

**THE BOARD OF TRUSTEES OF THE  
DES PLAINES FIREFIGHTERS  
PENSION FUND**

**ADMINISTRATIVE RULES  
AND  
REGULATIONS**

**UPDATED & APPROVED  
NOVEMBER 12, 2019**

**BOARD OF TRUSTEES OF  
DES PLAINES FIREFIGHTERS PENSION FUND**

**ADMINISTRATIVE RULES**

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**BOARD OF TRUSTEES OF THE  
DES PLAINES FIREFIGHTERS' PENSION FUND**

**ADMINISTRATIVE RULES  
PART 1 - GENERAL PROVISIONS**

§101.1

Authority.

(a) Implementing Article 1 and Article 4 of the Illinois Pension Code, 40 ILCS, §5/1-101, et seq., and §5/4-101 et seq. The promulgation of these rules is authorized under §5/4-126 of the Illinois Pension Code.

§101.2

Purpose.

(a) The purpose of these rules is to establish uniform procedures for the implementation of Article 1 and Article 4 of the Illinois Pension Code by the Des Plaines Firefighters' Pension Board. These rules also are promulgated for the benefit of, and to provide guidance to, pension fund members, participants and beneficiaries, and are available for inspection at the office of the Pension Board.

§102.1

Definitions.

(a) As used in these rules, the terms set forth below shall have the following definitions and meanings, except when the context of the rule specifies and requires a different meaning.

- (1) Pension Board. "Pension Board" shall mean the trustees of the Des Plaines Firefighters' Pension Fund as established under 40 ILCS 5/4-121 of the Pension Code.
- (2) Pension Code. "Pension Code" means the provisions of Illinois law contained in Article 1, Article 4, and Article 22 of Chapter 40, Illinois Compiled Statutes, as currently promulgated.
- (3) Pension Fund. "Pension Fund" shall mean the Des Plaines Firefighters' Pension Fund established pursuant to Article 4 of the Illinois Pension Code for the benefit of firefighters employed by the Des Plaines Fire Department and their beneficiaries.
- (4) Municipality. "Municipality" shall mean the City of Des Plaines, Illinois.
- (5) Participant. "Participant" shall mean any employee or former employee of the Des Plaines Fire Department and any member of the Pension Fund who is receiving, or may be eligible to receive, benefits under Article 4 of the Pension Code. A participant must meet the definitional requirement of "Firefighter" under Article 4 of the Pension Code in order for the Pension Board to have jurisdiction to adjudicate a disability claim.

- (6) Beneficiary. "Beneficiary" shall mean any retired member of the Pension Fund, or any person designated by a participant or eligible to receive benefits under Article 4 of the Illinois Pension Code.
- (7) Firefighter. "Firefighter" shall mean any person who is appointed in accordance with Illinois law, to the Des Plaines Fire Department and is sworn and commissioned to perform the duties of a firefighter as outlined in 40 ILCS 5/4-106.
- (8) Fiduciary. A person is a "fiduciary" with respect to the Des Plaines Firefighters' Pension Fund to the extent that the person: (1) exercises any discretionary authority or discretionary control respecting management of the pension fund, or exercises any authority or control respecting management or disposition of its assets; (2) renders investment advice or renders advice on the selection of fiduciaries for a fee or other compensation, direct or indirect, with respect to any moneys or other property of the pension fund or retirement system, or has any authority or responsibility to do so; (3) has any discretionary authority or discretionary responsibility in the administration of the pension fund or retirement system or (4) is a "consultant" as defined by §1-101.5 of the Pension Code.
- (9) Investment Adviser. A person is an "investment adviser", "investment advisor", or "investment manager" with respect to a pension fund or retirement system established under this Code if the person: (1) is a fiduciary appointed by the Board of Trustees of the Pension Fund in accordance with §1-109.1; (2) has the power to manage, acquire, or dispose of any asset of the Pension Fund; (3) has acknowledged in writing that he or she is a fiduciary with respect to the Pension Fund; and (4) is at least one of the following: (i) registered as an investment adviser under the federal Investment Advisers Act of 1940 (15 U.S.C. 80b-1, et seq.); (ii) registered as an investment adviser under the Illinois Securities Law of 1953; (iii) a bank, as defined in the Investment Advisers Act of 1940; or (iv) an insurance company authorized to transact business in this State. §1-101.4.

## **PART 2 – ADMINISTRATION**

### §201.1

#### Board Creation.

(a) The City of Des Plaines Firefighters' Pension Board is created pursuant to §4-121 of the Illinois Pension Code. The makeup of the Pension Board is to be governed by the provisions of that section.

Cross-reference: 40 ILCS 5/4-121

### §201.2

#### Composition.

(a) The Firefighters' Pension Board, according to the law, shall be composed of five (5) members. The Pension Board shall be known as the "Board of Trustees of

the City of Des Plaines Firefighters' Pension Fund." Two members of the Pension Board shall be elected by active participants of the Firefighters' department. Two members of the Pension Board shall be appointed by the Mayor. The fifth member of the Pension Board shall be elected by and from the beneficiaries of legal age.  
Cross-reference: 40 ILCS 5/4-121

§202.1

Terms of Office.

(a) Each trustee of the Firefighters' Pension Board shall serve a three year term of office.

(1) The term of office of any appointed trustee may extend beyond the three year term if a successor has not been appointed and qualified.

(2) The term of office for all board members shall begin the second Tuesday in May after elections and municipal appointments have taken place.

(3) The term of office of any elected trustee may extend beyond the three year term if a successor has not been elected in accordance with the provisions of the Pension Code.

Cross-reference: 40 ILCS 5/4-121

§202.2

Staggering of Terms.

(a) It shall be the policy of the Pension Board that the terms of office for active participant trustees and municipal appointee terms are to be staggered. The fact that terms may not be staggered during a given year due to unforeseen circumstances shall bear no impact on any trustee's ability to continue acting in his/her formal capacity as a Board member.

§203.1

Death, Resignation or Inability to Perform.

(a) Upon the death, resignation or the inability to perform of any elected Pension Board trustee, his or her successor shall be elected for the unexpired term at a special election. A special election shall follow the same procedure as used in the regular election.

(b) Upon the death, resignation, or the inability to perform of any appointed Pension Board trustee, the Pension Board shall notify the City Mayor/Board President and request that a successor be appointed to fill the unexpired term of the trustee who is no longer able to perform his or her duties.

§204.1

Compensation.

(a) Pension Board trustees are not entitled to receive any compensation for services performed as trustees.

§204.2

Reimbursement of Expenses.

(a) Pension Board trustees are entitled to be reimbursed for all reasonable expenses incurred on behalf of the Firefighters' Pension Board in furtherance of Pension Board business.

(b) Pension Board trustees are entitled to be reimbursed for reasonable expenses in attending any conferences, seminars or training programs.

(c) The following expenses incurred by Trustees in their capacity as a Pension

Board Trustees, on Pension Board authorized business shall be subject to reimbursement;

- (1) Travel – there shall be a reimbursement rate consistent with current I.R.S. practice as adopted by the municipality when Trustees use personal vehicles for Pension Board business, excluding travel to Pension Board meetings. Travel requiring air travel will be reimbursed at a coach fare.
  - (2) Meals – Trustees shall be entitled to reimbursement for the reasonable costs of meals while attending training conferences, seminars or other authorized Pension Board business. Trustees shall be entitled to reimbursement for the following meals; while on Pension Board Business:
    - a) breakfast
    - b) lunch
    - c) dinner
  - (3) Lodging – Trustees shall be entitled to reimbursement for lodging at a standard room rate.
- (e) Trustees shall not be entitled to reimbursement for any expenses incurred for spouses. Trustees shall not be entitled to reimbursement for lost wages or compensation.
- (f) In order to obtain such reimbursement, the trustee must submit written documentation evidencing the expense incurred and payment of the expense. The bill will then be presented at the next regularly scheduled meeting of the Pension Board and the trustees will vote on whether or not to approve payment of the expense. The approval or denial of any request for reimbursement made by a trustee, will be recorded in the minutes of the meeting at which the reimbursement is requested. In certain cases, with prior approval of a majority of the Pension Board, held at a regular or special Board meeting, the Pension Board may authorize pre-payment of air fare, meals and lodging expenses.

#### §205.1

##### Meetings.

- (a) The Pension Board shall hold regular meetings in February, May, August and November.
- (b) The Pension Board may agree to hold more frequent meetings if deemed necessary in order to consider pending matters. Agendas and Notices of all meetings shall be posted in a conspicuous location on the Board web site and/or at the municipal administration building.

#### §205.2

##### Emergency Meetings.

- (a) The President of the Firefighters' Pension Board may call special meetings in emergent or unforeseen situations, upon reasonable notice to all of the Pension Board's trustees. The reasons for such emergency meetings shall include but not be limited to: (1) discussion/possible action concerning pending or threatened litigation; (2) discussion/possible action concerning investment activity; (3) discussion/possible action concerning pension fund applications; (4) discussion/possible action concerning participant/beneficiary requests; (5) any other situation requiring immediate Board action.
- (b) Any Pension Board trustee may request an emergency meeting by serving

written notice upon all other trustees at least twenty four (24) hours prior to the date of the emergency meeting.

