

## **CHAPTER 18-11 ALTERNATE FIREFIGHTERS RELIEF ASSOCIATION PLAN**

### **18-11-01. Alternate firefighters relief association plan.**

An alternate firefighters retirement and disability plan may be implemented by a firefighters relief association in lieu of the plan provided for in chapter 18-05. Before a relief association may implement the plan provided for in this chapter, a vote must be taken among the members of that relief association to determine whether the association will adopt the plan authorized by this chapter or retain the plan established in chapter 18-05. If the members of the association vote to adopt the plan authorized by this chapter, that plan does not become operative until the city government of the community in which the fire department is located has approved the plan.

### **18-11-02. Operation of association.**

The firefighters relief association must be organized, operated, and maintained in accordance with its articles of incorporation and its bylaws by firefighters who are members of the fire department. The relief association may regulate and manage its own affairs and for that purpose has such corporate powers as are necessary and useful, subject to the regulations and restrictions of the laws of this state pertaining to corporations.

### **18-11-03. Firefighter defined.**

As used in this chapter, the term "firefighter" means any person who is regularly entered on the payroll of the department serving on active duty and engaged in the hazards of firefighting. The term includes a probationary firefighter but does not include a substitute firefighter or any person employed irregularly by the fire department.

### **18-11-04. Accrued rights not destroyed by plan - Transfer of funds - Records.**

Any firefighter who is a member of the relief association established under chapter 18-05 may continue as a member of the relief association created by this chapter if the department of which the firefighter is a member has elected to come under the provisions of this chapter, and any member of the relief association established under chapter 18-05 receiving pensions or benefits or widow or children receiving pensions or benefits shall continue to receive such pensions or benefits as are prescribed and being paid under existing association bylaws and any firefighter who is a member of an association maintained under chapter 18-05, and who becomes eligible for full pension under that association's bylaws, may not be penalized by any conditions of this chapter. Whenever a department votes to come under the provisions of this chapter, any and all funds or accounts and all other records and property maintained by any relief association being discontinued must be transferred to the relief association being established under this chapter.

### **18-11-05. Application for membership.**

When any firefighter desires to become a member of the relief association provided by this chapter, that firefighter may apply in writing for membership to the association. The application must be made on a form supplied by the association and must be accompanied by the certificate of a physician as required by the association's bylaws. The application and certificate must be filed with the secretary of the association, with required fees, and thereafter the board of examiners of the association shall make an investigation and file its report concerning the application with the secretary.

### **18-11-06. Association may deny membership to mentally, physically unsound.**

The association may deny any applicant membership who is not physically and mentally sound. Additional requirements for entrance age, entrance fees, and annual dues may be prescribed in the bylaws of the association.

**18-11-07. Officers.**

The officers of the relief association include a president and a vice president, both of whom must be elected from among members of the board of trustees, a secretary-treasurer, a board of trustees, and a finance committee. These officers must be elected in the manner and for the terms prescribed in the association's articles of incorporation and bylaws. The board of trustees shall manage the affairs of the association. The secretary-treasurer shall furnish a corporate bond to the association for the faithful performance of the secretary-treasurer's duties in an amount to be determined by the association. The premium on the bond must be paid by the association. The president and secretary-treasurer may be paid a fee in an amount as determined by the association.

**18-11-08. Report of receipts and expenditures regarding state funds to be filed with state and city auditor.**

Repealed by S.L. 1991, ch. 222, § 22.

**18-11-09. Apportioning insurance tax.**

The amount received under section 18-04-05 by the city auditor in a city that has a paid fire department and a duly organized and incorporated firefighters relief association must be apportioned so that one-half must be placed in a fund to be disbursed by the governing body of the city in maintaining the fire department and one-half must be paid to the secretary-treasurer of the firefighters relief association. However, the governing body of the city may pay all or any portion of the amount normally disbursed in maintaining the fire department to the secretary-treasurer of the firefighters relief association if its financial condition makes that disposition necessary or advisable.

**18-11-10. Additional city firefighters relief fund contributions.**

A city that has adopted a plan under this chapter shall fund from revenues derived from its general fund levy authority a sufficient amount for firefighters relief association contributions to equal a minimum of eight percent of the current annual salary of a first-class firefighter as last determined and approved by the governing body of the city, for each active member of the fire department relief association.

