shall continue to exist and to administer the Plan for the sole purpose of liquidating the assets of the Plan for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits until all nonforfeitable benefits have been distributed. Therefore, this section will remain in full force and effect until the distribution of the last of the assets. The Board and the Town reserve the right to change the composition of the Board if required based on the Board's fiduciary responsibility.

(b) Composition. The general administration and responsibility for the proper operation of the Volunteer Firefighters' Pension Plan and for making effective the provisions of this division are hereby vested in a Board of Trustees consisting of five persons as follows:

- (1) Two legal residents of the Town to be appointed by the Town Commission;
- (2) Two firefighters/retirees who are elected by a majority of the firefighters and retirees who are were members of the plan; and
- (3) A fifth person chosen by a majority of the other four members of the Board of Trustees. The name of the fifth person shall be submitted to the Town Commission which shall, as a ministerial duty, appoint him to the Board.

~~(b)~~ (c) Election of Firefighter-Trustee. The elective Firefighter-Trustee shall be elected by vote of all actively employed members and retirees at meetings to be held at places designated by the Board. All qualified members entitled to vote shall be notified of such meetings in person or by written notice ten days in advance of the meetings. The two candidates receiving the highest number of votes shall be declared elected and shall take office immediately upon the commencement of the term of office for which elected or as soon thereafter as they shall qualify therefor. An election shall be held not more than 30 and not less than ten days prior to the commencement of the terms for which Trustees are to be elected. The Board shall establish and administer the election procedure for each election.

- 134 (e) (d) Oath. Each Trustee shall, within ten days after his appointment or election, take an oath
 135 of office before the Town Clerk that, so far as it develops upon him, he will diligently and
 136 honestly administer the affairs of the Board, and that he will not knowingly violate or
 137 willingly permit to be violated any of the provisions of the law applicable to the plan. Such
 138 oath shall be subscribed to by the members making it and certified by the Town Clerk and
 139 filed in the Office of the Clerk.
- 140 (d) (e) Election of Chairman and Secretary; duties of Secretary; meetings. The Board shall by
 141 majority vote elect from its members a Chairman and a Secretary. The Secretary shall keep a
 142 complete minute book of the actions, proceedings or hearings of the Board. The Board shall
 143 meet at least once during each calendar quarter of each year.
- 144 (e) (f) Compensation. The Trustees shall serve without compensation, but they may be
 145 reimbursed from the fund for all necessary expenses which they may actually expend through
 146 service on the Board.
- 147 (f) (g) Term of office. Each resident member shall serve for a period of two years, unless sooner
 148 replaced by the Town Commission. The resident member shall serve at the pleasure of the
 149 Town Commission and may succeed himself in office. Each member elected by other
 150 members of the plan shall serve for a period of two years unless he sooner leaves the
 151 employment of the Town as a firefighter, whereupon the Town Commission shall choose his
 152 successor in the same manner as an original appointment. Each firefighter member may
 153 succeed himself in office. The fifth member of the Board shall have the same rights as each
 154 of the other four members and may succeed himself in office.
- 155 (g) (h) Filling vacancies. If a vacancy occurs in the office of Trustee, the vacancy shall be filled
 156 for the unexpired term in the same manner as the office was previously filled.
- 157 (h) (i) Employees. The Board of Trustees shall engage such persons, agents or entities as shall
 158 be required to transact the business of the plan. The compensation of all persons engaged by
 159 the Board and all other expenses of the Board necessary for the operation of the plan shall be
 160 paid at such rates and in such amounts as the Board shall agree.
- 161 (i) (j) Rules of procedure. Subject to the limitations of this division, the Board of Trustees shall
 162 from time to time establish uniform rules and regulations for the administration of funds
 163 created by this division and for transactions of its business, including provisions for expulsion
 164 due to nonattendance of its members which could result in a vacancy.
- 165 (j) (k) Voting. Each Trustee shall be entitled to one vote on the Board. Three affirmative votes
 166 shall be necessary for a decision by the Trustees at any meeting of the Board. The Chairman
 167 shall have the right to one vote only. No Trustee shall take part in any action in connection
 168 with the Trustee's own participation in the fund, and no unfair discrimination shall be shown
 169 to any individual firefighter participating in the fund.
- 170 (k) (l) Duties and responsibilities. The sole and exclusive administration of, and the
 171 responsibilities for, the proper operation of the fund and for making effective the provisions
 172 of this division are vested in the Board; however, nothing herein shall empower a Board to

amend the provisions of a retirement plan without the approval of the Town. The Board shall keep in convenient form such data as shall be necessary for an actuarial valuation of the fund and for checking the actual experience of the fund. The duties and responsibilities of the Board shall include, but not necessarily be limited by, the following:

Sec. 2-143.1. Defined contribution component Share Plan.

(a) Purpose. Pursuant to the requirements of F.S. § 175.351(6), a defined contribution plan component is established in addition to the defined benefit component of this local law plan. Effective August 31, 2023, the defined contribution component ("Share Plan") will be funded exclusively from excess Chapter 175 premium tax revenues received from the state, and not from any additional employer contributions by the Town. The Share Plan shall be administered by the Board of Trustees. This defined contribution component is not currently funded. Once the plan is funded, the Board of Trustees has the authority to adopt rules regarding the operation of the defined contribution component of the local law plan.