§205.3

Location of Meetings.

(a) Unless otherwise specified, all meetings of the Des Plaines Firefighters' Pension Board will be held at the offices of the Des Plaines City Hall, 1420 Miner Street, Room 101, Des Plaines, Illinois.

§205.4

Time of Meetings.

(a) Unless otherwise specified all regularly scheduled meetings and all emergency meetings shall begin at 8:30 AM.

§205.5

Notice of Meetings. (a) Notice of all regularly scheduled meetings shall be posted in accordance with the provisions of the Open Meetings Act.

(b) Notice of any emergency meetings will be posted as far in advance of the meeting as is reasonable under the circumstances.

Cross-reference: 5 ILCS 5/120-1

§205.6

Open Meetings.

(a) All Pension Board meetings are open to the public with the exception of those matters that, in the Pension Board's opinion are to be conducted in executive or closed session.

(b) All meetings shall allow public comment. Public comment shall be limited to three minutes per person.

Cross-reference: 5 ILCS 120/2(a)

§205.7

Executive Sessions.

(a) The President or presiding official of the Pension Board may close any meeting and adjourn into executive session in accordance with an applicable provision under the Open Meetings Act. The following are examples of topics that may be discussed in executive session:

- (1) discussions concerning the appointment, employment or the termination of a Pension Board employee;
- (2) discussions concerning the settlement of claims against the Pension Board;
- (3) discussions to consider pending or threatened litigation;
- (4) deliberations of the Pension Board during administrative hearings to review evidence and/or testimony before the Pension Board concerning any matter pending before it.

No final action or vote will be taken by the Pension Board in executive session. A verbatim recordation will be kept of all matters heard in executive session.

§205.8

Order of Business.

(a) All meetings of the Firefighters' Pension Board shall be conducted under the following agenda or an agenda set forth by the Pension Board's secretary:

1. Call to Order
2. Roll Call

3. Public Comment
4. Approval of Minutes
5. Accountant's Report
6. Investment Report
7. Communications/Reports
8. Applications for Membership/Withdrawals from the Fund
9. Applications for Disability/Retirement Benefits
10. Old Business
11. New Business
12. Trustee Training Updates
13. Attorney's Report
14. Closed Session
15. Adjournment

(b) The rules of procedure to be followed at such meetings will be Robert's Rules of Order, unless Robert's Rules of Order conflict with the Pension Code or the Rules of the Firefighters' Pension Board. Strict compliance with Robert's Rules of Order shall not be required.

§205.9

Minutes.

(a) Minutes of all Pension Board meetings shall be kept in accordance with the recordkeeping provisions set forth in Part 4 of these Rules.

§205.10

Quorum.

(a) A quorum of the Firefighters' Pension Board shall consist of at least three trustees. The approval of any and all Pension Board business shall require the affirmative vote of at least three (3) trustees at any given meeting.

(b) The Pension Board shall only be required to maintain a quorum (three member board) during any administrative proceeding before it, including during regular meetings, special meetings, and administrative hearings. So long as a quorum exists during any meeting or proceeding the Pension Board shall have the discretion and right to proceed on any matter before it.

§205.11

Electronic Attendance at Board Meeting

(a) In order for a Trustee to appear electronically there must be a quorum of trustees physically present at an open or closed meeting.

(b) Minutes of all meetings shall reflect if a Trustee was physically present or present by means of a video or audio conference. Lack of such specification shall be deemed to indicate that the Trustee in question was physically present.

(c) As provided herein, Trustees who are not physically present may participate in open or closed meetings by means of a video or audio conference. Such electronic participation may occur only if the Trustee is prevented from physically attending by: (1) personal illness or disability; (2) employment purposes; (3) business of the public body; (4) a family emergency; or (5) another emergency. If a Trustee wishes to attend a meeting electronically, the Trustee must notify the Board President as soon as practicably possible. Notification may be made in person, in writing, by e-mail or by phone.

(d) Upon receipt of notice of intent to participate electronically, the Board President or Secretary shall make appropriate arrangements for the Trustee to appear telephonically.

(e) At the meeting, the Firefighters' Pension Board shall vote on whether to permit the Trustee to participate electronically.

(f) When a Trustee is permitted to appear electronically, he or she may fully participate in all matters before the Board whether in open or closed session.

§205.12 Fraud. Any person, member, trustee, or employee of the Board who knowingly makes any false statement or falsifies or permits to be falsified any record of a Pension Fund in any attempt to defraud such Fund as a result of such act, or intentionally or knowingly defrauds the Fund in any manner, is guilty of a Class A misdemeanor.

Cross-references: 40 ILCS 5/1-135

§205.13 Indemnification. The Pension Board shall indemnify and protect its Trustees against all damage claims and suits, including defense thereof, when damages are sought for negligent or wrongful acts alleged to have been committed in the scope of their duties. Trustees shall not be indemnified for willful or wanton misconduct or for gross negligence.

Cross-reference: 40 ILCS 5/1-107.

§205.14 Fiduciary Liability Insurance. The Pension Board shall maintain and annually review and renew a fiduciary liability insurance policy.

### **PART 3 - PENSION BOARD OFFICERS AND EMPLOYEES**

§301.1 Officers.

(a) The officers of the Firefighters' Pension Board shall be the president and secretary. The Pension Board may elect other officers as deemed necessary.

§301.2 Employees/Consultants.

(a) The Pension Board may, in its discretion, hire employees, experts, vendors, independent contractors or consultants to carry out certain duties and functions of the Pension Board. The duties of any such employees and compensation will be specified in the minutes of the Pension Board meeting establishing the employment relationship. The Board may delegate the hiring of any experts.

(b) No pension beneficiary shall be eligible for employment by the Pension Board.

§301.3 General Powers and Duties of the Pension Board. The Pension Board shall have the following powers and duties in addition to the other powers granted under the Illinois Pension Code:

(a) To make necessary rules and regulations in conformity with the provisions of the Pension Code. These rules and regulations may be amended from time to time by a majority vote of the Board. For good cause shown, strict compliance with the

Rules may be waived by the Board. A copy of the Board's administrative rules and regulations shall be filed with the Illinois Department of Insurance. Notice as to rule changes shall either be sent to all pension participants and beneficiaries or be published in the Board's subsequent agendas/minutes. Under either situation the notice as to rule changes shall provide information concerning how to request a copy of the same.

(b) To provide for payment from the Fund all necessary expenses as approved by the Board. The Board may pre-approve or "ok to pay" routine bills and invoices that are received between pension board meetings so long as the Board formally votes to retro-actively approve such disbursements.

(c) To issue subpoenas for records or subpoenas compelling witnesses to attend and testify before the Board upon all matters connected with the administration of the Pension Fund. Subpoenas shall be issued in the manner provided by law for the taking of testimony in Circuit Court. The Pension Board's legal counsel has the authority to issue and execute subpoenas on the Board's behalf. The Pension Board may seek a waiver of the payment of the statutory mileage fee associated with its issuance of a subpoena for testimony or records.

(d) To collect, pay, contest, compromise, settle or abandon claims of or against the Fund.

(e) To appoint or hire a recording secretary, attorney, auditor, accountant, actuary, and/or investment advisors and consultants and to pay reasonable compensation to such appointees.

#### §301.4 Duties of the President.

(a) The President shall preside over all functions and duties of the Pension Board, unless such functions or duties are specifically delegated to other trustees, employees or agents of the Pension Board. The President shall preside over all meetings of the Pension Board and execute all orders, certificates and other documents necessary to carry out the affairs and activities of the Pension Board.

#### §301.5 Duties of the Secretary.

(a) The Secretary shall perform the following duties and functions: (1) be the custodian of all Pension Board records, minutes of the meetings, and documentation; (2) record and transcribe the minutes of all regular, special and emergency meetings of the Pension Board; (3) execute any and all documents on behalf of the Pension Board; (4) certify the authenticity of all resolutions or documents of the Pension Board; (5) perform all other duties necessary to the administration of the Pension Board, at the direction of the President or the Pension Board. The Pension Board is authorized to employ an Assistant Secretary to perform any of the above duties.

#### §301.6 Duties of The Treasurer.

(a) The Treasurer of the municipality shall be the treasurer of the Pension Board and shall perform the following duties and functions; (1) act as custodian of the Fund's assets and shall secure and safely keep the funds assets, subject to the control

and direction of the Pension Board; (2) keep all books and accounts concerning the fund in such a manner as may be prescribed by the Pension Board.

#### **PART 4 - RECORDKEEPING AND REPORTING REQUIREMENTS**

§401.1

##### **Minutes of Meetings.**

(a) The Secretary, Assistant Secretary, or recording secretary as appointed by the Board, shall keep and maintain minutes of all public meetings and separate verbatim minutes of matters heard in executive session.

§401.2

##### **Closed Session Minutes and Recordation Policy**

(a) A verbatim record shall be kept of all meetings or portions of meetings of the pension board closed to the public. The verbatim record shall be in the form of audio, video or written transcript. In addition, minutes shall be kept of all closed meetings in the manner prescribed under the Open Meetings Act and shall be approved by the Pension Board at a subsequent meeting.

