

LAKE WALES

OFFICIAL CODE OF ORDINANCES

CHAPTER 16. PENSIONS AND RETIREMENT

LAKE WALES
CHAPTER 16. PENSIONS AND RETIREMENT

Table of Contents

Article I. In General

Article II. City Of Lake Wales General Employees' Pension Plan And Trust

Division 1. Generally

Division 2. Ordinance 99-02 General Employees' Pension Plan

- § 16-41. Definitions and rules of construction.
- § 16-42. Membership.
- § 16-43. Board of trustees.
- § 16-44. Finances and fund management; establishment and operation of fund.
- § 16-45. Contributions.
- § 16-46. Benefit amounts and eligibility.
- § 16-47. Pre-retirement death.
- § 16-48. Optional forms of benefits.
- § 16-49. Beneficiaries.
- § 16-50. Claims procedures before the board decision.
- § 16-51. Roster of retirees.
- § 16-52. Board attorney and professionals.
- § 16-53. Limitation on benefits.
- § 16-54. Latest date to begin distribution of benefits.
- § 16-55. Repeal or termination of plan.
- § 16-56. Exemption from execution, non-assignability.
- § 16-57. Pension validity.
- § 16-58. Forfeiture of pension.
- § 16-59. Indemnification.
- § 16-60. Family and medical leave act.
- § 16-61. Eligible rollover distributions.
- § 16-62. Separation from employment for military service.
- § 16-63. Miscellaneous provisions.
- § 16-65. Military service prior to employment.
- § 16-66. *Purchase of service. [Repealed]*

Article III. Firefighters' Pension Plan And Trust Fund

- § 16-161. Definitions.
- § 16-162. Membership.
- § 16-163. Board of trustees

- § 16-164. Finances and fund management.
- § 16-165. Contributions.
- § 16-166. Benefit amounts and eligibility.
- § 16-167. Disability.
- § 16-168. Pre-retirement death.
- § 16-169. Optional forms of benefits.
- § 16-170. Beneficiaries.
- § 16-171. Claims procedures before the board decision.
- § 16-172. Reports to division of retirement.
- § 16-173. Roster of retirees.
- § 16-174. Board attorney and professionals.
- § 16-175. Internal Revenue Code compliance.
- § 16-176. Repeal or termination of plan and distribution of fund.
- § 16-177. Exemption from execution; non-assignability.
- § 16-178. Pension validity.
- § 16-179. Forfeiture of pension.
- § 16-180. Indemnification.
- § 16-181. Family and medical leave act.
- § 16-182. Separation from employment for military service.
- § 16-183. Prior firefighter service.
- § 16-184. Military service prior to employment.
- § 16-185. Miscellaneous provisions.
- § 16-186. Defined Contribution Component Supplemental Retirement Benefit.

Article IV. Municipal Police Officers' Pension Plan And Trust Fund

- § 16-231. Definitions.
 - § 16-232. Membership.
 - § 16-233. Board of trustees.
 - § 16-234. Finances and fund management.
 - § 16-235. Contributions.
 - § 16-236. Benefit amounts and eligibility.
 - § 16-237. Disability.
 - § 16-238. Pre-retirement death.
 - § 16-239. Optional forms of benefits.
 - § 16-240. Beneficiaries.
 - § 16-241. Claims procedures before the board decision.
 - § 16-242. Reports to division of retirement.
 - § 16-243. Roster of retirees.
 - § 16-244. Board attorney and professionals.
 - § 16-245. Repeal or termination of plan and distribution of fund.
 - § 16-246. Exemption from execution; non-assignability.
 - § 16-247. Pension validity.
-

§ 16-248. Forfeiture of pension.

§ 16-249. Indemnification.

§ 16-250. Family and medical leave act.

§ 16-251. Internal Revenue Code Compliance.

§ 16-252. Separation from employment for military service.

§ 16-253. Prior police officer service.

§ 16-254. Military service prior to employment.

§ 16-255. Miscellaneous provisions.

§ 16-256. Defined Contribution Component Supplemental Retirement Benefit.

Article V. Old Age And Survivor's Insurance

§ 16-301. Old age and survivor's insurance for city officials and employees adopted.

§ 16-302. Authority to execute agreements and extend benefits; persons excepted.

§ 16-303. Salary withholdings authorized; disposition of funds.

§ 16-304. Contributions by city; appropriations from general fund.

§ 16-305. Records and reports.

§ 16-306. Title II, Social Security Act adopted; persons excepted.

§ 16-307. Custodian of funds; withholding and reporting agent designated.

LAKE WALES
CHAPTER 16. PENSIONS AND RETIREMENT

Article I. In General

Article II. City Of Lake Wales General Employees' Pension Plan And Trust

Division 1. Generally

Division 2. Ordinance 99-02 General Employees' Pension Plan

§ 16-41. Definitions and rules of construction.

Effective: Tuesday, January 20, 2015

(a) As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

Accrued benefit means the benefit accrued by a member under the terms of the plan.

Accumulated contributions means a member's own contributions without interest. For those members who purchase credited service with interest and at no cost to the system, any payment representing the amount attributable to member contributions based on the applicable member contribution rate, interest and any required actuarially calculated payments for the purchase of such credited service, shall be included in accumulated contributions.

Act means the Employee Retirement Income Security Act of 1974 (P.L. 93-406) and any regulations issued thereunder by the Department of Labor and the Internal Revenue Service, as that statute and these regulations shall be amended.

Actuarial equivalent means a benefit or amount of equal value, based upon the 1983 Group Annuity Mortality Table and an interest rate of eight (8) percent per annum.

Average annual compensation shall mean the average compensation received by a general employee during the period of five (5) consecutive calendar years which produces the highest average annual compensation. For an employee who does not receive compensation during five (5) consecutive calendar years, "average annual compensation" shall mean the average of the actual annual compensation received by the general employee.

Beneficiary means the person or persons entitled to receive benefits hereunder at the death of a member as provided in section 16-49 of the plan.

Board means the board of trustees, which shall administer and manage the system herein provided and serve as trustees of the fund.

City means City of Lake Wales, Florida.

Code means the Internal Revenue Code of 1986, as amended from time to time.

Compensation shall mean the total amount of all payments made by the city to an employee for services rendered to the city, including overtime pay and an employee's contributions to this plan. Compensation shall not include employee expense reimbursements, director's fees, contributions made by the city under the plan, nor contributions made by the city for group insurance, hospitalization and like benefits nor, except as otherwise provided in the preceding sentence, contributions made by the city under any other employee benefit plan it maintains. Notwithstanding the preceding, for computation periods ending prior to the effective date of Ordinance 88-19, "compensation" shall mean amounts paid to the employee by the city which were considered to be "earnings" pursuant to the city general employees' pension plan as the plan existed immediately prior to the effective date of Ordinance 88-19.

Compensation shall exclude the following: (1) overtime in excess of 300 hours and (2) accrued unused annual or sick leave ("accumulated leave") in excess of the hours accrued as of June 30, 2011 (hereinafter the "effective date"). The number of hours of accumulated leave used to calculate pension benefits shall be the lesser of the number of hours of accumulated leave on the effective date and the member's retirement date. For purposes of valuing accumulated leave earned prior to July 1, 2011: (i) compensation shall exclude accumulated leave hours in excess of the balance on June 30, 2011; (ii) accumulated leave balances shall be calculated using the future value of accumulated leave upon retirement; and (iii) the member's final accumulated leave balance accrued as of June 30, 2011 upon retirement shall be pensionable, notwithstanding the fluctuation of intervening accumulated leave balances after June 30, 2011. The intent of this amendment is to protect accrued benefits, consistent with Article I, Section 10 of the Florida Constitution.

Amounts which are paid to reimburse an employee for unused vacation and sick time shall be considered to be compensation which is earned during the calendar year in which such payment is made. Amounts which are paid to a former member as severance pay shall be considered to be compensation, but such amounts shall be considered to have been earned and paid in equal weekly increments over the period of time following the member's termination of service for which the severance pay was based, and shall be compensation in a particular calendar year only to the extent that it is considered to have been paid in that calendar year.

Compensation in excess of limitations set forth in Code section 401(a)(17) shall be disregarded. The limitation on compensation for an "eligible employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993.

Credited service means the total number of years and fractional parts of years of service as a general employee with member contributions, when required, omitting intervening years or fractional parts of years when such member was not employed by the city as a general employee. A member may voluntarily leave their contribution in the fund for a period of five (5) years after leaving the employ of the city pending the possibility of being rehired without losing credit for the time that he or she was a member of the system. If the member is not reemployed within five (5) years, then the accumulated contributions will be returned upon written request of the member. Upon return of a member's accumulated contributions, all of their rights and benefits under the system are forfeited and terminated. Returned contributions will be credited with interest as provided in section 16-46.

In the event that a member of this system has also accumulated credited service in another pension system maintained by the city, or has a period or periods of previous employment as a general employee, but is not eligible to receive credited service for this period or periods of previous employment for benefit calculation purposes, then such other credited service shall be used in determining eligibility for early or normal retirement. Such other credited service will not, however, be considered in determining benefits under this system. Unless otherwise provided herein only the member's credited service and compensation under this system on or after the member's latest date of membership in this system will be considered for benefit calculation. In addition, any benefit calculation for a member of this system who is or becomes eligible for a benefit from this system after he or she has become a member of another pension system maintained by the city, shall be based upon the member's average final compensation, credited service and benefit accrual rate as of the date the member ceases to be a general employee.

The years or fractional parts of years that a general employee previously served as a general employee with the city during a period of previous employment and for which period accumulated contributions were withdrawn from the fund, or for a period of previous employment for which credited service has not been otherwise received for benefit calculation purposes, shall be added to the member's years of credited service provided that:

- (1) The general employee contributes to the fund the sum that he or she would have contributed had he or she been a member of the system for the years or fractional parts of years for which he or she is requesting credit, plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund, plus payment of costs for all professional services and administrative costs rendered to the board in connection with the purchase of years of credited service.
- (2) The request shall be made only once and made by the general employee on or before the later of twelve (12) months from the effective date of this ordinance or six (6) months from the date of the member's reemployment with the city as a general employee, whichever is later.
- (3) Payment by the general employee of the required amount shall be made within six (6) months of the member's request for credit and shall be made in one (1) lump sum payment upon receipt of which credited service shall be given.
- (4) There shall be no maximum credit under this definition and all years of credited service added pursuant to this definition shall count for all purposes.

Years and completed months of employment with the city during which time the member is participating in the deferred retirement option plan (DROP) described in section 16-46(j), shall not be counted as credited services for benefit purposes unless the member elects to continue employment with the city following the completion of the two (2) year DROP period. In the event of continued employment following participation in the DROP program, the member will receive credit for the DROP period in accordance with the required repurchase procedure set forth above.

Effective date means October 1, 1999, except as otherwise provided in the plan and except where an earlier effective date is required by reason of the application of the Tax Reform Act of 1986 and subsequent legislation, in which case the latest effective date required to comply with such act and subsequent legislation shall be substituted with respect only to the specific portions of the plan effected by such act and subsequent legislation.

Eligible employee is an individual who was a member before the first plan year beginning after December 31, 1995.

Employee means general employee unless such term is used in a general sense.

Fund means the trust fund established herein as part of the system.

General employee means any actively employed person in the regular full-time service of the city, including those in their initial probationary employment period, but not including police officers and firefighters, but shall include civilian, clerical and other employees of the police and fire departments. A full time employee shall be deemed to be one whose customary employment is for twenty (20) or more hours per week and five (5) or more months per year.

General counsel means the attorney retained by the board to represent it with respect to the plan.

Member means an actively employed general employee who fulfills the prescribed membership requirements and does not elect to opt-out. Benefit improvements which, in the past, have been provided for by amendments to the system adopted by city ordinance, and any benefit improvements which might be made in the future shall apply prospectively and shall not apply to members who terminate employment or who retire prior to the effective date of any ordinance adopting such benefit improvements, unless such ordinance specifically provides to the contrary. Member shall also include any opt-out employee under section 16-42(c)(2) who elects to join the Plan and is determined by the board of trustees to have fulfilled the requirements set forth in section 16-42(d).

Opt-out employee means an actively employed general employee employed in a position defined as pay grades 202—300, who elects to establish a qualified tax deferred pension plan in accordance with the Internal Revenue Code and rules as promulgated by the Secretary of the Treasury, and receive benefits in accordance with section 16-42(c).

Plan means the City of Lake Wales General Employees' Pension Plan and Trust.

Plan year means the twelve (12) month period beginning October 1 and ending September 30, of the following year. The plan year shall be the computation period for the purposes of the plan. The change in plan year shall be effective January 1, 1998.

Retiree means a member who has entered retirement status.

Retirement means a member's separation from city employment with eligibility for immediate receipt of retirement benefits under the system.

Spouse means the lawful wife or husband of a member or retiree at the time benefits become payable.

System means the City of Lake Wales General Employees' Pension Plan and Trust as contained herein and all amendments thereto.

(b) Words used in the masculine shall apply to the feminine where applicable, and wherever the context of the plan dictates, the plural shall be read as the singular and the singular as the plural.

(Ord. No. 99-02, § 2, 5-4-99; Ord. No. 99-11, § 2, 9-21-99; Ord. No. 2006-50, § 1, 12-5-06; Ord. No. 2012-06, § 1, 4-2-12; Ord. No. 2015-01, § 1, 01-20-15)

§ 16-42. Membership.

Effective: Tuesday, January 20, 2015

(a) *Conditions of eligibility.* Except as provided in paragraph (c) below, all future new full time employees shall become members of this system, as a condition of employment, on the initial date of employment as a probationary employee. Each employee who was a member in the plan pursuant to the terms of the plan as it existed immediately prior to the effective date shall continue as a member in this plan as of the effective date. All present employees as of the effective date that are not enrolled in the plan shall have the continuing opportunity to become members upon submitting an application for membership.

(b) *Application for membership.* Except as provided in paragraph (c) below, each new full time employee shall complete an application form covering the following, as well as such other items as may be prescribed by the board:

- (1) Acceptance of the terms and conditions of the retirement system;
- (2) Designation of a beneficiary or beneficiaries; and
- (3) Authorization of payroll deduction payable to the system.

(c) *Participation, election to opt out.*

(1) All full time employees shall participate in the plan as a condition of their employment, except for employees who serve in opt-out positions who may make an irrevocable election to opt-out of the plan. Opt-out positions are defined as pay grades 119(a)—300.

(2) Employees eligible to opt-out shall be given notice and an opportunity to elect out of the plan from October 1, 1999 through December 31, 1999. Employees who are hired or promoted to opt-out positions after the initial opt-out election period expires shall be given the option to opt-out of the plan at the time they are hired or first promoted to an opt-out position. All elections are irrevocable, except as provided in subsection 16-42(d). An employee who elects to opt-out of the plan and establishes a qualified tax deferred pension plan in accordance with the Internal Revenue Code and rules as promulgated by the Secretary of the Treasury, shall be entitled to receive, via rollover, direct plan to plan transfer, or other method, an amount equal to the electing employee's member contributions, with simple interest thereon computed at the greater of five (5) percent per annum, or such other rate which may at that time be in effect, plus an amount equal to such employee's total compensation earned while a plan participant, multiplied by the average percentage of city contributions to its general employees over the five (5) year period immediately preceding the year in which the election is made. Participants who receive a payout of their plan benefits after opting out will not be entitled to any other benefits under the plan.

(3) An employee who elects to opt-out may choose to leave their funds in the plan in which case the member shall be entitled to receive benefits under the plan in the same manner as other members, except that such members shall cease accruing additional credited service for benefit purposes and all determinations of compensation made under the plan will be based upon compensation earned during the time the member participated in the plan.

(4) An employee who elects to opt-out is eligible to establish a tax deferred pension plan in accordance with the Internal Revenue Code and rules as promulgated by the Secretary of the Treasury. In conjunction with the employee's remittance of an amount at least equal to the contribution requirements as stated in section 16-45(a)(1) but not more than the maximum deferral allowed by the Internal Revenue Code and treasury regulations, to the deferral plan of their choosing, the city shall remit an amount equal to their gross bi-weekly wages or salary times a percentage determined in the annual actuarial valuation report prepared by the general employee's pension plan actuary, for city contributions to the general employee's pension plan for participants. In the absence of adequate individual remittances, the city is absolved of its responsibility to make contributions.

(d) *Participation, written election to opt back into the Plan.*

(1) All members who opted-out of the Plan pursuant to subsection 16-42(c)(2) and remain employees of the city shall be provided an option to submit a one-time written election to rejoin the Plan. Upon joining the Plan, the member shall be transferred from the city's defined contribution plan into the General Employees' Pension Plan and Trust. The board of trustees shall provide all applicable opt-out employees with a copy of the ordinance permitting the election to opt into the Plan. The board of trustees shall have the authority to adopt administrative rules and procedures to govern the opt-in procedure to be uniformly applied to all applicable employees.

(2) Upon entry into the Plan, opt-out members shall have the option to purchase prior creditable service with the city. The member shall be required to pay the full actuarial cost of the prior service for any service purchased. The member shall also be required to reimburse the Plan for the cost of the actuary's individual service buyback calculation. Payment in full for the cost of the prior service buyback must be submitted within ninety (90) days from the date the actuarially determined calculation is provided to the employee. Payment may be made by rollover from another qualified plan. Members electing to rejoin the Plan but not to purchase prior creditable service will be deemed to have commenced credited service on the date of entry into the Plan.

(Ord. No. 99-02, § 2, 5-4-99; Ord. No. 99-11, § 2, 9-21-99; Ord. No. 2004-31, § 2, 10-5-04; Ord. No. 2006-50, § 2, 12-5-06; Ord. No. 2008-06, § 1, 2-5-08; Ord. No. 2015-01, § 2, 01-20-15)

§ 16-43. Board of trustees.

(a) *Administration by board.* The general administration and responsibility for the proper operation of the retirement system and trust and for making effective the provisions of this ordinance are hereby vested in a board of trustees (herein designated the plan administrator) consisting of five (5) persons as follows:

- (1) The mayor and/or commissioner to be appointed by the city commission;
- (2) Finance director, as a non-voting member of the board;
- (3) Two (2) employee members to be elected by a majority of the actively employed members of the retirement system; and
- (4) Two (2) public members selected by the board and appointed by the city commission.

(b) *Terms and election.* The regular term of office of each employee member and of the public member shall be four (4) years. Each employee member may succeed himself in office. Each public member trustee shall serve as trustee for a period of four (4) years, unless sooner replaced by the city commission at whose pleasure each trustee shall serve, and may succeed himself as a trustee without limitation. Employee members shall be elected in the following manner:

(1) No less than thirty (30) days before the expiration of a regular term or immediately upon notice of a vacancy on the board, the city clerk will notify all actively employed members that an employee member must be elected to the board and request nominations. Such notification will be in writing and will include a nomination form and a list of all employees eligible for nomination. Employees eligible for nomination will include all actively employed members who have completed their six (6) month probationary period of employment. Nominations will be forwarded to the city clerk before the time and date specified on the nomination form.

(2) If one (1) nominee receives a minimum of fifty-one (51) percent of the nominations, that nominee shall be declared elected and shall take office immediately upon commencement of the term of office for which elected.

(3) If no nominee receives fifty-one (51) percent of all nominations, the city clerk will prepare an election ballot listing the nominees receiving the three (3) largest number of nominations and forward a ballot to all actively employed members. Election ballots shall be returned to the city clerk before the time and date specified on the ballot. The nominee receiving the highest number of votes for office shall be declared elected and shall take office immediately upon commencement of the term of office for which elected.

(4) If two (2) or more nominees tie for the highest number of votes, a runoff ballot shall be prepared and a runoff election shall be conducted as in paragraph (b)(3) herein.

An election shall be held not more than thirty (30) and not less than ten (10) days prior to the commencement of the term for which a board member is to be elected. The city shall establish and administer the nominating and election procedure for each election. The board shall elect annually by majority vote from among its members a chairman and vice-chairman.

(c) *Vacancies.* If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(d) *Resignation.* A trustee may resign at any time as trustee of the plan by giving thirty (30) days written notice in advance to the city and to the board of trustees.

(e) *Removal.* The board of trustees, upon the vote of four (4) of its members, may submit to the city commission its recommendation that the city commission remove any trustee who neglects the duties of his office. The city commission may, by majority vote, thereafter remove such member as a trustee.

(f) *Expenses.* The trustees shall serve without compensation, but they may be reimbursed from the fund for all necessary expenses which they may actually expend through service on the board, as provided by law.

(g) *Oath of office.* Each trustee shall, within ten (10) days after his appointment or election, take an oath of office before the city clerk, that the member will diligently and honestly administer the affairs of the board, and that the member will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system. Such oath shall be subscribed to by the member making it and certified by the clerk and filed in the office of the city clerk.

(h) *Voting.* Each trustee shall be entitled to one (1) vote on the board. Three (3) affirmative votes shall be necessary for a decision by the trustees at any meeting of the board. The chairman shall have the right to one (1) vote only.

(i) *Rules.* Subject to the limitations of this division, the board of trustees shall from time to time establish uniform rules and regulations for the administration of funds created by this division and for transaction of its business, including provision for expulsion due to nonattendance of its members which could result in a vacancy.

(j) *Services.* The board of trustees shall engage such actuarial, accounting and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by the board of trustees and all other expenses of the board necessary for the operation of the retirement system shall be paid from the fund at such rates and in such amounts as the board of trustees shall agree. Funds may be disbursed by the city's finance department or other disbursing agent as determined by the board, but only upon written authorization by the board of trustees.

(k) *Professionals.* The board of trustees may employ and pay from the trust fund reasonable compensation to agents, attorneys, accountants and other persons to advise the board as in its opinion may be necessary. The board may delegate to any agent, attorney, accountant or other person selected by it any non-trustee power or duty vested in it by the plan, and the board may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

(l) *Powers and duties.* The powers, duties and responsibilities of the board of trustees shall include the power and duty to:

- (1) Construe the provisions of the system and determine all questions arising thereunder;
- (2) Determine all questions relating to eligibility and participation;
- (3) Determine and certify the amount of all retirement allowances or other benefits hereunder;
- (4) Establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system;
- (5) Distribute to members at regular intervals information concerning the system;
- (6) Receive and process all applications for participation and benefits;
- (7) Authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund;
- (8) Have performed actuarial studies and annual actuarial valuations and make recommendations regarding any and all changes in the provisions of the system;

(9) Select a secretary, who shall keep a complete minute book of the actions, proceedings, or hearings of the board and who shall keep a record of all persons receiving pension payments, noting the time of commencement and cessation thereof. Minutes prepared by the secretary shall be filed with the city clerk and made part of the official records of the city.

(10) Enforce the terms of the plan and the rules and regulations it adopts;

(11) Direct the crediting and distribution of the trust;

(12) Review and render decisions respecting a claim for (or denial of a claim for) a benefit under the plan;

(13) Furnish the city with information which the city may require for tax or other purposes;

(14) Engage the services of an investment manager or managers (as defined in act section 3(38)), each of whom shall have such power and authority to manage, acquire or dispose of any plan asset under its control as authorized by the board;

(15) Establish and maintain a funding standard account and make credits and charges to the account to the extent required by and in accordance with the provisions of the Code;

(16) Perform such other duties as are specified in this document.

(m) *Manner of action.* The board of trustees shall exercise all of its powers, duties and discretion under the plan in a uniform and nondiscriminatory manner.

(n) *Legal entity.* The board of trustees represents 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.

(o) *Meetings.* The board of trustees may hold meetings, determining the notice, place and time of each. A majority of its members shall constitute a quorum.

(p) *Recusal.* A trustee shall have the right to recuse himself or herself from voting as the result of a conflict of interest provided that the trustee complies with the provisions of F.S. § 112.3143, (1996). No member of the board of trustees may decide or determine any matter concerning the distribution, nature or method of settlement of his own benefits under the plan.

(q) *Authorized representative.* The board of trustees may authorize any one (1) of its members, or its secretary, to sign on its behalf any notices, directions, applications, certificates, consents, approvals, waivers, letters or other documents. The board of trustees must evidence this authority by an instrument signed by all members and filed with the trustee.

(r) *Third party.* No person dealing with the board of trustees shall be obligated to see to the proper application of any money paid or property delivered to the board of trustees, or to inquire whether the board of trustees has acted pursuant to any of the terms of the plan. Each person dealing with the board of trustees may act upon any notice, request or representation in writing by the board of trustees, or by the board of trustees duly authorized agent, and shall not be liable to any person whomsoever in so doing. The certificate of the board of trustees that it is acting in accordance with the plan shall be conclusive in favor of any person relying on the certificate.

(s) *Participant records.* The board of trustees shall keep such records and shall prepare such reports concerning participants' accounts as the act and Code require. Upon a member's written request, the board of trustees shall furnish the member the information described in Act section 105(a).

(t) *Annual review.* The board of trustees shall review, not less often than annually, all pertinent employee information and plan data in order to establish the funding policy of the plan and to determine the appropriate methods of carrying out the plan's objectives.

(u) *Parties to litigation.* Except as otherwise provided by the act, only the city and the board of trustees shall be necessary parties to any court proceeding involving the plan. No member, beneficiary or other person having an interest in the fund, shall be entitled to any notice of process unless required by the Act.

(Ord. No. 99-02, § 2, 5-4-99; Ord. No. 2008-09, § 2, 3-18-08; Ord. No. 2012-06, § 2, 4-2-12)

§ 16-44. Finances and fund management; establishment and operation of fund.

(a) As part of the plan, there exists the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the plan, including the assets of the prior Lake Wales General Employees' Pension Plan and Trust which are hereby retained in the fund.

(b) The actual custody and supervision of the fund (and assets thereof) shall be vested in the board. Payment of benefits and disbursements from the fund shall be made by the disbursing agent designated by the board but only upon written authorization from the board.

(c) All funds of the plan may be deposited by the board with the city's finance director acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the city. However, any funds so deposited with the finance director of the city shall be kept in a separate fund by the finance director or clearly identified as such funds of the plan. In lieu thereof, the board shall deposit the funds of the plan in a qualified public depository as defined in F.S. § 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of chapter 280, Florida Statutes, as it may be amended from time to time. In order to fulfill its investment responsibilities as set forth herein, the board may retain the services of a custodian bank, an investment advisor registered under Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.

(d) All funds and securities of the plan may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:

- (1) Current amounts of accumulated contributions of members on both an individual and aggregate account basis;
- (2) Receipts and disbursements;
- (3) Benefit payments;

(4) Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city;

(5) All interest, dividends and gains (or losses) whatsoever; and

(6) Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.

(e) As follows:

(1) An audit shall be performed annually by a certified public accountant chosen by the board for the most recent fiscal year of the city in accordance with generally accepted government auditing standards. Such audit will be presented in accordance with generally accepted accounting principles.

(2) At least once every three (3) years, the board of trustees shall retain an independent consultant professionally qualified to evaluate the performance of professional money managers. The board may engage an independent consultant in concert with the boards of trustees for the firefighters' and police officers' pension trust funds and share the costs with these boards. The independent consultant shall make recommendations to the board of trustees regarding the selection of money managers for the next investment term. These recommendations shall be considered by the board of trustees at its next regularly scheduled meeting. The date, time, place and subject of this meeting shall be advertised in a newspaper of general circulation in the municipality at least ten (10) days prior to the date of the hearings.

(f) The board shall have the following investment powers and authority:

(1) The board shall be vested with full legal title to said fund, subject, however, in any event to the authority and power of the city commission to amend or terminate this fund, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under the plan, except as otherwise provided herein. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund.

(2) All monies paid into or held in the fund shall be invested and reinvested by the board and the investment of all or any part of such funds shall be limited to:

a. Annuity and life insurance contracts with life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the members in the fund shall be entitled under the provisions of this plan and pay the initial and subsequent premium thereon.

b. Time or savings accounts of a national bank, a state bank or a savings/building and loan association insured by the Federal Deposit Insurance Corporation.

c. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.

d. Bonds, stocks, mutual funds, commingled funds administered by national or state banks, or evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided that the security of the corporation is traded on a nationally recognized exchange and holds a rating or ranking in one (1) of the three (3) highest classifications by a major rating or ranking service, and if such investments are made in a commingled fund administered by a state or national bank, then the rating or ranking of each issue in the commingled fund shall hold a rating or ranking within the top three (3) rating or ranking classifications of a major rating or ranking service.

e. Such other investments as allowed by law, including the ability to invest up to twenty-five (25) percent of the portfolio in foreign securities.

(3) The board shall not invest more than five (5) percent of its assets in the common stock or capital stock of any one (1) issuing company, nor shall the aggregate investment in any one (1) issuing company exceed five (5) percent of the outstanding capital stock of that company.

(4) The board may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the plan.

(5) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.

(6) The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the fund which it may deem to be to the best interest of the fund to exercise.

(7) The board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power contained herein.

(8) Where any action which the board is required to take or any duty or function which it is required to perform either under the terms herein or under the general law applicable to it as trustee under this ordinance, can reasonably be taken or performed only after receipt by it from a member, the city, or any other entity, of specific information, certification, direction or instructions, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.

(9) Any overpayments or underpayments from the fund to a member, retiree or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board in such a manner that the actuarial equivalent of the benefit to which the member, retiree or beneficiary was correctly entitled to, shall be paid. Overpayments shall be charged against payments next succeeding the correction or collected in another manner if prudent. Underpayments shall be made up from the fund in a prudent manner.

(10) The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits herein provided for.

(11) In any application to or proceeding or action in the courts, any judgment entered in such a proceeding or action shall be conclusive upon all persons.

(12) Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to said fund shall always remain in the board.

(g) The board of trustees shall not have any obligation or responsibility with respect to any action required by the plan to be taken by the city or, any member, nor shall the board of trustees be required to collect any contribution required under the plan, or determine the correctness of the amount of any contribution. The board of trustees need not inquire into or be responsible for any action or failure to act on the part of the others.

(h) The board of trustees and the city in no way guarantee the trust fund from loss or depreciation. The city does not guarantee the payment of any money which may be or becomes due to any person from the fund. The liability of the board of trustees to make any payment from the fund at any time and all times is limited to the then available assets of the fund.

(i) The board shall not be liable for the acts or omissions of any investment manager or managers the board of trustees may appoint, nor shall the board be under any obligation to invest or otherwise manage any asset of the plan which is subject to the management of a properly appointed investment manager. The board of trustees, and any properly appointed investment manager may execute a letter of agreement as a part of this plan delineating the duties, responsibilities and liabilities of the investment manager with respect to any part of the trust fund under the control of the investment manager.

(Ord. No. 99-02, § 2, 5-4-99; Ord. No. 2012-06, § 3, 4-2-12)

§ 16-45. Contributions.

(a) *Member contributions.*

(1) *Amount.* Each member of the plan shall be required to make regular contributions to the fund in the amount of five (5) percent of their compensation. Member contributions withheld by the city on behalf of the member shall be deposited with the board at least monthly. The contributions made by each member to the fund shall be designated as employer contributions pursuant to section 414(h) of the Code. Such designation is contingent upon the contributions being excluded from the members' gross income for federal income tax purposes. For all other purposes of the plan, such contributions shall be considered to be member contributions. Member contributions shall cease if a member's accrued benefit reaches the seventy-five thousand dollars (\$75,000.00) cap set forth in section 16-46

(2) *Method.* Such contributions shall be made by payroll deduction.

(b) *City contributions.* So long as this plan is in effect, the city shall make an annual contribution to the fund in one (1) or more installments in an amount equal to the difference in each year, between the total aggregate member contributions for the year and the total cost for the year, in a manner which is authorized under the provision of F.S. part VII ch. 112, or its successor. The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded accrued past service liability over a thirty (30) year period, commencing with the fiscal year in which the initial effective date of this plan occurs. The city, from its records and the reports of the actuary, shall determine the amount of any contributions to be made by it to fund under the terms of the plan. In this regard, the city may place full reliance upon all reports, opinions, tables, valuations, certificates and computations the actuary furnishes the city.

