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Boynton Beach, FL Code of Ordinances

ARTICLE III. MUNICIPAL POLICE OFFICERS' RETIREMENT TRUST FUND*

***Cross reference**-Excise tax on casualty insurers for police retirement, § 23-2.

Sec. 18-164. Creation and maintenance of fund and retirement system.

(a) There is hereby created a special pension fund for the Police Officers of Boynton Beach, Florida, to be known as the Boynton Beach Police Officers' Pension Fund. All assets of every description held in the name of the Boynton Beach Police Officers' Retirement Trust Fund shall continue to be held, but such fund shall hereafter be known as the Boynton Beach Police Officers' Pension Fund and shall be administered as set forth in this article of Chapter 18 of the City of Boynton Beach Code.

(b) The fund shall be maintained in the following manner:

(1) By payment to the fund of the net proceeds of the .85% excise tax which is imposed by the City of Boynton Beach upon certain casualty insurance companies on their gross receipts of premiums from holders of policies, which policies cover property within the corporate limits of the City of Boynton Beach as authorized in F.S. Chapter 185, amended. These amounts are to be deposited with the Board of Trustees within five days of receipt by the municipality. F.S. Ch. 185. In November of 2017 and November of 2018 only, \$30,000.00 of the insurance premium excise tax provided for in this subsection will be used by the City to offset the unfunded actuarial liability of the fund. The remainder of the funds will be used as set forth in Section 18-169(f) of the plan, which provides for a supplemental benefit as defined in F.S. Section 185.02(22).

(2) By the payment to the fund of 7% of the salary of each full time police officer duly appointed and enrolled as a member of the City of Boynton Beach Police Department; which 7% shall be picked up, rather than deducted, by the City of Boynton Beach from the compensation due to the Police Officer and paid over to the Board of Trustees of the Boynton Beach Police Officers' Pension Fund on a bi-weekly basis. All pickup contributions shall be treated as employer contributions for the purposes of determining tax treatment under the Internal Revenue Code of 1986, as amended. All such pick up amounts shall be considered as employee contributions for purposes of this plan. The percentage deducted from the police officers' salaries are to be deposited with the Board of Trustees immediately. F.S. Ch.185, Boynton Beach Code of Ordinances Sec. 18-170.

(3) By all fines and forfeitures imposed and collected from any police officer because of the violation of any rule and regulation adopted by the Board of Trustees. F.S. Ch. 185.

(4) By mandatory payment at least quarterly by the City of Boynton Beach a sum equal to the normal cost and the amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in F.S. Chapter 112, Part VII. F.S. Ch. 185. On an annual basis, the Board of Trustees will evaluate the actuarial assumptions used.

(5) By all gifts, bequests, and devises when donated to the fund. F.S. Ch. 185.

(6) By all accretions to the fund by way of interest or dividends on bank deposits, or otherwise. F.S. Ch. 185.

(7) By all other sources or income now or hereafter authorized by law for the augmentation of the Boynton Beach Police Officers' Pension Fund. F.S. Ch. 185.

(c) Under no circumstances may the City of Boynton Beach reduce the member contribution to less than 0.5% of salary.

(Ord. 10-005, § 2, 2-2-10; Ord. No. 18-006, § 2, 5-15-18)

Sec. 18-165. Definitions.

(a) The following words or phrases, as used in this article, shall have the following meaning:

Actuarial equivalence or actuarially equivalent. Any benefit payable under the terms of this plan in a form other than the normal form of benefit shall have the same actuarial present value on the date payment commences as the normal form of benefit. For purposes of establishing the actuarial present value of any form of payment, all future payments shall be discounted for interest and mortality by using 8% interest and the 1983 Group Annuity Mortality Table, blending 80% males and 20% females, with ages set ahead five years in the case of disability retirees.

Average final compensation. The average total remuneration received by a police officer during the best five years of service with the city within the last ten. F.S. Ch. 185, Boynton Beach Code of Ordinances Section 18-168, as amended by Ord. No. 0 00-18 and 00-004.

Compensation or salary. The total cash remuneration including lump sum payments for accumulated sick and vacation leave and "overtime" paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or a special detail work performed on behalf of a second party employer paid directly to the police officer by the second party employer and amounts paid to a police officer after December 31, 2008 as differential wages during any period of active duty military service lasting more than 30 days. This definition also excludes severance pay and other similar payments which are not for services rendered. The member's compensation or salary contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code shall be deemed to be the compensation or salary the member would receive if he or she were not participating in such program and shall be treated as compensation for retirement purposes under this article. For any person who first becomes a member in any Plan year beginning on or after January 1, 1996, compensation for any Plan year shall not include any amounts in excess of section 401(a)(17) of the Internal Revenue Code limitation (as amended by the Omnibus Budget Reconciliation Act of 1993), which limitation of \$150,000 shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by section 401(a)(17)(B) of the Internal Revenue Code. For any person who first became a member prior to the first plan year beginning on or after January 1, 1996, the limitation on compensation shall be not less than the maximum compensation amount that was allowed to be taken into account under the plan as in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by section 401(a)(17) of the Internal Revenue Code. F.S. Ch. 185.