(b) From their inception all closed or executive session minutes are to be considered exempt from disclosure pursuant to the Illinois Freedom of Information Act. Minutes of all executive session meetings will be reviewed by the Pension Board on a semi-annual basis to determine if the matters contained in those minutes can now be disclosed to the public.

(c) In accordance with applicable provisions under the Open Meetings Act, beginning on or after eighteen (18) months from the date a closed session meeting minute was approved, the Board may consider whether it wishes to destroy the corresponding verbatim audio or video recording of the closed session. Such consideration must be made during a Board meeting and must be placed as a meeting agenda item. Destruction of a verbatim recordation may take place only after an affirmative vote and must be memorialized in the Board's meeting minute.

§401.3

##### **Correspondence File.**

(a) The Pension Board shall maintain a general correspondence file with copies of all correspondence sent or received by the Pension Board, including contracts entered into by the Board with legal counsel, investment managers, and other persons employed or retained by the Pension Board.

§401.4

##### **Investment File.**

(a) The Pension Board shall maintain on an annual basis, an investment file containing all documentation and correspondence relating to investment activity each year.

§401.5

##### **Litigation Files.**

(a) The Pension Board shall maintain a separate file as to all matters in litigation. If the litigation involves the denial of a retirement pension or a disability pension, the litigation file may be maintained as a part of the applicant's personal file.

(b) All matters contained in the litigation file shall be considered private and not

disclosable to the public.

§401.6 Annual List of Payments to the Municipality.

(a) The Pension Board shall submit to the Board of Trustees of the municipality an annual report of pension fund payments to be made, which report shall state: (1) the persons entitled to payments; (2) the amount of such payments; and, (3) the reasons for such payments. This report shall also include all items of income accrued to the Pension Fund during the fiscal year.

(b) The report shall be submitted at the close of the municipality's fiscal year.

(c) The report shall be signed by the President and Secretary of the Pension Board and certified or attested to under oath.

§401.7 Annual Report by the Pension Board.

(a) The Pension Board shall also submit an annual report to the municipality as to the general condition of the Pension Fund. This report shall be made prior to the municipality's meeting held for the levying of taxes for the year for which the report is made.

(b) The annual report shall contain the following information:

(1) The assets of the Pension Fund;

(2) The estimated receipts during the next succeeding calendar year from the deductions of the salaries of Firefighters and all other sources;

(3) The estimated amount required during the next calendar year to pay all pensions and other obligations of the Pension Fund and to meet the annual requirements of the Pension Fund for the municipality's portion of the financing as set forth in §5/4-118 of the Pension Code.

§401.8 Annual Report of the Municipality's Treasurer.

(a) Under the Pension Code the treasurer of the municipality is required to provide a sworn statement to the Pension Board that is to contain the following information:

(1) All monies received and paid out by the treasurer on behalf of the Pension Fund;

(2) The amounts presently held on behalf of and owing to the Pension Fund.

(b) The annual treasurer's report may be based upon information provided by the Pension Fund's accountants.

§401.9 Report for Tax Levy

(a) The Pension Board shall report to the Mayor for the municipality on the condition of the pension fund at the end of its most recently completed fiscal year. The report shall be made prior to the council or board meeting held for appropriating and levying taxes for the year for which the report is made. The report shall be prepared by an enrolled actuary retained by the Pension Board or an accepted actuarial report obtained by the City of Des Plaines or Illinois Department of Insurance.

§402.1 Statements of Economic Interest.

(a) Each Trustee of the Firefighters' Pension Board shall be required to file a

Statement of Economic Interest as set out in 5 ILCS 420/4A-103.  
Cross-reference: 5 ILCS 420/4A-101(o).

§402.2

Duty of the Municipality to Furnish Information.

(a) Upon the demand of the Pension Board, any official of the municipality shall furnish a statement to the Pension Board relating to the municipality's method of financing the Pension Fund or the handling of Pension Fund assets. All books and records of that municipal official shall be produced at any time for examination and inspection by the Board.

(b) In the event that treasurer, or any other municipal official refuses to produce such books and records, the Pension Board may exercise its subpoena power pursuant to §4-123.1 of the Pension Code in order to require the production of such books, records or testimony. The subpoena may require the treasurer or other municipal official to appear at the regularly scheduled meeting of the Pension Board, or at any specially scheduled meeting called by the Pension Board.

§403.1

Recordkeeping as to Firefighters' Department Participants.

(a) A file shall be maintained on each active Firefighter who is a participant and member of the Firefighters' Pension Fund. Each active member's file should contain the following documentation:

- (1) Application for Membership;
- (2) Any medical reports or documentation as to the applicant's physical or mental fitness to perform the duties of a Firefighter;
- (3) Pension Board's letter of acceptance into the Firefighters' Pension Fund;
- (4) Copy of participant's birth certificate;
- (5) Copy of participant's marriage certificate;
- (6) Copies of documentation evidencing dissolutions of marriage;
- (7) Certified copies of any QILDROs, QILDRO Consents and QILDRO Calculation Orders
- (8) Copy of documentation evidencing military service, obtained after admission into the Pension Fund;
- (9) Birth certificates for all dependents;
- (10) A record of the participant's contributions and service credits on an annual basis;
- (11) Yearly creditable service reports received from the municipality or Firefighters' department (if any);
- (12) Copies of any disability pension applications that were withdrawn or denied by the Pension Board;
- (13) Copies of any orders and decisions of the Pension Board denying a disability pension or a retirement pension filed by the participant;
- (14) All correspondence to and from the participants.

(b) Each participant shall be required to complete a Participant Information Form. In the event that the participant or the municipality fails or refuses to supply any of the documentation set forth above, the file shall contain a memorandum to that effect.

§403.2

Recordkeeping as to Retirees.

(a) A file shall be maintained on all retired members of the Pension Fund. Each retired member's file should contain the following documentation:

- (1) Application for retirement benefits;
- (2) Documentation as to Benefit Computations:
  - (A) Date of Birth;
  - (B) Date of Appointment;
  - (C) Date of Retirement;
  - (D) Creditable Service Records;
  - (E) Applicable Pension Rates;
  - (F) Salary attached to the rank held by the pension applicant;
  - (G) All documents previously maintained pursuant to §403.1 above.

§403.3

Recordkeeping as to Disability Pension Beneficiaries.

(a) A file shall be maintained on all disability pension applicants who were granted either a duty or non-duty disability. Each file should contain the following documentation:

- (1) Application for the disability pension;
- (2) Physician's statements and medical reports relating to the disability;
- (3) Transcript of Proceedings;
- (4) Order and Decision of the Pension Board;
- (5) Certificate of Payment;
- (6) Documentation as to benefit computation;
- (7) Annual physician's report as to continuing disability;
- (8) All documents previously maintained pursuant to §403.1 above.

§403.4

Recordkeeping as to Surviving Spouses.

(a) A file shall be maintained on each beneficiary who is a surviving spouse of any participant receiving benefits. Each file should contain the following documentation:

- (1) Application for surviving spouse benefits;
- (2) Marriage Certificate;
- (3) Death Certificate of Spouse;
- (4) Spouse's Birth Certificate;
- (5) Documentation relating to benefit computation;
- (6) All documents previously maintained pursuant to §403.1 above.

§403.5

Recordkeeping as to Children's Benefits.

(a) A file shall be maintained on each beneficiary who is the child of a Firefighter receiving benefits. Each file should contain the following documentation:

- (1) Application for child's benefit;
- (2) Birth certificate of each child;
- (3) Adoption certificate, if applicable;
- (4) Details of benefit computation;
- (5) All documents previously maintained pursuant to §403.1 above.

§403.6

Recordkeeping as to Separated Members.

(a) A file shall be maintained on each participant and Pension Fund member who withdraws from the Pension Fund. Each file should contain the following information:

- (1) Written application withdrawing from the Pension Fund and requesting a refund of contributions;
- (2) Service date documentation;
- (3) Documentation as to how refund was computed;
- (4) Copy of canceled check or other documentation indicating payment of refund;
- (5) All documents previously maintained pursuant to §403.1 above.

§404.1

Affidavits of Continued Eligibility.

(a) Each pension beneficiary shall on an annual basis, regardless of physical location or residence, submit a notarized affidavit of continued eligibility to receive pension payments.

(b) Each pension beneficiary shall have thirty (30) days from the date the affidavit is served/mailed to complete, have notarized and return the affidavit to the Pension Board. A pension beneficiary's failure to properly execute and timely submit/return his or her affidavit within the thirty (30) day timeline delineated on the affidavit shall result in the temporary suspension of the beneficiary's direct deposit benefit payment. The beneficiary shall instead be required to retrieve his or her monthly benefit payment from the Pension Fund's office or accountant's office as means of physically verifying the individual's existence and submitting his or her affidavit to the Board. The suspension of any beneficiary's electronic pension payment shall be made in writing and sent certified first class mail to the individual's last known address.

(b) All disabled pensioners under age fifty who are required to undergo an annual disability re-evaluation shall be required to submit a notarized affidavit of continued disability eligibility. The affidavit shall include requests for updated medical treatment and employment information. Failure to submit a timely disability affidavit shall result in the temporary suspension of the disability beneficiary's direct deposit benefit payment. The beneficiary shall instead be required to retrieve his or her monthly benefit payment from the Pension Fund's office or accountant's office as means of physically verifying the individual's existence and submitting his or her affidavit to the Board.

