

# **Fire and Police Pension Fund**

## **San Antonio**

### **2009**



DEDICATED TO PROVIDING RETIREMENT SECURITY FOR  
FIRE FIGHTERS AND POLICE OFFICERS  
PAST, PRESENT, AND FUTURE

## **Summary Plan Description**

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# **FIRE AND POLICE PENSION FUND**

## **SAN ANTONIO**

**2009**

### **Summary Plan Description**

This Summary Plan Description is an overall summary of the statutory law governing the Fund, and provides general information concerning the operations and administration of the Fund. It is not intended to be a comprehensive analysis or explanation.

**THE STATUTE GOVERNING THE FUND AND THE POLICIES AND PROCEDURES ADOPTED BY THE BOARD OF TRUSTEES OF THE FUND TAKE PRIORITY OVER THIS SUMMARY.**

The governing statute and other useful information are available for viewing at the Fund's website: [www.safireandpolicepension.org](http://www.safireandpolicepension.org). Members and beneficiaries are encouraged to visit the website or contact the Fund office for further assistance and information. The Fund does not provide legal or tax advice. Questions concerning legal or tax matters should be directed to a qualified professional.

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# I GENERAL INFORMATION

## A. Background

The Fire and Police Pension Fund, San Antonio (the "Fund"), was created to protect the pensions for San Antonio fire fighters and police officers and their beneficiaries because of the hazardous nature of their professions. The Fund is dedicated to providing retirement security for fire fighters and police officers--past, present and future. It is a statutory trust providing a defined benefit plan for retired police officers and fire fighters (and their beneficiaries), and disability and death benefits for current police officers and fire fighters (and their beneficiaries) employed by the City of San Antonio. It is governed by Article 6243o of Vernon's Texas Civil Statutes (the "Act") and the provisions of the Texas Government Code. (Article 6243o was most recently amended effective October 1, 2009).

The members of the Fund contribute a percentage of their total salary to the Fund, and the City of San Antonio double matches this amount. The employee's contribution is 12.32% of total salary.

The Executive Director serves as the person who oversees the investment and administrative operations of the Fund, and who further advises the Board of Trustees (the "Board") on all issues relating to ongoing investment decisions and opportunities. The Executive Director is the principal point of contact for the Fund, and all notices concerning any Board action should be addressed to the attention of the Executive Director, 311 Roosevelt Avenue, San Antonio, Texas 78210.

## B. Board Operations

The nine-member Board of Trustees of the Fund normally meets at 9:30 a.m. on the last Tuesday of every month at the offices of the Fund. The Board is composed of the Mayor (or the Mayor's representative), two City Council members, two active fire fighter representatives, two active police officer representatives, one retiree fire fighter representative, and one retiree police officer representative. The fire and police representatives are elected by majority vote of the membership of their respective Associations. Officers of the Board are determined through election by the members of the Board.

The Board of Trustees is charged with the task of establishing Fund policy. The Trustees play a challenging and fiduciary role in their supervision of the Fund. The issues they address are numerous and varied. They serve strictly on a voluntary basis, yet the requests of their time are very demanding. The Board is there to serve and represent the members and the beneficiaries by protecting the Fund. The Fund operates on a fiscal year basis beginning on October 1 each year and ending on September 30 of the following year.

**C. Investment Philosophy**

The Fund manages a large investment portfolio to meet the needs of its members. The portfolio is currently allocated in equities (stocks), fixed income securities (bonds), cash (money market accounts) and alternative investments such as oil and gas, real estate, venture capital and timber properties. Professional consultants are employed by the Fund to assist the Board in investment decisions.

The investment strategy has as its objective a diversified approach designed to maximize returns while minimizing risk. This disciplined strategy has historically yielded successful results. The investment strategy is important because the returns achieved are the Fund's principal source of asset growth, rather than employer or employee contributions. Investment returns impact the actuarial soundness of the pension system significantly. Accrued unfunded liability may be reduced if investment returns exceed the assumed rate of return.

**D. Legislative Changes - 2009**

The major changes enacted during the 2009 legislative session are the following: (i) the implementation of a procedure to allow members who have served probationary time prior to becoming a member to purchase service credit for that time; (ii) an increase in the COLA payments to members that retired between 1997 and 1999; (iii) expansion of the BackDROP payment election from 4 years to 5 years; (iv) establishment of a 55-year-old minimum age for marriage after retirement spouses to begin receiving annuity payments for those that qualify for such annuity payments; (v) an increase in the lump sum death benefit payment to spouses who do not qualify for annuity payments, and who married the deceased member post-retirement, from \$2,500 to \$15,000; (vi) the elimination of the minimum years of marriage requirement for eligibility for such lump sum payment; (vii) changing the allocation of death benefits between a surviving spouse and the dependent children of a member from 50% - spouse and 50% - children to 75% - spouse and 25% - children; and (viii) the establishment of a procedure to allow the fire chief and police chief to opt out of membership in the Fund.

**E. Fund Website**

A helpful resource for members and other beneficiaries of the Fund is the Fund's website: [www.safireandpolicepension.org](http://www.safireandpolicepension.org). The website includes general information about the Fund as well as other useful content such as a benefit calculator tool for members, a "Steps to Retirement" guide, various administrative forms, current news pertaining to the Fund, Board agendas and minutes, Fund annual reports, legal and legislative information, and a calendar of events. The answers to many questions concerning Fund operations and member benefits can be quickly obtained by visiting the Fund's website.

## II SERVICE RETIREMENT

### A. **Retirement Pension Eligibility [Section 5.01 (a)]**

Whenever a Fund member contributes the appropriate portion of his or her salary and serves the minimum vesting period, the Board of Trustees shall, upon application, authorize that a retirement pension be paid. The minimum vesting period is twenty (20) years. If a member qualifies for a retirement benefit and then ceases to be a member of the Fund, that person continues to be entitled to benefits that accrued as of the date of termination of employment.

### B. **Application Procedure**

In order to effectuate a smooth transition from active duty to retirement, every prospective retiree should notify his or her department superiors and the Fund office well in advance of the actual retirement date (a minimum of thirty days). Fund staff will advise the member of all of the necessary steps that the member will need to take in order to secure his or her retirement benefits in a timely and efficient manner. In addition, in order to assist a member with retirement planning, Fund staff will upon request review the options available to a member under the Act, and provide estimated benefit payments for both straight annuity and BackDROP scenarios.