(c) *Other contributions.* Private donations, gifts and contributions may be deposited to the fund, but such deposits must be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used only for additional benefits for members, as determined by the board of trustees, and may not be used to reduce what would have otherwise been required city contributions.

(d) *Return of overpayment member or beneficiary.* Any overpayments or underpayments from the fund to a member or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board. Overpayments shall be charged against payments next succeeding the correction. Underpayments shall be made up from the fund.

(e) *Rollover contributions.* The plan does not permit participant rollover contributions, or voluntary contributions other than the mandatory contribution required pursuant to the plan.

(Ord. No. 99-02, § 2, 5-4-99; Ord. No. 2003-39, § 2, 12-2-03; Ord. No. 2013-14, § 1, 9-17-13)

§ 16-46. Benefit amounts and eligibility.

Effective: Tuesday, November 17, 2015

(a) *Normal retirement date.* A member's normal retirement date shall be the first day of the month coincident with, or next following the date he or she attains the earlier of:

- (1) Age sixty (60) years with ten (10) years of credited service; or
- (2) The later of sixty (60) years or ten (10) years of credited service.

A member may retire on their normal retirement date or on the first day of any month thereafter. Normal retirement under the plan is retirement from employment with the city on or after the normal retirement date. Each member who retires on or after normal retirement age shall receive a normal retirement pension.

(b) *Normal retirement benefit.* A member retiring hereunder on or after their normal retirement date shall receive a monthly benefit consisting of a single life annuity which shall commence on the first day of the month next following their retirement and be continued thereafter during member's lifetime, ceasing upon death. The monthly retirement benefit shall equal one-twelfth ($1/12$) of two and one-half ($2\frac{1}{2}$) percent of average annual compensation, for each year of credited service. For members retiring before the effective date of this plan, the benefit defined by the plan as it was stated at that time shall be payable. Retirement income will be reduced for moneys received under the disability provisions of the plan so that the monthly benefit shall not exceed the greater of the disability or retirement pension. Effective October 1, 2012, annual defined benefits under this section may not exceed seventy-five thousand dollars (\$75,000.00) per year.

(c) *Delayed retirement.* Retirement may be delayed by a member and shall not be mandatory solely by reason of age prior to the required beginning date specified in section 16-54, hereof. Subject to the provisions of section 16-54, the delayed retirement date shall be the first day of the month coincident with, or next following, actual retirement.

(d) *Early retirement date.* A member may retire on their early retirement date which shall be the first day of any month coincident with or next following the attainment of age fifty-five (55) and the completion of ten (10) years of credited service. Early retirement under the plan is retirement from employment with the city on or after the early retirement date and prior to the normal retirement date.

(e) *Early retirement benefit.* A member retiring hereunder on their early retirement date may receive either a deferred or an immediate monthly retirement benefit payable for life as follows:

(1) A deferred monthly retirement benefit which shall commence on what would have been the member's normal retirement date had the member remained an employee and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be a life-annuity determined in the same manner as for retirement at normal retirement date except that credited service and average annual compensation shall be determined as of his or the early retirement date; or

(2) An immediate monthly retirement benefit which shall commence on the member's early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined above, reduced by one fifteenth ($1/15$) for each of the first two and one-half ($2\frac{1}{2}$;) years, one thirtieth ($1/30$) for each of the next two and one-half ($2\frac{1}{2}$) years by which the commencement of benefits precedes the member's normal retirement date.

(f) *Immediate and deferred payment of early retirement benefit.* The board of trustees shall commence payment of the immediate early retirement pension on the first day of the month designated by the member as the annuity starting date, so long as such date follows the member's termination of service with the city. If a member elects a deferred early retirement pension, or fails to designate an annuity starting date, the board shall commence payment following the member's attainment of normal retirement age.

(g) *Termination benefit—Generally.* A member whose employment terminates for any reason prior to becoming eligible for an early or normal retirement pension, shall receive either a deferred pension, calculated in the manner set forth in paragraph (h) of this section 16-46 herein; or a refund benefit in an amount equal to the total contributions made by the member to the plan, with simple interest computed thereon at the greater of five (5) percent per annum, or such other rate as may be designated from time to time by the board. A member shall only be entitled to a deferred pension if the member has at least ten (10) years of credited service. Notwithstanding any other provision of this section 16-46, a member, at any time prior to the commencement of his normal retirement pension, his early retirement pension or his deferred pension, may elect to receive a refund benefit in lieu thereof.

(h) *Amount of deferred pension.* The member's deferred pension shall be a single life annuity computed in the same manner as his early retirement pension if the member elects to begin receiving his monthly pension before normal retirement or it shall be a single life annuity computed in the same manner as his normal retirement pension if the member elects to begin receiving his pension at normal retirement, with such benefits to be determined as of the date on which his termination of employment occurs.

(i) *Payment of deferred pension.* A terminated member's deferred pension shall become payable in the same manner as a normal retirement pension, or if elected by the member in the manner provided in paragraph (h) hereof, in the same manner as an early retirement pension.

(j) *Deferred retirement option plan (DROP).*

(1) *Operation.* Any member of the system who has satisfied the requirement for normal or delayed retirement as set forth therein may elect to withdraw from the system while continuing to be an employee of the city for a period of up to five (5) years. During this period, the member would cease to make contributions to the fund and benefit accruals would cease at the date of withdrawal. At the time of the withdrawal, the member may elect an optional form of retirement income as described in section 16-48. The amount of the monthly pension which would otherwise be paid shall be maintained in a special DROP account in the name of the member within the fund and shall be segregated from other trust assets on a bookkeeping basis. The member shall elect to receive either interest or earnings on their account to be determined as provided below. The election may be revised bi-annually on a prospective basis pursuant to such rules as the board of trustees may adopt. DROP investment elections must be made in writing at least thirty (30) days prior to the end of the December and June quarters, on such forms as the board of trustees may require.

a. Interest election. The DROP account shall be credited interest based on the 91 T-Bill interest rate compounded quarterly; or

b. Earnings election. Quarterly the DROP account shall share in the investment gains and losses for the quarter at the same rate of the return earned by the total trust fund.

(2) *Termination of employment.* Upon termination of employment not later than five (5) years following entry into the DROP program, the member shall commence receiving the monthly benefit in the same form and amount as selected at the time of entry into the DROP program. In addition, the member shall receive the value of this DROP Account as a single lump sum.

(3) *Continued employment.* In the event that the member continues employment with the city following completion of the five (5) year participation in the DROP plan, the member shall forfeit their entitlement to the accumulated assets in the DROP Account and shall deposit to the fund an amount equal to the member contribution which would have been made had the member continued as an active participant in the plan during the period of continued employment and shall contribute to the system at the rate specified herein. Upon termination of employment, the retiring member shall receive benefit credit for years and completed months during which he or she participated in the DROP program and for which member contributions were subsequently made, as well as credited service before and after participation in the DROP plan.

(k) *Disability benefits:*

I. *Non-duty disability retirement:*

(1) Each member with ten (10) years of credited service who becomes permanently and totally incapacitated for further performance of duty with the city from a cause other than the performance of duty shall be eligible for a non-duty disability retirement.

(2) A member shall be deemed disabled for the purposes of this section if permanently and totally unable to engage in any useful and efficient service within the city workforce due to a physical or mental impairment.

(3) No member may receive a non-duty disability retirement on the basis of a pre-existing medical condition, unless the disability would have occurred regardless of that pre-existing condition. The board, as part of the disability review process, shall determine whether a vacant position exists within the city's workforce, consistent with the member's training, skill and medical limitations. If the member is capable of performing any such vacant position and the member refuses the assignment, that refusal shall be grounds for denial of a non-duty disability retirement. Nothing in this section shall require the city to create a job where none presently exists or to accept an employee who lacks the training or skills necessary to perform any such vacant position.

(4) The procedure for determining disability shall be as set forth in this plan for the determination of service-incurred disability.

(5) The board of trustees shall have the continuing right to require disabled members to submit to a medical examination when the board has reason to believe that the disabled member is committing a fraud on the fund.

(6) Non-duty disability benefits shall be calculated in the same manner as an early retirement benefit (reduced by one-fifteenth (1/15) for each of the first two and one-half (2½) years, one-thirtieth (1/30) for each of the next two and one-half (2½) years by which the commencement of benefits precedes the member's normal retirement date). Non-duty disability benefits shall continue for the life of the member, except as set forth in this section.

(7) Upon finding that a member is no longer disabled as defined in this Plan, non-duty disability benefits shall cease. In such event, the member shall become eligible for a regular service retirement, if the member otherwise satisfies the requirements for service retirement.

(8) For the purposes of this section, compensation shall be deemed to be the greater of the member's average compensation based upon the member's pay status at the time the disabling event occurred or average annual compensation. The monthly benefit to which a member is entitled shall be payable on the first day of the first month after the board of trustees determines such entitlement. In lieu of the monthly disability pension, the member may elect to receive a return of the member's contributions, with simple interest thereon computed at the rate of five (5) percent per annum or such other rate, which may be in effect at such time, in which event the member shall not be entitled to any other benefit under the plan. A member receiving monthly disability benefits shall not be entitled to any other benefits under the plan. In the event a member who is receiving monthly disability benefits recovers, the last payment will be the payment due next preceding the date of such recovery. Disability payments shall cease upon the member's death.

II. *Service-incurred disability retirement:*

(1) A member shall be disabled under the terms of this section if the member has suffered an injury or illness arising out of performance of service for the city and which renders the member permanently and totally disabled for useful and efficient service with the city.

(2) A member shall be deemed permanently and totally disabled when he or she is totally unable to engage in any useful and efficient service within the city due to a physical or mental impairment which is the natural and proximate result of an accident, injury or illness which occurred while in the actual performance of duty.

(3) A member shall be eligible for a service-incurred disability retirement from the date of entry into the plan. Application for disability retirement shall be made on a form prescribed by the board of trustees. The member shall execute such medical releases as are necessary to permit the board to review the medical records needed to determine the question of disability and to discuss said records at a public meeting. Upon receipt of an application for a disability, the board shall refer the application to its physician for review. The applicant for a disability shall be required to submit to such medical examinations as the board appointed physician shall deem necessary. The board appointed physician, and any referring specialists, shall report their findings to the board. The report shall include a determination, to the extent reasonably possible, of the origin of the disability, whether the disability is permanent and whether the disability is total. In making those determinations, the physician(s) shall be bound by the definition of disability set forth in this plan.

(4) Upon receipt of the report of the board's physician(s), the board of trustees shall schedule a public hearing at which time the board shall review all medical reports, together with such documentary evidence as the applicant may wish to submit. The board shall conduct a preliminary determination as to whether the member is permanently and totally disabled based upon the written documentation presented. If the board does not grant the application based on the written documentation, it shall inform the applicant in writing of the reasons for the denial of the application. The member may, within thirty (30) days of receipt of the board's preliminary denial, request a full evidentiary hearing before the board. Said hearing will be conducted consistent with the principles of due process and the rules of evidence generally applicable to administrative proceedings shall apply. The board shall have the power to issue subpoenas compelling the attendance of witnesses. At said hearing, the applicant may present such oral and written evidence as the applicant deems necessary to establish its burden of proof. The board may appoint special counsel as an advocate to cross-examine witnesses and to offer argument in opposition to the application. The attorney for the board shall not serve both as advocate and as advisor to the board in the same proceeding. The applicant and the board shall have the right to examine and cross-examine all witnesses. The decision of the board shall be based solely upon the evidence presented and the law applicable to this plan. Following the conclusion of the hearing, the board shall render an opinion in writing setting forth the reasons for the grant or denial of the benefit.

(5) The board may prescribe rules of procedure to implement the provisions of this plan relating to the conduct of disability hearings.

(6) A member who is granted a service-incurred disability retirement shall receive a benefit equal to the greater of: (i) forty-two (42) percent of average final compensation; or (ii) the member's accrued benefit, subject to reduction for early retirement (reduced by one-fifteenth ($1/15$) for each of the first two and one-half ($2\frac{1}{2}$) years, one-thirtieth ($1/30$) for each of the next two and one-half ($2\frac{1}{2}$) years by which the commencement of benefits precedes the member's normal retirement date). Service-incurred disability benefits shall continue for the life of the member, except as set forth in this section. The benefit shall be paid yearly, in monthly installments, for the life of the member.

(7) The board of trustees shall have the continuing right to require disabled members to submit to a medical examination when the board has reason to believe that the disabled member is no longer entitled to receive benefits from the fund. If the examination reveals the member is no longer entitled to receive disability benefits, the benefits shall cease and, if vested, the member will be eligible for a regular service retirement as if he had retired on the date his disability retirement benefits commenced. The board has discretion to exercise this power as the circumstances warrant.

(8) For the purposes of this paragraph section, compensation shall be deemed to be the greater of the member's average compensation based upon the member's pay status at the time the disabling event occurred or average annual compensation. The monthly benefit to which a member is entitled shall be payable on the first day of the first month after the board of trustees determines such entitlement. In lieu of the monthly disability pension, the member may elect to receive a return of the member's contributions, with simple interest thereon computed at the rate of five (5) percent per annum or such other rate, which may be in effect at such time, in which event the member shall not be entitled to any other benefit under the plan. A member receiving monthly disability benefits shall not be entitled to any other benefits under the plan. In the event a member who is receiving monthly disability benefits recovers, the last payment will be the payment due next preceding the date of such recovery.

(1) *Effective date of change in benefits.* Members separating from service before October 1, 1999, shall only be entitled to the benefits provided by the plan prior to October 1, 1999.

(m) *Member accrued benefit not exceeding one thousand dollars (\$1,000.00).* Notwithstanding anything contained in this plan to the contrary, effective March 28, 2005 a member whose employment terminates for any reason other than death, with an accrued benefit of less than one thousand dollars (\$1,000.00), will receive a lump sum payment equal to the present value of member's accrued benefit, calculated based upon the form of benefit for which the member qualifies (i.e., a deferred benefit versus a refund benefit) which is most favorable to the member, without any requirement of member consent. Such payment shall be in lieu of all other benefits under the plan.

(Ord. No. 99-02, § 2, 5-4-99; Ord. No. 2002-09, § 2, 5-21-02; Ord. No. 2002-12, § 2, 7-2-02; Ord. No. 2003-39, § 2, 12-2-03; Ord. No. 2007-38, § 1, 9-18-07; Ord. No. 2008-06, § 2, 2-5-08; Ord. No. 2013-14, § 2, 9-17-13; Ord. No. 2015-14, § 1, 11-17-15)

§ 16-47. Pre-retirement death.

The beneficiary of a member who dies before receiving monthly benefits shall receive a refund of one hundred (100) percent of the total contributions made by the member, with simple interest thereon computed at the greater of five (5) percent per annum, or such other rate as may be designated from time to time by the board. No other benefit shall be payable under the circumstances described above.

(Ord. No. 99-02, § 2, 5-4-99)

§ 16-48. Optional forms of benefits.

(a) In lieu of the amount and form of retirement income payable in the event of normal, early, delayed retirement or deferred pension as specified herein, a member, upon written request to the board, which request shall be retained by the board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one (1) of the following options:

(1) A retirement income of a larger monthly amount, payable to the member for their lifetime, with a ten (10) year term certain.

(2) A retirement income of a modified monthly amount, payable to the member during the lifetime of the member, and following the death of the member, one hundred (100) percent, seventy-five (75) percent, sixty-six and two-thirds ($66\frac{2}{3}$) percent, or fifty (50) percent of such monthly amounts payable to a joint pensioner for his or her lifetime. Except where the retiree's joint pensioner is their spouse, the present value of payments to the retiree shall not be less than fifty (50) percent of the total present value of payments to the retiree and his or her joint pensioner.

(3) An actuarially equivalent larger monthly amount, with a reduction in the monthly amount when the member's social security benefits are estimated to start so that the member's total monthly benefit, inclusive of social security benefits, will remain constant upon the starting date of his social security benefits.

(b) A retiree may not change their form of benefit after the date of cashing or depositing their first retirement check. Notwithstanding the above, in the event a retiree becomes divorced after receiving their first retirement check, such retiree may change their form of benefit to a single life annuity as long as a certified copy of retiree's divorce decree does not purport to provide any benefit to his or her ex-spouse, so long as such order does not reserve jurisdiction to make such a provision for the surviving spouse and so long as the retiree is alive at the time of the change and pays all costs associated with such change. All changes shall be prospective and become effective only after the time of approval by the board.

(c) Notwithstanding anything herein to the contrary, the board in its discretion, may elect to make a lump sum payment to a member or a member's beneficiary in the event that the total computed value of the remaining monthly income payments to be paid do not exceed five thousand dollars (\$5,000.00). Any such payment made to any person pursuant to the power and discretion conferred upon the board by the preceding sentence shall operate as a complete discharge of all obligations under the plan with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

(d) Actuarially equivalent pop-up option. Members shall be permitted to select an actuarially equivalent pop-up option in conjunction with the joint and survivor annuity contained in paragraph 16-48(a)(2). For members who have selected the pop-up option, if the member's joint pensioner predeceases the member, the survivorship benefit shall be deemed canceled and the member's annuity shall revert to the original life annuity monthly benefit, effective on the first day of the month following the death of the member's joint pensioner. By electing this option, the member consents to the actuarial adjustment of the member's retirement benefits sufficient to cover the cost of this option. The board, by uniform rule, may establish a procedure for implementing this option.

(e) If a member has elected an option with a joint pensioner or designated beneficiary and the member's retirement benefits have commenced, the member may thereafter change his or her joint pensioner or designated beneficiary up to two (2) times without the approval of the board or the current joint pensioner or designated beneficiary. The ability to change a joint pensioner is contingent on the retiree agreeing to an actuarial recalculation of the benefit to avoid any actuarial impact on the plan. The retiree is not required to provide proof of the good health of the designated beneficiary or joint pensioner being removed, who need not be living, but such information may be taken into account by the actuary in recalculating the value of the benefit. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume that the joint pensioner has deceased for purposes of calculating the new payment. Any actuarial expenses resulting from the request shall be charged to the retiree.

(Ord. No. 99-02, § 2, 5-4-99; Ord. No. 2009-05, § 2, 3-3-09; Ord. No. 2012-06, § 4, 4-2-12)

§ 16-49. Beneficiaries.

(a) *Beneficiary designation.* Any member may from time to time designate, in writing, or change such designation of, any person or persons, contingently or successively, to whom the board of trustees shall pay the remainder of his accrued benefit on event of his death where the member elected a form of distribution which provides for payments over a certain period of time other than for life. A married member's beneficiary designation shall not be valid unless the member's spouse consents to the beneficiary designation. A married member's beneficiary designation does not require spousal consent if the member's spouse is the designated beneficiary. The board of trustees shall prescribe the form for the written designation of beneficiary and, upon the member's filing the form with the board of trustees, it effectively shall revoke all designations filed prior to that date by the same member.

(b) *No beneficiary designation.* If a member fails to name a beneficiary in accordance with paragraph (a), above, or if the beneficiary named by a member predeceases him or dies before complete distribution of the member's benefit, then the board of trustees shall pay the member's remaining benefit, if any, in the following order of priority to:

- (1) The member's surviving spouse;
- (2) The personal representative of the member's estate.

(Ord. No. 99-02, § 2, 5-4-99)

§ 16-50. Claims procedures before the board decision.

(a) *Claims of affected persons.*

- (1) The board of trustees shall grant an initial hearing upon receipt of a written request ("claim"), on matters which affect the substantial rights of any person ("claimant"), including members, retirees, beneficiaries, or any person affected by a decision of the board of trustees.

(2) The board shall review the claim at an initial hearing and enter an order within ninety (90) days from the date of receipt of the claim. The board may extend the time for entering the order at an initial hearing for an additional ninety (90) days if it determines such time is necessary for full discovery and adequate review. The chairman of the board or general counsel and the claimant may stipulate to further extensions of time.

(3) The claimant shall have the right to be represented by counsel at any or all times throughout the claims procedure.

(b) *Initial hearing.*

(1) At the initial hearing, the only evidence to be considered by the board shall be documentary evidence contained in his employment and pension file, including but not limited to, correspondence, medical records and reports of treating physicians, and/or examining physicians, and evidence received pursuant to paragraph (b)(2).

(2) Other than questions from the trustees, there will be no taking of additional evidence at the initial hearing, except that the claimant will be afforded five (5) minutes to make a presentation, which shall be limited to comments and/or arguments as to the evidence or information already contained in the pension file.

(3) Upon completion of the review of the claim at the initial hearing, the board shall enter an order setting forth its findings and conclusions on the claim. The written order shall be provided to the claimant. The order shall include:

- a. The specific findings and conclusions of the board, including specific references to pertinent provisions of the plan on which such conclusions are based;
- b. A description of any additional material or information that the board may deem necessary for the claimant to perfect their claim, together with the reasons why such material or information is necessary; and
- c. An explanation of the right to a full hearing on the claim and the time limit in which a full hearing must be requested in writing.

(4) The decision of the board at the initial hearing shall not be final until after the time has expired to request a full hearing or, if a full hearing is requested, until the board makes a decision at the conclusion of the full hearing.

(c) *Full hearing.*

(1) Any claimant may request a full hearing on the issues presented to the board at an initial hearing and upon which the board has entered an order as provided in paragraph (b)(3) above.

(2) A full hearing must be requested by the claimant within ninety (90) days of the receipt of the board's order. The order will be deemed received three (3) days following the date it is mailed to claimant at the address provided to the board by claimant.

(3) Upon receipt of the request for a full hearing and considering the amount of discovery which might be conducted, the board shall establish a date for full hearing and cause notice to be given to the claimant. The full hearing shall be held within ninety (90) days from the receipt of the request from the claimant. The full hearing may be postponed, if necessary and with the consent of the claimant, to permit full discovery of the facts.

(4) Copies of all documents to be offered into evidence at the full hearing, including depositions, and a complete witness list with names and addresses of witnesses expected to be called, shall be furnished to the board and the general counsel by the claimant at least twenty (20) days prior to the full hearing. Documents not furnished to the board within the prescribed time limit may be excluded from evidence at the full hearing if a reasonable explanation is not provided for the delay in providing the documents.

(5) The claimant shall be responsible for the appearance of any witnesses which he or she wishes to have testify at the hearing.

(6) Testimony at the full hearing may be submitted in the form of a deposition. Depositions timely submitted will be part of the record before the board at the full hearing and will not be read in totality at the full hearing; provided however, that this does not preclude the claimant or the General counsel from reading parts of depositions in an opening or closing statement.

(7) Irrelevant and unduly repetitious evidence shall be excluded.

(8) Any person who knowingly gives false testimony is guilty of a misdemeanor of the first degree, punishable as provided in F.S. §§ 775.082 or 775.083.

(9) The file maintained by the board is part of the record before the board at the full hearing.

(10) All proceedings of the board shall be conducted in public.

(11) In cases concerning an application for pension benefits, the burden of proof, except as otherwise provided by law, shall be on the claimant seeking to show entitlement to such benefits.

(12) In cases concerning termination of pension benefits, the burden of proof shall be on the board.

(13) Except as to those records which are exempted from the provisions of chapter 119, Florida Statutes, records maintained by the board are open for inspection and/or copying during normal business hours at a reasonable cost for copying.

(14) Should a claimant requesting an initial or full hearing decide to appeal any decision made by the board, with respect to any matter considered at such hearing, the claimant requesting an initial or full hearing will need a record of the proceedings and may need to assure that a verbatim record of the proceeding is made. The claimant requesting an initial or full hearing will be responsible for obtaining a court reporter or otherwise making a record of the proceedings before the board.

(15) The decisions of the board after the requested full hearing shall be final and binding.

(16) Within fifteen (15) days after making a decision at the full hearing, the board shall enter a final order setting forth its findings and conclusions and a copy of the order shall be provided to the claimant.

(d) Conduct of the full hearing.

(1) The chairman of the board shall preside over the hearing and shall rule on all evidentiary procedural, and other legal questions that arise during the hearing. The chairman's rulings shall stand unless overruled by a majority of the trustees present. The chairman shall open the full hearing by explaining the procedures to be followed.

(2) The claimant shall have the right to be represented by counsel or be self-represented.

(3) The claimant shall be allowed to make an opening statement not to exceed five (5) minutes.

(4) Testimony of witnesses shall be under oath or affirmation. Depositions and affidavits shall be admissible.

(5) The chairman, any trustee, the general counsel, the claimant or the claimant's counsel, upon recognition by the chairman, may direct questions to any witness during the proceedings.

(6) Either the claimant or the general counsel shall have the right to present evidence relevant to the issues, to cross examine witnesses, to impeach witnesses and to respond to the evidence presented.

(7) The claimant shall be permitted a closing argument not to exceed five (5) minutes.

(8) The board shall deliberate and make a decision following closing argument and thereafter enter an order as provided herein.

(e) *Evidence.* Anyone required to give evidence under the terms of the plan may do so by certificate, affidavit, document of other information which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. Both the board of trustees and the trustee shall be fully protected in acting and relying upon any evidence described under the immediately preceding sentence.

(f) *Litigation against the trust.* If any legal action filed against the plan administrator or the board of trustees, or against any member or members of the board of trustees, by or on behalf of any member or beneficiary, results adversely to the member or to the beneficiary, the board of trustees shall reimburse itself, or any member or members of the board of trustees all costs and fees expended by it or them by surcharging all costs and fees against the sums payable under the plan to the member or to the beneficiary, but only to the extent a court of competent jurisdiction specifically authorizes and directs any such surcharges and then only to the extent Code section 401(a)(13) does not prohibit any such surcharges.

(g) *Amendment by board.* The board of trustees retains the right to amend the claims procedures set forth in section 16-50

(Ord. No. 99-02, § 2, 5-4-99)

§ 16-51. Roster of retirees.

The secretary of the board shall keep a record of all persons enjoying a pension under the provisions of this ordinance in which it shall be noted the time when the pension is allowed and when the same shall cease to be paid. Additionally, the secretary shall keep a record of all members in such a manner as to show the name, address, date of employment and date of termination of employment.

(Ord. No. 99-02, § 2, 5-4-99)

§ 16-52. Board attorney and professionals.

The board may employ independent legal counsel at the plan's expense for the purposes contained herein, together with such other professional, technical, or other advisors as the board deems necessary. The board member may delegate to any agent, attorney, accountant or other person selected by it any non-board member power or duty vested in it by the plan, and the board member may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

(Ord. No. 99-02, § 2, 5-4-99)

§ 16-53. Limitation on benefits.

(a) The benefit of any member may not exceed the annual benefit authorized by section 415(b) IRC. For purposes of determining whether a member's benefit exceeds the limitations of this section, the following shall apply:

(1) Adjustment if benefit not a straight life annuity.

a. If the form of benefit is other than a straight life annuity, such benefit shall be adjusted actuarially to the equivalent of a straight life annuity to determine whether the limitations set forth in this section are met.

b. For the purposes of this section, no adjustment shall be taken into account for any ancillary benefit which is not directly related to retirement income benefits.

(2) Adjustment if benefit commences before age sixty-two (62).

a. If the benefit distribution commences before age sixty-two (62), the actual retirement benefit shall not exceed the adjusted dollar limitation. The adjusted dollar limitation shall be the equivalent, determined in a manner consistent with reduction of benefits for early retirement under section 415(b)(2)(E) IRC, of one hundred sixty thousand dollars (\$160,000.00), as of January 1, 2002, adjusted annually pursuant to section 415(d) IRC, commencing at age sixty-two (62). For purposes of this adjustment, survivor benefits, that portion of a joint and survivor annuity which is the survivor benefit, and any other ancillary benefits shall not be taken into account.

b. No adjustment shall be required under this subsection if the member is a "qualified participant," as that term is defined in section 415(b)(2)(H) IRC.

c. No adjustment shall be required under this subsection if the benefit is payable due to the member's disability or preretirement death.

(3) If the benefit distribution commences after age sixty-five (65), the adjusted dollar limitation shall be the equivalent, determined in a manner consistent with the adjustments under section 415(b)(2)(E) IRC, of one hundred sixty thousand dollars (\$160,000.00), as of January 1, 2002, adjusted annually pursuant to section 415(d) IRC, commencing at age sixty-five (65). For purposes of this adjustment, survivor benefits, that portion of a joint and survivor annuity which is the survivor benefit, and any other ancillary benefits shall not be taken into account.

(b) The maximum retirement benefit payable under this section to any member who has completed less than ten (10) years of credited service shall be the number determined under subsection (a) multiplied by a fraction, the numerator of which shall be the number of years of service, and the denominator of which shall be ten (10).

(c) Notwithstanding the foregoing, the benefit payable to a member shall not be deemed to exceed the limits of this section if the total benefits payable to a member under all defined benefit plans maintained by the city do not exceed ten thousand dollars (\$10,000.00) and the city has never maintained a defined contribution plan in which the member has participated.

(Ord. No. 2013-08, § 1, 5-21-13)

EDITOR'S NOTE

Ord. No. 2013-08, § 1, adopted May 21, 2013, amended the Code by repealing former § 16-53 which pertained to maximum pension and derived from Ord. No. 99-02, § 2, adopted May 4, 1999.

§ 16-54. Latest date to begin distribution of benefits.

Notwithstanding any other provision of this plan to the contrary, a member's benefit shall be distributed as follows:

(1) A member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date, as defined in subsection (4) of this section.

(2) If the member dies before required distributions have begun, the member's entire interest will be distributed, or begin to be distributed, no later than as follows:

a. If the member's surviving spouse is the member's sole designated beneficiary, distributions to the surviving spouse must begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by a date on or before December 31 of the calendar year in which the member would have attained age seventy (70).

b. If the member's sole designated beneficiary is not the member's surviving spouse, distributions to the designated beneficiary must begin by December 31 of the calendar year immediately following the calendar year in which the member died.

c. If the member does not have a designated beneficiary, the member's entire interest must be distributed within five (5) years of the date of the member's death.

(3) If the member dies after required distributions have begun, the remaining portion of the member's benefit must be distributed at least as rapidly as under the method of distributions being used at the time of the member's death.

(4) Required beginning date is the later of: April 1 of the calendar year following the calendar year in which the member attains or will have attained the age of seventy and one-half (70½) or April 1 of the calendar year following the calendar year in which the member retires.

(Ord. No. 99-02, § 2, 5-4-99; Ord. No. 2013-08, § 2, 5-21-13)

§ 16-55. Repeal or termination of plan.

(a) This ordinance establishing the plan and fund, and subsequent ordinances pertaining to said plan and fund, may be modified, terminated, or amended, in whole or in part for any reason or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in chapter 121; provided that if this or any subsequent ordinance shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the member or beneficiary shall be nonforfeitable.

(b) If this ordinance shall be repealed, or if contributions to the plan are discontinued, the board shall continue to administer the plan in accordance with the provisions of this ordinance, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one (1) of the options provided for in this article who are designated by any of said members. In the event of repeal, or if contributions to the plan are discontinued, there shall be full vesting (one hundred (100) percent) of benefits accrued to date of repeal and the assets of the plan shall be distributed in accordance with the following procedures:

(1) The board of trustees shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits to be distributed, after taking into account the expenses of such distribution. The board shall inform the municipality if additional assets are required, in which event the municipality shall continue to financially support the plan until all nonforfeitable benefits have been funded.

(2) The board of trustees shall determine the method of distribution of the asset value, that is, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each member entitled to benefits under the plan as specified in subsection (3).

(3) The board of trustees shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income shall mean the single premium payable for such annuity. The actuarial single-sum value may not be less than the member's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.