(c) A pension recipient's failure to properly provide or fully disclose information requested on an affidavit of eligibility may be considered by the Pension Board during an administrative proceeding when rendering credibility findings.

§405.1

Subpoenas.

(a) The Pension Board has the power to subpoena witnesses or documentation. The Pension Board shall retain a copy of each subpoena that is issued. The Pension Board also may issue a check with each subpoena for mileage or witness fees as provided by law on any subpoena that the Pension Board initiates on its own behalf.

(b) At the request of any applicant in a disability or retirement pension proceeding, the Pension Board will execute and issue subpoenas. The subpoena shall be prepared on a form acceptable to the Pension Board. The Pension Board will not be responsible for the payment of any mileage or witness fees as required under the law. Such fees shall be the responsibility of the person requesting the subpoena. The person or entity requesting issuance of a subpoena also shall be responsible for service of the subpoena on the person/entity affected.

(c) The Pension Board's legal counsel has the authority to issue and execute subpoenas on the Board's behalf.

Cross-reference: 40 ILCS 3-136

#### §406.1

##### Confidentiality.

(a) Unless permitted under the Illinois Freedom of Information Act (FOIA) or subject to disclosure under other state or federal law, all Pension Board records shall be considered confidential and are not subject to disclosure to the general public.

(b) Any Pension Fund participant or beneficiary may review his or her own file upon written request.

(c) As a separate and distinct legal entity, any and all requests for information made by a municipality shall be in the form of and be treated as a formal FOIA request.

(d) Any records that are subject to FOIA shall be disclosable only to the extent provided under that Act.

(e) In accordance with the exemptions provided under the Freedom of Information Act, IME reports, FCE reports and any other medical/treatment records constitute personal and private information and shall be exempt from disclosure unless waived in writing by the party affected.

(f) Upon written request or verbal request on the record at hearing, and to the extent allowable under the law, records entered as exhibits during the course of any administrative proceedings may be kept under seal and shall be exempt from disclosure to the public up through the culmination, of the administrative proceeding before the Pension Board.

(g) Any and all communications amongst the Pension Board and its legal counsel constitute confidential communications, are subject to the attorney client privilege and may therefore be considered exempt from disclosure under the Freedom of Information Act.

Cross-reference: 5 ILCS 140/7, 140/7.5

#### §406.2

##### Freedom of Information Act Requests.

(a) Freedom of Information Act (FOIA) requests and responses shall be made/provided in accordance with the statutes contained under the Illinois Freedom of Information Act.

(b) Any requests for information or requests to review documentation made pursuant to the Freedom of Information Act shall be submitted to or filed with the Pension Board's designated FOIA Officer. A request shall not be considered to have been received by the Pension Board unless and until the request has been received by the Pension Board's FOIA Officer. The time for responding to a FOIA

request shall begin when the Pension Board's FOIA Officer receives a FOIA request.

(c) A copy of the request for information under FOIA shall be sent to the Pension Board's legal counsel for review. The Pension Board's legal counsel may respond to any FOIA request on behalf of the Pension Board.

(d) In accordance with section 140/4 of the Freedom of Information Act, Article 4 of the Illinois Pension Code shall constitute a description of the Pension Board's plan summary and purpose, and these Administrative Rules and Regulations shall constitute a description of the plan's operations, functional subdivisions, and a description of how FOIA requests are to be submitted/directed.

(e) In accordance with section 140/5 of the Freedom of Information Act, Part 4 of these Administrative Rules and Regulations (Recordkeeping and Reporting Requirements) shall constitute the list of current types or categories of records under its control.

(f) All Pension Fund records shall be presumed to be kept and maintained in paper format for FOIA response purposes. Should records responsive to a FOIA request be maintained in both paper and electronic format, the Pension Board shall have the discretion to send the entire response in paper format or electronic format, whichever is deemed to be most efficient and economical.

Cross-reference: 5 ILCS 140/3.5; 140/4; 140/5

## **PART 5 - ELECTION OF PENSION BOARD TRUSTEES**

§501.1

### **Election of Board Trustees.**

(a) The election of the two Pension Board trustees chosen by the active participants and the Pension Board trustee chosen by the beneficiaries shall be held every three years. The election shall be held on the 3rd Monday in April of each election year.

§501.2

### **Term of Office.**

(a) The term of office of each elected Pension Board trustee shall be three years.

§501.3

### **General Election Procedure.**

(a) All elections will be supervised by the two trustees who are appointed by the Municipality and/or the Pension Board's accounting firm.

(b) All contested elections will be conducted under the Australian ballot system, which means voting by secret ballot.

(c) All elections will be conducted by mail, electronic mail or online. However, the Pension Board, by a majority vote of the trustees, may hold elections in any other manner that is consistent with the Pension Code. Elections that are not conducted by mail will be held at a convenient place within the municipality as determined by a majority vote of the trustees.

§502.1

### **Eligibility to Serve as a Trustee.**

(a) All active firefighters who are members and participants of the Pension Fund are eligible to run for the office of Pension Board trustee representing the active

Pension Fund participants. An active participant trustee who retires during his or her term may continue to serve the Pension Board throughout the remainder of that term.

(b) All beneficiaries of legal age are eligible to run for the office of Pension Board trustee representing the beneficiary members. A firefighter receiving a disability pension shall be considered a retired firefighter.

§502.2 Nomination and Voting Rights.

(a) For each nomination and for any election, no person shall be entitled to cast more than one ballot.

(b) At any election, each active participant shall be entitled to nominate two (2) persons for the office of pension board trustee representing the active members.

(c) At any election, each beneficiary of legal voting age shall be entitled to nominate one (1) person for the office of pension board trustee on behalf of the beneficiary members.

(d) A pension board participant or beneficiary may nominate himself or herself for the office of pension board trustee.

§502.3 Mailing Lists.

(a) The Pension Board shall maintain a mailing list of all active participants and all beneficiaries of legal voting age, with current addresses, and e-mail addresses which will be utilized in the nomination and election of pension board trustees.

§503.1 Nomination Procedure.

(a) During any election year, the Pension Board shall mail and/or email a Notice of Election and Request for Nominations to each participant and beneficiary who is eligible to vote. The notice shall advise each eligible voter of the upcoming election and instruct each active participant that he or she may nominate two candidates for trustee;

(b) The notice shall specify that all nominations must be post-marked or received by the Pension Board on a date pre-determined by the Pension Board per election. Nominations either received or post-marked after that date will be invalid;

(c) All participants or beneficiaries who are nominated in accordance with paragraph (b) above, will have his or her name placed on the election ballot.

§503.2 Elections by Acclamation.

(a) In the event that only two active participants are nominated for pension board trustee in any given election year, or only one beneficiary is nominated in any given election year, the persons so nominated are to be elected by acclamation.

§503.3 Contested Elections.

(a) In any election where three or more persons are nominated for the position of Pension Board trustee representing the participants or in any election where two or more persons are nominated for the position of Pension Board trustee representing the beneficiaries, a formal election shall take place in accordance with Board's general election procedures as outlined in §501.3 above.

- §503.4 Runoff Elections.  
(a) In case of ties, a runoff election shall be held on a predetermined date by the Pension Board. The Pension Board shall follow the procedure outlined in §503.3 above in all runoff elections.  
(b) If any runoff election ends in a tie, the election winner will be decided by a coin toss officiated by an appointed trustee.

- §503.5 Special Elections.  
(a) Upon the death, resignation or inability to act of any elected trustee, his or her successor shall be elected for the unexpired term of such trustee, at a special election called by the Pension Board.  
(b) Any special election will follow the nomination and election procedures set forth in §503.1 through §503.3 above.

- §504.1 Election Results.  
(a) The results of all elections for pension board trustee shall be posted in the same manner that other notices are posted.

## **PART 6 – ADMISSION AND WITHDRAWAL PROCEDURES**

- §601.1 Eligibility for Admission into the Pension Fund.  
(a) In order for an individual to be admitted into the Des Plaines Firefighters' Pension Fund, he or she must meet all of the following requirements:  
(1) The individual must be appointed to the Des Plaines Fire Department and must be sworn and commissioned to perform the duties of a firefighter as classified by the Department;  
(2) Within three (3) months of receiving his or her appointment or reappointment makes written application to the Pension Board for admission into the Des Plaines Firefighters' Pension Fund. The Pension Board may extend this admission period, in its discretion.

- §601.2 Persons Excluded.  
(a) The following individuals are ineligible for admission into the Des Plaines Firefighters' Pension Fund:  
(1) part-time firefighters;  
(2) temporary employees;  
(3) municipal parking lot attendants;  
(4) clerks or civilian employees who perform clerical duties exclusively;  
(5) persons who fail to make a timely application within three months after their first appointment or any reappointment;  
(6) persons who fail to make their pension contributions as required under §5/4-118.1 of the Pension Code.

- §601.3 Written Application.

- (a) Written application for membership shall be made on a form prescribed by the Pension Board.
- (b) All sworn firefighters will be given an application form and advised of the requirement to make written application at the time of his or her first appointment.