### C. **Retirement Pension Computation [Section 5.01 (f-1)]**

The pension of a member is computed on the basis of (i) the member's allowable service credit, determined under Section 5.01 (g) , and (ii) the member's Average Total Salary, which is the average of the member's Total Salary (see below) for the highest three years of the last five years (computed from the date of retirement). Fractional years of service are prorated based on full months served as a contributing member. In no event can the annual pension exceed 87.5% of the member's Average Total Salary as of the date of retirement.

A member's Total Salary is all salary of a member except:

- a. Overtime pay, field training officer's pay, bomb squad pay, SWAT team pay, K-9 pay, and hostage team pay; and
- b. Pay for unused accrued vacation and sick leave, holiday pay, compensatory time pay, and bonus days leave, or any similar items of compensation that may be paid in the future. [See Section 1.02 (17)]

The following table shows how a retirement pension is currently calculated:

**RETIREMENT PENSION COMPUTATION**

<b>Years of Service (regardless of age)</b>		<b>Percentage of Total Average Salary</b>
20	+2.25% per year	45.0
21	+5.0%	50.0
22	+5.0%	55.0
23	+5.0%	60.0
24	+5.0%	65.0
25	+5.0%	70.0
26	+5.0%	75.0
27	+5.0%	80.0
28	+2.0%	82.0
29	+2.0%	84.0
30	+2.0%	86.0
31	+0.5%	86.5
32	+0.5%	87.0
33	+0.5%	87.5

The maximum allowable pension is 87.5% of a member's Average Total Salary.

If you retire with more than 20 but not more than 27 years of service credit, the percentage of your Average Total Salary will increase by 0.417% for each full month of service credit. If you retire with more than 27 years but not more than 30 years of service credit, the percentage of your Average Total Salary will increase by 0.167% for each full month of service credit. If you retire with more than 30 years of service credit, the percentage of your Average Total Salary will increase by 0.042% for each full month of service credit up to a maximum of 36 months.

**D. Sick Leave [Section 5.01(g)]**

The respective personnel departments will provide a "Statement of Verification" of accrued sick leave as of the date of retirement. Upon retirement, all full months of unused sick leave in excess of ninety days will be included as service credit for purposes of determining the amount of the pension annuity. However, pay for unused sick leave is not included for purposes of determining Total Salary [Section 1.02 (17)].

**E. Probationary Service Credit [Sections 5.01(k), (l) and (m)]**

A member who was employed as a probationary firefighter or police officer prior to becoming a member of the Fund may elect to purchase one month of service credit for each full month of

probationary service, up to a maximum of 10 months. For *each month* of service credit to be purchased, the purchase price to be paid by the member is equal to the “member buyback contribution amount” for the member plus interest thereon from the member’s class graduation date until December 31, 2009 (or the date full payment is received by the Fund if before December 31, 2009). The “member buyback contribution amount” is the amount of the first contribution by the member to the Fund for a full pay period, multiplied by 26, divided by 12, and multiplied by 3.

A member must make such an election on or before December 31, 2009, and must make full and final payment with “qualified funds” on or prior to September 30, 2010. “Qualified funds” are defined in the Act as pretax funds that are part of an eligible rollover distribution, as described in Section 402(f)(2) of the Internal Revenue Code, or funds that have been transferred to the Fund in accordance with Sections 403(b)(13) or 457(e)(17) of the Internal Revenue Code to purchase years or fractions of years of service. Payment in full must also be made prior to the earlier to occur of the date of the member’s death or the date of the member’s retirement. If only partial payment is made prior to the date of death or retirement, the Fund will refund the payments without interest not later than the 60<sup>th</sup> day after the date of the member’s death or retirement, as applicable.

**F. Backward Deferred Retirement Option Plan (BackDROP) [Section 5.015]**

Some members prefer to obtain part of the pension as a lump sum payment that can be used for investment or other purposes. The BackDROP option permits a retiring member to elect a lump sum payment together with a reduced pension benefit. In determining the amount of the lump-sum payment and reduced annuity when a BackDROP is elected, the amount of service credit and Average Total Salary are calculated differently than is the case with a regular (straight) annuity. The BackDROP Average Total Salary is computed as if the member’s retirement date were actual retirement date less the number of BackDROP months elected, which may not exceed 60 months. For purposes of the *lump-sum payment*, service credit is calculated as follows:

Lump-sum service credit = Straight annuity service credit, less:

- service credit in excess of 34 years, other than credit for unused sick leave as of the date of actual retirement;
- service credit for unused sick leave as of the date of actual retirement; and
- the number of BackDROP months elected

The lump-sum payment is then computed as follows:

- An annuity amount is calculated using the lump-sum service credit and the BackDROP Average Total Salary; then
- Divided by twelve; then

- Multiplied by the number of BackDROP months elected

For purposes of the *reduced annuity*, service credit is determined in the same manner as is the case for the lump-sum calculation, except that the amount of sick leave unused on the date of actual retirement is not deducted. The reduced annuity is computed using the reduced annuity service credit and the BackDROP Average Total Salary. The reduced annuity may not exceed the maximum allowable pension under Section 5.01 (87.5% of a member's straight annuity Average Total Salary).

Payment of the lump sum may be deferred for up to twelve months following the date of actual retirement, and can usually be "rolled over" into a qualified retirement account (such as an Individual Retirement Account) without creating a taxable event. The lump-sum payment may also be paid to the member directly, in which event the payment may be taxable. It is strongly recommended that members consult with their tax advisors prior to electing how the lump-sum payment is to be made.

### **III DISABILITY RETIREMENT**

Before applying for a disability pension, the applicant must be disabled for at least thirty continuous days. Every member considering making application for a disability pension should carefully read Sections 5.03 through 5.08 of the Act, which govern disability retirement situations.

#### **A. Disability Pension Eligibility [Section 5.03]**

##### **1. Regular Disability [Section 5.03(a)]:**

A member of the Fund is eligible to retire and receive a regular disability retirement pension provided that (i) the member makes a written application for regular disability retirement with the Board, (ii) is permanently disabled through injury or disease so as to be unable to perform the duties of any available position in his or her respective department, (iii) has been off active duty for a continuous period of not less than thirty days before the date of the application, (iv) is not on indefinite suspension from the fire department or police department (when application is made or at the time the Board considers the application), and (v) has authorized the release to the Board of all medical records dated on or after the date of initial application for employment.