**18-11-11. Levy proceeds.**

Each year in which the levy provided for in section 18-11-10 is made, immediately after April first and September first the proceeds of the levy, together with any interest and penalties collected thereon, must be forwarded by the county treasurer to the city auditor, and after certification by the city auditor, the city auditor shall pay over those amounts to the secretary-treasurer of the firefighters relief association.

**18-11-12. Contribution by firefighters.**

The officer in charge of the finances of the city shall deduct from the salary of each firefighter participating in the plan provided in this chapter an amount to be determined by the bylaws of the firefighters relief association but which may not be less than five percent of the monthly salary of a first-class firefighter, until those firefighters have completed thirty years' service with the department at which time the amount deducted may be decreased to a lesser amount to be prescribed by the bylaws of the relief association, but which may not be less than two and one-half percent of the monthly salary of a first-class firefighter. This amount must be paid to the secretary-treasurer of the relief association monthly and must be credited by the association to each firefighter individually in the state fund. All moneys paid into city pension funds prior to July 1, 1959, by firefighters participating in the plan provided for in this chapter must be paid to the secretary-treasurer of the association and credited by the association to the individual member in the state fund.

**18-11-13. Association state fund - Expenditures - Investment.**

The moneys received by the association must be kept in a trust fund known as the association state fund. The assets of the fund must be held in trust. No part of the assets of the fund may be used for or diverted to purposes other than for the exclusive benefit of the members, their spouses, or the members' beneficiaries prior to the satisfaction of all liabilities of the fund with respect to them, provided that the fund may be used to pay reasonable administration expenses of the association. The moneys received from the state, city, or employee's salary contribution must be deposited in the association state fund and may be expended only for the purposes set forth in section 18-11-14. The relief association shall manage and control all moneys that come into its possession. Moneys in the fund may be invested in bonds of the United States, bonds of the state of North Dakota or any other state, in certificates of indebtedness of the state of North Dakota, in any bonds or certificates of indebtedness of any political subdivision of the state of North Dakota which constitute the general obligations of the issuing tax authority, or the Bank of North Dakota or any other bank or savings and loan association which is insured by the United States. The board may also invest all or part of the moneys in the fund in other investments by selecting a funding agent or agents and establish an investment agreement contract. The contract must authorize the funding agent or agents to hold and invest those moneys for the board. The moneys invested must be placed for investment only with a firm or firms whose primary endeavor is money management and only after a trust agreement or contract has been executed.

**18-11-14. Disbursement of moneys from association state fund.**

The amounts paid into the relief association by the state, city, and employee's salary contribution and set aside in the association state fund must be appropriated and disbursed only for:

1. The payment of disability or service pensions to members of the association;
2. Pensions to widows and children or orphans of members or retired members;
3. The payment of the fees of the president and secretary-treasurer and the premiums on the bond of the secretary-treasurer or any other officer;
4. Funeral payments;
5. Cost of the state audit;
6. Essential postage, office supplies, and equipment;
7. Actuarial study;
8. Return of contributions to those qualified under section 18-11-20;
9. Investment contract fees;
10. Legal and accounting fees;
11. The indemnification of members of the board of trustees pursuant to section 18-11-18; and
12. Any other expenditures related to the general principles for which this chapter is established.

**18-11-15. Service pensions - Qualifications.**

1. A monthly service pension must be paid to members of the association with the following qualifications:

Years of service	Years of age at retirement	Percent of first-class firefighter's monthly salary on January first during year the pension is paid
20	50	40%
21	51	42%
22	52	44%
23	53	46%
24	54	48%
25	55	50%
26	56	52%
27	57	54%

28	58	56%
29	59	58%
30	60	60%

- Except for members participating in a firefighters relief association paying a monthly service pension to members of the association under subsection 4 or 5, all members must serve twenty years before they are eligible for a service pension. Members participating in a firefighters relief association paying a monthly service pension to members of the association under subsection 4 or 5 must serve ten years before they are eligible for a service pension. However, any member who has twenty years of service or ten years of service with a firefighters relief association paying a monthly service pension to members of the association under subsection 4 or 5, and who has not attained retirement age may retire from the department without forfeiting the right to a service pension. The association, in its bylaws, may establish a retirement age of not less than fifty years, at which time the service pension becomes payable. This retirement age may be established for all firefighters or classes of firefighters by birth dates. A person who has served twenty years or ten years with a firefighters relief association paying monthly service pensions to members of the association under subsection 4 or 5 and who is separated from service must, upon application, be placed on the deferred pension roll of the association, and after reaching retirement age, the association shall, upon application therefor, pay the service pension from the date the member attains eligibility at a rate of forty percent of the monthly salary of a first-class firefighter as determined on January first of the year in which the pension is paid. Any person making such application waives all other rights, claims, or demands against the association for any cause, except those causes that may have arisen from, or that may be attributable to, the person's service on the fire department.
- With the consent of the governing body of the city involved, and in substitution for the pension payment schedule provided in subsection 1, a firefighters relief association shall pay a monthly service pension to members of the association with the following qualifications, the following amounts:

Years of service	Years of age	Percent of first-class firefighter's monthly salary on January first during year the pension is paid
20	50	40%
21	51	42%
22	52	44%
23	53	46%
24	54	48%
25	55	50%
26	56	52%
27	57	54%
28	58	56%
29	59	58%
30	60	60%

- With the consent of the governing body of the city involved, and in substitution for the pension payment schedule provided in subsection 1 or 3, a firefighters relief association shall pay a monthly service pension to members of the association with the following qualifications, the following amounts:

Years of service	Years of age	Percent of first-class firefighter's monthly salary on January first during year the pension is paid
10	50	20%
11	50	22%
12	50	24%
13	50	26%

14	50	28%
15	50	30%
16	50	32%
17	50	34%
18	50	36%
19	50	38%
20	50	40%
21	51	42%
22	52	44%
23	53	46%
24	54	48%
25	55	50%
26	56	52%
27	57	54%
28	58	56%
29	59	58%
30	60	60%

5. With the consent of the governing body of the city involved, upon the advice of its actuary that the pension schedule can be implemented on an actuarially sound basis and notification to the legislative management's employee benefits programs committee, and in substitution for the pension payment schedule provided in subsection 1, 3, or 4, a firefighters relief association shall pay a monthly service pension to members of the association with the following qualifications, the following amount:

Years of service	Years of age	Percent of first-class firefighter's monthly salary on January first during year the pension is paid
10	50	20%
11	50	22%
12	50	24%
13	50	26%
14	50	28%
15	50	30%
16	50	32%
17	50	34%
18	50	36%
19	50	38%
20	50	40%
21	51	43%
22	52	46%
23	53	49%
24	54	52%
25	55	55%
26	56	58%
27	57	61%
28	58	64%
29	59	67%
30	60	70%

6. Benefits with respect to a member may not exceed the maximum benefits specified under section 415 of the Internal Revenue Code; 26 U.S.C. 415 for governmental plans. This section does not constitute an election under section 415(b)(10)(C) of the Internal Revenue Code; 26 U.S.C. 415(b)(10)(C).

#### **18-11-15.1. Purchase of legislative service credit.**

A member may, prior to retirement, purchase service credit for the time during each legislative session spent serving as a member of the legislative assembly while employed as a firefighter under this chapter. The member shall pay for this service credit an amount equal to the required member assessments and the employer contributions for that period of time plus interest as established by the board of trustees of the association. Service credit for legislative sessions prior to July 1, 1985, must be purchased before January 1, 1986. Service credit for each later legislative session must be purchased within one year after the adjournment of that legislative session.

#### **18-11-16. Disability pensions - Qualifications.**

Any member of the relief association who is unable, because of physical or mental disability, to perform the duties of a firefighter shall receive monthly a disability pension equal to fifty percent of the monthly salary of a first-class firefighter on January first of the year that the pension is being paid, unless that member is eligible for a larger service pension in which case the member shall draw an amount equal to the member's service pension. No member shall receive a disability pension unless the member is disabled for a period of at least seven consecutive days, at which time the member must be paid from the time of disability. However, a member may not receive a disability pension for the days the member was reimbursed by the city for accumulated sick leave.

#### **18-11-17. Pensions to surviving spouses and children of deceased members.**

When a service pensioner, disability pensioner, deferred pensioner, or an active member of a relief association dies leaving a surviving spouse to whom the deceased was married while an active member of the association, a child who was or children who were living while the deceased was on the payroll of the fire department or who were born within nine months after the decedent was withdrawn from the payroll of that fire department, or both such surviving spouse and such children, then such surviving spouse and children are entitled to a monthly pension as follows:

1. If the deceased leaves only a surviving spouse, a pension in the sum of forty percent of a first-class firefighter's monthly salary on January first during the year the pension is paid to the surviving spouse, during such spouse's natural life or until such spouse remarries.
2. If the deceased leaves both a surviving spouse and children, a monthly pension to the surviving spouse in the sum of forty percent of a first-class firefighter's monthly salary on January first during the year the pension is paid, for the rest of the surviving spouse's natural life or until such spouse remarries, and to the parent or guardian of any children under the age of eighteen years of age there must be paid monthly twenty percent of a first-class firefighter's monthly salary to be divided equally among such children.
3. If the deceased leaves only children, a monthly pension must be paid to the guardian of such child or children for such child or children in the sum of sixty percent of a first-class firefighter's monthly salary on January first during the year the pension is paid, to be divided equally among such children; provided, however, that if there is only one surviving child, that child shall receive a sum equal to forty percent of a first-class firefighter's monthly salary. All pensions to child or children shall terminate when the child or children reach the age of eighteen years.
4. As used in this section, the term "child" means:
  - a. The natural or adopted child of a firefighter; or
  - b. The natural or adopted child of a firefighter's surviving spouse or former spouse who is designated in writing by the firefighter as a child beneficiary under this section on a form supplied by the relief association.

**18-11-18. Reduction in benefits if funds not sufficient.**

If at any time the relief association's actuary certifies that the balance of the association's fund, together with future contributions by active members and contributions by the state, or the city, or both, and earnings thereon, will be inadequate to provide future prescribed benefits for active and inactive members and their beneficiaries, the board of trustees of the association, by majority vote, may decrease the benefits provided for in sections 18-11-15, 18-11-16, and 18-11-17 in accordance with actuarial recommendations to assure the solvency of the fund and subject to the following conditions:

1. The benefit for existing and future retirees and pension recipients may not be less than the benefit paid in the previous calendar year to an existing retiree of similar status.
2. The reduction must be based upon actuarial recommendations which take into consideration pension benefit standards for similarly funded plans.
3. When the balance of the association's state fund, together with future contributions by active members, and contributions by the state, or the city, or both, and earnings thereon, are sufficient to provide future prescribed benefits for active and inactive members and their beneficiaries, benefits shall again be paid as prescribed by sections 18-11-15, 18-11-16, and 18-11-17 if such action is recommended after actuarial study and the action is approved by a majority vote of the board of trustees of the association.

Decisions of the board of trustees, made in good faith and based upon actuarial recommendations with respect to benefit adjustments under this section, are final and supersede any previous actions or bylaws of the association. The members of the board of trustees must be indemnified from the funds of the association for any claims or expenses of defending claims arising from decisions made in good faith and based upon actuarial recommendations under this section.

**18-11-19. Fund based upon actuarial tables - Treatment of forfeitures.**

1. The pension fund must be based upon actuarial tables and the association is authorized to engage an actuary for studies of the plan when deemed necessary by the association.
2. As required by section 401(a)(8) of the Internal Revenue Code; 26 U.S.C. 401(a)(8), no part of any benefit forfeitures of a member resulting from the application of any provisions of this chapter may be applied to increase the benefits a member would otherwise receive.

**18-11-20. Members withdrawing from association - Members in military service.**

Each association shall adopt bylaws and regulations providing that in the event any member withdraws from employment in the department or ceases to be a member of the association, whether by death or otherwise, the member is entitled to a return of an amount which is not less than fifty percent nor more than one hundred percent of the member's contributions paid to the association without interest. Any benefits already received by that member must be deducted from the amount which would be returned to the member. Any applicant for a service pension who, subsequent to entry into the service of such fire department, has served in the military forces of the United States, may not have the period of that military service deducted in the computation of the period of service herein provided for, but that military service must be construed and counted as a part and portion of the member's active duty in that fire department. However, that credit for military service may not exceed five years. Any such member, who was a full-time regular firefighter at the time of the member's entry into the armed services and who seeks credit for that military service, shall, upon return to employment in the fire department, pay into the pension fund for each year of military service the same amount of money as the member would have contributed from the member's salary had the member been in the continuous employment of the department.

**18-11-21. Money received under pension not subject to legal process - Assignments.**

Payments made or to be made by a firefighters relief association to any member of the pension roll is not subject to judgment, garnishment, execution, or other legal process. Persons entitled to such payments do not have the right to assign the same, and the association may not recognize any assignment or pay over any sum which has been assigned.