§601.4. Determining When a Firefighter is Appointed, Sworn, and Commissioned.

- (a) Firefighters' can be appointed to the Fire Department only by the Board of Fire and Police Commissioners. An individual appointed to the Firefighters' force by someone other than the Board of Fire and Police Commissioners is not eligible for admission into the Pension Board.
- (b) It is the Board of Fire and Police Commissioners who also commissions Firefighters. A person not properly commissioned cannot be admitted into the Pension Fund.
- (c) It is the duty of the Pension Board to ascertain that all Firefighters seeking admission into the Pension Fund have been properly appointed, sworn and commissioned.

Cross-references: 65 ILCS 5/10-2.1-4; 65 ILCS 5/3-9-3

§601.5 Refund.

- (a) A Firefighter who is separated from Firefighters' service with less than twenty (20) years of service is entitled to a refund of his contributions upon filing a written request to the Pension Board.
- (b) Upon receipt of the written withdrawal request, the Pension Board shall send the firefighter a refund statement indicating the amount of contributions the withdrawing member is entitled to receive. The Pension Board shall also advise the treasurer of the municipality to process the refund.
- (c) A Firefighter is not entitled to any interest at the time of withdrawal of contributions.
- (d) Payment of a refund shall bar the Firefighter and his or her dependents from any further participation or receipt of any future Pension Fund benefits.
- (e) A Firefighter who is not separated from Firefighters' service may not withdraw from participation in the Firefighters' Pension Fund.

§601.6 Refund to Survivors.

- (a) The surviving spouse of a Firefighter who dies with less than ten (10) years of Firefighters' service shall be entitled to a refund of the Firefighter's contributions, if the surviving spouse makes a written request for such refund.
- (b) If a Firefighter dies leaving no surviving spouse, the excess of the Firefighter's contributions over any pension payments, shall be refunded to his or her heirs or estate, if the heirs or estate make a written request for such refund.
- (c) Any refund paid under this Section shall be paid without interest.
- (d) Any refund paid under this Section shall bar the surviving spouse, the heirs or the estate of the deceased Firefighter from any further participation in the Firefighters' Pension Fund or the receipt of any future Firefighters' Pension Fund benefits.
- (e) Upon receipt of the written refund request from the surviving spouse, heirs or

estate, the Pension Board shall send the party requesting the refund a written statement indicating the amount of refund the party is entitled to receive. The Pension Board shall also advise the treasurer of the Municipality to process the refund.

§601.7 Readmission into the Pension Fund.

(a) A Firefighter who is separated from Firefighters' service and receives a refund of his contributions and is subsequently re-appointed to the Firefighters' department and applies for re-admission into the Firefighters' Pension Fund, will be entitled to re-admission if each of the following conditions are met:

(1) The Firefighter repays the Pension Fund the amount of the previous refund together with interest at 2% per annum, from the date of the refund until the date of the re-payment.

(b) A Firefighter can apply for re-admission into the Firefighters' Pension Fund without re-payment of the amount refunded. However, the officer shall be treated as an entirely new pension fund member and there shall be no reinstatement of his or her previous creditable service.

**PART 7 - ADJUDICATION OF FORMAL PENSION CLAIMS & MATTERS**

§701.1 Hearing Procedure in Contested Cases.

(a) If the Pension Board determines that there is a possibility that an applicant for a disability or retirement pension may not be entitled to the full relief he or she is requesting, the applicant shall be entitled to a hearing before the Firefighters' Pension Board.

(b) The hearing procedures to be followed in such cases are those procedures set out in Part 8 of these rules and in accordance with the statutes contained under the Illinois Open Meetings Act (OMA).

§701.2 Request for a Hearing.

(a) An applicant seeking a disability or retirement pension may in any case request that the Pension Board hold a hearing.

(b) The request for a hearing must be made in writing by the applicant or his legal counsel.

(c) The hearing procedures to be followed in such cases are those procedures set out in Part 8 of these rules and in accordance with the statutes contained under the Illinois Open Meetings Act (OMA).

§701.3 Termination, Suspension or Recomputation of Disability Pension or Benefits.

(a) If the Pension Board determines that there is a possibility that a Firefighter's disability pension may be terminated or recomputed for any reason, the pension recipient shall be entitled to a hearing before the Pension Board.

(b) A disability pension recipient's unreasonable failure to appear at his or her annual re-evaluation, as required pursuant to 40 ILCS 5/4-112, shall result in the

recipient's assumption of any and all cancellation/rescheduling costs associated with his or her failed appearance. Additionally, the Board may, in its discretion, vote to suspend the recipient's pension benefits until he or she completes the re-evaluation process.

(c) The hearing procedure to be followed in such cases are those procedures set out in Part 8 of these rules.

§701.4 Loss, Suspension or Revocation of Pension Rights or Benefits.

(a) If the Pension Board determines that any participant or beneficiary may have his or her pension rights revoked or terminated, the participant or beneficiary shall be entitled to a hearing before the Pension Board.

(b) The hearing procedure to be followed in such cases are those procedures set out in Part 8 of these rules.

§702.1 Disability Pension Applications.

(a) All applications for disability pensions benefits under Article 4 of the Pension Code shall be made on an Application for a Disability Pension form, which will be supplied by the Pension Board upon request. A disability pension application shall be processed based upon the date when the application was served or formally received by the Pension Board, not the date it was executed.

(b) A Firefighter must list on his or her disability application any and all injuries, illnesses, conditions that he or she is suffering from as of the date of application that are or may become the subject of the applicant's disability claim. An applicant who fails to list all relevant injuries, illnesses or conditions that he or she knew about or was suffering from on the date of application that could have formulated a basis for a disability claim waives consideration of those injuries, illnesses and conditions, and an applicant may not later amend his or her application to seek disability pension benefits relating to the same.

(c) An applicant may file for a non-duty or occupational disease disability pension claim in the alternative to his or her request for a line of duty disability pension.

(d) A Firefighter may apply for a non-duty disability pension only for a medical condition lasting greater than twelve (12) months in duration.

(e) Along with the Application referred to in §702.1(a) above, each applicant will be required to submit a detailed written statement specifying exactly how the claimed disability arose/occurred. The Pension Board may render credibility findings at hearing based upon the applicant's failure to provide detailed and/or correct information on his or her application as to his or her condition/claim.

(f) The applicant shall be required to submit a list of his or her treating medical providers' contact information and dates of service on his or her application. The applicant may also supplement his or her application with medical evidence and/or doctors' reports setting forth the nature and extent of the claimed illness, injury, or condition.

§702.2 Records Retention.

(a) In order to process a disability claim the Pension Board shall request a full and complete set of records from the applicant's medical providers. In accordance with

its subpoena power under the Pension Code, it shall be the policy of the Pension Board to subpoena the disability applicant's personnel file, worker's compensation records, job description, salary and service information and any additional relevant documentation from the municipality. The issuance of said subpoena shall serve as notification to the municipality as to the pendency of the disability claim.

(b) An applicant who continues to seek medical treatment throughout the adjudication process of his or her claim shall be responsible for supplementing the Pension Board with all additional treatment records prior to undergoing the requisite independent medical evaluations. Failure to provide the Pension Board with up to date information concerning the applicant's medical treatment and condition may result in the delay and or suspension of disability pension proceedings.

(c) The Pension Board shall not be liable for failing to provide medical information and/or reports to its independent medical providers if such information was not accurately listed or provided on the firefighter's disability application, or if such medical information and/or reports were not furnished to the Pension Board within fourteen business days prior to the date the applicant undergoes his or her independent medical evaluations (IMEs).

§702.3

Burden of Proof in Disability Pension Claims.

(a) In all pension disability claims, the burden of proof is on the applicant to prove his or her entitlement to either a duty disability or a non-duty disability, by a preponderance of the evidence.

§702.4

Medical Examination Procedures in Disability Pension Claims.

(a) Upon receipt of an application for a disability pension, and obtaining all relevant records, the Pension Board shall schedule independent medical examinations with physicians selected by the Board or its attorney, in order to determine whether the applicant is physically or mentally disabled.

(b) Medical examinations and opinions may be obtained from at least three physicians selected by the Pension Board. The Pension Board in its discretion may select any of the physicians used by the applicant provided the prior medical reports and certificates of disability are presented to the Pension Board. The Pension Board may require other evidence of disability. The Board may, in its discretion have the applicant examined by more than three physicians.

(c) The Pension Board will schedule the medical examinations with the appropriate physicians and then notify the disability applicant of the scheduled examination on a Notice of Medical Examination Form.

(d) Should the disability applicant need to reschedule any given examination, he or she must notify the Pension Board's attorney at least seven (7) days prior to the examination date his or her intent to cancel the appointment. An applicant's failure to provide at least seven (7) days notice of cancellation or outright failure to appear at the medical examination shall result in the applicant's assumption of any and all fees and costs associated with such cancellation/non-appearance.

(e) Each physician selected by the Pension Board shall be required to submit a signed Physician's Certificate of Disability and/or a detailed medical report

indicating whether the applicant is physically or mentally disabled and whether the disability renders necessary his or her suspension from Firefighters' service. The physician may also indicate in appropriate cases whether or not the alleged injury of illness was incurred from the performance of an act of Firefighters' duty.