(4) If there is asset value remaining after the full distribution specified in subsection (3), and after the payment of any expenses incurred with such distribution, such excess shall be returned to the city.

(5) The board of trustees shall distribute, in accordance with subsection (2), the amounts determined apportioned under subsection (3).

(Ord. No. 99-02, § 2, 5-4-99; Ord. No. 2012-06, § 5, 4-2-12)

§ 16-56. Exemption from execution, non-assignability.

(a) Subject to Code Section 414(p) relating to qualified domestic relations orders, neither a member nor a beneficiary shall anticipate, assign or alienate (either at law or in equity) any benefit provided under the plan, and the board shall not recognize any such anticipation, assignment or alienation. Furthermore, a benefit under the plan is not subject to attachment, garnishment, levy, execution or other legal or equitable process except the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit those funds necessary to pay for (i) accident, health, and long-term care insurance premiums for the recipient, the recipient's spouse and the recipient's dependents, (ii) child support, or (iii) alimony. The pension fund shall not incur any liability for making or failing to make such withholding.

(1) Nothing contained in this plan shall prevent the board of trustees from complying with the provisions of a qualified domestic relations order (as defined in Code section 414(p)).

(2) The board of trustees shall establish reasonable procedures to determine the qualified status of a domestic relations order. Upon receiving a domestic relations order, the board of trustees promptly shall notify the member and any alternate payee named in the order, in writing, of the receipt of the order and the plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the board of trustees shall determine the qualified status of the order and shall notify the member and each alternate payee, in writing, of its determination. The board of trustees shall provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order, or in a manner consistent with Department of Labor regulations.

(3) If any portion of the member's nonforfeitable accrued benefit is payable during the period the board of trustees is making its determination of the qualified status of the domestic relations order, the board of trustees shall make a separate accounting of the amounts payable. If the board of trustees determines the order is a qualified domestic relations order within eighteen (18) months of the date amounts first are payable following receipt of the order, the board of trustees shall distribute the payable amounts in accordance with the order. If the board of trustees does not make its determination of the qualified status of the order within the eighteen (18) month determination period, the board of trustees shall distribute the payable amounts in the manner the plan would distribute if the order did not exist and shall apply the order prospectively if the board of trustees later determines the order is a qualified domestic relations order.

(4) The board of trustees shall make any payments or distributions required under this section by separate benefit checks or other separate distribution to the alternate payee(s).

(Ord. No. 99-02, § 2, 5-4-99; Ord. No. 2012-06, § 6, 4-2-12)

§ 16-57. Pension validity.

The board of trustees shall have the power to examine the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. The board is empowered to purge the pension rolls or correct the pension amount of any person heretofore granted a pension under prior or existing law or any person hereafter granted a pension under this ordinance if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any person who has heretofore under any prior or existing law been or who shall hereafter under this ordinance be erroneously, improperly or illegally classified. Any overpayments or under payments shall be corrected and paid or repaid in a reasonable manner determined by the board.

(Ord. No. 99-02, § 2, 5-4-99)

§ 16-58. Forfeiture of pension.

(a) Any member who violates the provisions of F.S. § 112.3173, or who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of the member's admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this pension fund, except for the return of the member's accumulated contributions, with simple interest thereon at five (5) percent per annum. Specified offenses are as follows:

- (1) The committing, aiding or abetting of felony embezzlement of public funds;
- (2) The committing, aiding or abetting of any felony theft by a public officer or employee from employer;
- (3) The committing of felony bribery in connection with the employment of a public officer or employee;
- (4) Any felony specified in F.S. ch. 838;
- (5) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he or she acts or in which he or she is employed, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of the member's public office or employment position.

(b) Conviction shall be defined as an adjudication of guilt by a court of competent jurisdiction; or a plea of guilty or of nolo contendere. Conviction shall not include cases where the adjudication of guilt is withheld and the accused is placed on probation.

(c) Court shall be defined as any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the board shall hold a hearing on which notice shall be given to the member whose benefits are being considered for forfeiture. Said member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the member shall be afforded a full opportunity to present their case against forfeiture.

(d) Any member who has received benefits from the plan in excess of their accumulated contributions after their rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of their accumulated contributions, with simple interest thereon at five (5) percent. The board may implement all legal action necessary to recover such funds.

(Ord. No. 99-02, § 2, 5-4-99)

§ 16-59. Indemnification.

(a) To the extent not covered by insurance contracts in force from time to time, the city shall indemnify, defend and hold harmless members of the board from all personal liability for damages and costs, including court costs and attorneys' fees, arising out of claims, suits, litigation, or threat of same, herein referred to as "claims", against these individuals because of acts or circumstances connected with or arising out of their official duty as members of the board. The city reserves the right, in its sole discretion, to settle or not settle the claim at any time, and to appeal or to not appeal from any adverse judgment or ruling, and in either event will indemnify, defend and hold harmless any members of the board from the judgment, execution, or levy thereon.

(b) This section shall not be construed so as to relieve any insurance company or other entity liable to defend the claim or liable for payment of the judgment or claim, from any liability, nor does this section waive any provision of law affording the city immunity from any suit in whole or part, or waive any other substantive or procedural rights the city may have.

(c) This section shall not apply nor shall the city be responsible in any manner to defend or pay for claims arising out of acts or omissions of members of the board which constitute felonies or gross malfeasance or gross misfeasance in office.

(Ord. No. 99-02, § 2, 5-4-99)

§ 16-60. Family and medical leave act.

(a) The fractional parts of the twenty-four (24) month period ending each March 1 that a member is on leave without pay from the city pursuant to the Family and Medical Leave Act (FMLA) shall be added to the member's credited service provided that:

(1) The member contributes to the fund the sum that he or she would have contributed, based on his or her salary and the member contribution rate in effect at the time that the credited service is requested, had he or she been a member of the plan for the fractional parts of the twenty-four (24) months ending each March 1 for which he or she is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of periods of credited service.

(2) The request for credited service for FMLA leave time for the twenty-four (24) month period prior to each March 1 and payment of professional fees shall be made on or before March 31.

(3) Payment by the member of the required amount shall be made on or before April 30 for the preceding twenty-four (24) month period ending March 1 and shall be made in one (1) lump sum payment upon receipt of which credited service shall be issued.

(Ord. No. 99-02, § 2, 5-4-99)

§ 16-61. Eligible rollover distributions.

Effective: Tuesday, November 17, 2015

(a) General. A distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) Definitions

(1) Eligible Rollover Distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more, any distribution to the extent such distribution is required under Section 401 (a)(9) of the Code, and the portion of any extent such distribution that is not includible in gross income. For purposes of this section, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan. For purposes of this section, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) Eligible retirement Plan: an eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of the eligible rollover distribution to the surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For purposes of this section, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

(3) Distributee. A Distributee includes an employee or former employee. In addition, the employee's or former employee's surviving Spouse is a distributee with regard to the interest of the Spouse.

(4) Direct Rollover. A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(c) Notice of eligible rollover distributions

(1) The members' retirement plan shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the recipient of such distribution explaining to the following:

a. The provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan and that the automatic distribution by direct transfer applies to certain distributions in accordance with section 401(a)(31)(B) of the Code.

b. The provision which requires the withholding of tax on the distribution if it is not directly transferred to an eligible retirement plan.

c. The provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within sixty (60) days after the date on which the recipient received the distribution.

d. The provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.

(2) For the purpose of subsection (d)(1), the term "reasonable period of time" shall have the meaning assigned to it under section 401(a)(31) of the Code and the regulations thereunder.

(Ord. No. 2013-08, § 3, 5-21-13; Ord. No. 2015-14, § 1, 11-17-15)

NOTATION

Editor's note

Ord. No. 2013-08, § 3, adopted May 21, 2013, amended the Code by repealing former § 16-61 which pertained to direct transfers of eligible rollover distributions and derived from Ord. No. 99-02, § 2, adopted May 4, 1999.

§ 16-62. Separation from employment for military service.

The years or parts of a year that a member performs qualified military service after separation from employment as a general employee with the city shall be added to the member's years of credited service for all purposes, including vesting, provided that:

(1) The general employee must return to their employment as a general employee within one (1) year from the earlier of the date of their military discharge or their release from service.

(2) The general employee deposits into the fund the same sum that the member would have contributed if they had remained a general employee during their absence. The general employee must deposit all missed contributions within a period equal to three (3) times the period of military service, but not more than five (5) years or he or she will forfeit the right to receive credited service for his or her military service pursuant to this section.

(3) The maximum credit for military service pursuant to this section shall be five (5) years.

(4) In order to qualify for the purchase of credited service pursuant to this section, the general employee must have been discharged or released from service under honorable conditions.

(5) Effective January 1, 2007, in the case of a member who dies while on a leave of absence to perform qualified military service as described in section 414(u) IRC, the member's beneficiary shall be entitled to any benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the plan had the member resumed and then terminated employment on account of death, in accordance with section 401(a)(37) IRC.

(6) This section is intended to meet or exceed the minimum requirements of the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), and the Heroes Earnings Assistance and Relief Tax Act of 2008 (the "Heart Act"). To the extent that this section does not meet the minimum standards of USERRA or the Heart Act, as it they may be amended from time to time, the minimum standards shall apply.

(Ord. No. 99-02, § 2, 5-4-99; Ord. No. 2013-08, § 4, 5-21-13)

§ 16-63. Miscellaneous provisions.

(a) *Interest of members in plan.* At no time prior to the satisfaction of all liabilities under the plan with respect to retirees and members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

(b) *No reduction of accrued benefits.* No amendment or ordinance shall be adopted by the city commission which shall have the effect of reducing the then vested accrued benefits of members or a member's beneficiaries.

(c) *Qualification of plan.* It is intended that the plan will constitute a qualified public pension plan under the applicable provisions of the Code, as now in effect or hereafter amended. Any modification or amendment of the plan shall apply retroactively, if necessary or appropriate, to qualify or maintain the plan as meeting the requirements of the applicable provisions of the Code as now in effect or hereafter amended, or any other applicable provisions of the U.S. federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder.

(d) *Use of forfeitures.* Forfeitures arising from terminations of service of members shall serve only to reduce future city contributions.

(e) *Discharge of members.* Members entitled to a benefit shall not forfeit the same upon dismissal from the city, but shall retain entitlement as herein described.

(f) *Incompetents.* If any member or beneficiary is a minor or is, in the judgment of the board, otherwise incapable of personally receiving and giving a valid receipt for any payment due him under the plan, the board may, unless and until claims shall have been made by a duly appointed guardian of such person, make such payment or any part thereof to such person's spouse, children, or other person deemed by the board to have incurred expenses or assumed responsibility for the expenses of such person. Any payment so made shall be a complete discharge of any liability under the plan for such payment.

(g) *Personal data to board.* Each member and each beneficiary of a deceased member must furnish to the board of trustees such evidence, data or information as the board of trustees considers necessary or desirable for the purpose of administering the plan. The provisions of this plan are effective for the benefit of each member upon the condition precedent that each member will furnish promptly full, true and complete evidence, data and information when requested by the board of trustees, provided the board of trustees shall advise each member of the effect of his failure to comply with its request.

(h) *Address for notification.* Each member and each beneficiary of a deceased member shall file with the board of trustees from time to time, in writing, his post office address and any change of post office address. Any communication, statement or notice addressed to a member, or beneficiary, at his last post office address filed with the board of trustees, or as shown on the records of the city, shall bind the member, or beneficiary, for all purposes of this plan.

(i) *State law.* Florida law shall determine all questions arising with respect to the provisions of this plan except to the extent federal statute supersedes state law.

(j) *Employment not guaranteed.* Nothing contained in this plan, or with respect to the establishment of the trust, or any modification or amendment to the plan or trust, or in the creation of any account, or the payment of any benefit, shall give any employee, employee-participant or any beneficiary any right to continue employment, any legal or equitable right against the employer, or employee of the employer, or against the trustee, or its agents or employees, or against the plan administrator, except as expressly provided by the plan, the trust, the act or by a separate agreement.

(k) *Waiver of notice.* Any person entitled to notice under the plan may waive the notice.

(l) *Successors.* The plan shall be binding upon all persons entitled to benefits under the plan, their respective heirs and legal representatives, upon the city, its successors and assigns, and upon the board of trustees, the plan administrator and their successors.

(m) *Unclaimed account procedure.*

(1) The plan does not require either the board of trustees to search for, or ascertain the whereabouts of, any member or beneficiary. The board of trustees, by certified or registered mail addressed to his last known address of record with the board of trustees or the employer, shall notify any member, or beneficiary, that the member is entitled to a distribution under this plan, and the notice shall quote the provisions of this section. If the member, or beneficiary, fails to claim his distributive share or make his whereabouts known in writing to the board of trustees within six (6) months from the date of mailing of the notice, or before the termination or discontinuance of this plan, whichever should first occur, the board of trustees shall treat the member's or beneficiary's unclaimed payable accrued benefit as forfeited. The city shall use the amounts representing the forfeited accrued benefit to reduce its contribution for future plan years.

(2) If a member or beneficiary who has incurred a forfeiture of his accrued benefit under the provisions of paragraph (1) above makes a claim, at any time, for his forfeited accrued benefit, the board of trustees shall restore the member's or beneficiary's forfeited accrued benefit. The board of trustees shall direct the distribution of the member's or beneficiary's accrued benefit as if the member's employment terminated in the plan year in which the board of trustees restored the forfeited benefit.

(n) *Co-mingling of investments.* The board of trustees, for collective investment purposes, may combine into one (1) trust fund the fund created under this plan with the trust created under any other qualified retirement plan the city maintains. However, the board of trustees shall maintain separate records of account for each trust in order to reflect property each member's accrued benefit under the plan(s) in which the member is a member.

(o) *Miscellaneous provisions affecting payment of benefits—Generally.* In general, the board of trustees shall make payment of any pension directly to the member entitled to the payment. However, the board of trustees paying the pension which a member is to receive directly from the fund, may purchase from an insurance company selected by the board of trustees a nontransferable annuity contract. The nontransferable annuity contract must provide pension and other benefits in an amount not less than the pension and other benefits a member would receive under this plan, and must satisfy all consent and distribution requirements prescribed by the plan. In the event the board of trustees purchases a nontransferable annuity contract for the benefit of a member, the board of trustees may either assign the contract to the member or hold the contract for the benefit of the member pursuant to the instructions of the board of trustees. The board of trustees also may purchase a nontransferable annuity contract for the benefit of a designated beneficiary, surviving spouse or alternate payee under a qualified domestic relations order (as defined in Code section 414(p)) entitled to distribution of all or a portion of the member's nonforfeitable accrued benefit.

(p) *No responsibility for city action.* The board of trustees shall not have any obligation nor responsibility with respect to any action required by the plan to be taken by the employer, any member, nor for the failure of any of the above persons to act or make any payment or contribution, or to otherwise provide any benefit contemplated under this plan, nor shall the board of trustees be required to collect any contribution required under the plan, or determine the correctness of the amount of any city contribution. The board of trustees need not inquire into or be responsible for any action or failure to act on the part of the others.

(q) *No liability.* The city assumes no obligation or responsibility to any of its employees, members or beneficiaries for any act of, or failure to act, on the part of the board of trustees.

(Ord. No. 99-02, § 2, 5-4-99)

§ 16-65. Military service prior to employment.

The years or completed months that a member serves or has served on active duty in the military service of the Armed Forces of the United States or the United States Merchant Marine, voluntarily or involuntarily, honorably or under honorable conditions, prior to the first and initial employment with the city shall be added to the member's years of credited service provided that:

(1) The member contributes to the fund the sum that the member would have contributed, based on the member's salary and the member contribution rate in effect at the time that the credited service is requested, had the member been a member of the system for the years or completed months for which the member is requesting credit, plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund or the city, plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.

(2) Payment by the member of the required amount shall be made within six (6) months of the member's request for credit and shall be made in one (1) lump sum payment upon receipt of which credited service shall be issued.

(3) The maximum credit under this section shall be five (5) years.

(Ord. No. 99-02, § 2, 5-4-99; Ord. No. 2002-13, § 1, 7-16-02; Ord. No. 2005-30, § 2, 8-16-05)

§ 16-66. Purchase of service. [Repealed]

Effective: Tuesday, January 05, 2021

(Ord. No. 2020-07, § 1, 07-07-20; Ord. No. 2020-34, § 1, 1-05-21)

Article III. Firefighters' Pension Plan And Trust Fund

§ 16-161. Definitions.

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

Accrued benefit means the benefit accrued by a member under the terms of the plan.

Accumulated contributions means a member's own contributions without interest. For those members who purchase credited service with interest and at no cost to the system, any payment representing the amount attributable to member contributions based on the applicable member contribution rate, and any actuarially calculated payments for their purchase, shall be included in accumulated contributions.

Act means the Employee Retirement Income Security Act of 1974 (P.L. 93-406) and any regulations issued thereunder by the Department of Labor and the Internal Revenue Service, as that statute and these regulations shall be amended.

Actuarial equivalent means a benefit or amount of equal value, based upon the 1983 group annuity mortality table and an interest rate of eight (8) percent per annum.

Average final compensation for a firefighter means one-twelfth (1/12) of the average salary of the three (3) best years of the last ten (10) years of creditable service prior to retirement, termination, or death or the career average as a full-time firefighter since July 1, 1953, whichever is greater. A year shall be twelve (12) consecutive months. Notwithstanding the preceding, effective October 1, 2012, for all members who have not yet retired and/or entered the DROP as of the enactment date of September 17, 2013. Average final compensation for a firefighter shall mean one-twelfth (1/12) of the average salary of the five (5) highest years of the last ten (10) years of creditable service prior to retirement, termination, or death.

Beneficiary means the person or persons entitled to receive benefits hereunder at the death of a member as provided in section 16-170 of this plan.

Board means the board of trustees, which shall administer and manage the system herein provided and serve as trustees of the fund.

City means City of Lake Wales, Florida.

Code means the Internal Revenue Code of 1986, as amended from time to time.

Credited service means the total number of years and fractional parts of years of service as a firefighter with member contributions, when required, omitting intervening years or fractional parts of years when such member was not employed by the city as a firefighter. A member may voluntarily leave his contributions in the fund for a period of five (5) years after leaving the employ of the city pending the possibility of being re-employed as a firefighter without losing credit for the time that he was a member of the system, if after he is rehired he remains re-employed with the same department not less than three (3) years, otherwise his contributions shall be returned without interest. If the member who left the employ of the fire department should not be re-employed as a firefighter within five (5) years, then accumulated contribution will be returned upon the written request of the member and all of his rights and benefits under the system shall be forfeited and terminated. However, no member will receive credit for service for which he has withdrawn his contributions unless he pays into the fund the contributions he has withdrawn, with interest, at the actuarially assumed rate within ninety (90) days of his reemployment. Years and completed months of employment with the city during which time the member is participating in the deferred retirement option plan (DROP) as described in this plan, shall not be counted as credited service for benefit purposes unless the member elects to continue employment with the city following the completion of the DROP period and makes payment of the omitted member contributions. In the event of continued employment following participation in the DROP program, the member will receive credit for the DROP period in accordance with the required procedure.

In the event that a member of this system has also accumulated credited service in another pension system maintained by the city, or has a period or periods of previous employment as a firefighter, but is not eligible to receive credited service for this period or periods of previous employment for benefit calculation purposes, then such other credited service shall be used in determining eligibility for early or normal retirement. Such other credited service will not, however, be considered in determining benefits under this system. Unless otherwise provided herein only his or her credited service and compensation under this system on or after his or her latest date of membership in this system will be considered for benefit calculation. In addition, any benefit calculation for a member of this system who is or becomes eligible for a benefit from this system after he or she has become a member of another pension system maintained by the city, shall be based upon the member's average final compensation, credited service and benefit accrual rate as of the date the member ceases to be a firefighter.

Effective date means the date of the enactment of the ordinance, except where an earlier effective date is required by reason of the application of the Tax Reform Act of 1986, and subsequent legislation, in which case the latest effective date required to comply with such act and subsequent legislation shall be substituted with respect only to the specific portions of the plan affected by such act.

Firefighter means any person employed full-time in a constituted fire department of any municipality or special fire control district who is certified as a firefighter as a condition of employment in accordance with the provisions of F.S. § 633.35 and whose duty it is to extinguish fires, to protect life, and to protect property. However, for purposes of this chapter only, "firefighter" also includes public safety officers who are responsible for performing both police and fire services, who are certified as police officers or firefighters and who are certified by their employers to the insurance commissioner and treasurer as participating in this chapter prior to October 1, 1979. Effective October 1, 1979, public safety officers who have not been certified as participating in this plan under F.S. Ch. 175 shall be considered police officers for retirement purposes and shall be eligible to participate in the city police officers pension plan under F.S. Ch. 185. Full-time employment shall be deemed to be employment of more than thirty (30) hours per week.

Fund means the trust fund established herein as part of the system.

General counsel means the attorney retained by the board to represent it with respect to the plan.

Masculine gender where used herein, unless the context specifically requires otherwise, shall include both the feminine and masculine genders.

Member means an actively employed full-time firefighter who fulfills the prescribed membership requirements. Benefit improvements which, in the past, have been provided for by amendments to the system adopted by city ordinance, and any benefit improvements which might be made in the future shall apply prospectively and shall not apply to members who terminate employment or who retire prior to the effective date of any ordinance adopting such benefit improvements, unless such ordinance specifically provides to the contrary.

Plan means the City of Lake Wales Firefighter's Pension Plan and Trust.

Plan year means the twelve-month period beginning October 1 and ending September 30 of the following year. The plan year shall be the computation period for the purposes of the plan. The change in plan year shall be effective January 1, 1997.

Retiree means a member who has entered retirement status.

Retirement means a member's separation from city employment with eligibility for immediate receipt of retirement benefits under the system.

Salary prior to July 1, 2011, means the total compensation reported on the member's W-2 form, plus all tax deferred, tax sheltered or tax exempt items of income derived from elective employee payroll deductions or salary reductions. Compensation in excess of limitations set forth in section 401(a)(17) of the Code shall be disregarded. The limitation on compensation for an "eligible employee" shall not be less than the amount which was allowed to be taken into account hereunder in effect on July 1, 1993.

Salary on July 1, 2011 and thereafter means the fixed monthly remuneration paid a firefighter, provide that when calculating retirement benefits, up to three hundred (300) hours per year in overtime compensation shall be included, but payments for accrued unused sick or vacation leave may not be included.

For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, earnings shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in subsection (a) of section 16-175 hereof, compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code.

Spouse means the lawful wife or husband of a member or retiree at the time benefits become payable.

System means the City of Lake Wales Firefighter's Pension Plan and Trust as contained herein and all amendments thereto.

Trust means the trust herein established and continued herein.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2000-12, § 2, 9-5-00; Ord. No. 2002-01, § 2, 5-7-02; Ord. No. 2010-26, § 2, 10-19-10; Ord. No. 2012-11, § 2, 8-7-12; Ord. No. 2013-16, § 1, 9-17-13)

§ 16-162. Membership.

(a) Conditions of eligibility.

(1) All full-time firefighters, and all future new full-time firefighters, shall become members of this system as a condition of employment.

(2) All future firefighters shall be required to complete a medical examination as prescribed by the city. Based upon medical evidence of a pre-existing adverse health condition, resulting from the prescribed examination or other records or medical history, the board may declare any member ineligible for disability benefits hereunder, as related to such preexisting condition. Each declaration must also be reflected in the minutes of the meeting of the board at which such declaration was formally adopted or established by the board.

(b) Application for membership. Each firefighter shall complete a form prescribed by the board providing the following information:

(1) Acceptance of the terms and conditions of the retirement system;

(2) Designation of a beneficiary or beneficiaries;

(3) A sworn statement as to prior medical history;

(4) A written release and waiver of right to privacy permitting the board to obtain, discuss and distribute all medical records to the board, the board attorney and any medical professions retained by the board; and

(5) Authorization for payroll deductions payable to the system.

(Ord. No. 98-18, § 2, 10-20-98)

§ 16-163. Board of trustees

(a) *Make-up of board.* The sole and exclusive administration of and responsibilities for the proper operation of the retirement system and for making effective the provisions of this article are hereby vested in a board herein designated the plan administrator, consisting of five (5) trustees, two (2) of whom, unless otherwise prohibited by law, shall be legal residents of the city, who shall be appointed by the city commission, and two (2) of whom shall be full-time firefighter members of the system, who shall be elected by a majority of the firefighters who are members of the system. The fifth trustee shall be chosen for a four-year term by a majority of the previous four (4) trustees as provided for herein, and such person's name shall be submitted to the city commission. Upon receipt of the fifth person's name, the city commission shall, as a ministerial duty, appoint such person to the board as its fifth trustee. The fifth trustee shall have the same rights as each of the other four (4) trustees appointed or elected as herein provided and shall serve a four-year term unless the office is soonervacated and may succeed himself in office. Each resident trustee shall serve as trustee for a period of four (4) years, unless sooner replaced by the city commission at whose pleasure each trustee shall serve, and may succeed himself as a trustee without limitation. Each firefighter trustee shall serve as trustee for a period of four (4) years, unless he sooner leaves the employment of the city as a firefighter or otherwise vacates his office as trustee, whereupon a successor shall be chosen in the same manner as the departing trustee. Each firefighter may succeed himself in office. The board shall meet at least quarterly each year. 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.

(b) *Terms and election.* The regular term of office shall be four (4) years. Employee members shall be elected in the following manner:

(1) No less than thirty (30) days before the expiration of a regular term or immediately upon notice of a vacancy on the board, the city clerk will notify all actively employed members that an employee member must be elected to the board and request nominations. Such notification will be in writing and will include a nomination form and a list of all employees eligible for nomination. Employees eligible for nomination will include all actively employed members who have completed their six (6) month probationary period of employment. Nominations will be forwarded to the city clerk before the time and date specified on the nomination form.

(2) If one (1) nominee receives a minimum of fifty-one (51) percent of the nominations, that nominee shall be declared elected and shall take office immediately upon commencement of the term of office for which elected.

(3) If no nominee receives fifty-one (51) percent of all nominations, the city clerk will prepare an election ballot listing the nominees receiving the three (3) largest number of nominations and forward a ballot to all actively employed members. Election ballots shall be returned to the city clerk before the time and date specified on the ballot. The nominee receiving the highest number of votes for office shall be declared elected and shall take office immediately upon commencement of the term of office for which elected.

(4) If two (2) or more nominees tie for the highest number of votes, a runoff ballot shall be prepared and a runoff election shall be conducted as in subsection (b)(3) herein.

An election shall be held not more than thirty (30) and not less than ten (10) days prior to the commencement of the term for which a board member is to be elected. The city shall establish and administer the nominating and election procedure for each election. The board shall elect annually by majority vote from among its members a chairman, vice-chairman and secretary.

(c) *Vacancies.* If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(d) *Resignation.* The trustee may resign at any time as trustee of the plan by giving thirty (30) days written notice in advance to the city and to the board.

(e) *Removal.* The board, upon the vote of a majority of its members, may submit to the city commission its recommendation that the city commission remove any trustee who neglects the duties of his office. The city commission may, by majority vote, thereafter remove such member as a trustee.

(f) *Expenses.* The trustees shall serve without compensation, but they may be reimbursed from the fund for all necessary expenses which they may actually expend through service on the board, as provided by law.

(g) *Oath of office.* Each trustee shall, within ten (10) days after his appointment or election, take an oath of office before the city clerk, that he will diligently and honestly administer the affairs of the board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system. Such oath shall be subscribed to by the members making it and certified by the clerk and filed in the office of the city clerk.

(h) *Voting.* Each trustee shall be entitled to one (1) vote on the board. Three (3) affirmative votes shall be necessary for a decision by the trustees at any meeting of the board. The chairman shall have the right to one (1) vote only.

(i) *Rules.* Subject to the limitations of this division, the board shall from time to time establish uniform rules and regulations for the administration of funds created by this division and for transaction of its business, including provisions for expulsion due to nonattendance of its members which could result in a vacancy.

(j) *Services.* The board shall engage such actuarial, accounting and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the retirement system shall be paid from the fund at such rates and in such amounts as the board shall agree. Funds may be disbursed by the city finance department or other disbursing agent as determined by the board, but only upon written authorization by the board.

(k) *Professionals.* The board may employ and pay from the trust fund reasonable compensation to agents, attorneys, accountants and other persons to advise the board as in its opinion may be necessary. The board may delegate to any agent, attorney, accountant or other person selected by it any non-trustee power or duty vested in it by the plan, and the board may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

(l) *Powers and duties.* The powers, duties and responsibilities of the board shall include the power and duty to:

- (1) Construe the provisions of the system and determine all questions arising thereunder;

- (2) Determine all questions relating to eligibility and participation;
 - (3) Determine and certify the amount of all retirement allowances or other benefits hereunder;
 - (4) Establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system;
 - (5) Distribute to members at regular intervals information concerning the system;
 - (6) Receive and process all applications for participation and benefits;
 - (7) Authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund;
 - (8) Have performed actuarial studies and annual actuarial valuations and make recommendations regarding any and all changes in the provisions of the system;
 - (9) Select a secretary, who shall keep a complete minute book of the actions, proceedings, or hearings of the board and who shall keep a record of all persons receiving pension payments, noting the time of commencement and cessation thereof. Minutes prepared by the secretary shall be filed with the city clerk and made part of the official records of the city;
 - (10) Enforce the terms of the plan and the rules and regulations it adopts;
 - (11) Direct the crediting and distribution of the trust;
 - (12) Review and render decisions respecting a claim for (or denial of a claim for) a benefit under the plan;
 - (13) Furnish the city with information which the city may require for tax or other purposes;
 - (14) Engage the services of an investment manager or managers (as defined in § 3(38)) of the act, each of whom shall have such power and authority to manage, acquire or dispose of any plan asset under its control as authorized by the board;
 - (15) Establish and maintain a funding standard account and to make credits and charges to the account to the extent required by and in accordance with the provisions of the Code;
 - (16) Perform such other duties as are specified in this document; and
 - (17) Appoint an administrator of the system if deemed appropriate by the board.
- (m) *Manner of action.* The board shall exercise all of its powers, duties and discretion under the plan in a uniform and nondiscriminatory manner.
- (n) *Legal entity.* The board represents 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.
- (o) *Meetings.* The board shall hold meetings, at least quarterly, determining the notice, place and time of each. A majority of its members shall constitute a quorum.
- (p) *Recusal.* A trustee shall have the right to recuse himself or herself from voting as the result of a conflict of interest provided that the trustee complies with the provisions of F.S. § 112.3143. No member of the board may decide or determine any matter concerning the distribution, nature or method of settlement of his own benefits under the plan.

(q) *Authorized representative.* The board may authorize any one (1) of its members, or its secretary, to sign on its behalf any notices, directions, applications, certificates, consents, approvals, waivers, letters or other documents. The board must evidence this authority by an instrument signed by all members and filed with the trustee.

(r) *Third party.* No person dealing with the board shall be obligated to see to the proper application of any money paid or property delivered to the board, or to inquire whether the board has acted pursuant to any of the terms of the plan. Each person dealing with the board may act upon any notice, request or representation in writing by the board, or by the board's duly authorized agent, and shall not be liable to any person whomsoever in so doing. The certificate of the board that it is acting in accordance with the plan shall be conclusive in favor of any person relying on the certificate.

(s) *Member records.* The board shall keep such records and shall prepare such reports concerning members' accounts as the Act and Code require. Upon a member's written request, the board shall furnish the member the information described in section 105(a) of the Act.

(t) *Annual review.* The board shall review, not less often than annually, all pertinent employee information and plan data in order to establish the funding policy of the plan and to determine the appropriate methods of carrying out the plan's objectives. The board shall communicate periodically, as it deems appropriate, to any plan investment manager the plan's short-term and long-term financial needs so investment policy can be coordinated with plan financial requirements.