##### **2. Catastrophic Injury Disability [Section 5.03(a-1)]:**

A member of the Fund is eligible to retire and receive a catastrophic injury disability retirement pension provided that the member (i) makes a written application for catastrophic injury disability retirement to the Board, (ii) is permanently so disabled as a result of a catastrophic injury as to be unable to secure any type of third-party employment, or engage in any self-employment, other than sporadic third-party or self-employment, and as a result is incapable of maintaining employment

resulting in an annual income that is at or above the poverty level, (iii) has had all required member contributions made on the member's behalf, (iv) is not on indefinite suspension from the fire or police department (when application is made or at the time the Board considers the application), and (v) has authorized the release to the Board of all medical records dated on or after the date of initial application for employment.

A "catastrophic injury" is an irreparable physical bodily injury sustained by a member as a direct and immediate result of the member's engaging in an activity that (i) constitutes the performance of the member's duties as a firefighter or police officer, (ii) involves an extraordinary degree of risk of bodily injury or death, and (iii) does not result in death [See Section 1.02 (4-a) of the Act]. Heart/lung disease, anxiety disorders, and soft-tissue back/spine injuries may not form the basis of a catastrophic injury disability [See Sections 5.03(a-2), (a-3), and (a-4) of the Act]. The catastrophic injury disability is retroactive in that a member awarded a regular disability pension prior to October 1, 2007 may apply for the benefit. If awarded, the payment of the increased benefit will be prospective only.

**B. Application Procedure**

1. Regular Disability. A member applying for regular disability retirement must comply with the following requirements and procedures:

- a. Contact the Fund office and schedule an appointment.
- b. Make a written application for regular disability retirement.
- c. Execute the Authorization for Release of Medical Information form.
- d. Bring to the Fund office letters from two (2) personal physicians which state that the member is permanently disabled through injury or disease so as to be unable to perform the duties of any available position in his or her respective department.
- e. Be off of active duty for a continuous period of not less than thirty (30) days before the date of the application for disability retirement.
- f. Be a member in good standing of the fire or police department in which the member is employed (when application is made and at the time the Board considers the application).

2. Catastrophic Injury Disability. A member applying for catastrophic injury disability retirement must comply with the following requirements and procedures:

- a. Contact the Fund office and schedule an appointment.

- b. Make a written application for catastrophic injury disability retirement.
- c. Execute the Authorization for Release of Medical Information form.
- d. Undergo a medical examination by any physician(s) selected by the Board.
- e. Be a member in good standing of the fire or police department in which the member is employed (when application is made and at the time the Board considers the application).
- f. Meet the employability and income requirements set out in Article III.A.2. above.

At the time of the initial appointment, the Fund staff will assist the member in completing the applicable forms and will provide the member with a general overview of disability retirement benefits that may be available under the Act, examination criteria, medical re-examination provisions, the annual income review process, and the reinstatement process.

For regular disability applicants, the Fund staff will also request a written determination from the respective department Chief stating (i) whether the department is or is not able to provide the member employment within the department commensurate with the member's physical or mental capabilities, and (ii) describing any available positions that are commensurate with the member's disabilities. Such determination lies solely within the discretion of the department Chief and must be reasonably exercised. The Chief's written determination must be received by the Fund office prior to the First Hearing on the Application for Disability Retirement. If a position is available but is refused by the applicant, then the disability retirement may not be granted.

A disability retirement will be discontinued with respect to a disability retiree who, after retirement, has been offered a position commensurate with the retiree's disability by the Chief of his or her respective department and who refuses the position. Once granted, a disability retirement benefit may not be completely discontinued unless the disability retiree has been accepted for reinstatement in that person's former position or status by the Chief of his or her respective department.

### **C. Hearings.**

Upon the completion of all application requirements, receipt of all necessary documentation, and initial action on the matter by the Disability Committee of the Board, the Fund staff will schedule the First Hearing on the Application for Disability Retirement at the next regularly scheduled Board meeting. At the First Hearing, if the Board determines that the applicant has met all application requirements, and if the Chief of the applicant's respective department has determined that there is no position available commensurate with the disability of the applicant (with respect to regular disability applications), then the following apply:

1. A member of the Fund who applies for disability retirement is subject to medical examination as determined by the Board.
2. If the Board orders one or more independent medical evaluations, the attending physician(s) designated by the Board shall report to the Executive Director that:
  - a. For a regular disability applicant, the member is/is not permanently disabled through injury or disease so as to incapacitate the member from the performance of duties.
  - b. For a catastrophic injury disability applicant, the member does/does not meet the employability and income requirements set out in Article III.A.2. above.
  - c. The physician must submit a written narrative of the member's examinations.

Upon receipt of any independent medical evaluations required by the Board and further action on the matter by the Disability Committee of the Board, the Fund office shall schedule the Second Hearing on the Application for Disability Retirement at the next regularly scheduled Board meeting. At the Second Hearing, all documents, medical reports and other relevant information will be presented to the Board for its consideration, together with the recommendation of the Disability Committee of the Board, if any. The applicant, or his or her designated representative, is entitled to present evidence and/or question witnesses at the hearing, or may waive this right.

**D. Disability Pension Computation [Section 5.04]**

1. Regular disability:

When a member is granted a regular disability retirement pension as provided above, such member shall be entitled to receive from the Fund (i) if the member has served at least three years before the date of retirement, 50% of the member's Average Total Salary, computed from the date of retirement; or, (ii) if the member has served less than three years but more than two months before the date of retirement, 50% of the member's average monthly salary multiplied by 12; or, (iii) if the member has served less than two months before the date of retirement, 50% of member's average daily salary multiplied by 360. All disability retirement benefits are paid on a monthly basis.

2. Catastrophic injury disability:

When a member is granted a catastrophic injury disability retirement pension, such member shall be entitled to receive from the Fund (i) if the member has served at least three years before the date of retirement, 87.5% of the member's Average Total Salary, computed from the date of retirement; or, (ii) if the member has served less than three years but more than two months before the date of retirement, 87.5% of the member's average monthly salary multiplied by 12; or, (iii) if the member has served less than two months before the date of retirement, 87.5% of the member's daily

salary multiplied by 360. All disability retirement benefits are paid on a monthly basis.