Cross-reference: 40 ILCS 5/4-112

§702.5 Unreasonable Failure to Appear for an Independent Medical Examination or Submit Documentation

(a) If a disability pension applicant fails or refuses to take part in an independent medical examination scheduled by the Pension Board, without a valid reason, the Board may determine that the applicant is not disabled.

(b) Valid reasons for failing to take part in an independent medical examination include the following:

(1) Illness on the date of the scheduled examination or test;

(2) Not receiving timely notice of the scheduled examination or test, or receiving no notice at all;

(3) Being furnished incorrect or incomplete information, or being given incorrect information about the physician involved or the time or place of the examination or test, or;

(4) Having had death or serious illness occur in your immediate family;

(c) If a disability pension applicant unreasonably refuses to provide any medical documentation or other evidence deemed relevant by the Pension Board, the Board may determine that the applicant is not disabled.

§702.6 Rescheduling of Independent Medical Examination

(a) A disability pension applicant who wished to reschedule any independent medical examination must first contact and receive permission to reschedule from the Pension Board's legal counsel. Requests for rescheduling must be made at least seven (7) business days in advance of the contemplated medical examination.

§703.1 Determining When to Grant a Duty Disability Pension as Opposed to a Non-Duty Disability Pension.

(a) The determination as to whether a disability is or is not duty related will normally depend upon the facts in each particular case.

(b) In order to receive a line-of-duty disability pension the applicant must prove by a preponderance of the evidence that there is a relationship of proximate cause between the applicant's disability and the performance of an act of duty as a firefighter.

(c) In order to receive a line-of-duty disability pension, the Firefighter must prove that the act of duty involved a special risk, not ordinarily assumed by a citizen in the ordinary walks of life.

§704.1 Preclusion Against Simultaneous/Interim Retirement Pension Adjudications during the Pendency of Disability Pension Claim Adjudications; Expense Offsets

(a) The Pension Board shall not adjudicate a retirement pension claim and

or begin remitting retirement pension benefit payments to a participant who has also filed and has pending a disability pension claim before it. Only after the participant's disability pension claim has been adjudicated and a written decision and order served may the Pension Board consider and adjudicate a participant's simultaneous or subsequent retirement pension claim.

(b) Under no circumstances shall the Pension Board remit retirement pension payments to a participant when he or she has a disability claim pending before the Pension Board.

(c) If a participant files a retirement pension claim 1) simultaneously with 2) during the pendency of, or 3) subsequent to his or her disability claim, and under any of these listed circumstances seeks an award of retroactive retirement pension benefit payments which overlap the pendency of his or her disability claim, then the participant's retirement pension claim shall be adjudicated retroactively in accordance with the law, however such retroactivity shall be subject to offsets for costs incurred by the Pension Board in adjudicating the individual's disability claim. Such offset expenses shall include costs for applicable medical records retention, independent medical evaluation (IME) fees, functional capacity evaluation (FCE) fees, and court reporter/hearing costs.

(d) In accordance with the retroactive offsets provided in subsection (c), attorney's fees shall not be considered an offset expense.

(e) In accordance with subsection (c), the Pension Board reserves the right to negotiate the amount of disability expense offsets with the participant and withhold such expense offsets from future retirement pension benefit payments until all disability expense offsets have been recouped. The participant shall be entitled to notice and an opportunity to be heard regarding any intended disability expense offsets. The Pension Board shall formally render a vote as to any and all disability expense offsets.

#### §705.1

##### Annual Medical Re-Evaluations for Disabled Pensioners Under Age Fifty

(a) All disabled pensioners under age fifty (50) shall be required to undergo a medical re-evaluation for purposes of verifying each pensioners continuance of disability. Such re-evaluation shall take place on no less than an annual basis.

(b) For even numbered years each disability pensioner shall be required to submit a certificate of disability from his or her own provider as a means of verification.

(c) Beginning in 2017, for all odd numbered years each disability pensioner shall be required to undergo a full independent medical examination (IME). The Board may, in its discretion also require the pensioner to undergo a Functional Capacity Evaluation (FCE) in addition to his or her independent medical examination.

(d) The Pension Board, in its discretion, may require a disabled pensioner age fifty or over to undergo medical re-evaluation for purposes of verifying the individual's continuance of disability. If, upon evaluation, the disabled pensioner is found to have recovered from disability the Pension Board shall be required to conduct a show cause hearing.

(e) The issue of recovery from disability and restoration to active duty must be adjudicated during a formal hearing. Under such circumstances the disabled pensioner in question shall be provided adequate notice and opportunity to be heard

prior to any formal vote or decision.

(d) If any member who, upon medical examination, is found to have recovered from his or her disability, the Pension Board shall certify to the Fire Chief that the member is no longer disabled and may resume his or her duties as a Firefighter.

§706.1 Emergency Service.

In case of an emergency, as determined by the Fire Chief, a disabled member may be assigned and shall perform such reasonable duties as the Fire Chief or City may direct. Such person shall have no claim for salary against the municipality for the duties so performed during periods of emergency service.

**PART 8 - HEARING PROCEDURES**

§801.1 Applicability.

(a) These rules are applicable to all hearings held before the Firefighters' Pension Board.

§801.2 Filing of Documents.

(a) All documents, applications, briefs or motions required or permitted to be filed with the Pension Board under these rules or the Pension Code, may be either mailed or delivered to the Firefighters' Pension Board or its legal counsel.

(b) The date of filing shall be the date of delivery of the document or the date of mailing.

§801.3 Form of Documents.

(a) All documents filed under these rules shall clearly show the Pension Board hearing number (if any) and the title of the proceedings.

(b) All documents shall be signed by the applicant or his or her attorney.

§801.4 Computation of Time.

(a) Computation of any period of time prescribed by this rule shall begin with the first business day following the day on which the act, event or development initiating such period of time occurs, and shall run until the end of the last day, or the next following business day if the last day is a Saturday, Sunday, or legal holiday. Where the period of time is five days or less, Saturdays, Sundays and legal holidays shall be excluded in the computation of time.

(b) Notice requirements shall be construed to mean notice received, but proof that notice was dispatched by means reasonably calculated to be received by the prescribed date shall be prima facie proof that notice was timely received, unless otherwise specified by law.

§801.5 Appearances.

(a) Any person entitled to participate in pension proceedings may appear as follows:

(1) A natural person may appear in his own behalf or by an attorney at law

licensed to practice in the State of Illinois, or both.

(2) A business, nonprofit, or government organization may appear by any bona fide officer, employee, or representative, or may be represented by an attorney licensed to practice in the State of Illinois, or both.

(b) An attorney appearing in a representative capacity before the Pension Board shall file a written notice of appearance. There is no specified appearance form. Any notification in writing in the form of a letter to the Pension Board will serve as an appearance.

#### §801.6

##### Municipal Intervention.

(a) As a separate and distinct legal entity, a municipality does not qualify as a party of interest with respect to matters before the Pension Board.

(b) As a separate and distinct legal entity, a municipality does not qualify as a party to any matter pending before the Pension Board unless it files a Petition to Intervene and until such petition is granted by the Board.

(c) A municipality who has been notified of a pending disability, restoration or divestiture claim and who seeks to participate in any formal proceeding before the Pension Board must file a Petition to Intervene as soon as administratively possible and no less than thirty (30) days prior to the date of the Pension Board's administrative hearing in any given matter. A municipality's failure to expeditiously file a Petition to Intervene after reasonably being placed on notice of a pending matter may be grounds for denying a municipality's Petition to Intervene and may be grounds for denying any subsequent motions for reconsideration. A municipality that was placed on notice as to a pending claim and that fails to file a Petition to Intervene no less than thirty (30) days prior to the date of hearing shall not be permitted to intervene unless for good cause shown.

(d) Notice to the municipality under this section may be in the form of information requests, such as the issuance of subpoenas and FOIA requests to the municipality from the Pension Board and/or its legal counsel. Notice may also be in the form of formal written notification to the municipality's legal counsel/department, HR department or finance department by the Pension Board and/or its legal counsel.

#### §802.1

##### Notice of Hearing.

(a) All administrative hearings conducted by the Firefighters' Pension Board shall be initiated by the Pension Board by the issuance of a written Notice of Hearing, which shall be served upon all parties of record and any attorney who has filed an appearance.

(b) The Notice of Hearing shall inform the party of the purpose for the hearing and state the date, time and place of the hearing.

#### §802.2

##### Service of the Notice of Hearing.

(a) Service of the Notice of Hearing shall be complete when the Notice is served in person or deposited in the United State mail postage prepaid, by first class registered or certified mail, addressed to the last known address of the person involved, not less than ten days before the date designated for the Hearing. Service may also be made by facsimile.

(b) A party waives any claim of faulty or untimely notice of hearing by participating in the hearing.

§802.3 Rights of the Parties Prior to Hearing.

(a) Any party has the right to be represented by counsel, at his or her own expense.  
(b) Any party may inspect and review all Board records pertaining to the case and may obtain copies of any such records at his or her own expense.  
(c) Any party, or the Pension Board, may compel the attendance of any Fire Department employee at the hearing, or any other person who may have information relevant to the needs, abilities or the status of the case. The procedures to be utilized regarding the issuance of subpoenas is set forth in §404.1 of these Rules.