(u) *Parties to litigation.* Except as otherwise provided by the act, only the city and the board shall be necessary parties to any court proceeding involving the plan. No member, beneficiary or other person having an interest in the fund shall be entitled to any notice of process unless required by the Act.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2008-09, § 3, 3-18-08; Ord. No. 2010-08, § 1, 5-4-10)

§ 16-164. Finances and fund management.

Establishment and operation of fund.

(1) As part of the plan, there exists the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the plan, including the assets of the prior Lake Wales Municipal Firefighter's Pension Plan and Trust which are hereby retained in this fund.

(2) The actual custody and supervision of the fund (and assets thereof) shall be vested in the board. Payment of benefits and disbursements from the fund shall be made by the disbursing agent designated by the board but only upon written authorization from the board.

(3) All funds of the plan may be deposited by the board with the finance director of the city, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the city. However, any funds so deposited with the finance director of the city shall be kept in a separate fund by the finance director or clearly identified as such funds of the plan. In lieu thereof, the board shall deposit the funds of the plan in a qualified public depository as defined in F.S. § 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of F.S. Ch. 280, as it may be amended from time to time. In order to fulfill its investment responsibilities as set forth herein, the board may retain the services of a custodian bank, an investment advisor registered under Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.

(4) All funds and securities of the plan may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:

- a. Current amounts of accumulated contributions of members on both an individual and aggregate account basis;
- b. Receipts and disbursements;
- c. Benefit payments;
- d. Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city;
- e. All interest, dividends and gains (or losses) whatsoever; and
- f. Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.

(5) An audit shall be performed annually by a certified public accountant chosen by the board for the most recent fiscal year of the city showing a detailed listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete evaluation of assets on both a cost and market basis, as well as other items normally included in a certified audit.

(6) The board shall have the following investment powers and authority:

- a. The board shall be vested with full legal title to said fund, subject, however, in any event to the authority and power of the city commission to amend or terminate this fund, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under the plan, except as otherwise provided herein. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund.
- b. All monies paid into or held in the fund shall be invested and reinvested by the board and the investment of all or any part of such funds shall be limited to:

1. Annuity and life insurance contracts with life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the members in the fund shall be entitled under the provisions of this plan and pay the initial and subsequent premium thereon.

2. Time or savings accounts of a national bank, a state bank or a savings/building and loan association insured by the Federal Deposit Insurance Corporation.

3. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.

4. Bonds, stocks, mutual funds, commingled funds administered by national or state banks, or evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided that the security of the corporation is traded on a nationally recognized exchange and holds a rating or ranking in one (1) of the three (3) highest classifications by a major rating or ranking service, and if such investments are made in a commingled fund administered by a state or national bank, then the rating or ranking of each issue in the commingled fund shall hold a rating or ranking within the top three (3) rating or ranking classifications of a major rating or ranking service.

5. Foreign securities in an amount not to exceed twenty-five (25) percent of the assets of the fund at market value, as allowed under F.S. § 175.071.

6. Such other investments as allowed by law.

c. The board shall not invest more than five (5) percent of its assets in the common stock or capital stock of any one (1) issuing company, nor shall the aggregate investment in any one (1) issuing company exceed five (5) percent of the outstanding capital stock of that company; nor shall the aggregate of its investments in common stock, capital stock and convertible bonds at cost exceed sixty (60) percent of the assets of the fund.

d. The board may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the plan.

e. The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.

f. The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the fund which it may deem to be in the best interest of the fund to exercise.

g. The board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power contained herein.

h. Where any action which the board is required to take or any duty or function which it is required to perform either under the terms herein or under the general law applicable to it as trustee under this article, can reasonably be taken or performed only after receipt by it from a member, the city, or any other entity, of specific information, certification, direction or instructions, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.

i. Any overpayment or underpayment from the fund to a member, retiree or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board in such a manner that the actuarial equivalent of the benefit to which the member, retiree or beneficiary was correctly entitled to, shall be paid. Overpayment shall be charged against payments next succeeding the correction or collected in another manner if prudent. Underpayment shall be made up from the fund in a prudent manner.

j. The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits herein provided for.

k. In any application to or proceeding or action in the courts, any judgment entered in such a proceeding or action shall be conclusive upon all persons.

l. Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to said fund shall always remain in the board.

(7) The board shall not have any obligation or responsibility with respect to any action required by the plan to be taken by the city or, any member, nor shall the board be required to collect any contribution required under the plan, or determine the correctness of the amount of any contribution. The board need not inquire into or be responsible for any action or failure to act on the part of the others.

(8) The board and the city in no way guarantee the trust fund from loss or depreciation. The city does not guarantee the payment of any money which may be or becomes due to any person from the fund. The liability of the board to make any payment from the fund at any time and all times is limited to the then available assets of the fund.

(9) The board shall not be liable for the acts or omissions of any investment manager or managers the board may appoint, nor shall the board be under any obligation to invest or otherwise manage any asset of the plan which is subject to the management of a properly appointed investment manager. The board and any properly appointed investment manager may execute a letter of agreement as a part of this plan delineating the duties, responsibilities and liabilities of the investment manager with respect to any part of the trust fund under the control of the investment manager.

(10) At least once every three (3) years, the board shall retain an independent consultant professionally qualified to evaluate the performance of professional money managers. The independent consultant shall make recommendations to the board regarding the selection of money managers for the next investment term. These recommendations shall be considered by the board at its next regularly scheduled meeting. The date, time, place, and subject of this meeting shall be advertised in a newspaper of general circulation in the municipality at least ten (10) days prior to the date of the hearings.

(11) The board shall identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in Florida Statutes, Section 215.473, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in such company beginning January 1, 2010 and shall thereafter be prohibited from purchasing or holding such securities. The divestiture of any such security must be completed by September 30, 2010. In accordance with Ch. 2009-97, Laws of Florida, no person may bring any civil, criminal, or administrative action against the board or any employee, officer, director, or advisor of such board based upon the divestiture of any security pursuant to this paragraph.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2010-08, § 2, 5-4-10)

§ 16-165. Contributions.

(a) Member contributions.

(1) *Amount.* Each member of the plan shall be required to make regular contributions to the fund in the amount of a portion of his or her wages as established by contract between the city and the bargaining unit. member contributions withheld by the city on behalf of the member shall be deposited with the board at least monthly. The contributions made by each member to the fund shall be designated as city contributions pursuant to section 414(h) of the Code. Such designation is contingent upon the contributions being excluded from the members' gross income for federal income tax purposes. For all other purposes of the plan, such contributions shall be considered to be member contributions.

(2) *Method.* Such contributions shall be made by payroll deduction.

(b) *State contributions.* Any monies received or receivable by reason of laws of the state for the express purpose of funding and paying for retirement benefits for firefighters of the city shall be deposited in the trust fund comprising part of this system immediately, and under no circumstances more than five (5) days after receipt by the city.

(c) *City contributions.* So long as this system is in effect, the city shall make quarterly contributions to the trust fund in an amount equal to the difference in each year between the total aggregate member contributions for the year, plus state contributions for such year, and the total cost for the year, in a manner which is authorized under the provision of F.S. part VII, ch. 112, or its successor. The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded past service liability over a thirty (30) year period, commencing with the fiscal year in which the effective date of this system occurs.

(d) *Other contributions.* Private donations, gifts and contributions may be deposited to the fund, but such deposits must be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used only for additional benefits for members, as determined by the board, and may not be used to reduce what would have otherwise been required city contributions.

(e) *Return of overpayment member or beneficiary.* Any overpayment or underpayment from the fund to a member or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board. Overpayment shall be charged against payments next succeeding the correction. Underpayment shall be made up from the fund.

(f) *Rollover contributions.* The plan does not permit member rollover contributions, or voluntary contributions other than the mandatory contribution required pursuant to the plan.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2004-07, § 2, 5-18-04)

§ 16-166. Benefit amounts and eligibility.

(a) *Normal retirement date.* A member's normal retirement date shall be the first day of the month coincident with, or next following the date he attains the earlier of:

- (1) Age fifty-five (55) with ten (10) or more years of credited service; or
- (2) Age fifty-two (52) with twenty-five (25) years of credited service, for members who separate from service before October 1, 1998; and
- (3) Age fifty (50), with twenty-five (25) years of credited service, for members who separate from service on or after October 1, 1998.

A member may retire on his or her normal retirement date or on the first day of any month thereafter. Normal retirement under the plan is retirement from employment with the city on or after the normal retirement date. Each member who retires on or after normal retirement age shall receive a normal retirement pension.

(b) *Normal retirement benefit.* A member retiring hereunder on or after his or her normal retirement date shall receive a monthly benefit consisting of a single life annuity which shall commence on the first day of the month next following his or her retirement and be continued thereafter during member's lifetime, ceasing upon death, but with one hundred twenty (120) monthly payments guaranteed in any event. The monthly retirement benefit for a firefighter shall equal: (1) two and one-half (2½) percent of average final compensation, for each year of credited service for members separating from service prior to October 1, 1998; or (2) three (3) percent of average final compensation, for each year of credited service for members who separate from service on or after October 1, 1998. Notwithstanding the preceding, effective October 1, 2012, for all members who have not yet retired and/or entered the DROP as of the enactment date of September 17, 2013, the maximum total benefit provided by the fund shall be limited to the lesser of either: seventy-five thousand (\$75,000.00) per year; or three (3) percent of average final compensation, for each year of credited service. In no event shall the maximum total benefit provided by the fund be less than two (2) percent of average final compensation, for each year of credited service. Once the maximum pension benefit, as defined herein, is met, all pension contributions made on behalf of the member will permanently cease. The monthly retirement income for a firefighter shall be reduced for moneys received under the disability provisions of this plan so that the monthly benefit shall not exceed the greater of the disability or retirement pension.

(c) *Delayed retirement.* Retirement may be delayed by a member and shall not be mandatory solely by reason of age prior to the required beginning date specified in section 16-175, hereof. The delayed retirement date shall be the first day of the month coincident with, or next following, actual retirement.

(d) *Early retirement date.* A member may retire on his or her early retirement date which shall be the first day of any month coincident with or next following the attainment of age fifty (50) and the completion of ten (10) years of credited service. Early retirement under the plan is retirement from employment with the city on or after the early retirement date and prior to the normal retirement date.

(e) *Early retirement benefit.* A member retiring hereunder on his or her early retirement date may receive either a deferred or an immediate monthly retirement benefit payable for life, with one hundred twenty (120) monthly payments guaranteed, as follows:

(1) A deferred monthly retirement benefit which shall commence on what would have been the member's normal retirement date had he remained a firefighter and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be a life annuity determined in the same manner as for retirement at normal retirement date except that credited service and average final compensation shall be determined as of the early retirement date; or

(2) An immediate monthly retirement benefit which shall commence on the member's early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in subsection (1) above, which is actuarially reduced from the amount to which the member would have been entitled had the member retired on his normal retirement date and with the same number of years of credited service as at the time benefits commence and based on the member's average final compensation at that date. In no event shall the early retirement reduction exceed three (3) percent for each year by which the member's age at retirement precedes the member's normal retirement age.

(f) *Immediate and deferred payment of early retirement benefit.* The board shall commence payment of the immediate early retirement pension on the first day of the month designated by the member as the annuity starting date, so long as such date follows the member's termination of service with the city. If a member elects a deferred early retirement pension, or fails to designate an annuity starting date, the board shall commence payment following the member's attainment of normal retirement age.

(g) *Termination benefit—Generally.* A member whose employment terminates for any reason prior to becoming eligible for an early or normal retirement pension, shall receive either a deferred pension, calculated in the manner set forth in subsection (h) of this section herein; or a refund benefit in an amount equal to the total contributions made by the member to the plan. A member shall only be entitled to a deferred pension if he has at least ten (10) years of credited service. Notwithstanding the provisions of this section, a member, at any time prior to the commencement of his normal retirement pension, his early retirement pension or his deferred pension, may elect to receive a refund benefit in lieu thereof.

(h) *Amount of deferred pension.* The member's deferred pension shall be a single life annuity, with a one hundred twenty-month guarantee, computed in the same manner as the early retirement pension if the member elects to begin receiving his monthly pension before age fifty-five (55) or it shall be a single life annuity, with a one hundred twenty-month guarantee, computed in the same manner as the normal retirement pension if the member elects to begin receiving his pension on or after age fifty-five (55), with such benefit to be determined as of the date on which his termination of employment occurs.

(i) *Payment of deferred pension.* A terminated member's deferred pension shall become payable in the same manner as a normal retirement pension, or if elected by the member in the manner provided in subsection (h) hereof, in the same manner as an early retirement pension.

(j) *Effective date of change in benefits.* Members separating from service before October 1, 1998, shall only be entitled to the benefits provided by the plan prior to October 1, 1998.

(k) *Deferred retirement option plan (DROP).*

(1) *Operation.* Any member of the system who has satisfied the requirement for normal retirement as set forth herein may elect to withdraw from the system while continuing to be an employee of the city for a period of up to five (5) years. During this period, the member and employer shall cease to make contributions to the fund and benefit accruals shall cease at the date of withdrawal from the system. At the time of the withdrawal, the member may elect any optional form of retirement income as allowed by the plan. The amount of the monthly pension which would otherwise be paid shall be maintained as a co-mingled DROP account(s) in the name of the member within the fund and shall be segregated from other trust assets on a bookkeeping basis only.

a. Upon electing participation in the DROP, the member shall elect to receive, by designating full or partial allocation of the monthly benefit amount, either interest and/or earnings on his or her accounts to be determined as provided below. The member may elect, in writing, to change his or her election on a quarterly basis during DROP participation. An election to change must be made at least thirty (30) days prior to the beginning of a calendar quarter and shall be effective on the first day of the calendar quarter immediately following such notice of election. There shall be no limit on the number of such transfers.

1. Earnings election. Quarterly the DROP account shall share in the investment gains and losses for the quarter at the same rate of the return earned by the total trust fund; and/or

2. Interest election. The DROP account shall be credited interest based on the trust fund's money market interest rate compounded quarterly.

3. Any additional cost arising for the election of partial allocation of the monthly benefit amount shall be paid by the member.

b. Regardless of the option selected by the participant, the board of trustees has the right to accelerate payments in order to comply with section 401(a)(9) IRC and the right to defer payments to comply with section 415 IRC.

(2) *Termination of employment.* Upon termination of employment, not later than five (5) years following entry into the DROP program, the member shall commence receiving the monthly benefit in the same form and amount as selected at the time of entry into the DROP program. In addition, the member shall receive the value of his DROP account in a single lump sum payment.

(3) *Continued employment.* In the event that the member continues employment following completion of the DROP period, the member shall forfeit his or her entitlement to the accumulated assets in the DROP account, which account shall no longer be segregated from the other assets of the plan, and such member shall deposit to the fund an amount equal to the member contributions which would have been made had the member continued as an active participant in the plan during the DROP period. Upon later termination of employment, the retiring member shall receive benefit credit for years and completed months during which he or she participated in the DROP program and for which member contributions were subsequently made, as well as credited service accrued before and after participation in the DROP plan.

(4) *Computation of plan benefits.* The benefits of a member who makes an election to withdraw from the system while continuing to be an employee of the city, shall be determined based upon including as salary, at the time of withdrawal, the amount of accrued vacation and sick pay which would have been available had such member terminated employment at the time of making the election. Notwithstanding the above, payments made to a withdrawing member's DROP account shall be reduced by the product obtained by multiplying the then applicable member contribution rate by the amount of accrued vacation pay and sick pay which is includible in the above calculation.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2000-12, § 2, 9-5-00; Ord. No. 2002-01, § 2, 5-7-02; Ord. No. 2004-07, § 2, 5-18-04; Ord. No. 2010-17, § 1, 10-19-10; Ord. No. 2013-16, § 2, 9-17-13)

§ 16-167. Disability.

(a) *Disability benefits in-duty.* Each firefighter who is a member in the system and who shall have become totally and permanently disabled, while, actively employed as a firefighter with the city to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, and which disability was directly caused by the performance of his duty as a firefighter shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to either, (i) two and one-half (2½) percent of his or her compensation for a member separating from service prior to October 1, 1998, or (ii) three (3) percent of his or her compensation for a member separating from service on or after October 1, 1998, multiplied by the total years of credited service, but in any event the minimum amount paid to the member shall be forty-two (42) percent of the member's compensation. For the purposes of this paragraph, compensation shall be deemed to be the greater of the member's average compensation based upon his or her pay status at the time the disability occurred or his or her average final compensation.

(1) Any condition or impairment of health of a firefighter caused by tuberculosis, hypertension or heart disease resulting in total or partial disability or death shall be presumed to have been suffered in the line of duty unless the contrary is shown by competent evidence; provided, that such firefighter shall have successfully passed a physical examination upon entering into such service, including a cardiogram, which examination failed to reveal any evidence of such condition; and provided further, that such presumption shall not apply to benefits payable or granted in a policy of life insurance or disability insurance.

(2) The presumption provided for in this paragraph (2) shall apply only to those conditions described in this subsection (2) that are diagnosed on or after January 1, 1996.

a. *Definitions.* As used in this paragraph (2), the following definitions apply:

1. "Body fluids" means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the Centers for Disease Control, apply. For purposes of potential transmission of meningococcal meningitis or tuberculosis, the term "body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, and saliva, mucous, and other fluids through which infectious airborne organisms can be transmitted between persons.

2. "Emergency rescue or public safety member" means any member employed full-time by the city as a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who, in the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis, or tuberculosis and who is not employed elsewhere in a similar capacity. However, the term "emergency rescue or public safety member" does not include any person employed by a public hospital licensed under F.S. Ch. 395, or any person employed by a subsidiary thereof.

3. "Hepatitis" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C, or any other strain of hepatitis generally recognized by the medical community.

4. "High risk of occupational exposure" means that risk that is incurred because a person subject to the provisions of this subsection, in performing the basic duties associated with his or her employment:

i. Provides emergency medical treatment in a non-healthcare setting where there is a potential for transfer of body fluids between persons;

ii. At the site of an accident, fire, or other rescue or public safety operation, or in an emergency rescue or public safety vehicle, handles body fluids in or out of containers or works with or otherwise handles needles or other sharp instruments exposed to body fluids;

iii. Engages in the pursuit, apprehension, and arrest of law violators or suspected law violators and, in performing such duties, may be exposed to body fluids; or

iv. Is responsible for the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, while on work detail outside the facility, or while being transported and, in performing such duties, may be exposed to body fluids.

5. "Occupation exposure," in the case of hepatitis, meningococcal meningitis, or tuberculosis, means an exposure that occurs during the performance of job duties that may place a worker at risk of infection.

b. *Presumption.* Any emergency rescue or public safety member who suffers a condition or impairment of health that is caused by hepatitis, meningococcal meningitis, or tuberculosis, that requires medical treatment, and that results in total or partial disability or death shall be presumed to have a disability suffered in the line of duty, unless the contrary is shown by competent evidence; however, in order to be entitled to the presumption, the member must, by written affidavit as provided in F.S. § 92.50, verify by written declaration that, to the best of his or her knowledge and belief:

1. In the case of a medical condition caused by or derived from hepatitis, he has not:

i. Been exposed, through transfer of bodily fluids, to any person known to have sickness or medical conditions derived from hepatitis, outside the scope of his employment;

ii. Had a transfusion of blood or blood components, other than a transfusion arising out of an accident or injury happening in connection with his present employment, or received any blood products for the treatment of a coagulation disorder since last undergoing medical tests for hepatitis, which tests failed to indicate the presence of hepatitis;

iii. Engaged in unsafe sexual practices or other high-risk behavior, as identified by the Centers for Disease Control or the SurgeonGeneral of the United States or had sexual relations with a person known to him to have engaged in such unsafe sexual practices or other high-risk behavior; or

iv. Used intravenous drugs not prescribed by a physician.

2. In the case of meningococcal meningitis, in the ten (10) days immediately preceding diagnosis he or she was not exposed, outside the scope of his or her employment, to any person known to have meningococcal meningitis or known to be an asymptomatic carrier of the disease.

3. In the case of tuberculosis, in the period of time since the member's last negative tuberculosis skin test, he or she has not been exposed, outside the scope of his or her employment, to any person known by him or her to have tuberculosis.

c. *Immunization.* Whenever any standard, medically recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is granted under this section, if medically indicated in the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the U.S. Public Health Service, an emergency rescue or public safety member may be required by the city to undergo the immunization or prophylaxis unless the member's physician determines in writing that the immunization or other prophylaxis would pose a significant risk to the member's health. Absent such written declaration, failure or refusal by an emergency rescue or public safety member to undergo such immunization or prophylaxis disqualifies the member from the benefits of the presumption.

d. *Record of exposures.* The city shall maintain a record of any known or reasonable suspected exposure of an emergency rescue or public safety member in its employ to the disease described in this section and shall immediately notify the member of such exposure. An emergency rescue or public safety member shall file an incident or accident report with the city of each instance of known or suspected occupational exposure to hepatitis infection, meningococcal meningitis, or tuberculosis.

e. *Required medical tests; pre-employment physical.* In order to be entitled to the presumption provided by this section:

1. An emergency rescue or public safety member must, prior to diagnosis, have undergone standard, medically acceptable tests for evidence of the communicable disease for which the presumption is sought, or evidence of medical conditions derived therefrom, which tests fail to indicate the presence of infection. This paragraph does not apply in the case of meningococcal meningitis.

2. On or after June 15, 1995, an emergency rescue or public safety member may be required to undergo a pre-employment physical examination that tests for any evidence of hepatitis or tuberculosis.

(b) *Disability benefits off-duty.* Every firefighter who is a member in the system with ten (10) years or more credited service who shall have become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability is not directly caused by the performance of his duties as a firefighter, shall be entitled to a monthly pension equal to either: (i) two and one-half (2½) percent of compensation for a member separating from service prior to October 1, 1998, or (ii) three (3) percent of compensation for a member separating from service on or after October 1, 1998, multiplied by the total years of credited service, but in any event, the minimum amount paid to the member shall be twenty-five (25) percent of his compensation. This provision shall not apply to a member who has reached early or normal retirement age. Any disability occurring after termination shall not constitute a basis for disability payments. For the purposes of this paragraph, compensation shall be deemed to the greater of the member's average compensation based upon his or her pay status at the time the disability occurred or his or her average final compensation.

(c) *Conditions disqualifying disability benefits.* Each firefighter who is claiming disability benefits shall establish, to the satisfaction of the board, that such disability or death was not occasioned primarily by:

- (1) Excessive or habitual use of any drugs, intoxicants or narcotics.
- (2) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections.
- (3) Injury or disease sustained while committing a crime.
- (4) Injury or disease sustained while serving in any branch of the armed forces.
- (5) Injury or disease sustained after his employment as a firefighter with the city shall have terminated.
- (6) A condition pre-existing the firefighter's membership in the system. No member shall be entitled to a disability pension because of or due to the aggravation of a specific injury, impairment or other medical condition pre-existing at the time of membership in the system; provided, that such preexisting condition and its relationship to a later injury, impairment or other medical condition be established by competent substantial evidence. Nothing herein shall be construed to preclude a disability pension to a member who, after membership in the system, suffers an injury, impairment or other medical condition different from some other injury, impairment or other medical condition existing at or prior to said membership.

(d) *Physical examination requirement.* A firefighter shall not become eligible for disability benefits until and unless he undergoes a physical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the board for that purpose. The board shall not select the member's treating physician or surgeon for this purpose except in an unusual case where the board determines that it would be reasonable and prudent to do so.

Any firefighter receiving disability benefits under provisions of this section shall be periodically re-examined by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the board, to determine if such a disability has ceased to exist. If the board finds that the retiree is no longer permanently and totally disabled to the extent that he is unable to render useful and efficient service as a firefighter, the board shall recommend to the city that the disability retirement income be discontinued and the retiree be returned to performance of duty as a firefighter, and the retiree so returned shall enjoy the same rights that member had at the time he was placed upon pension.

The cost of the physical examination and/or re-examination of the firefighter claiming and/or receiving disability benefits shall be borne by the board of this system. All other reasonable costs as determined by the board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the board.

If the firefighter recovers from disability and re-enters the service of the city as a firefighter, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he re-entered the service of the city will not be considered as credited service for the purposes of the plan.

The board shall have the power and authority to make the final decisions regarding all disability claims.

(e) *Disability payments.* The monthly benefit to which a member is entitled in the event of the member's disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be:

(1) If the firefighter recovers from the disability prior to his normal retirement date, the payment due next preceding the date of such recovery; or

(2) If the firefighter dies without recovering from disability or attains his normal retirement date while still disabled, the payment due next preceding his death or the one hundred twentieth monthly payment, whichever is later.

(3) Any monthly retirement income payments due after the death of a disabled firefighter shall be paid to the firefighter's designated beneficiary or beneficiaries as provided in F.S. §§ 175.181 and 175.201.

(f) A disabled member may select an actuarially equivalent optional form of benefit in the same manner as a retired member, or in such other actuarially equivalent form as may be allowed by the board.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2000-12, § 2, 9-5-00)

§ 16-168. Pre-retirement death.

(a) *Prior to eligibility for deferred benefit or retirement.* The beneficiary of a deceased member who was not receiving monthly benefits, or who was not yet eligible for a deferred benefit under subsection (g) of section 16-166, early retirement, or normal retirement, shall receive a refund of one hundred (100) percent of the member's accumulated contribution, or in the event an annuity or life insurance contract has been purchased by the board on such firefighter, then the beneficiary shall receive instead the death benefits available under such contract, subject to the limitations on such benefits set forth in F.S. § 175.081, whichever amount is greater.

(b) *Deceased members eligible for deferred benefit or retirement benefit.* The beneficiary of any member who dies and who, at the date of his or her death was eligible for a deferred benefit under subsection (g) of section 16-166, or early retirement, or normal retirement, shall be entitled to a benefit as follows:

(1) If the member was eligible for a deferred benefit, but not eligible for normal or early retirement, the beneficiary shall receive a benefit payable for ten (10) years, beginning on the date that the deceased member would have been eligible for early or normal retirement, at the option of the beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's, date of birth, credited service and average final compensation as of the date of his or her death and reduced as for early retirement, if applicable. The beneficiary may also elect to receive an immediate benefit, payable for ten (10) years, which is actuarially reduced to reflect the commencement of benefits prior to the early retirement date.

(2) If the deceased member was eligible for normal or early retirement, the beneficiary shall receive a benefit payable for ten (10) years, beginning on the first day of the month following the member's death or at the deceased member's otherwise normal retirement date, at the option of the beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his or her death and reduced as for early retirement, if applicable.

(3) A beneficiary may, in lieu of any benefit provided for in (1) or (2) above, elect to receive a refund of the deceased member's accumulated contributions.

(c) *Optional death benefit for members killed in line of duty.* In lieu of the benefits described in subsections (a) and (b) of this section, the surviving spouse of any member who dies as a direct result of an occurrence arising in the performance of service, or if there is no surviving spouse, the legal guardian of the youngest living child, may elect a benefit payable as follows:

(1) To the spouse, a monthly benefit payable until death equal to fifty (50) percent of the member's average final compensation.

(2) To each minor child, in equal monthly installments in an amount equal to ten (10) percent of the member's average final compensation, subject to a limitation of a total of eighty (80) percent of average final compensation for the spouse and children combined. Each child's pension shall terminate at death or upon attaining eighteen (18) years of age, unless such child continues to be a full-time student at an accredited institution of higher learning or at an accredited institution providing vocational or technical training, in which case such payments may continue until such child attains the age of twenty-one (21).

Upon death of the spouse, the allowance for each child shall be paid in trust or as otherwise determined by the board, to eligible children, not to exceed a combined total of fifty (50) percent of the member's average final compensation. The manner of handling and administering the pension to any child or children shall be determined by the board. No survivor pension shall be paid to any stepchild of a deceased member who had not been legally adopted by such member.

(3) There shall be in any event a minimum total service-incurred death benefit equal in amount to four (4) times the member's average final compensation. If such amount has not yet been paid in total at such time as benefits cease under subsections (c)(1) and (c) (2) above, then the balance shall be payable in a lump sum to the member's designated beneficiary, and if there be none, then to such member's estate.

(4) Notwithstanding the above, neither a surviving spouse, nor minor children may elect the optional death benefit described in this subsection (c) if the member has designated someone other than his spouse as his beneficiary.

(Ord. No. 98-18, § 2, 10-20-98)

§ 16-169. Optional forms of benefits.

(a) In lieu of the amount and form of retirement income payable in the event of normal, early, or delayed retirement, or deferred pension, as specified herein, a member, upon written request to the board, which request shall be retained by the board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one (1) of the following options:

(1) A retirement income of a larger monthly amount, payable to the member for his or her lifetime only.

(2) A retirement income of a modified monthly amount, payable to the member during the lifetime of the member, and following the death of the member, one hundred (100) percent, seventy-five (75) percent, sixty-six and two-thirds ($66 \frac{2}{3}$) percent, or fifty (50) percent of such monthly amounts payable to a joint pensioner for his or her lifetime. Except where the retiree's joint pensioner is his or her spouse, the present value of payments to the retiree shall not be less than fifty (50) percent of the total present value of payments to the retiree and his or her joint pensioner.

(3) An actuarially equivalent larger monthly amount, with a reduction in the monthly amount when the member's social security benefits are estimated to start so that the member's total monthly benefit, inclusive of social security benefits, will remain constant upon the starting date of his social security benefits.

(b) The member, upon electing any option of this section, will designate the joint pensioner (subsection (a)(2) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one (1) or more primary beneficiaries where applicable. If a member has elected an option with a joint pensioner or beneficiary and the member's retirement income benefits have commenced, the member may thereafter change his or her designated beneficiary up to two (2) times and may change his or her joint pensioner up to two (2) times without the approval of the board or the current designated survivor. The retiree member need not provide proof of the good health of the designated survivor being removed, and the designated survivor being removed need not be living. Provided that in the absence of proof of good health, the actuary will assume that the designated survivor being removed has deceased for purposes of calculating the new benefit payment.

(c) The consent of a member's or retiree's joint pensioner or beneficiary to any such change shall not be required. The rights of all previously designated beneficiaries to receive benefits under the system shall thereupon cease.

(d) Upon change of a retiree's beneficiary or joint pensioner in accordance with this section, the board shall adjust the retiree's monthly benefit by application of actuarial calculations to insure that the benefit paid is the actuarial equivalent of the retiree's then current benefit. Any such retiree shall pay the actuarial recalculation expenses and shall make repayment of any overage of previously paid pension benefits as a result of said recalculations. Each request for a change will be made in writing on a form prepared by the board and on completion will be filed with the board. In the event that no designated beneficiary survives the retiree, such benefits as are payable in the event of the death of the retiree subsequent to his or her retirement shall be paid as provided in section 16-170

(e) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:

(1) If a member dies prior to his or her normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under section 16-168

(2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the member's retirement under the system, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the member upon his or her retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the member prior to his or her retirement.

(3) If both the retiree and the beneficiary (or beneficiaries) designated by member or retiree die before the full payment has been effected under any option providing for payment for a period certain and life thereafter, made pursuant to the provisions of subsection (a), the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 16-170

(4) If a member continues beyond his or her normal retirement date pursuant to the provisions of section 16-166, and dies prior to his or her actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the member in the amount or amounts computed as if the member had retired under the option on the date on which his or her death occurred.

(f) Except as set forth in subsection (b), hereof, a retiree may not change his or her retirement option after the date of cashing or depositing his or her first retirement check.