**E. Outside Income Pension Reduction [Section 5.07]**

All disability retirement pensioners retiring after August 29, 1979 who are less than 65 years of age must provide the Fund, not later than May 1 of each year, a true and complete copy of the retiree's income tax return for the previous year. Retirees who are at least 65 years of age as of December 31 of the previous year are exempt from this requirement.

If a regular disability retiree received income from other employment, including self-employment, during the preceding year, the Fund may reduce the retiree's disability retirement benefits by \$1 for each \$2 earned, on a monthly basis, but not below the minimum monthly pension as stated in Section 5.05(c) of the Act.

**F. Medical Re-Examination and Disability Benefit Adjustment [Section 5.05]**

After a disability retirement pension has been granted, the Board may cause a disability retiree to undergo medical re-examination(s) by any reputable physician(s) selected by the Board. A retiree who has been granted a catastrophic injury disability pension must undergo a mandatory medical re-examination within five years following the initial grant of the catastrophic injury disability pension, and thereafter no less often than once every five years. Based on the examination(s), the Board shall determine whether the disability retirement benefit shall be continued, decreased, restored to the original amount if it had been previously decreased, or discontinued.

Any reduction resulting from the findings of medical examinations shall (except in the case of discontinuance) be subject to the following restrictions:

1. If retirement occurred before August 30, 1971, the annuity may not be reduced to less than an annuity calculated based on (i) the retiree's service credit, (ii) an annual multiplier of 2.25%, and (iii) the greater of the annual base pay of a private at the time of the original granting of the pension or \$2,400.00.

2. If retirement occurred on or after August 30, 1971, the annuity may not be reduced to less than an annuity calculated based on (i) the retiree's service credit, (ii) an annual multiplier of 2.25%, (iii) if the member has served at least three years before the date of retirement, the member's Average Total Salary, computed from the date of retirement, (iv) if the member has served less than three years but more than two months before the date of retirement, the member's average monthly salary multiplied by 12; and (v) if the member has served less than two months before the date of retirement, the member's average daily salary multiplied by 360.

A disability retiree who, after notice, fails to undergo a medical examination required by the Board is subject to a reduction or a total discontinuance of the disability retirement benefit.

**G. Reinstatement Procedure [Section 5.06]**

A disability retiree who applies for reinstatement to active duty must, in addition to complying with applicable civil service laws, file a written application with the Board to discontinue the disability pension, subject to medical examination, indicating that the retiree has recovered from the disability and certifying that the Chief of the applicable department has approved the reinstatement.

**IV  
DEATH BENEFITS**

**A. Death Benefit Pension Eligibility**

1. Death of Active Member or Regular Disability Retiree [Sections 6.02(a) and (b)]

If a member or regular disability retiree dies leaving a surviving spouse or one or more dependent children, the surviving spouse and the children are entitled to receive, at the election of the surviving spouse, an aggregate death benefit annual pension equal to the greater of (i) 50 percent of the member's Average Total Salary, or (ii) the same percentage of the member's Average Total Salary that the member would have been entitled to receive as a retirement pension if the member could have retired on the date of death, except that the percentage may not exceed the percentage to which a member with 27 years of service would be entitled.

2. Death of Retiree [Section 6.02(c)]

If a retiree other than a regular disability retiree dies leaving a surviving spouse or one or more dependent children, the aggregate death benefit is equal to the lesser of (i) the retirement annuity a retiring member would receive who had the same Average Total Salary as the deceased retiree and 27 years of service credit, or (ii) the retirement annuity the deceased retiree was receiving at the time of his or her death.

3. Division of Death Benefits [Sections 6.02(d), (d-1), (e) and (f)]

If there is a surviving spouse and one or more dependent children, the benefit is awarded 75% to the surviving spouse and 25% to the dependent children. The change from the previous 50/50 allocation became effective on October 1, 2009, and is applicable to all annuities being paid by the Fund which are divided between a surviving spouse and dependent children, regardless of when the death of the member or retiree occurred. If there are no dependent children, all of the benefit is paid to the surviving spouse. If there is no surviving spouse, the entire benefit is awarded to the children. Any award to more than one dependent child is divided equally among them. The benefits paid to a minor child cease at age 18 (except in the event the child is disabled and is wholly dependent).

4. Child Born After Retirement [Section 6.02 (g)]

A child who is born after the date of retirement of a member is not entitled to a death benefit pension unless the member was married to the other biological parent of the child on the date of retirement.

5. Marriage After Retirement [Sections 6.02 (d-2), (g), (g-1) and (g-3)]

A surviving spouse who was not married to the retiree at the time of the retiree's retirement but was married to the retiree for at least five consecutive years preceding the retiree's death is entitled to receive the entire death benefit of a surviving spouse, provided that the surviving spouse is at least 55 years old. If the surviving spouse is not at least 55 years old on the date of death of the retiree he or she will be entitled to no benefits from the Fund until age 55. In such event, the entire benefit is awarded to the children until such time as the surviving spouse reaches age 55. A surviving spouse who was not married to the retiree at the time of the retiree's retirement and was married to the retiree less than five consecutive years preceding the retiree's death is entitled to receive only the benefits, if any, provided under Section 6.08 of the Act.

6. Reallocation of Benefits in Certain Cases [Sections 6.02(h) and (i)]

If a member or a retiree dies, leaving a surviving spouse and at least one dependent child, the benefit awarded to the spouse is increased from 75 percent to 100 percent once all children reach adulthood [Section 6.02(h)]. Likewise, if the surviving spouse dies leaving dependent children, the amount awarded to the children is increased from 25 percent to 100 percent [Section 6.02(i)].

7. Election of Lump-Sum Payment [Section 6.14]

The surviving spouse of an active member who dies may elect to receive death benefits in the form of a lump-sum payment and reduced annuity under certain circumstances. The lump-sum payment and reduced annuity are calculated similarly as is the case with a BackDROP election by a retiring member provided for in Section 5.015 of the Act. Please consult the Fund to determine eligibility for this option and for assistance in calculating available benefits.

**B. Application Procedure**

1. Surviving Spouse With Minor Children

- (a) The applicant must bring the following documentation to the Fund:
  - (1) A certified copy of the decedent's death certificate.
  - (2) A certified copy of the applicant's marriage license.
  - (3) A certified copy of each minor child's birth certificate.
  - (4) If a marriage after retirement is involved, a copy of the applicant's valid driver's license, or other credible evidence of age.
  - (5) A Letter of Guardianship (contact the Fund office for assistance in filing for guardianship and refer the exhibit attached explaining

- guardianships).
- (6) A copy of the social security card for each minor child.
- (7) Documentation of any mental or physical disability of any child, if applicable.