§802.4 Continuance or Postponement of Hearings.

(a) A hearing may be continued for just cause by the Pension Board. A party to any pension proceeding shall have the right to request a continuance, however the Pension Board shall have the ultimate discretion to grant or deny the party's request. All parties involved in a hearing shall attempt to avoid undue delay caused by repetitive postponement or continuances, so that the case may be resolved in an expeditious manner. Repeated requests for a continuance are disfavored.

§802.5 Admissibility of Evidence.

(a) The formal rules of evidence utilized in the Illinois courts do not apply to hearings before the Pension Board.  
(b) In accordance with Illinois Supreme Court Rule 90, all written exhibits offered into evidence by either the applicant or the Pension Board shall be presumptively admissible.  
(c) If at least thirty (30) days written notice of the intention to offer any document(s) (including independent medical examination reports, functional capacity evaluations and/or any other type of medical report) into evidence is given to either the applicant, applicant's legal counsel, the Pension Board or any other party, the document may be admitted into evidence, without foundation or other proof.  
(d) Any party objecting to the admission of an exhibit may subpoena the author or maker of the document admissible under this rule, at the objecting party's expense, and examine the author or maker as if under cross-examination. Any party objecting to a document admissible under this rule shall request a subpoena from the Pension Board or the Board's attorney prior to the scheduled hearing date.  
Cross-Reference: Supreme Court Rule 90.

§803.1 Conduct of the Hearing.

(a) All hearings shall be open to the public unless required by statute to be otherwise.  
(b) All hearings shall be conducted in a fair, impartial and orderly manner in accordance with the Administrative Procedure Act. The Pension Board shall afford any party the opportunity to present evidence, testimony and arguments relative to the merits of the case, subject to the discretion of the presiding official.  
(c) The Pension Board's legal counsel or the presiding official will rule on all

evidentiary matters or legal determinations.

(d) The following shall be the order of proceedings on all hearings, subject to modification by the presiding official or the Pension Board's legal counsel:

- (1) presentation and disposition of all preliminary motions or matters;
- (2) opening statements;
- (3) entry of documentation into the record as evidence;
- (4) direct and cross examination of witnesses;
- (5) closing arguments;
- (6) executive session (if deemed appropriate by the Pension Board);
- (7) ruling on the matter (if ripe for determination);
- (8) adjournment.

Cross-references: 5 ILCS 100/10-25; 100/10-4

§803.2 Record of Proceedings.

(a) The Pension Board shall ensure that a verbatim record of the hearing is made, either by tape recording or by a court reporter. The Board shall also ensure that all written evidence presented at the hearing is marked to indicate the party offering the evidence and is made part of the administrative record. The applicant may obtain a copy of the verbatim record of the hearing at his or her own expense.

§803.3 Authority of the Presiding Official.

(a) The Pension Board President, the Board attorney, or any Pension Board trustee selected by the majority of the trustees shall be the Presiding Official at the hearing.  
(b) The Presiding Official shall have all powers necessary to conduct the hearing. The Presiding Official may exercise any of the powers necessary to conduct the hearing with the advice or guidance of the Pension Board's legal counsel. The Presiding Official's authority shall include but not be limited to the following powers:

- (1) administer oaths and affirmations;
- (2) regulate the course of hearings, set the time and place for continued hearings, fix time for filing of documents, provide for the taking of testimony by deposition if necessary, and generally conduct the proceeding according to generally recognized administrative law and these rules;
- (3) examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitious or cumulative testimony, and set reasonable limits on the amount of time each witness may testify;
- (4) rule upon offers of proof and receive relevant evidence, with the advice of counsel;
- (5) sign and issue subpoenas that require attendance, giving testimony and the production of books, papers and other documentary evidence;
- (6) direct parties to appear and confer for the simplification of issues, and to otherwise conduct prehearing conferences;
- (7) dispose of procedural requests or similar matters;
- (8) enter any order that further carries out the purpose of this rule.

§803.4 Official Notice.  
(a) Official notice may be taken at a hearing of all facts which judicial notice may be taken and of other facts of a technical nature, within the specialized knowledge and expertise of the Pension Board.

§804.1 Written Decision.  
(a) All decisions of the Pension Board shall be in writing in the form of an Order and Decision. If a disability pension is granted as a result of any decision, the President and Secretary of the Pension Board shall sign and issue a certificate of payment and forward the certificate of payment to the treasurer of the municipality.  
(b) All final written decision and orders shall be approved by formal vote at a subsequent Pension Board meeting.

§804.2 Certificate of Service.  
(a) All decisions of the Pension Board shall be accompanied by a certificate of service, signed by an agent of the Pension Board, indicating on whom the order was served, the date and the manner of service.  
(b) Service may be made by either personal delivery, or certified mail service shall be deemed to have been mailed when the decision and order is deposited in the United States mail in a sealed envelope, with postage prepaid, addressed to the party affected thereby at his or her last known address.  
Cross-reference: 735 ILCS 5/3-103

§805.1 Preparation of Administrative Record.  
(a) If the Pension Board is sued under the Administrative Review Law, 735 ILCS §5/3-101 et seq., as a result of any decision rendered, the Pension Board or its legal counsel shall prepare and file with the circuit court a complete administrative record.  
(b) The administrative record should contain the following:  
(1) all applications filed by the party;  
(2) all records, reports, exhibits presented at the hearing;  
(3) a transcript of the hearing;  
(4) the written decision of the Pension Board;  
(5) the certificate of service;  
(6) the complaint and summons in administrative review.  
Cross-reference: 735 ILCS 5/3-108

§806.1 Certificate of Payment.  
(a) When a disability pension is granted, the Pension Board shall issue a Certificate of Payment signed by the President and Secretary of the Pension Board.

## **PART 9 – INVESTMENT POLICIES**

§901.1 Investment Objectives.

(a) Safety of principal shall be the foremost objective of the Pension Board. Each investment transaction shall seek to first ensure that capital losses are avoided, whether they be from securities, defaults or erosion of market value. The Board seeks to attain market rates of return on its investments consistent with constraints imposed by its safety objectives, cash flow consideration, and Illinois state laws that restrict the placement of public funds.

§902.1

Investment Policy.

(a) The Pension Board has adopted a separate Investment Policy. That Investment Policy is incorporated by reference and made a part of these Administrative Rules.

(b) The Investment Policy will be reviewed by the Pension Board on an annual basis, to determine if any changes are required.

(c) If changes, additions or amendments are made to the Pension Board's investment policy, a copy of the Pension Board's updated Investment Policy shall be filed with the Illinois Department of Insurance.

**PART 10 – TRUSTEE ETHICS AND EDUCATION**

§1001.1

Purpose.

(a) The purpose of this section is to set forth a code of ethical conduct for the trustees of the Firefighters' Pension Fund and to establish procedures for the continuing education of the Board's trustees.

§1001.2

Standard of Care.

(a) The trustees are aware that they must discharge their duties to the Firefighters' Pension Fund solely in the interests of the Fund's participants and beneficiaries using the care, skill, prudence and diligence of a prudent person.

Cross-reference: 40 ILCS 5/1-109

§1001.3

Existing Law.

(a) Trustees recognize that they are governed by the provisions of the Illinois Pension Code, particularly Articles 1, 1A and 4 as well as these rules.

§1001.4

Conflicts of Interests.

(a) No trustee shall engage in any transaction or vote in any matter in which the trustee shall receive any direct or indirect personal gain. This shall not include, however, trustees who are participants in the Fund, from voting on benefits or benefit increases that all Fund members would be entitled to.

(b) Prior to voting on any matter in which a trustee would reasonably believe a conflict of interest exists, the trustee shall publicly announce the conflict and refrain from voting. The conflict statement required by law shall be recorded in the minutes of the Board meeting. In determining whether a conflict exists, trustees shall in all actions endeavor to avoid the appearance of impropriety.

§1001.5

Prior Communication with Benefit Applicants.

(a) Trustees shall not engage in prior communications with any applicant for benefits on any matter that is currently pending a hearing before the Board. This shall not preclude trustees from answering questions of general application to members where the information provided involves a restatement of benefits under the Pension Code and does not involve consideration of matters which will be presented in any evidentiary proceeding. All requests for information in conflict with this rule shall be referred in writing to the Pension Board's attorney for a written opinion.

(b) Trustees addressing benefit questions raised by Pension Fund participants and beneficiaries should clearly indicate that they are in no way capable of binding the Pension Board and that all such issues will be ultimately decided by the Board.

(c) In appropriate circumstances, a trustee may refer any questions to the Pension Board's attorney.

§1001.6 Prior Communications From Potential Providers or Contractors.

(a) All contacts from potential service providers or entities seeking to do business with the Board shall be communicated to the Board at its next quarterly meeting.

§1001.7 Communications with Investment Managers.

(a) All communications between individual trustees and investment managers shall be for informational purposes only. No individual trustee may bind or promise any consideration on behalf of the Pension Fund except as approved by the Board.

§1001.8 Applicability to Service Providers.

(a) All service providers or entities doing business with the Pension Board shall be bound by these ethical rules in their dealings with the trustees and the Pension Board.