**18-11-22. Examination of relief association records - Report of unauthorized spending to governor - Duty of governor.**

The books and accounts of the secretary-treasurer of each firefighters relief association receiving funds under the provisions of this chapter must be examined pursuant to section 54-10-14. If the audit report discloses that the money, or any part of it, has been or is being expended for unauthorized purposes, the state auditor shall report the facts to the governor. Thereupon, the governor shall direct the office of management and budget to refuse to issue any warrants for the benefit of the fire department or relief association of the municipality in which such association is organized until it appears to the state auditor, who shall report the fact to the governor, that all moneys wrongfully expended have been replaced. The governor may take such further action as the emergency may demand.

**18-11-23. Funeral benefits.**

The bylaws of the relief association shall provide for funeral benefits for its active or retired members not to exceed for each funeral twice the monthly salary of a first-class firefighter on January first of the year in which the member dies.

**18-11-24. Commencement of benefits.**

Notwithstanding any provision of this plan to the contrary, benefits payable under the plan are subject to the following:

1. A member's benefit may not commence later than April first of the calendar year following the latter of the calendar year in which the member attains age seventy and one-half or the calendar year in which the member terminates employment. In any case in which a lump sum death benefit is payable to a deceased member's beneficiary, the benefit must be paid no later than sixty days following the member's date of death.
2. The member's entire interest in the plan must be distributed over the life of the member or the lives of the member and a designated beneficiary, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and the designated beneficiary.
3. When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution prior to the member's death.
4. When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within five years of the member's death. The five-year payment rule does not apply to any portion of the member's interest that is payable to a surviving spouse payable over the life or life expectancy of the spouse and which begins no later than the date the member would have reached age seventy and one-half.
5. The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code; 26 U.S.C. 401(a)(9)(G).

**18-11-25. Vesting on plan termination.**

If the retirement plan established under this chapter is terminated, the accrued benefits of each member immediately become one hundred percent vested and nonforfeitable to the extent funded.

**18-11-26. Service pensions - Formulation of optional plan.**

With the consent of the governing body of the city involved, and in substitution for a pension payment schedule provided in section 18-11-15, a firefighters relief association may adopt a monthly service pension plan for members of the association as provided in this section.

1. Retirement date is the first day of the month next following the month in which the member attains the age of fifty-five years.
2. Retirement benefits for members reaching the retirement date equal an annual amount, payable monthly, comprised of a service benefit that equals two and fifty hundredths percent of final salary at the time of the member's retirement multiplied by the number of years of service employment up to a maximum of thirty years. For purposes of this subsection, final salary for a first-class firefighter is the final salary at the time of the member's retirement and for officers or members of higher rank is the average salary for the last five years of employment. As used in this subsection, salary does not include overtime or longevity payments.
3. Upon termination of employment after completing ten years of eligible employment but before the retirement date, a member is eligible to receive deferred vested retirement benefits payable commencing on the retirement date equal to one hundred percent of the member's accrued benefits.
4. Members participating in a firefighters relief association paying a monthly service pension to members of the association under this section must serve ten years before they are eligible for a service pension.
5. Members participating in a firefighters relief association who have been active members for at least one year, and who are not receiving salary or accumulated sick leave from the city and who are unable, because of physical or mental disability, to perform the duties of a firefighter, are eligible to receive a disability pension from the association. Disability benefits are not payable for a disability that occurs in a firefighter's first year of membership in the association. The disability pension amount is equal to a percentage of the monthly salary of a first-class firefighter on January thirty-first of the year that the pension is paid, unless the member is eligible for a larger service pension, in which case the member is entitled to draw an annual pension amount equal to the member's service pension. The percentage of the monthly salary of a first-class firefighter which is payable as a disability pension is dependent upon the member's years of service as follows:

Years of Completed Service	Maximum Percentage
0	0%
1	10%
2	20%
3	30%
4	40%
5	50%

Benefits may not be increased by reason of increases in salary of a first-class firefighter occurring after the initial calculation of pension benefits. The payments must remain fixed, except the benefit earned by years of service computation. If a member is receiving workforce safety and insurance benefits or other similar benefits, the sum of the member's disability pension payable from the association and amounts received in workforce safety and insurance benefits or other similar benefits may not be greater than one hundred percent of the monthly salary of the member at the time the member's disability began. However, when a member is no longer receiving workforce safety and insurance benefits or other similar benefits, the member's disability pension is payable in the amount as determined under this subsection without regard to workforce safety and insurance benefits or other similar benefits, including the greater of the amount of the disability pension or the service pension, if applicable.