- (b) The applicant must file a notarized application with the Fund.
- (c) Once all application requirements have been met, action on the application will be conducted at the next regularly scheduled Board meeting.

2. Surviving Spouse with No Minor Children

- (a) The applicant must submit the following documentation to the Fund:
  - (1) A certified copy of decedent's death certificate.
  - (2) A certified copy of applicant's marriage license.
  - (3) If a marriage after retirement is involved, a copy of the applicant's valid driver's license, or other credible evidence of age.
- (b) The applicant must complete and file a notarized application for a beneficiary pension with the Fund.
- (c) Once all application requirements have been met, action on the application will be conducted at the next regularly scheduled Board meeting.

C. **Remarriage: Benefits After Termination of Marriage [Section 6.04]**

1. Remarriage before October 1, 1995:

If a beneficiary widow/widower remarried before October 1, 1995, or a beneficiary dependent child married before October 1, 1995, pension payments were discontinued under prior law. Current law now provides that if the marriage of that beneficiary widow/widower or dependent child terminates on or after October 1, 1995, that person may reapply for benefits. The applicant must submit to the Fund office a certified copy of the Divorce Decree or a certified copy of the spouse's death certificate. The applicant shall be entitled prospectively on application to 100% of the pension that was in effect on the date of termination of benefits.

2. Remarriage on or after October 1, 1995:

There is no termination of benefits if the remarriage of the beneficiary widow/widower or dependent child occurred or occurs on or after October 1, 1995.

**D. Marriage Subsequent to Retirement [Section 6.08]**

A surviving spouse, whose status resulted from a marriage after the date of the retirement of the member that was less than 5 consecutive years in duration and immediately preceding the member's death, is entitled to a lump-sum death benefit in the amount of \$15,000. This benefit is not available to a surviving spouse if there are dependent children entitled to receive a death benefit.

**E. Limitation on Benefits for Multiple Marriages [Section 6.07]**

A surviving spouse who has been married to more than one deceased member or retiree shall only be entitled to the highest death benefit pension payable by virtue of one marriage.

**F. Benefits to Dependent Parents [Section 6.09]**

If a member or retiree dies leaving no spouse or child, but at the time of death had a surviving father and mother wholly dependent on that person for support, the mother and father are entitled to receive one-third of an annuity computed based on the decedent's Average Total Salary, the decedent's service credit, and the formula set out in Section 5.01 (f-1) of the Act, which is divided equally between the father and the mother. If there is only one surviving parent, the parent is entitled to one-fourth of such annuity.

An application for benefits must be accompanied by a copy of the deceased member's or retiree's tax return filed for the last year ending before the member's or retiree's death, or an explanation satisfactory to the Board of why the tax return cannot be provided. The Board retains the authority to fully investigate all claims based on total dependency. The ruling of the Board is final unless set aside or revoked by a court of competent jurisdiction.

**G. Benefits to Estate [Sections 6.11 and 6.115]**

If an active member dies and does not leave any surviving beneficiaries, the estate of the deceased member is entitled to a death benefit payment from the Fund in an amount equal to the greater of (i) ten times the amount of the annual annuity computed in accordance with Section 5.01 (f-1) of the Act using the deceased member's service credit and Average Total Salary as of the date of death, or (ii) the refund of the member's contributions that were picked up by the municipality. If a retiree dies leaving no surviving beneficiaries, the estate of the retiree is entitled to a death benefit payment in an amount equal to ten times the amount of the annual annuity awarded by the Board effective on the retiree's date of retirement, less any retirement or disability payments and any lump-sum BackDROP payment which was paid to the retiree.

**H. Benefits to Members Killed In the Line of Duty [Section 6.03]**

In the event a member is killed in the line of duty, the member's surviving spouse and dependent child or children are entitled to an annuity equal to the member's Total Salary as of the date of death. The pension will be divided between the surviving spouse and dependent child or children in

accordance with Section 6.01 of the Act. A guardianship is required in the case of a minor child or children, and the benefits to any minor child terminate upon the child reaching eighteen years of age. The annuity is subject to the same cost-of-living adjustments that apply to pensions for service retirement. The benefits paid may be exempt from federal income taxation. Beneficiaries should consult a tax advisor in this regard.

In determining whether a member has been killed in the line of duty, the Board will consider whether the City of San Antonio recognizes the death as being in the line of duty, medical reports, and such other evidence deemed relevant by the Board.

## V DENIAL OF BENEFITS

An application for benefits will be reviewed by Fund staff, who will either determine that the application should be approved, the application should be denied, or that additional information is required from the applicant. The staff will advise the applicant of its determination. Final decisions on approval or denial of benefits are made by the Board. In the event that staff determines that an application should be denied, the applicant may request that the matter be taken up and considered by the Board by proceeding in the following manner:

### A. Administrative Process [Section 3.02]

1. The applicant shall contact the Fund office and request that the matter be scheduled for consideration by the Board.
2. The applicant shall provide any additional documentation or other information requested by the staff pertaining to the claim.
3. As soon as administratively feasible, the applicant's request for Board determination shall be placed on the agenda for consideration by the Board at a regular or special meeting, and staff shall provide notification to the applicant in writing of the date, time and location of the meeting.
4. The applicant may be represented at the Board meeting by legal counsel at the applicant's expense.
5. The presiding officer of the Board has broad authority to issue subpoenas to witnesses to appear and provide sworn testimony on matters involving benefits under the Act.
6. The Board or Fund staff will advise the applicant in writing of the Board's determination.

### B. Denial by Board - Rehearing

In the event the Board rules unfavorably on the applicant's claim for benefits, the applicant

may, within 30 days after the announcement of the denial of the claim, request in writing to the Fund that the Board formally reconsider the matter. The request should specify the reason(s) for which a rehearing is requested. The presiding officer of the Board will direct that the matter be placed on the agenda to be reconsidered by the Board only if it appears to such officer that the applicant will present new and compelling evidence not previously considered by the Board to support the applicant's claim. If the matter will be reconsidered by the Board, the procedures set out in Article V.A.3.- 6. above regarding notice to applicant and the conduct of the meeting will be applicable.

