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April 17, 2009

Alderman Michael Murphy  
Room 205 - City Hall

Re: Amendment to Ch. 36 to Permit Firefighters to Select  
Their Protective Survivorship Option at Age 49 with  
22 Years of Service

Dear Alderman Murphy:

Local 215, IAFF, asked our office's assistance in drafting a technical correction amendment to Chapter 36 to permit eligible firefighters to select their protective survivorship option after attaining age 49 and 22 years of service. As explained below, it appears that sec. 36-05-7-b-4-a should have been amended when the 49/22 based benefit was created. This amendment is submitted to correct that oversight.

Chapter 36 provides that firefighters may retire on a service retirement allowance at age 52, with 25 years of service, or at age 49, with 22 years of service, but there is no provisions permitting 49/22 firefighters to select a protective survivorship option after 22 years of service. Instead, under current law, they must wait until they have earned 25 years of service to select a protective survivorship option.

Specifically, under sec. 36-05-1-f, firefighters who have attained the age of 52 and completed 25 years of creditable service are eligible for a service retirement allowance. In addition, firefighters who are represented by Local 215, IAFF, and are in active service on or after January 1, 1998, or firefighters who are not represented by Local 215, IAFF, and are in active service on or after January 1, 2000, and participate in the combined fund, are eligible for a service retirement allowance at age 49 upon completion of 22 years of creditable service.

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Under sec. 36-05-7-b-4-a, a firefighter who attains 25 years of creditable service on or after March 1, 1985, may elect a protective survivorship option. The section also provides that a firefighter eligible for election based on 25 years of service shall be required to make his or her election within 6 months of attaining 25 years of creditable service.

There is no provision, therefore, that permits a firefighter who has attained the age of 49 and 22 years of creditable service (*i.e.*, eligibility for normal service retirement) to select a protective survivorship option at that time. This three-year hiatus between the time certain firefighters become eligible for a service retirement allowances and the time they are permitted to select a protective survivorship option is inconsistent with the purpose of the protective survivorship option. The purpose of the option is to protect the member's survivorship benefit when the member elects to remain employed beyond the retirement eligibility date. Because of the hiatus, certain firefighters are working three years beyond their retirement eligibility date without having made a protective survivorship option election.

- ✕ The hiatus appears to be the result of an oversight. Section 36-05-7-b-4-a should have been amended when the 49/22 based benefit was created. We have enclosed an amendment to sec. 36-05-7-b-4-a that would permit firefighters who are eligible to retire at age 49 or older, with 22 years of creditable service, to elect a protective survivorship options at the time they become eligible for a service retirement allowance.

Very truly yours,

  
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RMK:lmb  
enclosure

c: Bernard J. Allen  
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