(b) Allocation. Effective August 31, 2023, the excess 175 funds of \$167,928 shall be paid into the Share Plan for allocations to active members, vested terminated former members, and retirees. Allocations of the payment will be determined as set forth below in subsection (d). No share account allocations will be made to non-vested former members who terminated service prior to August 31, 2023. Should the Plan be eligible for additional premium tax allocations after the allocation received in the fall of 2023, then 100% of the premium tax revenue in excess of \$95,764 will also be available for distribution to the active members, vested terminated former members, and retirees as provided for in subsection (d) as soon as practicable after receipt.

(c) Vesting. All active members as of August 31, 2023, vested terminated former members and retirees are 100% vested in their share account balance.

(d) Equal Allocation. Share Plan benefits shall be equally allocated to active members, vested terminated former members, and retirees (including any joint annuitant or beneficiary receiving monthly benefits because of the death of a member or retiree) who are receiving a monthly benefit from the Plan by dividing the total number of active members and retirees into the allocation amount.

(e) Timing. Distributions will be made as soon as practicable after the allocations are determined.

(f) Death. Any active members vested terminated former members, and retirees (including any joint annuitant or beneficiary receiving monthly benefits because of the death of a member or retiree) who dies after August 31, 2023 and before the distribution date will have the benefits paid to their designated beneficiary or their estate.

(g) Rule-Making Authority. The Board of Trustees of the Plan shall be authorized to adopt any rules necessary for the administration of the Share Plan.

Sec. 2-149. Distribution of benefits.

(a) Notwithstanding any other provision of this plan to the contrary, a form of retirement income payable from this plan after the effective date of this division, shall be made in accordance with the requirements of Code Section 401(a)(9), including the minimum distribution incidental benefit requirements of Section 1.401(a)(9)-2 Code Section 401(a)(9)(G) to satisfy the following conditions:

(1) If the retirement income is payable before the member's death, the distribution shall commence to them not later than April 1 of the calendar year following the calendar year of the member's retirement date or April 1 of the calendar year following the calendar year in which the member attains age 73, provided they were not age 72 by December 31, 2022. The Plan will make all future required minimum distributions in compliance with the prevailing age restrictions and additional parameters set out in the Internal Revenue Code as amended from time to time. ~~the calendar year defined above;~~ and

- a. Shall be paid over the life of the member or over the lifetimes of the member and spouse or dependent, or,
- b. Shall be paid over the period extending not beyond the life expectancy of the member and spouse or dependent.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the member dies before his/her entire interest in the plan has been distributed, the remaining portion of such interest in the plan shall be distributed no less rapidly than under the form of distribution in effect at the time of the member's death.

(2) If the member's death occurs before the distribution of his/her interest in the plan has commenced, the member's entire interest in the plan shall be distributed within five years of the member's death, unless it is to be distributed in accordance with the following rules:

- a. The member's remaining interest in the plan is payable to his/her spouse or dependent;
- b. The remaining interest is to be distributed over the life of the spouse, issue or dependent or over a period not extending beyond the life expectancy of the spouse, or dependent; and
- c. Such distribution begins within one year of the member's death unless the member's spouse, issue or dependent shall receive the remaining interest in which case the distribution need not begin before the date on which the member would have attained age ~~70½~~ 73, provided the member had not already attained age 72 by December 31, 2022 and if the spouse, issue or dependent dies before

the distribution to the spouse, issue or dependent begins, this section shall be applied as if the spouse, issue or dependent were the plan member. Effective January 1, 2024, a surviving spouse may elect to be treated as the deceased employee for purposes of the required minimum distributions rules.

- (b) Should the participant be subject to an involuntary mandatory distribution of a nonforfeitable account balance that is under ~~\$5,001.00~~ \$7,001.00 but is more than \$1,000.00, then the assets shall be rolled over to an individual retirement plan of a designated trustee or issuer. If the present value of a vested benefit exceeds \$5,000.00, then the benefit may only be paid out with the participant's consent.

Section 3. **Codification.** This Ordinance shall be codified in accordance with the foregoing. It is the intention of the Town Commission that the provisions of this Ordinance shall become and be made part of the Town of Lauderdale-By-The-Sea Code of Ordinances; and that the sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be changed to “section”, “article” or such other appropriate word or phrase in order to accomplish such intentions.

Section 4. **Severability.** If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 5. **Conflicts.** All prior ordinances or resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. **Direction to Staff.** The Town Manager and the Town Attorney are directed to work with the Board of Trustees to wind up its affairs.

Section 7. **Effective Date.** This Ordinance shall be in full force and effect immediately upon its passage on second reading. except that the calculations of the Fund’s asset value shall be based on a retroactive date.

273 Passed on the first reading, this 30th day of April, 2024.

274 Passed and adopted on the second reading, this 14th day of May, 2024.

275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302


MAYOR EDMUND MALKOON

	First Reading	Second Reading
Mayor Malkoon	YES	YES
Vice-Mayor Strauss	YES	YES
Commissioner Pouloupoulos	YES	YES
Commissioner DeNapoli	YES	YES
Commissioner Graziano	YES	YES

ATTEST:


Katrina Adler, Town Clerk

APPROVED AS TO FORM:


Susan L. Trevarthen, Town Attorney