**VI**  
**DISBURSEMENT OF 13TH AND 14TH**  
**PENSION CHECKS**  
**[Sections 5.11, 5.12 and 6.12]**

After the end of each fiscal year, the Board may (i) authorize the disbursement of a 13th monthly pension check for that year if the average annual yield on the Fund's investments exceeded the actuarial projections for the preceding five-fiscal-year period by at least 100 basis points, and (ii) authorize the disbursement of a 14th monthly pension check for that year if the average annual yield on the Fund's investments exceeded the actuarial projections for the preceding five-fiscal-year period by at least 300 basis points. The 13th and 14th pension checks are paid to each retiree and beneficiary entitled to receive a pension in the last month of the preceding fiscal year, and are in an amount equal to the pension check paid in that month. Retirees/beneficiaries entitled to receive less than one year of benefits for the preceding fiscal year will receive a prorated check. Authorization of a 13th or 14th check for any year is subject to the discretion of the Board. Authorization for one year does not obligate the Board to authorize a 13th or 14th check for any other year.

**VII**  
**COST OF LIVING ADJUSTMENTS**  
**[Section 5.09]**

After the end of each calendar year the Board increases all annuities based on the percentage increase in the Consumer Price Index for All Urban Consumers, U.S. City Average (CPI) commonly referred to as al Cost of Living Adjustment (COLA). The COLA adjustment for a retiree who retired during the previous calendar year is prorated based on full months retirement. All calculated COLA increases are rounded to the nearest one-tenth percentage point. There are three categories of Cost of Living Adjustments which apply to pensioners and beneficiaries, depending on the date of retirement, disability or death, as follows:

Before                      Member's retirement, disability or death before retirement occurred before  
8/30/71:                      August 30, 1971 - member or beneficiary will receive 100% of the CPI  
increase.

After 8/30/71              Member's retirement, disability or death before retirement occurred on or

and Before 10/1/99: after August 30, 1971, but before October 1, 1999 - member or beneficiary will receive:

- (1) If the increase of the CPI is 8% or less, 100% of the CPI increase; or
- (2) If the increase of the CPI is more than 8%, 100% of the CPI increase up to and including 8%, and 75% of the CPI increase in excess of 8%.

After 10/1/99: If the member's retirement, disability, or death before retirement occurred on or after October 1, 1999 - member or beneficiary will receive 75% of the CPI increase.

For example, assume that the CPI increase for calendar year 2009 is 4.5%. If you retired in 2000, effective January 1, 2010 you will receive a COLA equal to 75% of 4.5%, or 3.4%. If you retired in 1988, effective January 1, 2010 you will receive a COLA equal to 4.5%. Assume that the CPI increase for calendar year 2009 is instead 9.75%. If you retired in 2000, effective January 1, 2010 you will receive a COLA equal to 75% of 9.75%, or 7.3%. If you retired in 1988, effective January 1, 2010 you will receive a COLA calculated as follows:

$$\text{COLA} = 8\% + [75\% \times (9.75\% - 8\%)] = 9.3\%$$

## **VIII**

### **EXCESS BENEFIT PLAN**

#### **[Section 8.01]**

Effective October 1, 1997, a separate, non-qualified, unfunded excess benefit plan exists outside the Fund. This plan is intended for very limited situations that apply only to highly compensated employees.

An excess benefit participant is any member whose retirement benefits exceed the maximum benefit allowable under the United States Internal Revenue Code of 1986. As permitted under Section 415(m) of IRS regulations, this plan is intended to be a "qualified governmental excess benefit arrangement."

A member eligible to receive benefits under the excess benefit plan will receive an amount equal to the lesser of:

- (1) the member's unrestricted benefit less the maximum benefit; or
- (2) the amount by which the member's monthly benefit from the Fund has been reduced because of limitations by IRS.

In the case of the death of an excess benefit participant whose spouse, dependent child, or

dependent parent is entitled to pre-retirement or post-retirement death benefits under the Fund, the spouse, dependent child, or dependent parent is entitled to a monthly benefit under the excess benefit plan equal to the benefit determined by the Fund's dependent's benefits without regard to the limitations under IRS rules, less the maximum benefit.

Benefits payable under the Excess Benefit Plan will be paid at the same time and in the same manner as the benefit would have been paid from the Fund. The Board shall administer the excess benefit plan with the same rights, duties and responsibilities as the Board has for the Fund.

The City will make separate contributions to the Fund and to the Excess Benefits Plan that totals the amount that satisfies the obligation to the eligible member. City contributions made to provide retirement benefits under the Excess Benefit Plan may not be commingled with the money of the Fund.

## **IX**

### **REFUND OF CONTRIBUTIONS**

**[Section 4.07]**

A member who has contributed to the Fund for less than twenty years, and who resigns from employment as a police officer or fire fighter for reasons other than to obtain a disability pension or is terminated, may apply for a refund for only those contributions which he or she has made. Contributions will be refunded without interest.

A person who has vested, or who terminates employment to obtain a disability pension from the Fund, is not entitled to a refund of contributions. A person's acceptance of a refund pursuant to the Act precludes that person from obtaining any other right or benefit under the Act.

## **X**

### **MISCELLANEOUS PROVISIONS**

#### **A. Common Law Marriages [Section 6.06]**

Common-law marriages are not recognized under the Act and benefits may not be granted to common-law spouses as beneficiaries unless a declaration of informal marriage is made prior to the member's death pursuant to the provisions of the Texas Family Code. A declaration should be pre-filed (before death) by the member with the Fund office, and any changes should be reported to the Fund office.

#### **B. Mentally and Physically Dependent Children [Section 6.02(j)]**

A dependent child who is so mentally or physically disabled as to be incapable of being self-supporting to any extent, if otherwise qualified, and regardless of age, has the rights of a child under eighteen (18) years of age. Further, any pension paid to any mentally or physically disabled child or

children may be reduced by the amount received from any state aid, including Medicaid, or any state funded assistance, regardless of whether or not the funds were made available to the state by the federal government.

**C. Family and Medical Leave Act [Section 4.02]**

A member who takes approved unpaid leave as provided by the Family and Medical Leave Act can make voluntary contributions for the leave period in the same amount that the member would have paid if the member had not taken the leave. These voluntary contributions must be made no later than the 30th day after the date the member returns from that leave. Failure to make voluntary contributions within the time noted will result in the member losing all credit toward the member's retirement pension for said unpaid leave period.

