

Sec. 82-57. - Board of trustees; administrative duties; investment of retirement system assets.

- (a) Effective upon the adoption of the ordinance from which this section derives, a new board of trustees shall be established in accordance with subsection (b) below. Effective April 1, 2012, the firefighter board of trustees, police officer board of trustees and general employee/lifeguard board of trustees shall be abolished, and the board of trustees established in accordance with subsection (b) below shall be responsible for administering the retirement system and investing all assets of the system in accordance with subsections (c) through (k) below, for all employee benefit groups.
- (b) The board of trustees (the "board") shall consist of nine members selected as follows:
 - (1) One employee who is a member of benefit group general or benefit group lifeguard elected by the members of those benefit groups.
 - (2) One employee who is a member of benefit group firefighter elected by the members of that benefit group.
 - (3) One employee who is a member of benefit group police officer elected by the members of that benefit group.
 - (4) Five residents of the town who are not officers or employees of the town, retirants or beneficiaries of the retirement system, appointed by the town council.
 - (5) The town manager or, in the town manager's absence, the acting town manager, who shall serve as a voting ex-officio member.
- (c) The board shall meet at least quarterly, shall adopt its own rules of procedure and shall keep records of its proceedings. Five trustees shall constitute a quorum at any meeting of the board, and a vote of the majority of the quorum present at any meeting shall be necessary for a decision of the board. Each trustee shall be entitled to one vote on each question before the board. The trustees shall not receive any compensation but may receive expenses and per diem as provided by town ordinance.
- (d) Trustees other than the town manager or acting town manager shall serve staggered three-year terms, and may succeed themselves in office. To implement the staggered terms, the first elected trustee who is a member of benefit group police officer shall serve a one-year term; the first elected trustee who is a member of benefit group firefighter shall serve a two-year term; and the first elected trustee who is a member of benefit group general or benefit group lifeguard shall serve a three-year term. The staggered terms for the appointed trustees shall be implemented as follows: two appointed trustees shall serve an initial term of one year; two appointed trustees shall serve an initial term of two years; and one appointed trustee shall serve an initial term of three years; as determined by the town council. Trustees who are elected or appointed following the initial terms shall serve a term of three years. Each trustee shall, before assuming the duties of trustee, qualify by taking an oath of office to be administered by the town clerk.
- (e) A vacancy shall occur on the board if:
 - (1) A member-elected trustee ceases to be a member or ceases to be included in the appropriate benefit group;
 - (2) A resident appointed by the town council fails to maintain town residency as determined by the town council; or
 - (3) Any trustee resigns or is removed from office.
 - (4) A trustee fails to attend more than two scheduled meetings in any 12-month period without an excused absence. Excused absence due to illness, a death in the family, religious holidays and requirements of legal process shall not constitute lack of attendance. In order for an absence to be excused, the member must notify the plan administrator in writing no later than noon on the Friday prior to a scheduled

meeting, unless the absence is an emergency. Failure to timely notify the plan administrator in writing of an absence will result in an unexcused absence, unless the absence is an emergency. Excused and unexcused absences shall be recorded in the minutes of the meeting at which the absence occurred. The plan administrator may excuse an absence at the next regularly scheduled meeting for good cause shown.

- (f) If a vacancy occurs on the board, the vacancy shall be filled within 90 days, for the unexpired term, in the same manner as the position was previously filled.
- (g) The board shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature and description, and to administer the retirement system for the benefit of its members, retirants and beneficiaries.
- (h) The officers and advisors of the board shall be as follows:
 - (1) *Chair*. The board shall annually elect a chair and a chair pro tem from its members.
 - (2) *Secretary*. The board shall annually elect a secretary from among its members.
 - (3) *Finance director and treasurer*. The town finance director and treasurer shall be finance director and treasurer of the board.
 - (4) *Legal advisor*. The town attorney or an attorney designated by the town attorney shall be legal advisor to the board.
 - (5) *Actuary*. The board shall appoint an actuary who shall be the technical advisor to the board regarding the operation of the retirement system on an actuarial basis and who shall perform such services as are required in that connection. The term "actuary" as used in this article shall mean an enrolled actuary as defined in F.S. § 112.625. A partnership or corporation may be appointed actuary if the duties of the actuary are performed by or under the direct supervision of an individual who meets the preceding qualifications.
 - (6) *Services*. The board is authorized and empowered to employ such professional and other services as are required for the proper administration of the retirement system at the fund's expense.
 - (7) *Plan administrator*. The board is authorized to contract for the professional services of a plan administrator. In the event the board does not contract for the professional services of a plan administrator, or in the event of any lapse in such services, the human resources director shall be the plan administrator.
- (i) The board shall direct the investment of retirement system assets in accordance with the following provisions:
 - (1) The board shall adopt an investment policy in accordance with F.S. § 112.661, and shall regularly review, evaluate and, if deemed in the best interest of the retirement system, revise the investment policy, subject to the approval of the town council.
 - (2) In exercising its discretionary authority with respect to the management of the moneys and assets of the retirement system, the board shall exercise the care, skill, prudence and diligence under the circumstances then prevailing, that a person of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims.
 - (3) The board shall have full power and authority to invest and reinvest the moneys and assets held for the benefit of the members, retirants and beneficiaries of the system, subject to all terms, conditions, limitations and restrictions imposed by law on the investments of public employee retirement system assets, and subject to investment policy adopted by the board.
 - (4) The board may invest in securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15

USC § 80A-1 et seq., and in such other investments authorized by law and by the board's investment policy, including alternative investments.