6. Upon the recommendation of the association's actuary, a firefighters relief association may provide a thirteenth check to pensioners and beneficiaries under the plan. Payment of the thirteenth check is contingent upon portfolio performance as

determined by the association's actuary and may not be issued without approval of the actuary.

**18-11-27. Optional plan postretirement adjustments.**

Expired pursuant to S.L. 1999, ch. 212, § 4.

**18-11-28. Service, disability, and survivor pensions - Formulation of optional plan.**

With the consent of the governing body of the city involved, and in substitution for a pension payment schedule, disability pension provision, and survivor pension provision provided in sections 18-11-15, 18-11-16, 18-11-17, and 18-11-26, a firefighters relief association may adopt a monthly service pension plan, disability pension for members, and pensions for survivors of deceased members of the association as provided in this section.

1. Normal retirement date. Normal retirement date for a service pension is the first day of the month coincident with or next following the member's attainment of age fifty-five and the completion of ten years of service.
2. Service pensions. A member retiring on or after the member's retirement date is entitled to receive a monthly benefit beginning following the member's actual retirement and continuing for the member's lifetime as specified in subsection 7. The benefit amount is equal to two and fifty hundredths percent of average final compensation, times years of service, up to a maximum of seventy-five percent.
3. Termination benefits. If a member terminates the member's employment as a firefighter, either voluntarily or by discharge, and is not eligible for any other benefits, the member is entitled to the following:
  - a. Nonvested termination. If the member has less than ten years of credited service upon termination, the member is entitled to a refund of the member's accumulated contributions, payable in a single lump sum payment. Any benefits already received by the member from the association must be deducted from this payment. Upon return of the member's accumulated contributions, all of the member's rights and benefits under the plan are forfeited and terminated. Upon any re-employment, a firefighter may not receive credit for years or completed months of service for which the firefighter has withdrawn the firefighter's accumulated contributions from the plan, unless the firefighter repays into the plan the contributions the firefighter has withdrawn, with interest, as determined by the board, within ninety days after the firefighter's re-employment. A member may voluntarily leave the member's accumulated contributions in the plan for a period of five years after leaving the employ of the department pending the possibility of being re-employed as a firefighter, without losing credit for the time that the member was a member of the plan. If a member who is not vested is not re-employed as a firefighter with the department within five years, the member's accumulated contributions must be returned. During this period, the member is not entitled to any benefits under subsection 4 or 5.
  - b. Vested termination. If the member has ten or more years of service upon termination, the member is entitled to a monthly retirement benefit, determined in the same manner as a service pension, and based upon the member's service and the applicable pay in effect at the time of termination. The monthly benefit amount commences upon application by the member, at the member's normal retirement age. Alternatively, upon the member's request, the member's accumulated contributions must be returned to the member. Following payment under such election, neither the member nor the member's beneficiaries or estate is entitled to any future benefit payments from the fund.
4. Disability pensions.
  - a. Eligibility. An active member who becomes disabled before the member's normal retirement date is eligible to receive a disability pension.
  - b. The disability benefit is determined as follows:
    - (1) Benefit amount. The monthly benefit under the disability pension equals ten percent times the member's years of credited service, up to a maximum of

fifty percent times the monthly salary of a top paid firefighter for the year that the first benefit is paid, reduced as described in this paragraph. When a member eligible to receive a disability pension attains the member's normal retirement date, the member's monthly benefit equals the greater of the disability pension after adjustment for other income or the service pension. If the service pension is greater, the disability benefit must cease and the member must be treated in all respects as a service pensioner.