**D. Uniformed Service [Section 4.03]**

A member who enters any uniformed service of the United States and complies with the requirements of the Uniformed Services Employment and Re-employment Rights Act must file with the Fund, not later than the ninetieth (90th) day after the date of the member's reinstatement to an active status in the fire or police department, a written statement of intent to pay into the Fund an amount equal to what the member would have paid if the member had remained in active status in the department during the period of the member's absence in uniformed service.

This payment to the Fund must be made in full within an amount of time equal to three times the amount of time the member was absent, except that the maximum period for payment may not exceed five years. If the member fails to comply with the requirements, the member shall lose all credit towards the member's retirement pension for the length of time the member was engaged in uniformed service.

## **XI**

### **ADMINISTRATIVE INFORMATION**

**A. Payroll Deductions**

1. Insurance

All deductions such as medical insurance premiums, life insurance, etc., must be initiated by the applicant and require a signed Deduction Authorization form. Any change or cancellation of a deduction may be conducted by mail or in person. A self-addressed stamped envelope will be provided by the Fund. Any changes should be made during the first week of the month. Changes received after the first week of the month will be processed the following month.

## 2. Income Tax

Under most circumstances, a retirement pension is taxable income. The Fund staff will assist members in completing an IRS Form W-4P to determine the amount of withholding for federal income tax purposes. In some cases, cost of living increases do not automatically increase the withholding amount. A new Form W-4P must be submitted to initiate a change. The Fund staff mails all pensioners an IRS Form 1099R – Distributions from Pensions, Annuities, Retirement and Profit-Sharing Plans, IRAs, Insurance Contracts, etc. in January of each year.

## 3. Deferred Compensation (457 Plan)

All questions concerning a member's interest in the City of San Antonio's 457 Plan should be directed to the City's Finance Department or to the appropriate Deferred Compensation Carrier. The Fund has no involvement in the administration of that Plan.

### **B. Direct Deposit**

All pensioners, beneficiaries and other payees must provide the Fund with bank depository information so that benefit payments can be disbursed by direct deposit [Section 3.03(c)]. A voided check contains the pertinent information required by the Fund. Also, a Direct Deposit form must be completed. The direct deposit takes effect immediately on the first benefit payment and continues for each monthly payment. The direct deposit is electronically transferred to the depository institution and a non-negotiable facsimile of a check showing the amount of the deposit is mailed to your home address every month.

### **C. Change of Address and/or Status**

Active members and retirees should immediately notify the Fund of any status changes such as a marriage, divorce, or death of a spouse. Retirees, beneficiaries, and other payees should immediately notify the Fund in writing of any change of address.

### **D. Beneficiary Designation**

Members of the Fund cannot designate any beneficiary for the purpose of receiving death benefits. Such beneficiaries are determined exclusively under the provisions of the Act. Benefits are awarded to eligible widows/widowers, children, wholly-dependent parents, and member or retiree estates under Sections 6.01 through 6.14 of the Act.

### **E. Qualified Domestic Relations Orders**

At its December, 2008 regular meeting the Board of Trustees adopted a Qualified Domestic Relations Order (QDRO) Policy which became effective on January 1, 2009. Under the new QDRO Policy the Fund is able to pay retirement benefits that are divided by a Court in a divorce action directly to the retiree and the retiree's former spouse in accordance with the division ordered by the

Court. The new QDRO Policy is designed to simplify and streamline the process involved when retirement benefits are divided upon divorce. Attorneys who represent individuals in divorce actions on a regular basis are usually generally knowledgeable about QDRO's and how they need to be addressed in connection with the division of the community estate of the parties. It is important that any active member or retiree involved in a divorce action have their attorney contact the Fund office early on in the process. Fund staff or counsel will provide the necessary forms and information to assure that the divorce decree or property settlement agreement contains the appropriate language that conforms to the Fund's QDRO Policy.

The treatment of pension benefits in divorce proceedings is a complex subject. The parties involved and their attorneys frequently have numerous questions about various aspects of the process. The Fund staff and its legal advisors are available to assist in this regard should the need arise.

**F. Overpayment of Benefits [Section 3.03(d)]**

In the event of an overpayment of benefits by the Fund, subsequent benefits may be reduced in order to offset the excess amount paid. If no subsequent benefits are planned, then the Fund may recover the overpayment in any manner that other debt is recovered. The Fund must follow the procedures for recovery of overpayments mandated by Section 802.1024 of the Texas Government Code.

**G. Robert's Rules of Order**

Unless otherwise required under the Act, all meetings of the Board of Trustees and its various Committees are conducted in accordance with Robert's Rules of Order.

**Exhibits:**

**I: Guardianships**

# EXHIBIT I

## Guardianships

### Benefits to Children of Deceased Members

#### When is a guardianship required under the Act?

Section 6.02 of the Act provides for a death benefit in the form of an annuity to surviving spouses and dependent children of deceased members and retirees. The benefit is allocated as follows: 25% to the dependent children and 75% to the surviving spouse. Section 6.13 of the Act mandates that the payment to a minor child be either (i) paid to a guardian of the *estate* (property) of the child, or (ii) accrued by the Fund and paid to the child upon reaching age eighteen. While a parent is considered the "natural guardian" of his or her child (guardian of the person), a parent is not legally the guardian of the *estate* of the child unless and until the parent is appointed as guardian of the estate by court order. The guardian of a child's estate has the legal right to manage the assets of the child in accordance with the provisions of the Texas Probate Code.

#### Why does the Act require that a guardian of the estate be appointed?

A guardianship of the estate is required in order to protect the property interests of the child. The guardian is required by law to act in best interests of the child, and may not utilize the funds or other assets of the child except as authorized by the court. The guardianship significantly reduces the likelihood that the assets of the child will be misused or misappropriated, whether intentionally or unintentionally. A guardianship also protects the Fund from liability in the unlikely event that the funds of the child are not adequately protected.

#### What is the Fund's role in the guardianship process?

The Fund's role is limited to providing the surviving spouse with general information regarding guardianships. Establishing a guardianship is a legal proceeding, and the Fund strongly recommends that an attorney experienced in guardianship matters be consulted. The Fund will, subject to Board approval, provide reimbursement to a surviving spouse for attorneys fees incurred in establishing the guardianship that are deemed reasonable by the Board. Once the guardianship is established, the Fund pays all benefits to which the child is entitled to the court appointed guardian.. The Fund has no control over how the funds are managed by the guardian. The administration of the guardianship is governed by the Probate Code and overseen by the court.