(g) Notwithstanding anything herein to the contrary, the board in its discretion, may elect to make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the remaining monthly income payments to be paid do not exceed five thousand dollars (\$5,000.00). Any such payment made to any person pursuant to the power and discretion conferred upon the board by the preceding sentence shall operate as a complete discharge of all obligations under the system with the regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2010-08, § 3, 5-4-10; Ord. No. 2012-13, § 1, 8-21-12)

§ 16-170. Beneficiaries.

(a) *Beneficiary designation.* A member may from time to time designate a beneficiary in writing, or change such designation of, any person or persons, contingently or successively, to whom the trustee shall pay the remainder of his benefit in the event of his death. The board shall prescribe the form for the written designation of beneficiary and, upon the member's filing the form with the board, it effectively shall revoke all designations filed prior to that date by the same member. This subsection (a) shall not supersede the provisions of subsection (b) of section 16-169

(b) *No beneficiary designation.* If a member fails to name a beneficiary in accordance with the preceding subsection, or if the beneficiary named by a member predeceases him or her, or dies before complete distribution of the member's benefit, then the board shall pay the member's remaining benefit, if any, to the member's estate.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2000-12, § 2, 9-5-00)

§ 16-171. Claims procedures before the board decision.

(a) *Claims of affected persons.*

(1) The board shall grant an initial hearing upon receipt of a written request ("claim"), on matters which affect the substantial rights of any person ("claimant"), including members, retirees, beneficiaries, or any person affected by a decision of the board.

(2) The board shall review the claim at an initial hearing and enter an order within ninety (90) days from the date of receipt of the claim. The board may extend the time for entering the order at an initial hearing for an additional ninety (90) days if it determines such time is necessary for full discovery and adequate review. The chairman of the board or general counsel and the claimant may stipulate to further extensions of time.

(3) The claimant shall have the right to be represented by counsel at any or all times throughout the claims procedure.

(b) *Initial hearing.*

(1) At the initial hearing, the only evidence to be considered by the board shall be documentary evidence contained in his employment and pension file, including but not limited to, correspondence, medical records and reports of treating physicians and/or examining physicians, and evidence received pursuant to paragraph (2), below.

(2) Other than questions from the trustees, there will be no taking of additional evidence at the initial hearing, except that the claimant will be afforded five (5) minutes to make a presentation, which shall be limited to comments and/or arguments as to the evidence or information already contained in the pension file, including the report of the examining physician.

(3) Upon completion of the review of the claim at the initial hearing, the board shall enter an order setting forth its findings and conclusions on the claim. The written order shall be provided to the claimant. The order shall include:

a. The specific findings and conclusions of the board, including specific references to pertinent provisions of the plan on which such conclusions are based;

b. A description of any additional material or information that the board may deem necessary for the claimant to perfect his or her claim, together with the reasons why such material or information is necessary; and

c. An explanation of the right to a full hearing on the claim and the time limit in which a full hearing must be requested in writing.

(4) The decision of the board at the initial hearing shall not be final until after the time has expired to request a full hearing or, if a full hearing is requested, until the board makes a decision at the conclusion of the full hearing.

(c) *Full hearing.*

(1) Any claimant may request a full hearing on the issues presented to the board at an initial hearing and upon which the board has entered an order as provided in subsection (b)(3) above.

(2) A full hearing must be requested by the claimant within ninety (90) days of the receipt of the board's order. The order will be deemed received three (3) days following the date it is mailed to claimant at the address provided to the board by claimant.

(3) Upon receipt of the request for a full hearing and considering the amount of discovery which might be conducted, the board shall establish a date for full hearing and cause notice to be given to the claimant. The full hearing shall be held within ninety (90) days from the receipt of the request from the claimant. The full hearing may be postponed, if necessary and with the consent of the claimant, to permit full discovery of the facts.

(4) Copies of all documents to be offered into evidence at the full hearing, including depositions, and a complete witness list with names and addresses of witnesses expected to be called, shall be furnished to the board and the general counsel by the claimant at least twenty (20) days prior to the full hearing. Documents not furnished to the board within the prescribed time limit may be excluded from evidence at the full hearing if a reasonable explanation is not provided for the delay in providing the documents.

(5) The claimant shall be responsible for the appearance of any witnesses which he or she wishes to have testify at the hearing.

(6) Testimony at the full hearing may be submitted in the form of a deposition. Depositions timely submitted will be part of the record before the board at the full hearing and will not be read in totality at the full hearing; provided however, that this does not preclude the claimant or the general counsel from reading parts of depositions in an opening or closing statement.

(7) Irrelevant and unduly repetitious evidence shall be excluded.

(8) Any person who knowingly gives false testimony is guilty of a misdemeanor of the first degree, punishable as provided in F.S. §§ 775.082 or 775.083.

(9) The file maintained by the board is part of the record before the board at the full hearing.

(10) All proceedings of the board shall be conducted in public.

(11) In cases concerning an application for pension benefits, the burden of proof, except as otherwise provided by law, shall be on the claimant seeking to show entitlement to such benefits.

(12) In cases concerning termination of pension benefits, the burden of proof shall be on the board.

(13) Except as to those records which are exempted from the provisions of F.S. Ch. 119, Florida's Public Record Law, records maintained by the board are open for inspection and/or copying during normal business hours at a reasonable cost for copying.

(14) Should a claimant requesting an initial or full hearing decide to appeal any decision made by the board, with respect to any matter considered at such hearing, the claimant requesting an initial or full hearing will need a record of the proceedings and may need to assure that a verbatim record of the proceeding is made. The claimant requesting an initial or full hearing will be responsible for obtaining a court reporter or otherwise making a record of the proceedings before the board.

(15) The decisions of the board after the requested full hearing shall be final and binding.

(16) Within fifteen (15) days after making a decision at the full hearing the board shall enter a final order setting forth its findings and conclusions and a copy of the order shall be provided to the claimant.

(d) *Conduct of the full hearing.*

(1) The chairman of the board shall preside over the hearing and shall rule on all evidentiary procedural, and other legal questions that arise during the hearing. The chairman's rulings shall stand unless overruled by a majority of the trustees present. The chairman shall open the full hearing by explaining the procedures to be followed.

(2) The claimant shall have the right to be represented by counsel or be self-represented.

(3) The claimant shall be allowed to make an opening statement not to exceed five (5) minutes.

(4) Testimony of witnesses shall be under oath or affirmation. Depositions and affidavits shall be admissible.

(5) The chairman, any trustee, the general counsel, the claimant or the claimant's counsel, upon recognition by the chairman, may direct questions to any witness during the proceedings.

(6) Either the claimant or the general counsel shall have the right to present evidence relevant to the issues, to cross examine witnesses, to impeach witnesses and to respond to the evidence presented.

(7) The claimant shall be permitted a closing argument not to exceed five (5) minutes.

(8) The board shall deliberate and make a decision following closing argument and thereafter enter an order as provided herein.

(e) *Disability claims additional procedures.*

(1) All applications for disability pensions shall be in writing. Forms for such applications may be provided by the board.

(2) Upon receipt of the application for disability, the general counsel will provide the claimant with a set of interrogatories or questions to be answered under oath and a medical release authorization. Both documents will be completed by the claimant and returned to the general counsel.

(3) Upon receipt of the properly completed interrogatories and medical release authorization, the general counsel will request medical records from all relevant treating physicians; personnel records from the city, copies of relevant workers' compensation records, and copies of other records deemed to be relevant to the claim. The board shall pay, from the fund, the cost of any medical examinations required by the board and for copies of medical records.

(4) The general counsel will, if authorized by the board, upon receipt of the medical records from the treating physicians, schedule an independent medical examination or examinations (IME) with an appropriate independent examining physician or physicians who will be asked to render an opinion about claimant's physical condition as it relates to the claimed disability.

(5) Upon receipt of the IME report or reports from the examining physician or physicians, the general counsel will provide all records of treating physicians, relevant workman's compensation claims records, the independent medical evaluation, and all other relevant documents to the board for inclusion in the pension file and the board shall then schedule the initial hearing.

(f) *Evidence.* Anyone required to give evidence under the terms of the plan may do so by certificate, affidavit, document or other information which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. Both the board and the trustee shall be fully protected in acting and relying upon any evidence described under the immediately preceding sentence.

(g) *Litigation against the trust.* If any legal action filed against the plan administrator or the board, or against any member or members of the board, by or on behalf of any member or beneficiary, results adversely to the member or to the beneficiary, the trustee shall reimburse itself, or any member or members of the board all costs and fees expended by it or them by surcharging all costs and fees against the sums payable under the plan to the member or to the beneficiary, but only to the extent a court of competent jurisdiction specifically authorizes and directs any such surcharges and then only to the extent Code § 401(a)(13) does not prohibit any such surcharges.

(Ord. No. 98-18, § 2, 10-20-98)

§ 16-172. Reports to division of retirement.

Each year and no later than February 1, the chairman of the board shall file a report with the division of retirement containing the following:

- (1) Whether in fact the city is in compliance with the provisions of F.S. Ch. 175;
- (2) A certified statement of accounting for the most recent fiscal year of the city (or an independent audit by a certified public accountant if required by the division of retirement) showing a detailed listing of assets and methods used to value them and a statement of all income and disbursements during the year. Such income and disbursements shall be reconciled with the assets at the beginning and end of the year;
- (3) A statistical exhibit showing the number of firefighters on the force of the city, the number included in the pension plan, the number of firefighters ineligible classified according to the reasons for their being ineligible, and the number of retirees and their beneficiaries receiving pension payments and the amounts of annual retirement income or pension payments being received by them;
- (4) A statement of the amount the city has contributed to the pension fund for the preceding year and the amount the city will contribute to the system for the current plan year;
- (5) If any benefits are insured with a commercial insurance company, the report shall include a statement of the relationship of the insured benefits to the benefits provided by this section. This report shall also contain information about the insurer, basis of premium rates, mortality table, interest rates and method used in valuating retirement benefits;
- (6) By February 1 of each triennial year, and at least every three (3) years, the chairman shall provide to the division of retirement the actuarial valuation of the system as provided for herein. Such valuation shall be prepared by an enrolled actuary who is enrolled under subtitle C of title 3 of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.

(Ord. No. 98-18, § 2, 10-20-98)

§ 16-173. Roster of retirees.

The secretary of the board shall keep a record of all persons enjoying a pension under the provisions of this ordinance in which it shall be noted the time when the pension is allowed and when the same shall cease to be paid. Additionally, the secretary shall keep a record of all members in such a manner as to show the name, address, date of employment and date of termination of employment.

(Ord. No. 98-18, § 2, 10-20-98)

§ 16-174. Board attorney and professionals.

The board may employ independent legal counsel at the plan's expense for the purposes contained herein, together with such other professional, technical, or other advisors as the board deems necessary. The trustee may delegate to any agent, attorney, accountant or other person selected by it any non-trustee power or duty vested in it by the plan, and the trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

(Ord. No. 98-18, § 2, 10-20-98)

§ 16-175. Internal Revenue Code compliance.

(a) *Maximum pension.* Notwithstanding any provision of this plan to the contrary, the annual pension that is accrued by or paid to a participant shall not exceed the dollar limitation set forth below. If the benefit the participant would otherwise accrue in a limitation year would produce an annual pension in excess of the dollar limitation, the benefit shall be limited to a benefit that does not exceed the dollar limitation.

(1) *Definitions Used in this section.*

a. "Annual pension" means the benefits received by a participant under this Plan expressed in the form of a straight life annuity. In determining whether benefits payable exceed the dollar limitation set forth below, benefits payable in any form other than a straight life annuity shall be adjusted to the larger of:

(i) The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the form of benefit payable to the participant; or

(ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a five-percent interest assumption and the applicable mortality table described in § 1.417(e)-1(d)(2) for that annuity starting date.

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to § 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this Subsection (a), and the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Subsection (a) applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

b. "Dollar limitation" means one hundred sixty thousand dollars (\$160,000.00) (subject to the annual adjustments provided under Section 415(d) of the IRC). Said amount shall be adjusted based on the age of the participant when benefits begin, as follows:

(i) Except with respect to a participant who is a "Qualified Participant" as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code) beginning before age sixty-two (62) the Age-Adjusted Dollar Limitation is equal to the lesser of:

1 . The actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a deferred straight life annuity commencing at age sixty-two (62), where annual payments under the straight life annuity commencing at age sixty-two (62) are equal to the dollar limitation (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5 percent interest rate and the applicable mortality table under § 1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date); and

2. The dollar limitation (as adjusted pursuant to section 415(d)) multiplied by the ratio of the annual amount of the straight life annuity under the plan to the annual amount of the straight life annuity under the plan commencing at age sixty-two (62), with both annual amounts determined without applying the rules of section 415.

(ii) For benefits beginning after the age of sixty-five (65), the age-adjusted Dollar Limitation is equal to the lesser of:

1 . The actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a straight life annuity commencing at age sixty-five (65), where annual payments under the straight life annuity commencing at age sixty-five (65) are equal to the dollar limitation of section 415(b)(1)(A) (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a five-percent interest rate and the applicable mortality table under § 1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date); and

2 . The section 415(b)(1)(A) dollar limitation (as adjusted pursuant to section 415(d) and § 1.415(d)-1 for the limitation year) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan to the adjusted age sixty-five (65) straight life annuity. The adjusted immediately commencing straight life annuity means the annual amount of the immediately commencing straight life annuity payable to the participant, computed disregarding the participant's accruals after age sixty-five (65) but including actuarial adjustments even if those actuarial adjustments are applied to offset accruals. For this purpose, the annual amount of the immediately commencing straight life annuity is determined without applying the rules of section 415. The adjusted age sixty-five (65) straight life annuity means the annual amount of the straight life annuity that would be payable under the plan to a hypothetical participant who is sixty-five (65) years old and has the same accrued benefit (with no actuarial increases for commencement after age sixty-five (65) as the participant receiving the distribution (determined disregarding the participant's accruals after age sixty-five (65) and without applying the rules of section 415).

(iii) There shall be no age adjustment of the dollar limitation with respect to benefits beginning between the ages of sixty-two (62) and sixty-five (65).

(2) The limitations set forth in this subsection (a) shall not apply if the Annual Pension does not exceed ten thousand dollars (\$10,000.00) provided the participant has never participated in a defined contribution plan maintained by the city.

(3) Cost-of-living adjustments in the dollar limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under subsection 415(d) of the Code.

(4) In the case of a participant who has fewer than ten (10) years of participation in the plan, the dollar limitation set forth in paragraph (1)b. of this subsection (a) shall be multiplied by a fraction - (i) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (ii) the denominator of which is 10.

(5) Any portion of a participant's benefit that is attributable to mandatory employee contributions (unless picked-up by the city) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the Code.

(6) Should any participant participate in more than one defined benefit plan maintained by the city, in any case in which the participant's benefits under all such defined benefit plans (determined as of the same age) would exceed the dollar limitation applicable at that age, the accrual of the participant's benefit under this plan shall be reduced so that the participant's combined benefits will equal the Dollar Limitation.

(7) For a participant who has or will have distributions commencing at more than one (1) annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

(8) The determination of the annual pension under paragraph (a)(1) of this subsection (a) shall take into account (in the manner prescribed by the regulations under Section 415 of the Code) social security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.

(9) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the city shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this subsection (a) and the provisions of Section 415 of the Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The value of any benefits forfeited as a result of the application of this subsection (a) shall be used to decrease future employer contributions.

(b) *Required beginning date:* Notwithstanding any other provision of the plan, payment of a participant's retirement benefits under the plan shall commence not later than the participant's Required Beginning Date, which is defined as the later of:

(1) April 1 of the calendar year that next follows the calendar year in which the participant attains or will attain the age of seventy and one-half (70½) years; or

(2) April 1 of the calendar year that next follows the calendar year in which the participant retires.

(c) *Required minimum distributions.*

(1) *Required beginning date.* The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date as defined in subsection (b) of this section 16-175

(2) *Death of participant before distributions begin.*

a. If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(i) If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age seventy and one-half (70½), if later.

(ii) If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

(iii) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

b. The participant's entire interest shall be distributed as follows:

(i) Participant survived by designated beneficiary. If the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in subparagraph (2)a. above, over the life of the designated beneficiary or over a period certain not exceeding:

1. Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or

2. If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(ii) No designated beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

c. Death of surviving spouse before distributions to surviving spouse begin. In any case in which (i) the participant dies before the date distribution of his or her interest begins, (ii) the participant's surviving spouse is the participant's sole designated beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, subparagraphs (2)a. and 2b. above shall apply as though the surviving spouse were the participant.

(3) *Requirements for annuity distributions that commence during participant's lifetime.*

a. Joint life annuities where the beneficiary is not the participant's spouse. If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of Section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

b. Period certain annuities. Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age seventy (70), the applicable distribution period for the participant is the distribution period for age seventy (70) under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of seventy (70) over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this subparagraph (3)b., or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

(4) *Form of distribution.* Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subparagraphs (4)a., (4)b. and (4)c. below. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

a. General annuity requirements. If the participant's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:

(i) The annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(ii) The distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in paragraphs (2) or (3) above, whichever is applicable, of this subsection (c);

(iii) Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

(iv) Payments will either be non-increasing or increase only as follows:

1. By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

2. To the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;

3. To provide cash refunds of employee contributions upon the participant's death;
or

4. To pay increased benefits that result from a plan amendment.

b. Amount required to be distributed by required beginning date. The amount that must be distributed on or before the participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under subparagraph (2)a.(i) or (2)a.(ii), whichever is applicable) is the payment that is required for one (1) payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.

c. Additional accruals after first distribution calendar year. Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(5) For purposes of this subsection (c), distributions are considered to begin on the participant's required beginning date. If annuity payments irrevocably commence to the participant (or to the participant's surviving spouse) before the participant's required beginning date (or, if to the participant's surviving spouse, before the date distributions are required to begin in accordance with subparagraph (2)a. above), the date distributions are considered to begin is the date distributions actually commence.

(6) *Definitions.*

a. *Designated beneficiary.* The individual who is designated as the beneficiary under the plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

b. *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to paragraph (2) of this subsection (c).

c. *Life expectancy.* Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(d)

(1) Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) *Definitions:* The following definitions apply to this section:

a. *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(i) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more;

(ii) Any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;

(iii) The portion of any distribution that is a hardship distribution described in Section 401(k)(2)(B)(i)(IV) of the Code; and

(iv) The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(3) *Eligible retirement plan*: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, a qualified trust described in Section 401 (a) of the Code, an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of Code Section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.

(4) *Distributee*: A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated beneficiary as defined in Section 401(a)(9)(E) of the Code who is not the surviving spouse and who elects a direct rollover to an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code shall be considered a distributee.

(5) *Direct rollover*: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(e) Notwithstanding any other provision of this plan, the maximum amount of any mandatory distribution, as defined in Section 401(a)(31) of the Code, payable under the plan shall be one thousand dollars (\$1000.00).

(f) *Compensation Limitations Under 401(a)(17)*: In addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the plan to the contrary, the annual compensation of each participant taken into account under the plan shall not exceed the EGTRRA annual compensation limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is two hundred thousand dollars (\$200,000.00), as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding twelve (12) months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than twelve (12) months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12).

Any reference in the plan to the limitation under Section 401 (a)(17) of the Code shall mean the EGTRRA annual compensation limit set forth in this provision.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2010-26, § 3, 10-19-10)

§ 16-176. Repeal or termination of plan and distribution of fund.

(a) The article establishing the plan and fund, and subsequent ordinances pertaining to said plan and fund, may be modified, terminated, or amended, in whole or in part for any reason or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in chapter 121; provided that if this or any subsequent article shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the member or beneficiary shall be nonforfeitable.

(b) If this article shall be repealed, or if contributions to the plan are discontinued, the board shall continue to administer the plan in accordance with the provisions of this article, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one (1) of the options provided for in this article who are designated by any of said members. In the event of repeal, or if contributions to the plan are discontinued, there shall be full vesting (one hundred (100) percent) of benefits accrued to date of repeal and the assets of the plan shall be distributed in accordance with the following procedures:

(1) The board of trustees shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits to be distributed, after taking into account the expenses of such distribution. The board shall inform the municipality if additional assets are required, in which event the municipality shall continue to financially support the plan until all nonforfeitable benefits have been funded.

(2) The board of trustees shall determine the method of distribution of the asset value, that is, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each member entitled to benefits under the plan as specified in subsection (3).

(3) The board of trustees shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is shall mean the single premium payable for such annuity. The actuarial single-sum value may not be less than the member's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.

(4) If there is asset value remaining after the full distribution specified in subsection (3), and after the payment of any expenses incurred with such distribution, such excess shall be returned to the municipality less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the municipality and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the municipality and the state.

(5) The board of trustees shall distribute, in accordance with subsection (2), the amounts determined apportioned under subsection (3).

If, after 24 months after the date the plan terminated or the date the board received written notice that the contributions thereunder were being permanently discontinued, the municipality or special fire control district or the board of trustees of the firefighters' pension trust fund affected has not complied with all the provisions in this section, the Department of Management Services shall effect the termination of the fund in accordance with this section.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2010-08, § 3, 5-4-10; Ord. No. 2010-26, § 4, 10-19-10)

EDITOR'S NOTE

Ord. No. 2010-26, §§ 4, 5, adopted Oct. 19, 2010, repealed former sections 16-176 and 16-183 in their entirety and sequentially renumbered the remaining sections of Art. III. Former § 16-176 pertained to the latest date to begin distribution of benefits and former § 16-183 pertained to direct transfers of eligible rollover distributions. Both former § 16-176 and § 16-183 derived from Ord. No. 98-18, § 2, adopted Oct. 20, 1998.

§ 16-177. Exemption from execution; non-assignability.

Except as provided by law, neither a member nor a beneficiary shall anticipate, assign or alienate (either at law or in equity) any benefit provided under the plan, and the trustees shall not recognize any such anticipation, assignment or alienation. Furthermore, a benefit under the plan is not subject to attachment, garnishment, levy, execution or other legal or equitable process; except the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit those funds necessary to pay for the benefits being received from the city and/or for benefits being received by the retiree from the certified bargaining unit, and to make any payments for child support, alimony, and to pay for accident, health, and long-term care insurance premiums for the recipient, the recipient's spouse and the recipient's dependents. The pension fund shall not incur any liability for making or failing to make such withholdings.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2005-02, § 2, 1-18-05; Ord. No. 2010-08, § 5, 5-4-10; Ord. No. 2010-26, § 4, 10-19-10)

§ 16-178. Pension validity.

The board shall have the power to examine the facts upon which any pension shall heretofore be granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. The board is empowered to purge the pension rolls or correct the pension amount of any person heretofore granted a pension under prior or existing law or any person hereafter granted a pension under this article if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any person who has heretofore under any prior or existing law been or who shall hereafter under this ordinance be erroneously, improperly or illegally classified. Any overpayment or underpayment shall be corrected and paid or repaid in a reasonable manner determined by the board.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2010-26, § 4, 10-19-10)

§ 16-179. Forfeiture of pension.

(a) Any member who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his or her admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this pension fund, except for the return of his or her accumulated contributions. Specified offenses are as follows:

- (1) The committing, aiding or abetting of felony embezzlement of public funds;

(2) The committing, aiding or abetting of any felony theft by a public officer or employee from city;

(3) The committing of felony bribery in connection with the employment of a public officer or employee;

(4) Any felony specified in F.S. Ch. 838.

(5) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he or she acts or in which he or she is employed, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his or her public office or employment position.

(b) Conviction shall be defined as an adjudication of guilt by a court of competent jurisdiction, a plea of guilty or nolo contendere, or a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation.

(c) Court shall be defined as any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the board shall hold a hearing on which notice shall be given to the member whose benefits are being considered for forfeiture. Said member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the member shall be afforded a full opportunity to present his or her case against forfeiture.

(d) Any member who has received benefits from the plan in excess of his or her accumulated contributions after his or her rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his or her accumulated contributions. The board may implement all legal action necessary to recover such funds.

(Ord. No. 98-18, § 2, 10-20-98)

§ 16-180. Indemnification.

(a) To the extent not covered by insurance contracts in force from time to time, the city shall indemnify, defend and hold harmless members of the board from all personal liability for damages and costs, including court costs and attorneys' fees, arising out of claims, suits, litigation, or threat of same, herein referred to as "claims," against these individuals because of acts or circumstances connected with or arising out of their official duty as members of the board. The city reserves the right, in its sole discretion, to settle or not settle the claim at any time, and to appeal or to not appeal from any adverse judgment or ruling, and in either event will indemnify, defend and hold harmless any members of the board from the judgment, execution, or levy thereon.

(b) This section shall not be construed so as to relieve any insurance company or other entity liable to defend the claim or liable for payment of the judgment or claim, from any liability, nor does this section waive any provision of law affording the city immunity from any suit in whole or part, or waive any other substantive or procedural rights the city may have.

(c) This section shall not apply nor shall the city be responsible in any manner to defend or pay for claims arising out of acts or omissions of members of the board which constitute felonies or gross malfeasance or gross misfeasance in office.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2010-26, § 4, 10-19-10)

§ 16-181. Family and medical leave act.

The fractional parts of the twenty-four (24) month period ending each March 1 that a member is on leave without pay from the city pursuant to the Family and Medical Leave Act (FMLA) shall be added to his or her credited service provided that:

- (1) The member contributes to the fund the sum that he or she would have contributed, based on his or her salary and the member contribution rate in effect at the time that the credited service is requested, had he or she been a member of the plan for the fractional parts of the twenty-four (24) months ending each March 1 for which he or she is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of periods of credited service.
- (2) The request for credited service for FMLA leave time for the twenty-four (24) month period prior to each March 1 and payment of professional fees shall be made on or before March 31.
- (3) Payment by the member of the required amount shall be made on or before April 30 for the preceding twenty-four (24) month period ending March 1 and shall be made in one (1) lump sum payment upon receipt of which credited service shall be issued.
- (4) Credited service purchased pursuant to this section shall not count toward the calculation of years required to qualify for normal, early or deferred pension.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2010-26, § 4, 10-19-10)

§ 16-182. Separation from employment for military service.

The years or parts of a year that a member serves in the military service of the Armed Forces of the United States, the United States merchant marine or the United States Coast Guard, voluntarily or involuntarily, after separation from employment as a firefighter with the city to perform training or service, and reemployment on or after December 12, 1994, shall be added to his or her years of credited service for all purposes, provided that:

- (1) The firefighter must return to his or her employment as a firefighter within one (1) year from the earlier of the date of his or her military discharge or his or her release from service.
- (2) The maximum credit for military service pursuant to this section shall be five (5) years.
- (3) In order to qualify for the purchase of credited service pursuant to this section, the firefighter must have been discharged or released from service under honorable conditions.
- (4) This section is intended to meet or exceed the minimum requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA), (P.L. 103-353). To the extent that this section does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2004-07, § 2, 5-18-04; Ord. No. 2010-26, § 5, 10-19-10)

§ 16-183. Prior firefighter service.

Unless otherwise prohibited by law, and except as provided for in section 16-161, the years or fractional parts of years that a firefighter previously served as a firefighter with the city during a period of previous employment and for which period accumulated contributions were withdrawn from the fund, shall be added to his or her years of credited service provided that:

(1) The firefighter contributes to the fund the sum that he or she would have contributed, based on his or her salary and the member contribution rate in effect at the time that the credited service is requested, had he or she been a member of this system for the years or fractional parts of years for which he or she is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.

(2) Payment by the firefighter of the required amount shall be made within six (6) months of his or her request for credit and shall be made in one (1) lump sum payment to the board, upon receipt of which credited service shall be given.

(3) The maximum credit under this section shall be five (5) years of credited service and shall count for all purposes.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2004-07, § 2, 5-18-04; Ord. No. 2010-26, § 5, 10-19-10)

§ 16-184. Military service prior to employment.

The years or completed months that a member serves or has served on active duty in the military service of the Armed Forces of the United States or the United States Merchant Marine, voluntarily or involuntarily, honorably or under honorable conditions, prior to first and initial employment with the city shall be added to his years of credited service provided that:

(1) The member contributes to the fund the sum that he would have contributed, based on his salary and the member contribution rate in effect at the time that the credited service is requested, had he been a member of the system for the years or completed months for which he is requesting credit, plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund or the city, plus payment of costs for all professional service rendered to the board in connection with the purchase of years of credited service.

(2) Payment by the member of the required amount shall be made within six (6) months of the member's request for credit and shall be made in one (1) lump sum payment upon receipt of which credited service shall be issued.

(3) The maximum credit under this section shall be five (5) years.

(Ord. No. 98-18, § 2, 10-20-98; Ord. No. 2004-07, § 2, 5-18-04; Ord. No. 2010-26, § 5, 10-19-10)

§ 16-185. Miscellaneous provisions.

(a) *Interest of members in plan.* At no time prior to the satisfaction of all liabilities under the plan with respect to retirees and members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

(b) *No reduction of accrued benefits.* No amendment or ordinance shall be adopted by the city commission which shall have the effect of reducing the then vested accrued benefits of members or a member's beneficiaries.

(c) *Qualification of plan.* It is intended that the plan will constitute a qualified public pension plan under the applicable provisions of the Code, as now in effect or hereafter amended. Any modification or amendment of the plan shall apply retroactively, if necessary or appropriate, to qualify or maintain the plan in meeting the requirements of the applicable provisions of the Code as now in effect or hereafter amended, or any other applicable provisions of the United States federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder.

(d) *Use of forfeitures.* Forfeitures arising from terminations of service of members shall serve only to reduce future city contributions.

(e) *Discharge of members.* Members entitled to a benefit shall not forfeit the same upon dismissal from the city, but shall retain entitlement as herein described.

(f) *Incompetents.* If any member or beneficiary is a minor or is, in the judgment of the board, otherwise incapable of personally receiving and giving a valid receipt for any payment due him under the plan, the board may, unless and until claims shall have been made by a duly appointed guardian of such person, make such payment or any part thereof to such person's spouse, children, or other person deemed by the board to have incurred expenses or assumed responsibility for the expenses of such person. Any payment so made shall be a complete discharge of any liability under the plan for such payment.

(g) *Personal data to board.* Each member and each beneficiary of a deceased member must furnish to the board such evidence, data or information as the board considers necessary or desirable for the purpose of administering the plan. The provisions of this plan are effective for the benefit of each member upon the condition precedent that each member will furnish promptly full, true and complete evidence, data and information when requested by the board, provided the board shall advise each member of the effect of his failure to comply with its request.

(h) *Address for notification.* Each member and each beneficiary of a deceased member shall file with the board from time to time, in writing, his post office address and any change of post office address. Any communication, statement or notice addressed to a member, or beneficiary, at his last post office address filed with the board, or as shown on the records of the city, shall bind the member, or beneficiary, for all purposes of this plan.

(i) *Word usage.* Words used in the masculine shall apply to the feminine where applicable, and wherever the context of the plan dictates, the plural shall be read as the singular and the singular as the plural.

(j) *State law.* Florida law shall determine all questions arising with respect to the provisions of this plan except to the extent federal statute supersedes state law.

(k) *Employment not guaranteed.* Nothing contained in this plan, or with respect to the establishment of the trust, or any modification or amendment to the plan or trust, or in the creation of any account, or the payment of any benefit, shall give any employee, employee member or any beneficiary any right to continue employment, any legal or equitable right against the city, or employee of the city, or against the trustee, or its agents or employees, or against the plan administrator, except as expressly provided by the plan, the trust, the act or by a separate agreement.

(l) *Waiver of notice.* Any person entitled to notice under the plan may waive the notice.

(m) *Successors.* The plan shall be binding upon all persons entitled to benefits under the plan, their respective heirs and legal representatives, upon the city, its successors and assigns, and upon the trustee, the board, the plan administrator and their successors.