- (5) a. The Retirement Board may, unless restricted by law, transfer all or any portion of the assets of the Retirement Fund to a collective or common group trust, as permitted under Revenue Ruling 81-100, Revenue Ruling 2011-1, and Revenue Ruling 2014-24 (or subsequent guidance), that is operated or maintained exclusively for the commingling and collective investment of monies, provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under section 401(a) of the Internal Revenue Code, individual retirement accounts that are exempt under section 408(e) of the Internal Revenue Code, eligible governmental plans that meet the requirements of section 457(b) of the Internal Revenue Code, and governmental plans under section 401(a)(24) of the Internal Revenue Code. For this purpose, a trust includes a custodial account or separate tax-favored account maintained by an insurance company that is treated as a trust under section 401(f) or under section 457(g)(3) of the Internal Revenue Code.
- b. Any collective or common group trust to which assets of the retirement fund are transferred pursuant to subsection (a) above shall be adopted by the retirement board as part of the plan by executing appropriate participation, adoption agreements, and/or trust agreements with the group trust's trustee.
- c. The separate account maintained by the group trust for the plan pursuant to subsection (a) above shall not be used for, or diverted to, any purpose other than for the exclusive benefit of the members and beneficiaries of the plan.
- d. For purposes of valuation, the value of the separate account maintained by the group trust for the plan shall be the fair market value of the portion of the group trust held for the plan, determined in accordance with generally recognized valuation procedures.
- (6) The board shall retain an independent consultant professionally qualified to advise the board on all investment matters and evaluate the performance of professional money managers. The independent consultant shall assist the board in developing and revising its investment policy, and make recommendations regarding the selection of money managers. These recommendations shall be considered by the board at its meetings.
- (j) The date, time, place and subject of regular board meetings shall be posted at least ten days prior to the date of such meetings.
- (k) If a claim for benefits is denied by the board, the claimant shall be notified of the denial, in writing, within 30 days following the board's action. The notification shall set forth the reasons for denial. The claimant may appeal the denial and request a hearing before the board. The appeal shall be in writing to the town clerk and filed within 90 days of the board's denial. The request shall contain a written statement of the claimant's position regarding the claim. The board shall schedule a hearing within 60 days of receipt of the appeal. The hearing shall be conducted in accordance with rules adopted by the board. The board's action following the hearing shall be final and binding on all affected parties.
- (l) The board shall also provide administrative support and coordination for the town's defined contribution plan, retirement health savings plan, and 457 plan.
- (m) The boards of trustees for the existing firefighter, police officer and general/lifeguard retirement plans shall continue to operate through March 31, 2012, for the primary purpose of facilitating the transfer of contracts, investment holdings, assets and liabilities of the existing firefighter, police officer and general/lifeguard

retirement plans, as well as all documents and records of those plans, to the new board of trustees established pursuant to subsection (b) above. During the period prior to April 1, 2012, the boards of trustees for the existing firefighter, police officer and general/lifeguard retirement plans shall continue to:

- (1) Be the trustees of the moneys and assets of the employee groups of members and retirants of the retirement system for whose benefit such boards are formed.
- (2) Have full power and authority to invest and reinvest the moneys and assets held for the benefit of members for whose benefit such boards are formed, subject to all terms, conditions, limitations and restrictions imposed by law on the investments of public employee retirement systems and subject to investment policies and limitations adopted by resolution of the town council or the boards from time to time.
- (3) Invest in securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 USC 80A-1 et seq., as amended, and provided such investment company or investment trust takes delivery of such collateral either directly or through an authorized custodian.
- (4) Employ outside investment counsel to advise each board in the making and disposition of investments. All moneys and assets of the retirement system shall be held for the sole purpose of meeting disbursements authorized in accordance with the provisions of the retirement system and shall be used for no other purposes.
- (5) Exercise discretionary authority with respect to the management of the moneys and assets of the retirement system, and shall exercise the care, skill, prudence and diligence under the circumstances then prevailing, that a person of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims.
- (6) Retain an independent consultant professionally qualified to evaluate the performance of professional money managers. The independent consultants shall make recommendations regarding the selection of money managers. These recommendations shall be considered by the boards at their meetings. The date, time, place and subject of regular board meetings shall be posted at least ten days prior to the date of such meetings.

(Ord. No. 21-04, § 1, 10-1-04; Ord. No. 4-2012, § 2, 3-14-12; Ord. No. 14-2012, § 1, 8-14-12; Ord. No. 7-2013, § 1, 7-9-13)

Editor's note— Ord. No. 4-2012, § 2, adopted March 14, 2012, changed the title of section 82-57 from "Investment of retirement system assets" to "Board of trustees; administrative duties; investment of retirement system assets." The historical notation has been preserved for reference purposes.