#### Who becomes the child's guardian?

In nearly all cases, the surviving spouse becomes the guardian. The law provides states that if one parent is deceased, the surviving parent is the natural guardian of the minor child and is entitled to

be appointed guardian of the minor child's estate (Section 676<sup>1</sup>).

### **What are the legal steps involved in establishing a guardianship?**

The following is a brief summary of the legal process involved in obtaining a guardianship:

1. Application: Section 682

The process begins with filling out an application for guardianship called a "Petition for Guardianship".

2. Filing the case: Section 621

The attorney will file the "Petition for Guardianship" with the county clerk.

3. Issuance of "Notice and Citation": Section 633

When an application for the creation of a guardianship is filed with the clerk of the court, the clerk is required to issue notice that the application for guardianship has been filed. The notice must contain the names of the applicant and the proposed ward (the child), and must cite all persons interested in the welfare of the proposed ward to appear at the time and place specified in the notice if they wish to contest the application. The Probate Code requires that the notice be personally served by an officer of the court on certain specified interested persons, and requires that other specified persons be sent a copy of the notice by registered or certified mail. The hearing on the application may not be held until the Monday following the tenth day after the completion of all required service of the notice and citation.

4. Appointment of an "Attorney Ad Litem" to represent the child: Sections 646, 647

In all proceedings for the appointment of a guardian, the court must appoint an attorney (called the "attorney ad litem") to represent the interests of the proposed ward. The attorney ad litem must be supplied with copies of all court records and is required to interview the proposed ward before the hearing.

5. Court Appearance/Hearing: Sections 643, 644

The court must find by clear and convincing evidence that it is in the proposed ward's best interest to have the court appoint a guardian and that the rights of

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<sup>1</sup>All section numbers refer to the Texas Probate Code.

the proposed ward or the proposed ward's property will be protected by the appointment of that guardian.

6. Order of the Court: Section 693

The court will then issue an order appointing the guardian and setting out the specific powers and duties of the guardian.

7. Bond: Section 702

The court is required to set a bond in an amount sufficient to protect the ward's estate. The bond requirement may not be waived.

8. Oath: Section 700

The guardian shall take an oath to "discharge faithfully the duties of guardian" of the child's estate.

9. Issuance of Letters of Guardianship: Section 659

When a person who has been appointed guardian has qualified as guardian by taking and filing the oath and giving any required bond, the court clerk will issue to the guardian a certificate ("letters of guardianship") stating the guardian was appointed and qualified, giving the date of the appointment, and the date the letters of guardianship expire. The letters of guardianship are effective for one year and four months after the date of issuance, after which the letters may be renewed by the clerk on the receipt and approval by the court of the guardian's annual accounting (see below).

10. Some courts will provide an information sheet or booklet outlining for newly appointed guardians their rights and responsibilities.

**What are the responsibilities of the guardian?**

The guardian of the estate of a minor is entitled to possess and manage all properties belonging to the child. In addition, the guardian is obligated to collect debts, rental, and claims due, to enforce all obligations in favor of the child, and to represent the child in legal actions. It is also the duty of the guardian of the estate to take care of and manage the estate as a prudent person would manage the person's own property. The "prudent person" concept implies that the conduct of the guardian must be judged by the standard of "reasonableness" -- meaning "that which a reasonable person would do." Finally, the guardian must also account for all estate receipts and expenditures. Section 768

**What are the reporting requirements placed on the guardian?**

The guardian must file an "annual accounting" of all receipts and expenditures in connection with the child's estate. The guardian of the estate must return to the court an exhibit in writing under oath setting forth a list of all claims against the estate that were presented to the guardian and a complete account of receipts and disbursements (within the period covered by the account). Section 741(a)

### **May the reporting requirements be waived?**

The court may waive the requirement of annual accounts if the estate produces negligible or fixed income. The court may permit the guardian to receive the income and account for it when the guardianship is closed. Section 741(g)

### **Can the guardian incur personal liability?**

A person managing a child's estate may be personally liable for dissipation or waste of the child's estate if the guardian fails to exercise the required degree of care (the "prudent person" concept). Sections 768, 855

### **Are there limitations on the guardian's use of the child's benefits?**

The primary responsibility for support of a child is the parent's. If the parent is unable to support the child without "unreasonable hardship", then the funds placed in the guardianship may be used for the support, education, and maintenance of the child. Since the needs of children vary, the court is given great discretion to decide what expenditures are in the child's best interests. Section 777

### **When is the guardianship terminated?**

The guardianship of a minor child terminates by law when the child reaches the age of majority (18). Section 694

### **What is a Management Trust?**

A Management Trust is an arrangement authorized under the Probate Code whereby management of the assets of the ward's estate is turned over by the guardian to a trust company or the trust department of a bank (Sections 867-874). If a Management Trust is established, the institutional trustee, not the guardian, will be responsible for all investment decisions, court reports and accountings, distributions and other administrative functions. The amount of the bond required is typically much less when an institutional trustee is utilized. On the other hand, a trust company or bank will charge their customary fees for providing the necessary management services. If, however, the value of the trust's principal is \$50,000 or less, the court may appoint a person other than a financial institution to serve as trustee. Under this scenario it is possible for the surviving parent to serve as trustee of the Management Trust. A key feature of a Management Trust is that the trustee

has the authority to distribute trust assets as the trustee deems necessary for the health, education, support, or maintenance of the ward. The trustee is required to provide to the court an annual accounting of all transactions in the trust.

**Can a "simple trust" be used to avoid a guardianship?**

A "simple trust" arrangement is not a feasible alternative. As discussed above, the Act allows for only one option other than the appointment of a guardian, which is the accrual of the benefits by the Fund until the minor child reaches age eighteen.

**What are the risks to the Fund?**

The requirement that benefits to which a minor is entitled be paid to a guardian helps to protect the Fund by eliminating any potential liability associated with mismanagement of the minor's assets, should that occur. Once the benefits are tendered to the court-appointed guardian the Fund has no responsibility for the management of the funds. That responsibility will lie exclusively with the guardian or the trustee of the Management Trust (if applicable).

**Recommended Counsel For Guardianships:**

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