(n) *Unclaimed account procedure.*

(1) The plan does not require either the board to search for, or ascertain the whereabouts of, any member or beneficiary. The board, by certified or registered mail addressed to his last known address of record with the board or the city, shall notify any member, or beneficiary, that he is entitled to a distribution under this plan, and the notice shall quote the provisions of this section. If the member, or beneficiary, fails to claim his distributive share or make his whereabouts known in writing to the board within six (6) months from the date of mailing of the notice, or before the termination or discontinuance of this plan, whichever should first occur, the board shall treat the member's or beneficiary's unclaimed payable accrued benefit as forfeited. The city shall use the amounts representing the forfeited accrued benefit to reduce its contribution for future plan years.

(2) If a member or beneficiary who has incurred a forfeiture of his accrued benefit under the provisions of paragraph (1) above makes a claim, at any time, for his forfeited accrued benefit, the board shall restore the member's or beneficiary's forfeited accrued benefit. The board shall direct the distribution of the member's or beneficiary's accrued benefit. The board shall direct the distribution of the member's or beneficiary's accrued benefit as if the member's employment terminated in the plan year in which the board restored the forfeited benefit.

(o) *Co-mingling of investments.* The board for collective investment purposes, may combine into one (1) trust fund the trust created under this plan with the trust created under any other qualified retirement plan the city maintains. However, the board shall maintain separate records of account for each trust in order to reflect properly each member's accrued benefit under the plan(s) in which he is a member.

(p) *Miscellaneous provisions affecting payment of benefits generally.* In general, the board shall make payment of any pension directly to the member entitled to the payment. However, the board, in lieu of paying the pension which a member is to receive directly from the fund, may purchase from an insurance company selected by the board a nontransferable annuity contract. The nontransferable annuity contract must provide pension and other benefits in an amount not less than the pension and other benefits a member would receive under this plan, and must satisfy all consent and distribution requirements prescribed by the plan. In the event the board purchase a nontransferable annuity contract for the benefit of a member, the board may either assign the contract to the member or hold the contract for the benefit of the member pursuant to the instructions of the board. The board also may purchase a nontransferable annuity contract for the benefit of a designated beneficiary or surviving spouse entitled to distribution of all or a portion of the member's nonforfeitable accrued benefit.

(q) *No responsibility for city action.* The board shall not have any obligation nor responsibility with respect to any action required by the plan to be taken by the city, any member, nor for the failure of any of the above persons to act or make any payment or contribution, or to otherwise provide any benefit contemplated under this plan, nor shall the board be required to collect any contribution required under the plan, or determine the correctness of the amount of any city contribution. The board need not inquire into or be responsible for any action or failure to act on the part of the others.

(r) *No liability.* The city assumes no obligation or responsibility to any of its employees, members or beneficiaries for any act of, or failure to act, on the part of the board.

(s) *Statutory preemption.* In the event of any conflict with the provisions of this plan, the provisions of F.S. Ch. 175 shall control to the extent of any such conflict.

(t) *Statutory amendment.* Any and all amendments to F.S. ch. 175, the compliance of which are necessary for the continued participation of the plan under F.S. ch. 175, are hereby adopted by reference as if made by the city.

(Ord. No. 98-18, § 27, 10-20-98; Ord. No. 2010-26, § 5, 10-19-10)

§ 16-186. Defined Contribution Component Supplemental Retirement Benefit.

Effective: Tuesday, December 06, 2016

(a) There is hereby provided, in addition to all other benefits provided in this Article, a defined contribution component supplemental retirement benefit. The defined contribution component supplemental retirement benefit shall consist of an individual share account for each Member of the Plan, including DROP participants. The supplemental retirement benefit shall be funded solely by premium tax revenues in excess of the 2013 frozen amount received by the city pursuant to F.S. Ch. 175, as provided for by the City of Lake Wales Code of Ordinances. Effective October 1, 2016, fifty percent (50%) of the premium tax revenues received by the City in excess of the 2013 frozen amount shall be allocated to Members' share accounts as provided for herein with the remaining fifty percent (50%) of the premium tax revenue received by the City to be used at the discretion of the City toward current year benefits (either defined benefit or defined contribution), as an immediate reduction of unfunded actuarial liability (UAL) balance, or reserved as a prepaid sponsor contribution toward future required funding. Member share accounts shall be credited with premium tax revenues and investment earnings and losses and account distributions as outlined herein.

(b) *Annual crediting.* Effective January 1, 2017, and each January 1 thereafter, the share account of each Member and DROP participant on the City's payroll as of the preceding September 30 shall be credited as follows. Each Member and DROP participant who was employed on the preceding September 30 shall receive one share for each complete year and fractional part of years of Credited Service, as defined in section 16-161, determined as of the end of the Plan year ending on the same September 30. The total number of shares thus determined shall be divided into the total premium tax revenues received during that plan year to determine the amount to be credited to the share account of each eligible share plan participant.

(c) *Investment earnings and losses.* Effective January 1, 2017, and each January 1 thereafter, the share account of each Member and DROP participant shall be credited or debited with earnings or losses based upon the amount in the share account at the beginning of the immediately preceding fiscal year at a rate equal to the Plan's actual net rate of investment return for such fiscal year. Share accounts shall be commingled in the Fund and invested as with any other Fund asset. Share accounts shall be segregated into individual member accounts on a bookkeeping basis only. Alternatively, effective upon adoption, instead of the "net investment return" as set forth above, each Member may direct a one-time irrevocable election at any time prior to separation from service that his or her Share account be invested in a money market fund as may be made available from time to time by the board. The electing member's Share account shall be credited or debited at a rate equal to the net rate of investment return realized by such money market fund.

(d) *Distribution of share accounts.* A Member or DROP participant with ten or more years of credited service upon termination of employment and eligibility for receipt of pension benefits shall be eligible to receive a distribution of the balance in his or her share account, together with all earnings and losses credited or debited to the share account through the date of termination of employment. No supplemental retirement benefit shall be payable to a Member who terminates covered employment with less than ten years of Credited Service. The share account balances of such non-vested terminated Members shall be redistributed among all eligible participants' share accounts in the same manner as premium tax revenues in the following calendar year. The designated beneficiary of a Member who dies having accumulated ten or more years of Credited Service shall receive the accumulated total of the Member's share account balance. There shall be no forfeiture of a Member's share account based on the Member's death, disability, or termination of employment with ten or more years of Credited Service. Payment of share account benefits shall be by lump sum, which shall consist of the accumulated total balance of a Member's share account, or, at the Member's direction, the share account balance may be rolled over to another qualified plan in accordance with section 16-175 of this Plan. One additional payment or rollover will be made on the January 1 following termination of employment for any supplemental retirement benefit amount credited for the Member's year of termination.

(Ord. No. 2016-14, § 1, 12-06-16)

Article IV. Municipal Police Officers' Pension Plan And Trust Fund

§ 16-231. Definitions.

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

Accrued benefit means the benefit accrued by a member under the terms of the plan.

Accumulated contributions means a member's own contributions without interest. For those members who purchase credited service with interest and at no cost to the system, any payment representing the amount attributable to member contributions based on the applicable member contribution rate, and any actuarially calculated payments for their purchase, shall be included in accumulated contributions.

Act means the Employee Retirement Income Security Act of 1974 (P.L. 93-406) and any regulations issued thereunder by the Department of Labor and the Internal Revenue Service, as that statute and these regulations shall be amended.

Actuarial equivalent means a benefit or amount of equal value, based upon the 1983 Group Annuity Mortality Table and an interest rate of eight (8) percent per annum.

Average final compensation means one-twelfth (1/12) of the average salary of the three (3) best years of the last ten (10) years of credited service prior to retirement, termination, or death. A year shall be twelve (12) consecutive months. Notwithstanding the preceding, effective October 1, 2012, for all members who have not yet retired and/or entered the DROP as of the enactment date of September 17, 2013. Average final compensation for a police officer shall mean one-twelfth (1/12) of the average salary of the five highest years of the last ten (10) years of creditable service prior to retirement, termination, or death.

Beneficiary means the person or persons entitled to receive benefits hereunder at the death of a member as provided in section 16-240 of this plan.

Board means the board of trustees, which shall administer and manage the system herein provided and serve as trustees of the fund.

City means City of Lake Wales, Florida.

Code means the Internal Revenue Code of 1986, as amended from time to time.

Credited service. The total number of years and fractional parts of years of service as a police officer with member contributions, when required, omitting intervening years or fractional parts of years when such member was not employed by the city as a police officer. A member may voluntarily leave his contributions in the fund for a period of five (5) years after leaving the employ of the city pending the possibility of being re-employed as a police officer without losing credit for the time that he was a member of the system. If the member who left the employ of the police department should not be re-employed as a police officer within five (5) years, then his accumulated contribution will be returned upon the written request of the member. Upon return of a member's accumulated contributions, all of his rights and benefits under the system are forfeited and terminated. However, no member will receive credit for service for which he has withdrawn his contributions unless he pays into the fund the contribution he has withdrawn with interest, at the actuarially assumed rate, within ninety (90) days of his re-employment. In the event that a member of this system has also accumulated credited service in another pension system maintained by the city, or has a period or periods of previous employment as a police officer, but is not eligible to receive credited service for this period or periods of previous employment for benefit calculation purposes, then such other credited service shall be used in determining eligibility for early or normal retirement. Such other credited service will not, however, be considered in determining benefits under this system. Unless otherwise provided herein only his or her credited service and compensation under this system on or after his or her latest date of membership in this system will be considered for benefit calculation. In addition, any benefit calculation for a member of this system who is or becomes eligible for a benefit from this system after he or she has become a member of another pension system maintained by the city, shall be based upon the member's average final compensation, credited service and benefit accrual rate as of the date the member ceases to be a police officer. Years and completed months of employment with the city during which time the member is participating in the deferred retirement option plan (DROP) as described in this plan, shall not be counted as credited service for benefit purposes unless the member elects to continue employment with the city following the completion of the DROP period and makes payment of the omitted member contributions. In the event of continued employment following participation in the DROP program, the member will receive credit for the DROP period in accordance with the required procedure. In the event that a member of this system has also accumulated credited service in another pension system maintained by the city, or has a period or periods of previous employment as a police officer, but is not eligible to receive credited service for this period or periods of previous employment for benefit calculation purposes, then such other credited service shall be used in determining eligibility for early or normal retirement. Such other credited service will not, however, be considered in determining benefits under this system. Unless otherwise provided herein only his or her credited service and compensation under this system on or after his or her latest date of membership in this system will be considered for benefit calculation. In addition, any benefit calculation for a member of this system who is or becomes eligible for a benefit from this system after he or she has become a member of another pension system maintained by the city, shall be based upon the member's average final compensation, credited service and benefit accrual rate as of the date the member ceases to be a police officer.

Effective date means the date of the enactment of the ordinance, except where an earlier effective date is required by reason of the application of the Tax Reform Act of 1986, and subsequent legislation, in which case the latest effective date required to comply with such act and subsequent legislation shall be substituted with respect only to the specific portions of the plan affected by such act.

Fund means the trust fund established herein as part of the system.

General counsel means the attorney retained by the board to represent it with respect to the plan.

Masculine gender. The masculine gender, where used herein, unless the context specifically requires otherwise, shall include both the feminine and masculine genders.

Member means an actively employed full-time police officer who fulfills the prescribed membership requirements. Benefit improvements which, in the past, have been provided for by amendments to the system adopted by city ordinance, and any benefit improvements which might be made in the future shall apply prospectively and shall not apply to members who terminate employment or who retire prior to the effective date of any ordinance adopting such benefit improvements, unless such ordinance specifically provides to the contrary.

Plan means the City of Lake Wales Police Officer's Pension Plan and Trust.

Plan year means the twelve-month period beginning October 1 and ending September 30 of the following year. The plan year shall be the computation period for the purposes of the plan.

Police officer means any person who is elected, appointed, or employed full-time by any municipality, who is certified or required to be certified as a law enforcement officer in compliance with F.S. § 943.1395, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision training, guidance and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in F.S. §§ 943.10(6) and (8), respectively. For the purposes of this chapter only, "police officer" also shall include a public safety officer who is responsible for performing both police and fire services. Full-time employment shall be deemed to be employment twenty (20) or more hours per week, five (5) or more months per year.

Retiree means a member who has entered retirement status.

Retirement means a member's separation from city employment with eligibility for immediate receipt of retirement benefits under the system.

Salary prior to July 1, 2011, means the total compensation reported on the member's W-2 form, plus all tax deferred, tax sheltered or tax exempt items of income derived from elective employee payroll deductions or salary reductions. Compensation in excess of limitations set forth in section 401(a)(17) of the Code shall be disregarded. The limitation on compensation for an "eligible employee" shall not be less than the amount which was allowed to be taken into account hereunder in effect on July 1, 1993.

Salary on July 1, 2011 and thereafter means the total cash remuneration including up to three hundred (300) hours per year in overtime compensation paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or special detail work performed on behalf of a second party employer nor payments for accrued sick or vacation leave.

For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, earnings shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in subsection (a) of section 58-104 hereof, compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code.

Spouse means the lawful wife or husband of a member or retiree at the time benefits become payable.

System means the City of Lake Wales Police Officer's Pension Plan and Trust as contained herein and all amendments thereto.

Trust means the trust herein established and continued herein.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2000-13, § 2, 9-5-00; Ord. No. 2010-25, § 1, 10-19-10; Ord. No. 2012-10, § 2, 8-7-12; Ord. No. 2013-15, § 1, 9-17-13)

§ 16-232. Membership.

(a) *Conditions of eligibility:*

(1) All full-time police officers, and all future new full-time police officers, shall become members of this system as a condition of employment. Any person who enters employment with the city as a volunteer police officer shall not be a member of this plan.

(2) All future police officers, shall be required to complete a medical examination as prescribed by the city. Based upon medical evidence of a preexisting adverse health condition, resulting from the prescribed examination or other records or medical history, the board may declare any member ineligible for disability benefits hereunder, as related to such preexisting condition. Each declaration must also be reflected in the minutes of the meeting of the board at which such declaration was formally adopted or established by the board.

(b) *Application for membership.* Each police officer shall complete a form prescribed by the board providing the following information:

(1) Acceptance of the terms and conditions of the retirement system;

(2) Designation of a beneficiary or beneficiaries;

(3) A sworn statement as to prior medical history;

(4) A written release and waiver of right to privacy permitting the board to obtain, discuss and distribute all medical records to the board, the board attorney and any medical professions retained by the board;

(5) Authorization for payroll deductions payable to the system.

(Ord. No. 98-19, § 2, 10-20-98)

§ 16-233. Board of trustees.

(a) *Make-up of board.* The sole and exclusive administration of and responsibilities for the proper operation of the retirement system and for making effective the provisions of this article are hereby vested in a board herein designated the plan administrator, consisting of five (5) trustees, two (2) of whom, unless otherwise prohibited by law, shall be legal residents of the city, who shall be appointed by the city commission, and two (2) of whom shall be full-time police officer members of the system, who shall be elected by a majority of the police officers who are members of the system. The fifth trustee shall be chosen for a four-year term by a majority of the previous four (4) trustees as provided for herein, and such person's name shall be submitted to the city commission. Upon receipt of the fifth person's name, the city commission shall, as a ministerial duty, appoint such person to the board as its fifth trustee. The fifth trustee shall have the same rights as each of the other four (4) trustees appointed or elected as herein provided and shall serve a four-year term unless the office is sooner vacated and may succeed himself in office. Each resident trustee shall serve as trustee for a period of four (4) years, unless sooner replaced by the city commission at whose pleasure each trustee shall serve, and may succeed himself as a trustee without limitation. Each police officer trustee shall serve as trustee for a period of four (4) years, unless he sooner leaves the employment of the city as a police officer or otherwise vacates his office as trustee, whereupon a successor shall be chosen in the same manner as the departing trustee. Each police officer may succeed himself in office. The board shall meet at least quarterly each year. 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.

(b) *Terms and election.* The regular term of office shall be four (4) years. Employee members shall be elected in the following manner:

(1) No less than thirty (30) days before the expiration of a regular term or immediately upon written notification by the secretary of the board of avacancy on the board, the city clerk will notify all actively employed members that an employee member must be elected to the board and request nominations. Such notification will be in writing and will include a nomination form and a list of all employees eligible for nomination. Employees eligible for nomination will include all actively employed members who have completed their six (6) month probationary period of employment. Nominations will be forwarded to the city clerk before the time and date specified on the nomination form.

(2) If one (1) nominee receives a minimum of fifty-one (51) percent of the nominations, that nominee shall be declared elected and shall take office immediately upon commencement of the term of office for which elected.

(3) If no nominee receives fifty-one (51) percent of all nominations, the city clerk will prepare an election ballot listing the nominees receiving the three (3) largest number of nominations and forward a ballot to all actively employed members. Election ballots shall be returned to the city clerk before the time and date specified on the ballot. The nominee receiving the highest number of votes for office shall be declared elected and shall take office immediately upon commencement of the term of office for which elected.

(4) If two (2) or more nominees tie for the highest number of votes, a runoff ballot shall be prepared and a runoff election shall be conducted as in subsection (b)(3) herein.

An election shall be held not more than thirty (30) and not less than ten (10) days prior to the commencement of the term for which a board member is to be elected. The city shall establish and administer the nominating and election procedure for each election. The board shall elect annually by majority vote from among its members a chairman, vice-chairman and secretary.

(c) *Vacancies.* If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(d) *Resignation.* The trustee may resign at any time as trustee of the plan by giving thirty (30) days written notice in advance to the city and to the board.

(e) *Removal.* The board, upon the vote of a majority of its members, may submit to the city commission its recommendation that the city commission remove any trustee who neglects the duties of his office. The city commission may, by majority vote, thereafter remove such member as a trustee.

(f) *Expenses.* The trustees shall serve without compensation, but they may be reimbursed from the fund for all necessary expenses which they may actually expend through service on the board, as provided by law.

(g) *Oath of office.* Each trustee shall, within ten (10) days after his appointment or election, take an oath of office before the city clerk, that he will diligently and honestly administer the affairs of the board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system. Such oath shall be subscribed to by the members making it and certified by the clerk and filed in the office of the city clerk.

(h) *Voting.* Each trustee shall be entitled to one (1) vote on the board. Three (3) affirmative votes shall be necessary for a decision by the trustees at any meeting of the board. The chairman shall have the right to one (1) vote only.

(i) *Rules.* Subject to the limitations of this division, the board shall from time to time establish uniform rules and regulations for the administration of funds created by this division and for transaction of its business, including provisions for expulsion due to nonattendance of its members which could result in a vacancy.

(j) *Services.* The board shall engage such actuarial, accounting and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the retirement system shall be paid from the fund at such rates and in such amounts as the board shall agree. funds may be disbursed by the city finance department or other disbursing agent as determined by the board, but only upon written authorization by the board.

(k) *Professionals.* The board may employ and pay from the trust fund reasonable compensation to agents, attorneys, accountants and other persons to advise the board as in its opinion may be necessary. The board may delegate to any agent, attorney, accountant or other person selected by it any non-trustee power or duty vested in it by the plan, and the board may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

(l) *Powers and duties.* The powers, duties and responsibilities of the board shall include the power and duty to:

- (1) Construe the provisions of the system and determine all questions arising thereunder;

- (2) Determine all questions relating to eligibility and participation;
 - (3) Determine and certify the amount of all retirement allowances or other benefits hereunder;
 - (4) Establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system;
 - (5) Distribute to members at regular intervals information concerning the system;
 - (6) Receive and process all applications for participation and benefits;
 - (7) Authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund;
 - (8) Have performed actuarial studies and annual actuarial valuations and make recommendations regarding any and all changes in the provisions of the system;
 - (9) Select a secretary, who shall keep a complete minute book of the actions, proceedings, or hearings of the board and who shall keep a record of all persons receiving pension payments, noting the time of commencement and cessation thereof. Minutes prepared by the secretary shall be filed with the city clerk and made part of the official records of the city;
 - (10) Enforce the terms of the plan and the rules and regulations it adopts;
 - (11) Direct the crediting and distribution of the trust;
 - (12) Review and render decisions respecting a claim for (or denial of a claim for) a benefit under the plan;
 - (13) Furnish the city with information which the city may require for tax or other purposes;
 - (14) Engage the services of an investment manager or managers (as defined in § 3(38)) of the act, each of whom shall have such power and authority to manage, acquire or dispose of any plan asset under its control as authorized by the board;
 - (15) Establish and maintain a funding standard account and to make credits and charges to the account to the extent required by and in accordance with the provisions of the Code;
 - (16) Perform such other duties as are specified in this document; and
 - (17) Appoint an administrator of the system if deemed appropriate by the board.
- (m) *Manner of action.* The board shall exercise all of its powers, duties and discretion under the plan in a uniform and nondiscriminatory manner.
- (n) *Legal entity.* The board represents 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.
- (o) *Meetings.* The board shall hold meetings, at least quarterly, determining the notice, place and time of each. A majority of its members shall constitute a quorum.
- (p) *Recusal.* A trustee shall have the right to recuse himself or herself from voting as the result of a conflict of interest provided that the trustee complies with the provisions of F.S. § 112.3143. No member of the board may decide or determine any matter concerning the distribution, nature or method of settlement of his own benefits under the plan.

(q) *Authorized representative.* The board may authorize any one (1) of its members, or its secretary, to sign on its behalf any notices, directions, applications, certificates, consents, approvals, waivers, letters or other documents. The board must evidence this authority by an instrument signed by all members and filed with the trustee.

(r) *Third party.* No person dealing with the board shall be obligated to see to the proper application of any money paid or property delivered to the board, or to inquire whether the board has acted pursuant to any of the terms of the plan. Each person dealing with the board may act upon any notice, request or representation in writing by the board, or by the board's duly authorized agent, and shall not be liable to any person whomsoever in so doing. The certificate of the board that it is acting in accordance with the plan shall be conclusive in favor of any person relying on the certificate.

(s) *Member records.* The board shall keep such records and shall prepare such reports concerning members' accounts as the act and Code require. Upon a member's written request, the board shall furnish the member the information described in § 105(a) of the Act.

(t) *Annual review.* The board shall review, not less often than annually, all pertinent employee information and plan data in order to establish the funding policy of the plan and to determine the appropriate methods of carrying out the plan's objectives. The board shall communicate periodically, as it deems appropriate, to any plan investment manager the plan's short-term and long-term financial needs so investment policy can be coordinated with plan financial requirements.

(u) *Parties to litigation.* Except as otherwise provided by the act, only the city and the board shall be necessary parties to any court proceeding involving the plan. No member, beneficiary or other person having an interest in the fund shall be entitled to any notice of process unless required by the act.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2008-09, § 4, 3-18-08; Ord. No. 2010-09, § 1, 5-4-10)

§ 16-234. Finances and fund management.

Establishment and operation of fund.

(1) As part of the plan, there exists the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the plan, including the assets of the prior Lake Wales Municipal Police Officer's Pension Plan and Trust which are hereby retained in this fund.

(2) The actual custody and supervision of the fund (and assets thereof) shall be vested in the board. Payment of benefits and disbursements from the fund shall be made by the disbursing agent designated by the board but only upon written authorization from the board.

(3) All funds of the plan may be deposited by the board with the finance director of the city, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the city. However, any funds so deposited with the finance director of the city shall be kept in a separate fund by the finance director or clearly identified as such funds of the plan. In lieu thereof, the board shall deposit the funds of the plan in a qualified public depository as defined in F.S. § 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of F.S. ch. 280, as it may be amended from time to time. In order to fulfill its investment responsibilities as set forth herein, the board may retain the services of a custodian bank, an investment advisor registered under Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.

(4) All funds and securities of the plan may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:

- a. Current amounts of accumulated contributions of members on both an individual and aggregate account basis;
- b. Receipts and disbursements;
- c. Benefit payments;
- d. Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city;
- e. All interest, dividends and gains (or losses) whatsoever; and
- f. Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.

(5) An audit shall be performed annually by a certified public accountant chosen by the board for the most recent fiscal year of the city showing a detailed listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete evaluation of assets on both a cost and market basis, as well as other items normally included in a certified audit.

(6) The board shall have the following investment powers and authority:

- a. The board shall be vested with full legal title to said fund, subject, however, in any event to the authority and power of the city commission to amend or terminate this fund, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under the plan, except as otherwise provided herein. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund.
- b. All monies paid into or held in the fund shall be invested and reinvested by the board and the investment of all or any part of such funds shall be limited to:

1. Annuity and life insurance contracts with life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the members in the fund shall be entitled under the provisions of this plan and pay the initial and subsequent premium thereon.

2. Time or savings accounts of a national bank, a state bank or a savings/building and loan association insured by the Federal Deposit Insurance Corporation.

3. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.

4. Bonds, stocks, mutual funds, commingled funds administered by national or state banks, or evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided that the security of the corporation is traded on a nationally recognized exchange and holds a rating or ranking in one (1) of the three (3) highest classifications by a major rating or ranking service, and if such investments are made in a commingled fund administered by a state or national bank, then the rating or ranking of each issue in the commingled fund shall hold a rating or ranking within the top three (3) rating or ranking classifications of a major rating or ranking service.

5. Foreign securities in an amount not to exceed twenty-five (25) percent of the assets of the fund at market value, as allowed under F.S. § 185.06.

6. Such other investments as allowed by law.

c. The board shall not invest more than five (5) percent of its assets in the common stock or capital stock of any one (1) issuing company, nor shall the aggregate investment in any one (1) issuing company exceed five (5) percent of the outstanding capital stock of that company; nor shall the aggregate of its investments in common stock, capital stock and convertible bonds at cost exceed sixty (60) percent of the assets of the fund.

d. The board may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the plan.

e. The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.

f. The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the fund which it may deem to be in the best interest of the fund to exercise.

g. The board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power contained herein.

h. Where any action which the board is required to take or any duty or function which it is required to perform either under the terms herein or under the general law applicable to it as trustee under this article, can reasonably be taken or performed only after receipt by it from a member, the city, or any other entity, of specific, information, certification, direction or instructions, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.

i. Any overpayment or underpayment from the fund to a member, retiree or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board in such a manner that the actuarial equivalent of the benefit to which the member, retiree or beneficiary was correctly entitled to, shall be paid. Overpayment shall be charged against payments next succeeding the correction or collected in another manner if prudent. Underpayment shall be made up from the fund in a prudent manner.

j. The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits herein provided for.

k. In any application to or proceeding or action in the courts, any judgment entered in such a proceeding or action shall be conclusive upon all persons.

l. Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to said fund shall always remain in the board.

(7) The board shall not have any obligation or responsibility with respect to any action required by the plan to be taken by the city or, any member, nor shall the board be required to collect any contribution required under the plan, or determine the correctness of the amount of any contribution. The board need not inquire into or be responsible for any action or failure to act on the part of the others.

(8) The board and the city in no way guarantee the trust fund from loss or depreciation. The city does not guarantee the payment of any money which may be or becomes due to any person from the fund. The liability of the board to make any payment from the fund at any time and all times is limited to the then available assets of the fund.

(9) The board shall not be liable for the acts or omissions of any investment manager or managers the board may appoint, nor shall the board be under any obligation to invest or otherwise manage any asset of the plan which is subject to the management of a properly appointed investment manager. The board and any properly appointed investment manager may execute a letter of agreement as a part of this plan delineating the duties, responsibilities and liabilities of the investment manager with respect to any part of the trust fund under the control of the investment manager.

(10) At least once every three (3) years, the board shall retain an independent consultant professionally qualified to evaluate the performance of professional money managers. The independent consultant shall make recommendations to the board regarding the selection of money managers for the next investment term. These recommendations shall be considered by the board at its next regularly scheduled meeting. The date, time, place, and subject of this meeting shall be advertised in a newspaper of general circulation in the municipality at least ten (10) days prior to the date of the hearings.

(11) The board shall identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in Florida Statutes, Section 215.473, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in such company beginning January 1, 2010 and shall thereafter be prohibited from purchasing or holding such securities. The divestiture of any such security must be completed by September 30, 2010. In accordance with Ch. 2009-97, Laws of Florida, no person may bring any civil, criminal, or administrative action against the board or any employee, officer, director, or advisor of such board based upon the divestiture of any security pursuant to this paragraph.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2010-09, § 2, 5-4-10)

§ 16-235. Contributions.

(a) Member contributions.

(1) *Amount.* Each member of the plan shall be required to make regular contributions to the fund in the amount of a portion of his or her wages as established by contract between the city and the bargaining unit. Member contributions withheld by the city on behalf of the member shall be deposited with the board at least monthly. The contributions made by each member to the fund shall be designated as city contributions pursuant to section 414(h) of the Code. Such designation is contingent upon the contributions being excluded from the members' gross income for federal income tax purposes. For all other purposes of the plan, such contributions shall be considered to be member contributions.

(2) *Method.* Such contributions shall be made by payroll deduction.

(b) *State contributions.* Any monies received or receivable by reason of laws of the state for the express purpose of funding and paying for retirement benefits for police officers of the city shall be deposited in the trust fund comprising part of this system immediately, and under no circumstances more than five (5) days after receipt by the city.

(c) *City contributions.* So long as this system is in effect, the city shall make quarterly contributions to the trust fund in an amount equal to the difference in each year between the total aggregate member contributions for the year, plus state contributions for such year, and the total cost for the year, in a manner which is authorized under the provision of Part VII of Chapter 112, Florida Statutes, or its successor. The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded past service liability over a thirty (30) year period, commencing with the fiscal year in which the effective date of this system occurs.

(d) *Other contributions.* Private donations, gifts and contributions may be deposited to the fund, but such deposits must be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used only for additional benefits for members, as determined by the board, and may not be used to reduce what would have otherwise been required city contributions.

(e) *Return of overpayment member or beneficiary.* Any overpayment or underpayment from the fund to a member or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board. Overpayment shall be charged against payments next succeeding the correction. Underpayment shall be made up from the fund.

(f) *Rollover contributions.* The plan does not permit member rollover contributions, or voluntary contributions other than the mandatory contribution required pursuant to the plan.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2004-08, § 2, 5-18-04)

§ 16-236. Benefit amounts and eligibility.

(a) *Normal retirement date.* A member's normal retirement date shall be the first day of the month coincident with, or next following the date he attains the earlier of:

- (1) Age fifty-five (55) with ten (10) or more years of credited service; or
- (2) Age fifty-two (52) with twenty-five (25) years of credited service, for members who separate from service before October 1, 1998; and
- (3) Age fifty (50), with twenty-five (25) years of credited service, for members who separate from service on or after October 1, 1998.

A member may retire on his or her normal retirement date or on the first day of any month thereafter. Normal retirement under the plan is retirement from employment with the city on or after the normal retirement date. Each member who retires on or after normal retirement age shall receive a normal retirement pension.

(b) *Normal retirement benefit.* A member retiring hereunder on or after his or her normal retirement date shall receive a monthly benefit consisting of a single life annuity which shall commence on the first day of the month next following his or her retirement and be continued thereafter during member's lifetime, ceasing upon death, but with one hundred twenty (120) monthly payments guaranteed in any event. The monthly retirement benefit shall equal to: (i) two and one-half (2½) percent of average final compensation, for each year of credited service for members separating from service prior to October 1, 1998, or, (ii) three (3) percent of average final compensation, for each year of credited service for members who separate from service on or after October 1, 1998. Notwithstanding the preceding, effective October 1, 2012, for all members who have not yet retired and/or entered the DROP as of the enactment date of September 17, 2013, the maximum total benefit provided by the fund shall be limited to the lesser of either: seventy-five thousand dollars (\$75,000.00) per year; or three (3) percent of average final compensation, for each year of credited service. In no event shall the maximum total benefit provided by the fund be less than two (2) percent of average final compensation, for each year of credited service. Once the maximum pension benefit, as defined herein, is met, all pension contributions made on behalf of the member will permanently cease. The retirement income will be reduced for moneys received under the disability provisions of this plan so that the monthly benefit shall not exceed the greater of the disability or retirement pension.