(b) All such persons are responsible to the Pension Board and not to any individual trustees.

§1001.9 Prohibition of Consideration.

(a) No trustee shall accept any consideration, gratuity or compensation from any service provider except as to what is allowed under the Gift Ban Act.

(b) No trustee shall accept any consideration, gratuity or compensation from any participant or beneficiary seeking benefits.

Cross-reference: 40 ILCS 5/1-125(b)

§1001.10 Impartiality and Confidentiality.

(a) Each trustee will deal fairly, objectively and impartially with all fellow trustees, participants and beneficiaries.

(b) Each trustee shall maintain the confidentiality of Board actions as well as participant and beneficiary information.

§1002.1 Trustee Training.

(a) All trustees will attend at least 16 hours of continual education and training each year. 8 hours of such training shall cover ethics, investments or pension related matters.

(b) All newly elected or appointed trustees must undergo a thirty-two hour certified trustee training program.

(b) The Pension Board will annually certify each trustee's compliance with the ethical training requirements. Cross-reference: 40 ILCS 5/1-113.8

(c) The period determined by the Board for the completion of annual ethics training shall be as follows: January 1<sup>st</sup> through December 31<sup>st</sup> of each corresponding year.

## **PART 11 - PURCHASE OF PRIOR MILITARY SERVICE AND CREDITABLE SERVICE TRANSFERS**

§1100.1

### **Purpose**

Pursuant to 40 ILCS 5/4-108(c)(1.5), the Firefighters' Pension Board will accept as creditable service for each office, periods of service by such officer in the military, naval or air forces of the United States entered upon before beginning service as an active Firefighter with the Des Plaines Firefighters' Department.

§1100.2

### **Application**

A Firefighter shall make written application to the Pension Board to purchase his or her prior military service pursuant to Section 4-108(c)(1.5) of the Pension Code.

§1100.3

### **Prior Military Service**

The prior military service must have been either regular active military service or *active* reserve of National Guard service. *Active* reserve of National Guard service shall include service when the Firefighter was actually deployed on training, combat or combat support operations but shall not include training or other service periods of two weeks or less duration. The service must be documented on an official Form 214 (Certificate of Release or Discharge from Active Duty) or other official documentation acceptable by the Board. The total amount of such creditable service shall not exceed 2 years.

§1100.4

### **Discharge Paperwork**

The Pension Board shall review all release and/or discharge paperwork submitted by an applicant and may request additional information from officer or the U.S. military services. The Board, in its discretion, may accept periods of service for which an individual has been dishonorably discharged. Decisions to accept periods of military service with dishonorable discharge shall be considered on a case by case basis.

§1100.5

### **Contribution Calculations**

The contribution to the pension fund required to purchase the prior military service shall be equal to the amount required by Illinois statute (Article 4 of the Pension Code) and the rules of the Board. The amount of the contribution shall be

determined by a qualified actuary or other entity acceptable by the Board. The contribution required of the firefighter must be paid to the pension fund (i) within 5 years (60 months) from the date the Board approves the application to convert military service to creditable fire service and (ii) before the officer terminates service in the fire department. The required contribution may be paid in a lump sum or in accordance with a schedule of installment payments authorized by the Board and the Illinois Administrative Code covering installment payments for contributions required pursuant to a transfer of creditable service under 40 ILCS 5/4-118.1.

§1100.6

Proration

If the contribution that is required or elected has not been paid in full within the required time, the creditable service shall be prorated to an amount of time proportionate to the amount of contribution that has been paid. If the Firefighter dies in service before payment in full has been made and before expiration of the 5 year payment period, the surviving spouse of the Firefighter may elect to pay the unpaid amount on the Firefighter's behalf within 6 months after the date of death, in which case the creditable service shall be granted as though the deceased Firefighter had paid the remaining balance on the day before the date of death.

**PART 12 – BUYBACK OF UNPAID CONTRIBUTIONS  
FOR BREAKS IN SERVICE**

§1200.1

Breaks in Service for Less Than 30 Days

In accordance with 40 ILCS 5/4-108(a), the Firefighters' Pension Board will accept as creditable service for each officer, periods of service for furloughs without pay (including suspension days) lasting less than thirty (30) days time, so long as all applicable employee contributions are paid into the Pension Fund in accordance with all other applicable the provisions under this Chapter and Article 4 of the Illinois Pension Code.

§1200.2

Breaks in Service in Excess of 30 Days

In accordance with 40 ILCS 5/4-108(a), the Firefighters' Pension Board will accept as creditable service for each Firefighter, periods of service for furloughs without pay in excess of thirty (30) days due to a Firefighter's personal illness or accident, regardless of length. Furloughs in excess of thirty (30) days for accident or illness of a Firefighter's immediate relative shall not be counted.

§1200.3

Written Authorization

A Firefighter shall make written authorization granting or denying the municipality permission to automatically deduct contributions for all periods of unpaid break days lasting less than thirty (30) days in time.

§1200.4

Calculations & Withholdings: Breaks Less than 30 Days

The contribution amount required to purchase periods of unpaid break days of less than thirty days shall be computed in accordance with 40 ILCS 5/4-118.1. The

required contribution for each unpaid break period by the Firefighter shall be withheld directly from the Firefighter's payroll by the municipality (pursuant to prior written authorization), and shall be paid into the pension fund in accordance with the municipality's established policies and procedures for all other contribution withholdings.

§1200.5      Calculations & Withholdings: Breaks in Excess of 30 Days  
Payment of service for unpaid break days in excess of thirty (30) days due to personal accident or illness shall be calculated in accordance with 40 ILCS 5/4-118.1 and repayment of those contribution amounts shall be determined on a case by case basis before the Pension Board.

§1200.6      Repayment Deadlines  
In order for eligible unpaid break service time to count towards creditable service for pension purposes, all contributions must be paid into the Pension Fund prior to the Firefighter's (i) termination or (ii) written application for a retirement or disability pension.

§1200.7      Proration  
If the contribution that is required or elected has not been paid in full within the required time, the creditable service shall be prorated to an amount of time proportionate to the amount of contribution that has been paid. If the Firefighter dies in service before payment in full has been made and before expiration of the repayment or municipal withholding period, the surviving spouse of the Firefighter may elect to pay into the fund the amount on the Firefighter's behalf within 6 months after the date of death, in which case the creditable service shall be granted as though the deceased Firefighter had paid the remaining balance on the day before the date of death.

§1200.8      "Thirty Days"  
For purposes of this Chapter, "thirty (30) days" shall mean thirty consecutive days throughout any one year period.

§1200.9      Interest  
For purposes of this Chapter, all buybacks of unpaid break days which are not automatically withheld by the municipality pursuant to the Firefighter's written authorization shall be charged the applicable actuarially assumed rate of return compounded interest annually from the date the payroll deduction would have been made to the date the money is paid.

**PART 13 – QUALIFIED ILLINOIS DOMESTIC RELATIONS ORDERS (QILDROS)**

§1300.1      Adoption  
The Des Plaines Firefighters' Pension Board hereby adopts and incorporates 40 ILCS 5/1-119 of the Illinois Pension Code, 40 ILCS 5/1-101 *et. seq.*, as its

administrative rules pertaining to QILDROs, QILDRO Consents and QILDRO Calculation Orders.

§1301.1 QILDRO Benefit Eligibility

In accordance with Article 4 of the Illinois Pension Code, “partial refunds” and “lump sum death” benefits cannot and shall not be paid out by the Pension Fund to an alternate payee despite an QILDRO providing for the same.

§1302.1 QILDRO Calculation Order Entry & Subsequent Implementation

(a) The parties to a QILDRO which provides for a percentage based division of a beneficiary’s retirement pension must have entered and filed with the Pension Board a QILDRO Calculation Order. Unless and until a QILDRO Calculation Order is formally entered by the court and a certified copy of the same (along with a non-refundable \$50.00 processing fee) is filed with the Pension Board, the Pension Board shall not begin to divide and disburse benefits to an alternate payee pursuant to an underlying QILDRO.

(b) Upon a regular payee’s retirement and entry into pay status the Pension Board shall not suspend or withhold a portion of the regular payee’s benefit payments in contemplation of the subsequent filing of a QILDRO Calculation Order. Until a QILDRO Calculation Order is entered and received by the Pension Board, a regular payee to a QILDRO shall receive his or her full monthly benefit.

(c) In the event that the Pension Board pays out full retirement pension payments to a regular payee prior to the entry and implementation of a QILDRO Calculation Order, it shall be up to the parties to the underlying dissolution of marriage to determine, divide and disburse benefits/payments in accordance with the parties’ marital dissolution terms and conditions.

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List of References

Illinois Pension Code  
40 ILCS 5/1-101, *et seq.*  
40 ILCS 5/1A-101, *et seq.*  
40 ILCS 5/4-101, *et seq.*

Illinois Open Meetings Act  
5 ILCS 120/1, *et seq.*

Illinois Freedom of Information Act  
5 ILCS 140/1, *et seq.*

Illinois Administrative Code  
50 IL ADC 4401 (Examination & Audit Procedures)  
50 IL ADC 4402 (Definition of Salary)  
50 IL ADC 4404 (Portability of Creditable Service Time)