- (2) Adjusted for other income before age sixty-five. The disability pension amount must be reduced by one dollar for every "excess dollar". "Excess dollar" is the sum of earned income plus payments by the association, plus other insurance payments, less the salary of a top paid firefighter on January thirty-first of the year that the excess dollar amount is determined. This reduction must be redetermined each year. For purposes of this provision, earned income is all income reported or reportable for federal income tax purposes, excluding passive income, but including wages, salary, commissions, and similar pay from any gainful work, including partnership profits when applicable. For purposes of this provision, passive income is interest, rent, receipts, inheritance payments, private disability insurance, or other payments not related to wages. Other insurance payments received by a disabled member of the association for disability must be included in the excess dollar calculation without any reduction for taxes or other miscellaneous payments. For purposes of this provision, insurance includes disability benefits provided by the city or under workers' compensation or similar legislation, as well as primary and dependent disability benefits provided under social security. Any lump sum payment attributable to wages or insurance payments received by the member will be prorated over the period of time for which the payment is intended to provide benefits.
  - (3) Adjustment for other income ceases after age sixty-five. The "excess dollar" becomes zero and the association no longer has the right nor the responsibility to determine the excess dollar calculation for that disabled member of the association.
- c. Determination of benefit amount by board. Every disabled member of the association who disagrees with the findings of the association with regard to the benefit calculation may have the calculation determined by an independent third party in an arbitration process, the results of which are final. The association has the right and responsibility to all active members to determine the excess dollar calculation for each disabled member of the association. Any attempt to fraudulently receive benefits under this section by misrepresenting a physical condition or withholding information affecting benefit payments may be cause for dismissal from the association and immediate suspension of all benefit payments, current or future.
  - d. Application for benefit. All applications for pensions must be made on forms furnished by the association. Applicants shall answer all questions under oath and furnish such evidence as the board requests. Should any doubt arise in regard to the existence of disability, the matter must be referred to three physicians, one to be chosen by the applicant, one to be chosen by the board, and the two physicians so selected shall choose a third physician. In such case, the three physicians thus chosen shall examine the applicant and report to the board.
  - e. Suspension of disability pension pending proof of income. A disabled member shall provide proof of earned income to the association by April fifteenth each year. The proof provided must be in the form of earned income reported to the internal revenue service. If a disabled member is unable to provide proof of earned income by April fifteenth each year, the excess dollar amount is presumed sufficient to reduce the disability pension to zero dollars until the association

receives adequate information to accurately determine the excess dollar amount. The association shall pay a disabled member the disability pension amount that was suspended, up to twelve months, in one lump sum once earned income information is received and the association accurately determines the amount owed to the disabled member.

5. Optional forms of payment.
  - a. Normal form of benefit. For a member married at retirement, the normal form of payment of the service pension or deferred vested pension is a monthly payment for the member's lifetime, with fifty percent of this amount payable to the member's surviving spouse. For a member who is not married at retirement, the normal form of payment is a monthly payment for the member's lifetime, with no survivor payments, but actuarially adjusted as described in subdivision b as if the member were married to a spouse of the same age.
  - b. Optional forms of benefits. In place of the normal form of benefit provided in subdivision a, a member may elect to receive an actuarially equivalent benefit, based on the factors provided in subsection 8, in one of the following optional forms of payment:
    - (1) Life annuity. A monthly benefit payable for the member's lifetime only, with no survivor benefits payable.
    - (2) Certain and life annuity. A monthly benefit payable for the member's lifetime, but with one hundred twenty payments guaranteed. If the member dies before receiving one hundred twenty payments, monthly payments will be made to the member's designated beneficiary or estate until one hundred twenty payments have been paid.
    - (3) Joint and survivor annuity. A monthly benefit payable for the member's life, plus payments equal to seventy-five percent or one hundred percent of this benefit amount to the member's spouse following the member's death. Under this option, the surviving spouse is the member's spouse at the time of retirement. If the spouse dies before the member, no benefits will be paid to a survivor following the member's death.
  - c. Benefit selection. A member may select one of the optional forms of payment in subdivision b during the ninety days prior to the member's actual retirement, or upon attaining normal retirement age, on a form provided by the board. The selection may be changed at any time before cashing or depositing the first retirement payment. Consent of the member's spouse is not required to select or change an optional benefit form. A member may change the beneficiary designated under the certain and life payment form at any time prior to the member's death by filing a new selection form with the board. The beneficiary's consent is not required. If a member dies after having completed and filed a selection form with the board, but before actually retiring, the board shall direct that payments be made as if the member had retired on the member's date of death and had selected the optional payment indicated in the member's form. If a member dies after reaching normal retirement age without having completed a selection form, the board shall direct that payments be made as if the member had retired on the member's date of death, and had selected the joint and one hundred percent survivor optional payment form if the member was married on the member's date of death, or the certain and life form if the member was not married. If the member's spouse dies after the member has filed forms with the board selecting a joint and survivor benefit form, but before cashing or depositing the first retirement payment, and if the member does not file a revised selection form, the board shall direct that payments be made under subdivision a, providing for payments to a member who is not married at retirement.
6. Preretirement death benefits.
  - a. Surviving spouse benefits. If a vested active or vested deferred member dies before retirement, a pension in the sum of fifty percent of the amount of the disability pension, or if greater, fifty percent of the deferred vested pension, the