(c) *Delayed retirement.* Retirement may be delayed by a member and shall not be mandatory solely by reason of age prior to the required beginning date specified in section 16-251, hereof. The delayed retirement date shall be the first day of the month coincident with, or next following, actual retirement.

(d) *Early retirement date.* A member may retire on his or her early retirement date which shall be the first day of any month coincident with or next following the attainment of age fifty (50) and the completion of ten (10) years of credited service. Early retirement under the plan is retirement from employment with the city on or after the early retirement date and prior to the normal retirement date.

(e) *Early retirement benefit.* A member retiring hereunder on his or her early retirement date may receive either a deferred or an immediate monthly retirement benefit payable for life, with one hundred twenty (120) monthly payments guaranteed, as follows:

(1) A deferred monthly retirement benefit which shall commence on what would have been the member's normal retirement date had he remained a police officer and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be a life annuity determined in the same manner as for retirement at normal retirement date except that credited service and average final compensation shall be determined as of the early retirement date; or

(2) An immediate monthly retirement benefit which shall commence on early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in subsection (1) above, which is actuarially reduced from the amount to which the member would have been entitled had the member retired on his normal retirement date and with the same number of years of credited service as at the time benefits commence and based on the member's average final compensation at that date. In no event shall the early retirement reduction exceed three (3) percent for each year by which the member's age at retirement precedes the member's normal retirement age.

(f) *Immediate and deferred payment of early retirement benefit.* The board shall commence payment of the immediate early retirement pension on the first day of the month designated by the member as the annuity starting date, so long as such date follows the member's termination of service with the city. If a member elects a deferred early retirement pension, or fails to designate an annuity starting date, the board shall commence payment following the member's attainment of normal retirement age.

(g) *Termination benefit; generally.* A member whose employment terminates for any reason prior to becoming eligible for an early or normal retirement pension, shall receive either a deferred pension, calculated in the manner set forth in subsection (h) of this section 16-236 herein; or a refund benefit in an amount equal to the total contributions made by the member to the plan. A member shall only be entitled to a deferred pension if he has at least ten (10) years of credited service. Notwithstanding the provisions of this section 16-236, a member, at any time prior to the commencement of his normal retirement pension, his early retirement pension or his deferred pension, may elect to receive a refund benefit in lieu thereof.

(h) *Amount of deferred pension.* The member's deferred pension shall be a single life annuity, with a one hundred twenty (120) month guarantee, computed in the same manner as the early retirement pension if the member elects to begin receiving his monthly pension before age fifty-five (55) or it shall be a single life annuity, with a one hundred twenty (120) month guarantee, computed in the same manner as the normal retirement pension if the member elects to begin receiving his pension on or after age fifty-five (55), with such benefit to be determined as of the date on which his termination of employment occurs.

(i) *Payment of deferred pension.* A terminated member's deferred pension shall become payable in the same manner as a normal retirement pension, or if elected by the member in the manner provided in subsection (h) hereof, in the same manner as an early retirement pension.

(j) *Effective date of change in benefits.* Members separating from service before October 1, 1998, shall only be entitled to the benefits provided by the plan prior to October 1, 1998.

(k) *Deferred retirement option plan (DROP).*

(1) *Operation.* Any member of the system who has satisfied the requirement for normal retirement as set forth herein may elect to withdraw from the system while continuing to be an employee of the city for a period of up to five (5) years. During this period, the member and employer shall cease to make contributions to the fund and benefit accruals shall cease at the date of withdrawal from the system. At the time of the withdrawal, the member may elect any optional form of retirement income as allowed by the plan. The amount of the monthly pension which would otherwise be paid shall be maintained as a co-mingled DROP account(s) in the name of the member within the fund and shall be segregated from other trust assets on a bookkeeping basis only.

a. Upon electing participation in the DROP, the member shall elect to receive, by designating full or partial allocation of the monthly benefit amount, either interest or earnings on his or her accounts to be determined as provided below. The member may elect, in writing, to change his or her election on a quarterly basis during DROP participation. An election to change must be made at least thirty (30) days prior to the beginning of a calendar quarter and shall be effective on the first day of the calendar quarter immediately following such notice of election. There shall be no limit on the number of such transfers.

1. Earnings election. Quarterly the DROP account shall share in the investment gains and losses for the quarter at the same rate of the return earned by the total trust fund; and/or

2. Interest election. The DROP account shall be credited interest based on the trust fund's money market interest rate compounded quarterly.

3. Any additional cost arising for the election of partial allocation of the monthly benefit amount shall be paid by the member.

b. Regardless of the option selected by the participant, the board of trustees has the right to accelerate payments in order to comply with section 401(a)(9) IRC and the right to defer payments to comply with section 415 IRC.

(2) *Termination of employment.* Upon termination of employment, not later than five (5) years following entry into the DROP program, the member shall commence receiving the monthly benefit in the same form and amount as selected at the time of entry into the DROP program. In addition, the member shall receive the value of his DROP account in a single lump sum payment.

(3) *Continued employment.* In the event that the member continues employment following completion of the DROP period, the member shall forfeit his or her entitlement to the accumulated assets in the DROP account, which account shall no longer be segregated from the other assets of the plan, and such member shall deposit to the fund an amount equal to the member contributions which would have been made had the member continued as an active participant in the plan during the DROP period. Upon later termination of employment, the retiring member shall receive benefit credit for years and completed months during which he or she participated in the DROP program and for which member contributions were subsequently made, as well as credited service accrued before and after participation in the DROP plan.

(4) *Computation of plan benefits.* The benefits of a member who makes an election to withdraw from the system while continuing to be an employee of the city, shall be determined based upon including as salary, at the time of withdrawal, the amount of accrued vacation and sick pay which would have been available had such member terminated employment at the time of making the election. Notwithstanding the above, payments made to a withdrawing member's DROP account shall be reduced by the product obtained by multiplying the then applicable member contribution rate by the amount of accrued vacation pay and sick pay which is includible in the above calculation.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2000-13, § 2, 9-5-00; Ord. No. 2002-02, § 2, 5-21-02; Ord. No. 2004-08, § 2, 5-18-04; Ord. No. 2010-16, § 1, 10-19-10; Ord. No. 2013-15, § 2, 9-17-13)

§ 16-237. Disability.

(a) *Disability benefits in-duty.* Each police officer who is a member in the system and who shall have become totally and permanently disabled, while actively employed as a police officer with the city, to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a police officer, and which disability was directly caused by the performance of his duty as a police officer shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to either, (i) two and one-half (2½) percent of his or her compensation for a member separating from service prior to October 1, 1998, or (ii) three (3) percent of his or her compensation for a member separating from service on or after October 1, 1998, multiplied by the total years of credited service, but in any event the minimum amount paid to the member shall be forty-two (42) percent of the member's compensation. For the purposes of this paragraph, compensation shall be deemed to be the greater of the member's average compensation based upon his or her pay status at the time the disability occurred or his or her average final compensation.

(1) Any condition or impairment of health of a police officer caused by tuberculosis, hypertension, hardening of the arteries, or heart disease resulting in total or partial disability or death shall be presumed to have been suffered in the line of duty unless the contrary is shown by competent evidence; provided, that such police officer shall have successfully passed a physical examination upon entering into such service, including a cardiogram, which examination failed to reveal any evidence of such condition; and provided further, that such presumption shall not apply to benefits payable or granted in a policy of life insurance or disability insurance.

(2) The presumption provided for in this paragraph (2) shall apply only to those conditions described in this subsection (2) that are diagnosed on or after January 1, 1996.

a. *Definitions.* As used in this paragraph (2), the following definitions apply:

1. "*Body fluids*" means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the Centers for Disease Control, apply. For purposes of potential transmission of meningococcal meningitis or tuberculosis, the term "body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, and saliva, mucous, and other fluids through which infectious airborne organisms can be transmitted between persons.

2. "*Emergency rescue or public safety member*" means any member employed full-time by the city as a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who, in the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis, or tuberculosis and who is not employed elsewhere in a similar capacity. However, the term "emergency rescue or public safety member" does not include any person employed by a public hospital licensed under F.S. ch. 395, or any person employed by a subsidiary thereof.

3. "*Hepatitis*" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C, or any other strain of hepatitis generally recognized by the medical community.

4. "*High risk of occupational exposure*" means that risk that is incurred because a person subject to the provisions of this subsection, in performing the basic duties associated with his or her employment:

- i. Provides emergency medical treatment in a non-healthcare setting where there is a potential for transfer of body fluids between persons;
- ii. At the site of an accident, fire, or other rescue or public safety operation, or in an emergency rescue or public safety vehicle, handles body fluids in or out of containers or works with or otherwise handles needles or other sharp instruments exposed to body fluids;
- iii. Engages in the pursuit, apprehension, and arrest of law violators or suspected law violators and, in performing such duties, may be exposed to body fluids; or
- iv. Is responsible for the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, while on work detail outside the facility, or while being transported and, in performing such duties, may be exposed to body fluids.

5. "*Occupation exposure,*" in the case of hepatitis, meningococcal meningitis, or tuberculosis, means an exposure that occurs during the performance of job duties that may place a worker at risk of infection.

b. *Presumption.* Any emergency rescue or public safety member who suffers a condition or impairment of health that is caused by hepatitis, meningococcal meningitis, or tuberculosis, that requires medical treatment, and that results in total or partial disability or death shall be presumed to have a disability suffered in the line of duty, unless the contrary is shown by competent evidence; however, in order to be entitled to the presumption, the member must, by written affidavit as provided in F.S. § 92.50, verify by written declaration that, to the best of his or her knowledge and belief:

1. In the case of a medical condition caused by or derived from hepatitis, he has not:
 - i. Been exposed, through transfer of bodily fluids, to any person known to have sickness or medical conditions derived from hepatitis, outside the scope of his employment;
 - ii. Had a transfusion of blood or blood components, other than a transfusion arising out of an accident or injury happening in connection with his present employment, or received any blood products for the treatment of a coagulation disorder since last undergoing medical tests for hepatitis, which tests failed to indicate the presence of hepatitis;

iii. Engaged in unsafe sexual practices or other high-risk behavior, as identified by the Centers for Disease Control or the Surgeon General of the United States or had sexual relations with a person known to him to have engaged in such unsafe sexual practices or other high-risk behavior; or

iv. Used intravenous drugs not prescribed by a physician.

2. In the case of meningococcal meningitis, in the ten (10) days immediately preceding diagnosis he or she was not exposed, outside the scope of his or her employment, to any person known to have meningococcal meningitis or known to be an asymptomatic carrier of the disease.

3. In the case of tuberculosis, in the period of time since the member's last negative tuberculosis skin test, he or she has not been exposed, outside the scope of his or her employment, to any person known by him or her to have tuberculosis.

c. *Immunization.* Whenever any standard, medically recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is granted under this section, if medically indicated in the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the U.S. Public Health Service, an emergency rescue or public safety member may be required by the city to undergo the immunization or prophylaxis unless the member's physician determines in writing that the immunization or other prophylaxis would pose a significant risk to the member's health. Absent such written declaration, failure or refusal by an emergency rescue or public safety member to undergo such immunization or prophylaxis disqualifies the member from the benefits of the presumption.

d. *Record of exposures.* The city shall maintain a record of any known or reasonable suspected exposure of an emergency rescue or public safety member in its employ to the disease described in this section and shall immediately notify the member of such exposure. An emergency rescue or public safety member shall file an incident or accident report with the city of each instance of known or suspected occupational exposure to hepatitis infection, meningococcal meningitis, or tuberculosis.

e. *Required medical tests; pre-employment physical.* In order to be entitled to the presumption provided by this section:

1. An emergency rescue or public safety member must, prior to diagnosis, have undergone standard, medically acceptable tests for evidence of the communicable disease for which the presumption is sought, or evidence of medical conditions derived therefrom, which tests fail to indicate the presence of infection. This paragraph does not apply in the case of meningococcal meningitis.

2. On or after June 15, 1995, an emergency rescue or public safety member may be required to undergo a pre-employment physical examination that tests for any evidence of hepatitis or tuberculosis.

(b) *Disability benefits off-duty.* Every police officer who is a member in the system with ten (10) years or more credited service who shall have become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a police officer, which disability is not directly caused by the performance of his duties as a police officer, shall be entitled to a monthly pension equal to either: (i) two and one-half (2½) percent of compensation for a member separating from service prior to October 1, 1998, or (ii) three (3) percent of compensation for a member separating from service on or after October 1, 1998, multiplied by the total years of credited service, but in any event, the minimum amount paid to the member shall be twenty-five (25) percent of his compensation. This provision shall not apply to a member who has reached early or normal retirement age. Any disability occurring after termination shall not constitute a basis for disability payments. For the purposes of this paragraph, compensation shall be deemed to be the greater of the member's average compensation based upon his or her pay status at the time the disability occurred or his or her average final compensation.

(c) *Conditions disqualifying disability benefits.* Each police officer who is claiming disability benefits shall establish, to the satisfaction of the board, that such disability or death was not occasioned primarily by:

- (1) Excessive or habitual use of any drugs, intoxicants or narcotics.
- (2) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections.
- (3) Injury or disease sustained while committing a crime.
- (4) Injury or disease sustained while serving in any branch of the armed forces.
- (5) Injury or disease sustained after his employment as a police officer with the city shall have terminated.
- (6) A condition preexisting the police officer's membership in the system. No member shall be entitled to a disability pension because of or due to the aggravation of a specific injury, impairment or other medical condition preexisting at the time of membership in the system; provided, that such preexisting condition and its relationship to a later injury, impairment or other medical condition be established by competent substantial evidence. Nothing herein shall be construed to preclude a disability pension to a member who, after membership in the system, suffers an injury, impairment or other medical condition different from some other injury, impairment or other medical condition existing at or prior to said membership.

(d) *Physical examination requirement.* A police officer shall not become eligible for disability benefits until and unless he undergoes a physical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the board for that purpose. The board shall not select the member's treating physician or surgeon for this purpose except in an unusual case where the board determines that it would be reasonable and prudent to do so.

Any police officer receiving disability benefits under provisions of this section shall be periodically re-examined by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the board, to determine if such a disability has ceased to exist. If the board finds that the retiree is no longer permanently and totally disabled to the extent that he is unable to render useful and efficient service as a police officer, the board shall recommend to the city that the disability retirement income be discontinued and the retiree be returned to performance of duty as a police officer, and the retiree so returned shall enjoy the same rights that member had at the time he was placed upon pension.

The cost of the physical examination and/or re-examination of the police officer claiming and/or receiving disability benefits shall be borne by the board of this system. All other reasonable costs as determined by the board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the board.

If the police officer recovers from disability and re-enters the service of the city as a police officer his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service of the city will not be considered as credited service for the purposes of the plan.

The board shall have the power and authority to make the final decisions regarding all disability claims.

(e) *Disability payments.* The monthly benefit to which a member is entitled in the event of the member's disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be:

(1) If the police officer recovers from the disability prior to his normal retirement date, the payment due next preceding the date of such recovery; or

(2) If the police officer dies without recovering from disability or attains his normal retirement date while still disabled, the payment due next preceding his death or the one hundred twentieth monthly payment, whichever is later.

(3) Any monthly retirement income payments due after the death of a disabled police officer shall be paid to the police officer's designated beneficiary or beneficiaries as provided in F.S. §§ 185.162 and 185.21.

(f) A disabled member may select an actuarially equivalent optional form of benefit in the same manner as a retired member, or in such other actuarially equivalent form as may be allowed by the board.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2000-13, § 2, 9-5-00)

§ 16-238. Pre-retirement death.

(a) *Prior to eligibility for deferred benefit or retirement.* The beneficiary of a deceased member who was not receiving monthly benefits, or who was not yet eligible for a deferred benefit under subsection (g) of section 16-236, early retirement or normal retirement, shall receive a refund of one hundred (100) percent of the member's accumulated contribution, or in the event an annuity or life insurance contract has been purchased by the board on such police officer, then the beneficiary shall receive instead the death benefits available under such contract, subject to the limitations on such benefits set forth in F.S. § 185.061, whichever amount is greater.

(b) *Deceased members eligible for deferred benefit or retirement benefit.* The beneficiary of any member who dies and who, at the date of his or her death was eligible for a deferred benefit under subsection (g) of section 16-236, or early retirement, or normal retirement, shall be entitled to a benefit as follows:

(1) If the member was eligible for a deferred benefit, but not eligible for normal or early retirement, the beneficiary shall receive a benefit payable for ten (10) years, beginning on the date that the deceased member would have been eligible for early or normal retirement, at the option of the beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's, date of birth. Credited service and average final compensation as of the date of his or her death and reduced as for early retirement, if applicable. The beneficiary may also elect to receive an immediate benefit, payable for ten (10) years, which is actuarially reduced to reflect the commencement of benefits prior to the early retirement date.

(2) If the deceased member was eligible for normal or early retirement, the beneficiary shall receive a benefit payable for ten (10) years, beginning on the first day of the month following the member's death or at the deceased member's otherwise normal retirement date, at the option of the beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his or her death and reduced as for early retirement, if applicable.

(3) A beneficiary may, in lieu of any benefit provided for in (1) or (2) above, elect to receive a refund of the deceased member's accumulated contributions.

(c) *Optional death benefit for members killed in line of duty.* In lieu of the benefits described in subsections (a) and (b) of this section 16-238, the surviving spouse of any member who dies as a direct result of an occurrence arising in the performance of service, or if there is no surviving spouse, the legal guardian of the youngest living child, may elect a benefit payable as follows:

(1) To the spouse, a monthly benefit payable until death equal to fifty (50) percent of the member's average final compensation.

(2) To each minor child, in equal monthly installments in an amount equal to ten (10) percent of the member's average final compensation, subject to a limitation of a total of eighty (80) percent of average final compensation for the spouse and children combined. Each child's pension shall terminate at death or upon attaining eighteen (18) years of age, unless such child continues to be a full-time student at an accredited institution of higher learning or at an accredited institution providing vocational or technical training, in which case such payments may continue until such child attains the age of twenty-one (21).

Upon death of the spouse, the allowance for each child shall be paid in trust or as otherwise determined by the board, to eligible children, not to exceed a combined total of fifty (50) percent of the member's average final compensation. The manner of handling and administering the pension to any child or children shall be determined by the board. No survivor pension shall be paid to any stepchild of a deceased member who had not been legally adopted by such member.

(3) There shall be in any event a minimum total service-incurred death benefit equal in amount to four (4) times the member's average final compensation. If such amount has not yet been paid in total at such time as benefits cease under subsections (c)(1) and (c) (2) above, then the balance shall be payable in a lump sum to the member's designated beneficiary, and if there be none, then to such member's estate.

(4) Notwithstanding the above, neither a surviving spouse, nor minor children may elect the optional death benefit described in this subsection (c) if the member has designated someone other than his spouse as his beneficiary.

(Ord. No. 98-19, § 2, 10-20-98)

§ 16-239. Optional forms of benefits.

(a) In lieu of the amount and form of retirement income payable in the event of normal, early, or delayed retirement, or deferred pension, as specified herein, a member, upon written request to the board, which request shall be retained by the board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one (1) of the following options:

(1) A retirement income of a larger monthly amount, payable to the member for his or her lifetime only.

(2) A retirement income of a modified monthly amount, payable to the member during the lifetime of the member, and following the death of the member, one hundred (100) percent, seventy-five (75) percent, sixty-six and two-thirds ($66\frac{2}{3}$) percent, or fifty (50) percent of such monthly amounts payable to a joint pensioner for his or her lifetime. Except where the retiree's joint pensioner is his or her spouse, the present value of payments to the retiree shall not be less than fifty (50) percent of the total present value of payments to the retiree and his or her joint pensioner.

(3) An actuarially equivalent larger monthly amount, with a reduction in the monthly amount when the member's social security benefits are estimated to start so that the member's total monthly benefit, inclusive of social security benefits, will remain constant upon the starting date of his social security benefits.

(b) The member, upon electing any option of this section, will designate the joint pensioner (subsection (a)(2) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one (1) or more primary beneficiaries where applicable. If a member has elected an option with a joint pensioner or beneficiary and the member's retirement income benefits have commenced, the member may thereafter change his or her designated beneficiary up to two (2) times and may change his or her joint pensioner up to two (2) times without the approval of the board or the current designated survivor. The retiree member need not provide proof of the good health of the designated survivor being removed, and the designated survivor being removed need not be living. Provided that in the absence of proof of good health, the actuary will assume that the designated survivor being removed has deceased for purposes of calculating the new benefit payment.

(c) The consent of a member's or retiree's joint pensioner or beneficiary to any such change shall not be required. The rights of all previously designated beneficiaries to receive benefits under the system shall thereupon cease.

(d) Upon change of a retiree's beneficiary or joint pensioner in accordance with this section, the board shall adjust the retiree's monthly benefit by application of actuarial calculations to insure that the benefit paid is the actuarial equivalent of the retiree's then current benefit. Any such retiree shall pay the actuarial recalculation expenses and shall make repayment of any overage of previously paid pension benefits as a result of said recalculations. Each request for a change will be made in writing on a form prepared by the board and on completion will be filed with the board. In the event that no designated beneficiary survives the retiree, such benefits as are payable in the event of the death of the retiree subsequent to his or her retirement shall be paid as provided in section 16-240

(e) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:

(1) If a member dies prior to his or her normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under section 16-238

(2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the member's retirement under the system, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the member upon his or her retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the member prior to his or her retirement.

(3) If both the retiree and the beneficiary (or beneficiaries) designated by member or retiree die before the full payment has been effected under any option providing for payment for a period certain and life thereafter, made pursuant to the provisions of subsection (a), the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 16-240

(4) If a member continues beyond his or her normal retirement date pursuant to the provisions of section 16-236, and dies prior to his or her actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the member in the amount or amounts computed as if the member had retired under the option on the date on which his or her death occurred.

(f) Except as set forth in subsection (b), hereof, a retiree may not change his or her retirement option after the date of cashing or depositing his or her first retirement check.

(g) Notwithstanding anything herein to the contrary, the board in its discretion, may elect to make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the remaining monthly income payments to be paid do not exceed five thousand dollars (\$5,000.00). Any such payment made to any person pursuant to the power and discretion conferred upon the board by the preceding sentence shall operate as a complete discharge of all obligations under the system with the regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2010-09, § 3, 5-4-10; Ord. No. 2012-12, § 1, 8-21-12)

§ 16-240. Beneficiaries.

(a) *Beneficiary designation.* A member may from time to time designate a beneficiary in writing, or change such designation of, any person or persons, contingently or successively, to whom the trustee shall pay the remainder of his benefit in the event of his death. The board shall prescribe the form for the written designation of beneficiary and, upon the member's filing the form with the board, it effectively shall revoke all designations filed prior to that date by the same member. This subsection (a) shall not supersede the provisions of subsection (b) of section 16-239

(b) *No beneficiary designation.* If a member fails to name a beneficiary in accordance with the preceding subsection, or if the beneficiary named by a member predeceases him or her, or dies before complete distribution of the member's benefit, then the board shall pay the member's remaining benefit, if any, to the member's estate.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2000-13, § 2, 9-5-00)

§ 16-241. Claims procedures before the board decision.

(a) *Claims of affected persons.*

(1) The board shall grant an initial hearing upon receipt of a written request ("claim"), on matters which affect the substantial rights of any person ("claimant"), including members, retirees, beneficiaries, or any person affected by a decision of the board.

(2) The board shall review the claim at an initial hearing and enter an order within ninety (90) days from the date of receipt of the claim. The board may extend the time for entering the order at an initial hearing for an additional ninety (90) days if it determines such time is necessary for full discovery and adequate review. the chairman of the board or general counsel and the claimant may stipulate to further extensions of time.

(3) The claimant shall have the right to be represented by counsel at any or all times throughout the claims procedure.

(b) *Initial hearing.*

(1) At the initial hearing, the only evidence to be considered by the board shall be documentary evidence contained in his employment and pension file, including but not limited to, correspondence, medical records and reports of treating physicians and/or examining physicians, and evidence received pursuant to paragraph (2) below.

(2) Other than questions from the trustees, there will be no taking of additional evidence at the initial hearing, except that the claimant will be afforded five (5) minutes to make a presentation, which shall be limited to comments and/or arguments as to the evidence or information already contained in the pension file, including the report of the examining physician.

(3) Upon completion of the review of the claim at the initial hearing, the board shall enter an order setting forth its findings and conclusions on the claim. The written order shall be provided to the claimant. The order shall include:

a. The specific findings and conclusions of the board, including specific references to pertinent provisions of the plan on which such conclusions are based;

b. A description of any additional material or information that the board may deem necessary for the claimant to perfect his or her claim, together with the reasons why such material or information is necessary; and

c. An explanation of the right to a full hearing on the claim and the time limit in which a full hearing must be requested in writing.

(4) The decision of the board at the initial hearing shall not be final until after the time has expired to request a full hearing or, if a full hearing is requested, until the board makes a decision at the conclusion of the full hearing.

(c) *Full hearing.*

(1) Any claimant may request a full hearing on the issues presented to the board at an initial hearing and upon which the board has entered an order as provided in subsection (b)(3) above.

(2) A full hearing must be requested by the claimant within ninety (90) days of the receipt of the board's order. The order will be deemed received three (3) days following the date it is mailed to claimant at the address provided to the board by claimant.

(3) Upon receipt of the request for a full hearing and considering the amount of discovery which might be conducted, the board shall establish a date for full hearing and cause notice to be given to the claimant. The full hearing shall be held within ninety (90) days from the receipt of the request from the claimant. The full hearing may be postponed, if necessary and with the consent of the claimant, to permit full discovery of the facts.

(4) Copies of all documents to be offered into evidence at the full hearing, including depositions, and a complete witness list with names and addresses of witnesses expected to be called, shall be furnished to the board and the general counsel by the claimant at least twenty (20) days prior to the full hearing. Documents not furnished to the board within the prescribed time limit may be excluded from evidence at the full hearing if a reasonable explanation is not provided for the delay in providing the documents.

(5) The claimant shall be responsible for the appearance of any witnesses which he or she wishes to have testify at the hearing.

(6) Testimony at the full hearing may be submitted in the form of a deposition. Depositions timely submitted will be part of the record before the board at the full hearing and will not be read in totality at the full hearing; provided however, that this does not preclude the claimant or the general counsel from reading parts of depositions in an opening or closing statement.

(7) Irrelevant and unduly repetitious evidence shall be excluded.

(8) Any person who knowingly gives false testimony is guilty of a misdemeanor of the first degree, punishable as provided in F.S. § 775.082 or 775.083.

(9) The file maintained by the board is part of the record before the board at the full hearing.

(10) All proceedings of the board shall be conducted in public.

(11) In cases concerning an application for pension benefits, the burden of proof, except as otherwise provided by law, shall be on the claimant seeking to show entitlement to such benefits.

(12) In cases concerning termination of pension benefits, the burden of proof shall be on the board.

(13) Except as to those records which are exempted from the provisions of F.S. ch. 119, Florida's Public Record Law, records maintained by the board are open for inspection and/or copying during normal business hours at a reasonable cost for copying.

(14) Should a claimant requesting an initial or full hearing decide to appeal any decision made by the board, with respect to any matter considered at such hearing, the claimant requesting an initial or full hearing will need a record of the proceedings and may need to assure that a verbatim record of the proceeding is made. The claimant requesting an initial or full hearing will be responsible for obtaining a court reporter or otherwise making a record of the proceedings before the board.

(15) The decisions of the board after the requested full hearing shall be final and binding.

(16) Within fifteen (15) days after making a decision at the full hearing the board shall enter a final order setting forth its findings and conclusions and a copy of the order shall be provided to the claimant.

(d) *Conduct of the full hearing.*

(1) The chairman of the board shall preside over the hearing and shall rule on all evidentiary procedural, and other legal questions that arise during the hearing. The chairman's rulings shall stand unless overruled by a majority of the trustees present. The chairman shall open the full hearing by explaining the procedures to be followed.

(2) The claimant shall have the right to be represented by counsel or be self-represented.

(3) The claimant shall be allowed to make an opening statement not to exceed five (5) minutes.

(4) Testimony of witnesses shall be under oath or affirmation. Depositions and affidavits shall be admissible.

(5) The chairman, any trustee, the general counsel, the claimant or the claimant's counsel, upon recognition by the chairman, may direct questions to any witness during the proceedings.

(6) Either the claimant or the general counsel shall have the right to present evidence relevant to the issues, to cross examine witnesses, to impeach witnesses and to respond to the evidence presented.

(7) The claimant shall be permitted a closing argument not to exceed five (5) minutes.

(8) The board shall deliberate and make a decision following closing argument and thereafter enter an order as provided herein.

(e) *Disability claims additional procedures.*

(1) All applications for disability pensions shall be in writing. Forms for such applications may be provided by the board.

(2) Upon receipt of the application for disability, the general counsel will provide the claimant with a set of interrogatories or questions to be answered under oath and a medical release authorization. Both documents will be completed by the claimant and returned to the general counsel.

(3) Upon receipt of the properly completed interrogatories and medical release authorization, the general counsel will request medical records from all relevant treating physicians; personnel records from the city, copies of relevant workers' compensation records, and copies of other records deemed to be relevant to the claim. The board shall pay, from the fund, the cost of any medical examinations required by the board and for copies of medical records.

(4) The general counsel will, if authorized by the board, upon receipt of the medical records from the treating physicians, schedule an independent medical examination or examinations (IME) with an appropriate independent examining physician or physicians who will be asked to render an opinion about claimant's physical condition as it relates to the claimed disability.

(5) Upon receipt of the IME report or reports from the examining physician or physicians, the general counsel will provide all records of treating physicians, relevant workman's compensation claims records, the independent medical evaluation, and all other relevant documents to the board for inclusion in the pension file and the board shall then schedule the initial hearing.

(f) *Evidence.* Anyone required to give evidence under the terms of the plan may do so by certificate, affidavit, document or other information which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. Both the board and the trustee shall be fully protected in acting and relying upon any evidence described under the immediately preceding sentence.

(g) *Litigation against the trust.* If any legal action filed against the plan administrator or the board, or against any member or members of the board, by or on behalf of any member or beneficiary, results adversely to the member or to the beneficiary, the trustee shall reimburse itself, or any member or members of the board all costs and fees expended by it or them by surcharging all costs and fees against the sums payable under the plan to the member or to the beneficiary, but only to the extent a court of competent jurisdiction specifically authorizes and directs any such surcharges and then only to the extent Code section 401(a)(13) does not prohibit any such surcharges.

(Ord. No. 98-19, § 2, 10-20-98)

§ 16-242. Reports to division of retirement.

Each year and no later than February 1, the chairman of the board shall file a report with the division of retirement containing the following:

- (1) Whether in fact the city is in compliance with the provisions of F.S. Ch. 185.
- (2) A certified statement of accounting for the most recent fiscal year of the city (or an independent audit by a certified public accountant if required by the division of retirement) showing a detailed listing of assets and methods used to value them and a statement of all income and disbursements during the year. Such income and disbursements shall be reconciled with the assets at the beginning and end of the year.
- (3) A statistical exhibit showing the number of police officers on the force of the city, the number included in the pension plan, the number of police officers ineligible classified according to the reasons for their being ineligible, and the number of retirees and their beneficiaries receiving pension payments and the amounts of annual retirement income or pension payments being received by them.
- (4) A statement of the amount the city has contributed to the pension fund for the preceding year and the amount the city will contribute to the system for the current plan year.
- (5) If any benefits are insured with a commercial insurance company, the report shall include a statement of the relationship of the insured benefits to the benefits provided by this section. This report shall also contain information about the insurer, basis of premium rates, mortality table, interest rates and method used in valuating retirement benefits.
- (6) By February 1 of each triennial year, and at least every three (3) years, the chairman shall provide to the division of retirement the actuarial valuation of the system as provided for herein. Such valuation shall be prepared by an enrolled actuary who is enrolled under subtitle C of title 3 of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.

(Ord. No. 98-19, § 2, 10-20-98)

§ 16-243. Roster of retirees.

The secretary of the board shall keep a record of all persons enjoying a pension under the provisions of this ordinance in which it shall be noted the time when the pension is allowed and when the same shall cease to be paid. Additionally, the secretary shall keep a record of all members in such a manner as to show the name, address, date of employment and date of termination of employment.

(Ord. No. 98-19, § 2, 10-20-98)

§ 16-244. Board attorney and professionals.

The board may employ independent legal counsel at the plan's expense for the purposes contained herein, together with such other professional, technical, or other advisors as the board deems necessary. The trustee may delegate to any agent, attorney, accountant or other person selected by it any non-trustee power or duty vested in it by the plan, and the trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

(Ord. No. 98-19, § 2, 10-20-98)

EDITOR'S NOTE

Ord. No. 2010-25, §§ 2, 3, adopted Oct. 19, 2010 repealed former §§ 16-245, 16-246 in their entirety and sequentially numbered the remaining sections of this article. Former § 16-245 pertained to the maximum pension, and former section 16-246 pertained to the latest date to begin distribution of benefits. Both former § 16-245 and former § 16-246 derived from Ord. No. 98-19, § 2, adopted Oct. 20, 1998.

§ 16-245. Repeal or termination of plan and distribution of fund.

(a) The article establishing the plan and fund, and subsequent ordinances pertaining to said plan and fund, may be modified, terminated, or amended, in whole or in part for any reason or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in chapter 121; provided that if this or any subsequent article shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the member or beneficiary shall be nonforfeitable.

(b) If this article shall be repealed, or if contributions to the plan are discontinued, the board shall continue to administer the plan in accordance with the provisions of this article, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one (1) of the options provided for in this article who are designated by any of said members. In the event of repeal, or if contributions to the plan are discontinued, there shall be full vesting (one hundred (100) percent) of benefits accrued to date of repeal and the assets of the plan shall be distributed in accordance with the following procedures:

(1) The board of trustees shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits to be distributed, after taking into account the expenses of such distribution. The board shall inform the municipality if additional assets are required, in which event the municipality shall continue to financially support the plan until all nonforfeitable benefits have been funded.

(2) The board of trustees shall determine the method of distribution of the asset value, that is, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each member entitled to benefits under the plan as specified in subsection (3).

(3) The board of trustees shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is shall mean the single premium payable for such annuity. The actuarial single-sum value may not be less than the member's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.

(4) If there is asset value remaining after the full distribution specified in subsection (3), and after the payment of any expenses incurred with such distribution, such excess shall be returned to the municipality less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the municipality and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the municipality and the state.

(5) The board of trustees shall distribute, in accordance with subsection (2), the amounts determined apportioned under subsection (3).

If, after twenty-four (24) months after the date the plan terminated or the date the board received written notice that the contributions thereunder were being permanently discontinued, the municipality or special fire control district or the board of trustees of the firefighters' pension trust fund affected has not complied with all the provisions in this section, the Department of Management Services shall effect the termination of the fund in accordance with this section.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2010-09, § 4, 5-4-10; Ord. No. 2010-25, §§ 2, 3, 10-19-10)

§ 16-246. Exemption from execution; non-assignability.

Except as provided by law, neither a member nor a beneficiary shall anticipate, assign or alienate (either at law or in equity) any benefit provided under the plan, and the trustees shall not recognize any such anticipation, assignment or alienation. Furthermore, a benefit under the plan is not subject to attachment, garnishment, levy, execution or other legal or equitable process; except the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit those funds necessary to pay for the benefits being received from the city and/or for benefits being received by the retiree from the certified bargaining unit, and to make any payments for child support, alimony, and to pay for accident, health, and long-term care insurance premiums for the recipient, the recipient's spouse and the recipient's dependents. The Pension Fund shall not incur any liability for making or failing to make such withholdings.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2005-01, § 2, 1-18-05; Ord. No. 2010-09, § 5, 5-4-10 Ord. No. 2010-25, §§ 2, 3, 10-19-10)

§ 16-247. Pension validity.

The board shall have the power to examine the facts upon which any pension shall heretofore be granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. The board is empowered to purge the pension rolls or correct the pension amount of any person heretofore granted a pension under prior or existing law or any person hereafter granted a pension under this ordinance if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any person who has heretofore under any prior or existing law been or who shall hereafter under this ordinance be erroneously, improperly or illegally classified. Any overpayments or underpayments shall be corrected and paid or repaid in a reasonable manner determined by the board.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2010-25, §§ 2, 3, 10-19-10)

§ 16-248. Forfeiture of pension.

(a) Any member who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his or her admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this pension fund, except for the return of his or her accumulated contributions. Specified offenses are as follows:

- (1) The committing, aiding or abetting of felony embezzlement of public funds;
- (2) The committing, aiding or abetting of any felony theft by a public officer or employee from city;
- (3) The committing of felony bribery in connection with the employment of a public officer or employee;
- (4) Any felony specified in F.S. ch. 838;
- (5) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he or she acts or in which he or she is employed, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his or her public office or employment position.

(b) Conviction shall be defined as an adjudication of guilt by a court of competent jurisdiction, a plea of guilty or nolo contendere, or a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation.

(c) Court shall be defined as any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the board shall hold a hearing on which notice shall be given to the member whose benefits are being considered for forfeiture. Said member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the member shall be afforded a full opportunity to present his or her case against forfeiture.

(d) Any member who has received benefits from the plan in excess of his or her accumulated contributions after his or her rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his or her accumulated contributions. The board may implement all legal action necessary to recover such funds.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2010-25, §§ 2, 3, 10-19-10)

§ 16-249. Indemnification.

(a) To the extent not covered by insurance contracts in force from time to time, the city shall indemnify, defend and hold harmless members of the board from all personal liability for damages and costs, including court costs and attorneys' fees, arising out of claims, suits, litigation, or threat of same, herein referred to as "claims," against these individuals because of acts or circumstances connected with or arising out of their official duty as members of the board. The city reserves the right, in its sole discretion, to settle or not settle the claim at any time, and to appeal or to not appeal from any adverse judgment or ruling, and in either event will indemnify, defend and hold harmless any members of the board from the judgment, execution, or levy thereon.

(b) This section shall not be construed so as to relieve any insurance company or other entity liable to defend the claim or liable for payment of the judgment or claim, from any liability, nor does this section waive any provision of law affording the city immunity from any suit in whole or part, or waive any other substantive or procedural rights the city may have.

(c) This section shall not apply nor shall the city be responsible in any manner to defend or pay for claims arising out of acts or omissions of members of the board which constitute felonies or gross malfeasance or gross misfeasance in office.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2010-25, §§ 2, 3, 10-19-10)

§ 16-250. Family and medical leave act.

The fractional parts of the twenty-four (24) month period ending each March 1 that a member is on leave without pay from the city pursuant to the Family and Medical Leave Act (FMLA) shall be added to his or her credited service provided that:

(1) The member contributes to the fund the sum that he or she would have contributed, based on his or her salary and the member contribution rate in effect at the time that the credited service is requested, had he or she been a member of the plan for the fractional parts of the twenty-four (24) months ending each March 1 for which he or she is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of periods of credited service.

(2) The request for credited service for FMLA leave time for the twenty-four (24) month period prior to each March 1 and payment of professional fees shall be made on or before March 31.

(3) Payment by the member of the required amount shall be made on or before April 30 for the preceding twenty-four (24) month period ending March 1 and shall be made in one (1) lump sum payment upon receipt of which credited service shall be issued.

(4) Credited service purchased pursuant to this section shall not count towards the calculation of years required to qualify for normal, early, or deferred pension.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2010-25, §§ 2, 3, 10-19-10)

§ 16-251. Internal Revenue Code Compliance.

(a) *Maximum pension.* Notwithstanding any provision of this plan to the contrary, the annual pension that is accrued by or paid to a participant shall not exceed the dollar limitation set forth below. If the benefit the participant would otherwise accrue in a limitation year would produce an annual pension in excess of the dollar limitation, the benefit shall be limited to a benefit that does not exceed the dollar limitation.

(1) *Definitions Used in this section.*

a. "Annual pension" means the benefits received by a participant under this plan expressed in the form of a straight life annuity. In determining whether benefits payable exceed the dollar limitation set forth below, benefits payable in any form other than a straight life annuity shall be adjusted to the larger of:

(i) The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the form of benefit payable to the participant; or

(ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption and the applicable mortality table described in § 1.417(e)-1(d)(2) for that annuity starting date.

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to § 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this Subsection (a), and the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Subsection (a) applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

b. "Dollar limitation" means one hundred sixty thousand dollars (\$160,000.00) (subject to the annual adjustments provided under Section 415(d) of the IRC). Said amount shall be adjusted based on the age of the participant when benefits begin, as follows:

(i) Except with respect to a participant who is a "Qualified Participant" as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code) beginning before age sixty-two (62) the age-adjusted dollar Limitation is equal to the lesser of:

1. The actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a deferred straight life annuity commencing at age sixty-two (62), where annual payments under the straight life annuity commencing at age sixty-two (62) are equal to the dollar limitation (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a five-percent interest rate and the applicable mortality table under § 1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date); and

2. The dollar limitation (as adjusted pursuant to section 415(d) multiplied by the ratio of the annual amount of the straight life annuity under the plan to the annual amount of the straight life annuity under the plan commencing at age 62, with both annual amounts determined without applying the rules of section 415.

(ii) For benefits beginning after the age of sixty-five (65), the age-adjusted dollar limitation is equal to the lesser of:

1 . The actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a straight life annuity commencing at age sixty-five (65), where annual payments under the straight life annuity commencing at age 65 are equal to the dollar limitation of section 415(b)(1)(A) (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a five-percent interest rate and the applicable mortality table under § 1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date); and

2 . The Section 415(b)(1)(A) dollar limitation (as adjusted pursuant to Section 415(d) and §1.415(d)-1 for the limitation year) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan to the adjusted age sixty-five (65) straight life annuity. The adjusted immediately commencing straight life annuity means the annual amount of the immediately commencing straight life annuity payable to the participant, computed disregarding the participant's accruals after age sixty-five (65) but including actuarial adjustments even if those actuarial adjustments are applied to offset accruals. For this purpose, the annual amount of the immediately commencing straight life annuity is determined without applying the rules of Section 415. The adjusted age sixty-five (65) straight life annuity means the annual amount of the straight life annuity that would be payable under the plan to a hypothetical participant who is 65 years old and has the same accrued benefit (with no actuarial increases for commencement after age sixty-five (65) as the participant receiving the distribution (determined disregarding the participant's accruals after age sixty-five (65) and without applying the rules of Section 415).

(iii) There shall be no age adjustment of the dollar Limitation with respect to benefits beginning between the ages of sixty-two (62) and sixty-five (65).

(2) The limitations set forth in this subsection (a) shall not apply if the annual pension does not exceed ten thousand dollars (\$10,000.00) provided the participant has never participated in a defined contribution plan maintained by the city.

(3) Cost-of-living adjustments in the dollar limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Subsection 415(d) of the Code.

(4) In the case of a participant who has fewer than ten (10) years of participation in the plan, the dollar limitation set forth in Paragraph (1)b. of this subsection (a) shall be multiplied by a fraction—(i) the numerator of which is the number of years (or part thereof) of participation in the plan, and (ii) the denominator of which is 10.

(5) Any portion of a participant's benefit that is attributable to mandatory employee contributions (unless picked-up by the city) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the Code.

(6) Should any participant participate in more than one defined benefit plan maintained by the City, in any case in which the participant's benefits under all such defined benefit plans (determined as of the same age) would exceed the dollar limitation applicable at that age, the accrual of the participant's benefit under this plan shall be reduced so that the participant's combined benefits will equal the dollar limitation.

(7) For a participant who has or will have distributions commencing at more than one (1) annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

(8) The determination of the annual pension under paragraph (a)(1) of this subsection (a) shall take into account (in the manner prescribed by the regulations under Section 415 of the Code) social security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.

(9) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the city shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this subsection (a) and the provisions of Section 415 of the Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The value of any benefits forfeited as a result of the application of this subsection (a) shall be used to decrease future employer contributions.

(b) *Required beginning date:* Notwithstanding any other provision of the plan, payment of a participant's retirement benefits under the plan shall commence not later than the participant's required beginning date, which is defined as the later of:

(1) April 1 of the calendar year that next follows the calendar year in which the participant attains or will attain the age of seventy and one-half (70½) years; or

(2) April 1 of the calendar year that next follows the calendar year in which the participant retires.

(c) *Required minimum distributions.*

(1) *Required beginning date.* The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date as defined in subsection (b) of this section 16-251

(2) *Death of participant before distributions begin.*

a. If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(i) If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age seventy and one-half (70½), if later.

(ii) If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

(iii) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

b. The participant's entire interest shall be distributed as follows:

(i) Participant survived by designated beneficiary. If the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in subparagraph (2)a. above, over the life of the designated beneficiary or over a period certain not exceeding:

1. Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or

2. If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(ii) No designated beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

c. Death of surviving spouse before distributions to surviving spouse begin. In any case in which (i) the participant dies before the date distribution of his or her interest begins, (ii) the participant's surviving spouse is the participant's sole designated beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, subparagraphs (2)a. and (2)b. above shall apply as though the surviving spouse were the participant.

(3) *Requirements for annuity distributions that commence during participant's lifetime.*

a. Joint life annuities where the beneficiary is not the participant's spouse. If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of Section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

b. Period certain annuities. Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age seventy (70), the applicable distribution period for the participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of seventy (70) over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this subparagraph (3)b., or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

(4) *Form of distribution.* Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subparagraphs (4)a., (4)b. and (4)c. below. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

a. General annuity requirements. If the participant's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:

- (i) The annuity distributions will be paid in periodic payments made at intervals not longer than one (1) year;
- (ii) The distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in paragraphs (2) or (3) above, whichever is applicable, of this subsection (c);
- (iii) Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
- (iv) Payments will either be non-increasing or increase only as follows:
 1. By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

2. To the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;

3. To provide cash refunds of employee contributions upon the participant's death; or

4. To pay increased benefits that result from a plan amendment.

b. Amount required to be distributed by required beginning date. The amount that must be distributed on or before the participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under subparagraph (2)a.(i) or (2)a.(ii), whichever is applicable) is the payment that is required for one (1) payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.

c. Additional accruals after first distribution calendar year. Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(5) For purposes of this subsection (c), distributions are considered to begin on the participant's required beginning date. If annuity payments irrevocably commence to the participant (or to the participant's surviving spouse) before the participant's required beginning date (or, if to the participant's surviving spouse, before the date distributions are required to begin in accordance with subparagraph (2)a. above), the date distributions are considered to begin is the date distributions actually commence.

(6) *Definitions.*

a. *Designated beneficiary.* The individual who is designated as the beneficiary under the plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

b. *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to paragraph (2) of this subsection (c).

c. *Life expectancy.* Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(d)

(1)

Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) *Definitions.* The following definitions apply to this section:

a. *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(i) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more;

(ii) Any distribution to the extent such distribution is required under Section 401(a) (9) of the Code;

(iii) The portion of any distribution that is a hardship distribution described in Section 401(k)(2)(B)(i)(IV) of the Code; and

(iv) The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(3) *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, a qualified trust described in Section 401 (a) of the Code, an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of Code Section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.

(4) *Distributee*: A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated beneficiary as defined in Section 401(a)(9)(E) of the Code who is not the surviving spouse and who elects a direct rollover to an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code shall be considered a distributee.

(5) *Direct rollover*: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(e) Notwithstanding any other provision of this plan, the maximum amount of any mandatory distribution, as defined in Section 401(a)(31) of the Code, payable under the plan shall be one thousand dollars (\$1,000.00).

(f) *Compensation Limitations Under 401(a)(17)*: In addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the plan to the contrary, the annual compensation of each participant taken into account under the plan shall not exceed the EGTRRA annual compensation limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is two hundred thousand dollars (\$200,000.00), as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than twelve (12) months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Any reference in the plan to the limitation under Section 401 (a)(17) of the Code shall mean the EGTRRA annual compensation limit set forth in this provision.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2010-25, §§ 2—4, 10-19-10)

§ 16-252. Separation from employment for military service.

The years or parts of a year that a member serves in the military service of the armed forces of the United States, the United States merchant marine or the United States Coast Guard, voluntarily or involuntarily, after separation from employment as a police officer with the city to perform training or service, and reemployment on or after December 12, 1994, shall be added to his or her years of credited service for all purposes, provided that:

(1) The police officer must return to his or her employment as a police officer within one (1) year from the earlier of the date of his or her military discharge or his or her release from service.

(2) In order to qualify for the purchase of credited service pursuant to this section, the police officer must have been discharged or released from service under honorable conditions.

(3) This section is intended to meet or exceed the minimum requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA), (P.L. 103-353). To the extent that this section does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2010-25, §§ 2, 3, 10-19-10)

§ 16-253. Prior police officer service.

Unless otherwise prohibited by law, and except as provided for in section 16-231, the years or fractional parts of years that a police officer previously served as a police officer with the city during a period of previous employment and for which period accumulated contributions were withdrawn from the fund, shall be added to his or her years of credited service provided that:

(1) The police officer contributes to the fund the sum that he or she would have contributed, based on his or her salary and the member contribution rate in effect at the time that the credited service is requested, had he or she been a member of this system for the years or fractional parts of years for which he or she is requesting credit, plus amounts actuarially determined, such that the crediting of service does not result in any cost to the fund, plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.

(2) Payment by the police officer of the required amount shall be made within six (6) months of his or her request for credit and shall be made in one (1) lump sum payment to the board, upon receipt of which credited service shall be given.

(3) The maximum credit under this section shall be five (5) years of credited service and shall count for all purposes.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2004-08, § 2, 5-18-04; Ord. No. 2010-25, §§ 2, 3, 10-19-10)

§ 16-254. Military service prior to employment.

The years or completed months that a member serves or has served on active duty in the military service of the armed forces of the United States or the United States merchant marine, voluntarily or involuntarily, honorably or under honorable conditions, prior to first and initial employment with the city shall be added to his years of credited service provided that:

(1) The member contributes to the fund the sum that he would have contributed, based on his salary and the member contribution rate in effect at the time that the credited service is requested, had he been a member of the system for the years or completed months for which he is requesting credit, plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund or the city, plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.

(2) Payment by the member of the required amount shall be made within six (6) months of the member's request for credit and shall be made in one (1) lump sum payment upon receipt of which credited service shall be issued.

(3) The maximum credit under this section shall be five (5) years.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2004-08, § 2, 5-18-04; Ord. No. 2010-25, §§ 2, 3, 10-19-10)

§ 16-255. Miscellaneous provisions.

- (a) *Interest of members in plan.* At no time prior to the satisfaction of all liabilities under the plan with respect to retirees and members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.
- (b) *No reduction of accrued benefits.* No amendment or ordinance shall be adopted by the city commission which shall have the effect of reducing the then vested accrued benefits of members or a member's beneficiaries.
- (c) *Qualification of plan.* It is intended that the plan will constitute a qualified public pension plan under the applicable provisions of the Code, as now in effect or hereafter amended. Any modification or amendment of the plan shall apply retroactively, if necessary or appropriate, to qualify or maintain the plan in meeting the requirements of the applicable provisions of the Code as now in effect or hereafter amended, or any other applicable provisions of the United States federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder.
- (d) *Use of forfeitures.* Forfeitures arising from terminations of service of members shall serve only to reduce future city contributions.
- (e) *Discharge of members.* Members entitled to a benefit shall not forfeit the same upon dismissal from the city, but shall retain entitlement as herein described.
- (f) *Incompetents.* If any member or beneficiary is a minor or is, in the judgment of the board, otherwise incapable of personally receiving and giving a valid receipt for any payment due him under the plan, the board may, unless and until claims shall have been made by a duly appointed guardian of such person, make such payment or any part thereof to such person's spouse, children, or other person deemed by the board to have incurred expenses or assumed responsibility for the expenses of such person. Any payment so made shall be a complete discharge of any liability under the plan for such payment.
- (g) *Personal data to board.* Each member and each beneficiary of a deceased member must furnish to the board such evidence, data or information as the board considers necessary or desirable for the purpose of administering the plan. The provisions of this plan are effective for the benefit of each member upon the condition precedent that each member will furnish promptly full, true and complete evidence, data and information when requested by the board, provided the board shall advise each member of the effect of his failure to comply with its request.
- (h) *Address for notification.* Each member and each beneficiary of a deceased member shall file with the board from time to time, in writing, his post office address and any change of post office address. Any communication, statement or notice addressed to a member, or beneficiary, at his last post office address filed with the board, or as shown on the records of the city, shall bind the member, or beneficiary, for all purposes of this plan.
- (i) *Word usage.* Words used in the masculine shall apply to the feminine where applicable, and wherever the context of the plan dictates, the plural shall be read as the singular and the singular as the plural.
- (j) *State law.* Florida law shall determine all questions arising with respect to the provisions of this plan except to the extent federal statute supersedes state law.

(k) *Employment not guaranteed.* Nothing contained in this plan, or with respect to the establishment of the trust, or any modification or amendment to the plan or trust, or in the creation of any account, or the payment of any benefit, shall give any employee, employee-member or any beneficiary any right to continue employment, any legal or equitable right against the city, or employee of the city, or against the trustee, or its agents or employees, or against the plan administrator, except as expressly provided by the plan, the trust, the act or by a separate agreement.

(l) *Waiver of notice.* Any person entitled to notice under the plan may waive the notice.

(m) *Successors.* The plan shall be binding upon all persons entitled to benefits under the plan, their respective heirs and legal representatives, upon the city, its successors and assigns, and upon the trustee, the board, the plan administrator and their successors.

(n) *Unclaimed account procedure.*

(1) The plan does not require either the board to search for, or ascertain the whereabouts of, any member or beneficiary. The board, by certified or registered mail addressed to his last known address of record with the board or the city, shall notify any member, or beneficiary, that he is entitled to a distribution under this plan, and the notice shall quote the provisions of this section. If the member, or beneficiary, fails to claim his distributive share or make his whereabouts known in writing to the board within six (6) months from the date of mailing of the notice, or before the termination or discontinuance of this plan, whichever should first occur, the board shall treat the member's or beneficiary's unclaimed payable accrued benefit as forfeited. The city shall use the amounts representing the forfeited accrued benefit to reduce its contribution for future plan years.

(2) If a member or beneficiary who has incurred a forfeiture of his accrued benefit under the provisions of paragraph (1) above makes a claim, at any time, for his forfeited accrued benefit, the board shall restore the member's or beneficiary's forfeited accrued benefit. The board shall direct the distribution of the member's or beneficiary's accrued benefit. The board shall direct the distribution of the member's or beneficiary's accrued benefit as if the member's employment terminated in the plan year in which the board restored the forfeited benefit.

(o) *Co-mingling of investments.* The board for collective investment purposes, may combine into one (1) trust fund the trust created under this plan with the trust created under any other qualified retirement plan the city maintains. However, the board shall maintain separate records of account for each trust in order to reflect properly each member's accrued benefit under the plan(s) in which he is a member.

(p) *Miscellaneous provisions affecting payment of benefits generally.* In general, the board shall make payment of any pension directly to the member entitled to the payment. However, the board, in lieu of paying the pension which a member is to receive directly from the fund, may purchase from an insurance company selected by the board, a nontransferable annuity contract. The nontransferable annuity contract must provide pension and other benefits in an amount not less than the pension and other benefits a member would receive under this plan, and must satisfy all consent and distribution requirements prescribed by the plan. In the event the board purchase a nontransferable annuity contract for the benefit of a member, the board may either assign the contract to the member or hold the contract for the benefit of the member pursuant to the instructions of the board. The board also may purchase a nontransferable annuity contract for the benefit of a designated beneficiary or surviving spouse entitled to distribution of all or a portion of the member's nonforfeitable accrued benefit.

(q) *No responsibility for city action.* The board shall not have any obligation nor responsibility with respect to any action required by the plan to be taken by the city, any member, nor for the failure of any of the above persons to act or make any payment or contribution, or to otherwise provide any benefit contemplated under this plan, nor shall the board be required to collect any contribution required under the plan, or determine the correctness of the amount of any city contribution. The board need not inquire into or be responsible for any action or failure to act on the part of the others.

(r) *No liability.* The city assumes no obligation or responsibility to any of its employees, members or beneficiaries for any act of, or failure to act, on the part of the board.

(s) *Statutory preemption.* In the event of any conflict with the provisions of this plan, the provisions of F.S. ch. 185 shall control to the extent of any such conflict.

(t) *Statutory amendment.* Any and all amendments to F.S. ch. 185, the compliance of which are necessary for the continued participation of the plan under F.S. ch. 185, are hereby adopted by reference as if made by the city.

(Ord. No. 98-19, § 2, 10-20-98; Ord. No. 2010-25, §§ 2, 3, 10-19-10)

§ 16-256. Defined Contribution Component Supplemental Retirement Benefit.

Effective: Tuesday, December 06, 2016

(a) There is hereby provided, in addition to all other benefits provided in this Article, a defined contribution component supplemental retirement benefit. The defined contribution component supplemental retirement benefit shall consist of an individual share account for each Member of the Plan, including DROP participants. The supplemental retirement benefit shall be funded solely by premium tax revenues in excess of the 2013 frozen amount received by the city pursuant to F.S. Ch. 185, as provided for by the City of Lake Wales Code of Ordinances. Effective October 1, 2016, fifty percent (50%) of the premium tax revenues received by the City in excess of the 2013 frozen amount shall be allocated to Members' share accounts as provided for herein with the remaining fifty percent (50%) of the premium tax revenue received by the City to be used at the discretion of the City toward current year benefits (either defined benefit or defined contribution), as an immediate reduction of unfunded actuarial liability (UAL) balance, or reserved as a prepaid sponsor contribution toward future required funding. Member share accounts shall be credited with premium tax revenues and investment earnings and losses and account distributions as outlined herein.

(b) Annual crediting. Effective January 1, 2017, and each January 1 thereafter, the share account of each Member and DROP participant on the City's payroll as of the preceding September 30TH shall be credited as follows. Each Member and DROP participant who was employed on the preceding September 30TH shall receive one share for each complete year and fractional part of years of Credited Service, as defined in section 16-231, determined as of the end of the Plan year ending on the same September 30TH. The total number of shares thus determined shall be divided into the total premium tax revenues received during that plan year to determine the amount to be credited to the share account of each eligible share plan participant.

(c) Investment earnings and losses. Effective January 1, 2017, and each January 1 thereafter, the share account of each Member and DROP participant shall be credited or debited with earnings or losses based upon the amount in the share account at the beginning of the immediately preceding fiscal year at a rate equal to the Plan's actual net rate of investment return for such fiscal year. Share accounts shall be commingled in the Fund and invested as with any other Fund asset. Share accounts shall be segregated into individual member accounts on a bookkeeping basis only. Alternatively, effective upon adoption, instead of the "net investment return" as set forth above, each Member may direct a one-time irrevocable election at any time prior to separation from service that his or her Share account be invested in a money market fund as may be made available from time to time by the board. The electing member's Share account shall be credited or debited at a rate equal to the net rate of investment return realized by such money market fund.

(d) Distribution of share accounts. A Member or DROP participant with ten or more years of credited service upon termination of employment and eligibility for receipt of pension benefits shall be eligible to receive a distribution of the balance in his or her share account, together with all earnings and losses credited or debited to the share account through the date of termination of employment. No supplemental retirement benefit shall be payable to a Member who terminates covered employment with less than ten years of Credited Service. The share account balances of such non-vested terminated Members shall be redistributed among all eligible participants' share accounts in the same manner as premium tax revenues in the following calendar year. The designated beneficiary of a Member who dies having accumulated ten or more years of Credited Service shall receive the accumulated total of the Member's share account balance. There shall be no forfeiture of a Member's share account based on the Member's death, disability, or termination of employment with ten or more years of Credited Service. Payment of share account benefits shall be by lump sum, which shall consist of the accumulated total balance of a Member's share account, or, at the Member's direction, the share account balance may be rolled over to another qualified plan in accordance with section 16-251 of this Plan. One additional payment or rollover will be made on the January 1 following termination of employment for any supplemental retirement benefit amount credited for the Member's year of termination.

(Ord. No. 2016-15, § 1, 12-06-16)

Article V. Old Age And Survivor's Insurance

§ 16-301. Old age and survivor's insurance for city officials and employees adopted.

It is hereby declared to be the policy and purpose of the city to extend, effective as of January 1, 1951, to the employees and officials thereof, not excluded by law, and whether employed in connection with a governmental or proprietary function, the benefits of the system of old age and survivor's insurance as authorized by the Federal Social Security Act and amendments thereto, including Public Law No. 734 of 81st Congress, and by F.S. ch. 650; and to cover by such plan all services which constitute employment as defined in F.S. ch. 650, performed in the employ of the city by employees thereof. In pursuance of such policy, and for that purpose, the city shall take such action as may be required by applicable state or federal laws or regulations.

(Code 1962, § 17-1)

§ 16-302. Authority to execute agreements and extend benefits; persons excepted.

The mayor-commissioner or other chief executive officer of the city is hereby authorized and directed to execute all necessary agreements and amendments thereto with the state for the purpose of extending the benefits provided by such system of old age and survivor's insurance to the employees and officials of this city as provided in section 16-301, which agreement shall provide for such methods of administration of the plan by the city as are found by the state agency to be necessary for the proper and efficient administration thereof, and shall be effective with respect to services in employment covered by such agreement performed after January 1st, 1951.

(Code 1962, § 17-2)

§ 16-303. Salary withholdings authorized; disposition of funds.

Withholdings from salaries, wages, or other compensation of employees and officials for the purpose provided in section 16-301 are hereby authorized to be made, and shall be made, in the amounts and at such time as may be required by applicable state or federal laws or regulations, and shall be paid over to the state agency designated by such laws or regulations to receive such amounts.

(Code 1962, § 17-3)

§ 16-304. Contributions by city; appropriations from general fund.

There shall be appropriated from available funds derived from general fund, such amounts at such times as may be required, to pay promptly the contributions required of the city as employer by applicable state or federal laws or regulations, which shall be paid over in the manner provided by law and regulation.

(Code 1962, § 17-4)

§ 16-305. Records and reports.

The city shall keep such records and make such reports as may be required by applicable state or federal laws or regulations, and shall adhere to the rules and regulations of the state agency for the enforcement of such laws and regulations.

(Code 1962, § 17-5)

§ 16-306. Title II, Social Security Act adopted; persons excepted.

The city does hereby adopt the terms, conditions, requirements, reservations, benefits, privileges and other conditions thereunto appertaining, of Title 2 of the Social Security Act as amended by Public Law No. 734, 81st Congress, for and on behalf of all the officers and employees thereof and of its departments and agencies, save and except any official or employee who occupies any position, office, or employment not authorized to be covered by applicable state or federal laws or regulations.

(Code 1962, § 17-6)

§ 16-307. Custodian of funds; withholding and reporting agent designated.

The finance director of the city is hereby designated the custodian of all sums withheld from the compensation of officers and employees and of the appropriated funds for the contribution of the city, and the city auditor and clerk of the city is hereby made the withholding and reporting agent and charged with the duty of maintaining personnel records for the purposes of this article.

(Code 1962, § 17-7)