- member would have been entitled to on the date of death must be paid to the surviving spouse for the period of the spouse's natural life.
- b. Children's benefit. If a vested active or vested deferred member dies before retirement, a monthly benefit must be paid to the member's surviving children until age nineteen, or until completion of high school, whichever occurs first. The benefit amount to be shared among the children is equal to a percentage of the top paid firefighter's monthly salary on January thirty-first of the year the benefit is paid. The percentage is determined based on the number of children at the time of each benefit payment and whether the children's parent is alive. If the children's surviving parent is alive, the percentage is twenty percent. If no parent survives, and there is more than one child, the percentage is sixty percent. If there is no parent and only one child, the percentage is forty percent. Children who were living while the deceased was on the payroll of the department, or who were born within nine months after the decedent was withdrawn from the payroll of the department, are eligible for this benefit.
  - c. Minimum benefit. When an active member who is not yet vested dies, the member's beneficiaries designated on forms provided by the pension association or the member's estate, in case this form has not been filed with the association, or in case the designated beneficiaries do not exist or cannot be found within six months of the date of death, shall receive in addition to the funeral benefit, a sum equal to what the member has contributed to the association, less the amount of any benefits received by the active member or the member's beneficiaries or estate.
7. Commencement of benefits.
- a. Payment of benefits. Monthly benefit payments must be distributed on the last day of each month. For service or deferred pensions, the first payment must be prorated to equal the total monthly benefit earned, times the number of days in the month following actual retirement, divided by the total number of days in the month. Benefits payable to the surviving beneficiary of a retired member who had been receiving payments commence in the month following the retired member's death. Benefits payable to the surviving spouse or children of a member who dies before retirement must be similarly prorated based on the date of death of the active or deferred member. The final monthly benefit paid in the month a retired member dies, a surviving beneficiary dies, or a surviving beneficiary ceases to be eligible for benefits must be paid on the last day of the month of death or termination of eligibility and must equal a full monthly payment with no reduction or proration.
  - b. Mandatory commencement of benefits. Notwithstanding any provision in this section to the contrary, benefits payable under the plan are subject to the following:
    - (1) A member's benefits may not commence later than April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half and the calendar year in which the member terminates employment. If a lump sum death benefit is payable to a deceased member's beneficiary, the benefit must be paid no later than sixty days following the member's date of death.
    - (2) The member's entire interest in the plan must be distributed over the life of the member or the lives of the member and a designated beneficiary, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and designated beneficiary.
    - (3) When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution prior to the member's death.
    - (4) When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within five years of the member's death. The five-year payment rules do not apply to any portion of the

member's interest which is payable to a surviving spouse payable over the life or life expectancy of the spouse and which begins no later than the date the member would have reached age seventy and one-half.

(5) The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

8. Actuarial equivalence - optional forms of benefit. To determine the amount of the monthly payment under the life-only and certain and life optional forms permitted under subsection 5, multiply the normal monthly benefit amount by the following factors:

Life-only benefit: 1.043

Certain and life benefit: 1.030

To determine the amount of the monthly payment under the alternative joint and survivor optional forms permitted under subsection 5, multiply the normal monthly benefit amount by the following factors based on the difference in age between the member and the member's spouse, using the member's and spouse's ages as of the member's and spouse's most recent birthdays.

If the member is the same age as the spouse, use the following factors:

Joint and seventy-five percent survivor: 0.980

Joint and one hundred percent survivor: 0.960

If the spouse is not the same age as the member, use the following factors:

If the Spouse Is Younger:			If the Spouse Is Older:		
Age Difference	Joint and Survivor 75%	Joint and Survivor 100%	Age Difference	Joint and Survivor 75%	Joint and Survivor 100%
1	0.979	0.959	1	0.980	0.960
2	0.978	0.957	2	0.981	0.962
3	0.977	0.956	3	0.981	0.964
4	0.976	0.954	4	0.982	0.965
5	0.976	0.952	5	0.983	0.967
6	0.975	0.951	6	0.984	0.969
7	0.974	0.949	7	0.985	0.970
8	0.973	0.948	8	0.986	0.972
9	0.973	0.947	9	0.986	0.973
10	0.972	0.945	10	0.987	0.975
11	0.971	0.944	11	0.988	0.976
12	0.971	0.943	12	0.989	0.978
13	0.970	0.942	13	0.989	0.979
14	0.969	0.940	14	0.990	0.980
15	0.969	0.939	15	0.991	0.982