Creditable service or credited service. The aggregate number of years of service and fractional parts of years of service of any police officer, omitting intervening years and fractional parts of years when such police officer may not have been employed by the municipality subject to the following conditions:

(1) No police officer will receive credit for years or fractional parts of years of service if he or she has withdrawn his or her contributions to the fund for those years or fractional parts of years of service, unless the police officer repays into the Fund the amount he or she has withdrawn, plus interest as determined by the board in accordance with Section 18-172.

(2) A police officer may voluntarily leave his or her contributions in the fund for a period of five years after leaving the employ of the police department, pending the possibility of his or her being rehired by the same department, without losing credit for the time he or she has participated actively as a police officer. If he or she is not reemployed as a police officer with the same department within five years, his or her contributions shall be returned to him or her without interest.

(3) In determining the creditable service of any police officer, credit for up to five years of the time spent in the military service of the Armed Forces of the United States shall be added to the years of actual service, if:

a. The police officer is in the active employ of the municipality prior to such service and leaves a position, other than a temporary position, for the purpose of voluntary or involuntary service in the Armed Forces of the United States.

b. The police officer is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act.

c. The police officer returns to his or her employment as a police officer of the municipality within one year from the date of his or her release from such active service except that effective January 1, 2007, police officers who die or become disabled while serving on active duty military service shall be entitled to the rights of this section even though such member was not re-employed by the city as a police officer. Members who die or become disabled while on active duty military service shall be treated as through re-employed as a police officer the day before the member became disabled or died, and then considered for entitlement for a death or disability benefit. If the member's death or disability arises out of the member's active service in the military, then the member is entitled to a duty death or duty disability benefit. If the death or disability occurs while the member is serving on active duty military service but does not arise out of such service, then the member, if vested, is entitled to a non-duty disability benefit.

(4) Continuous service with the employer shall not be broken in the event of:

a. Absence on an approved leave of absence;

b. Absence from work because of occupational injury or disease incurred in employment for which a police officer is entitled to Workers' Compensation payments;

c. Absence due to service in the Armed Forces of the United States provided the officer shall re-enter employment with the city within one year of discharge.

Beneficiary. Any person, including the estate of the member, who is entitled to receive a pension benefit payable from the Boynton Beach Police Officers' Pension Fund upon the death of a member or participant. F.S. Ch. 185.

Fund or Police Officers' Pension Fund. The Boynton Beach Police Officers' Pension Fund. F.S. Ch. 185.

Plan year. The fiscal year commencing October 1 and ending the following September 30. Boynton Beach Code of Ordinances Section 18-171, Ord. No. 90-23, § 1, 8-7-90.

Police officer. Any person who is elected, appointed or employed full time by the City of Boynton Beach, who is certified or required to be certified as a law enforcement officer in compliance with F.S. Section 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 as the same are defined in F.S. Section 943.10(6) and (8). F.S. Ch. 185.

Retiree or retired police officer. A police officer who has entered retirement status. For the purposes of the deferred retirement option plan (DROP), a police officer who enters the DROP shall be considered a retiree for all purposes of the plan. F.S. Ch. 185.

Retirement. A police officer's separation from city employment with immediate eligibility for receipt of benefits under the plan. For purposes of the DROP, *retirement* means the date a police officer enters the DROP. F.S. Ch. 185.

(b) The masculine gender includes the feminine and words of the singular with respect to persons include plural and vice versa.

(Ord. 10-005, § 2, 2-2-10)

Sec. 18-166. Board of Trustees created.

(a) *Board of Trustees.* There is hereby created a Board of Trustees of the Boynton Beach Police Officers' Pension Fund which shall be solely responsible for administering the pension fund. The Board of Trustees shall be a legal entity, with the power to bring and defend lawsuits of every kind, nature and description, and to the extent required to accomplish the intent, requirements and responsibilities provided for in this article. The Board shall consist of five Trustees as follows:

(1) Two legal residents of the city, who shall be appointed by the City Commission. Effective for terms beginning after the effective date of Ord. No. 10-005, passed 2-2-10, each city Trustee shall have a term of four years but serves at the pleasure of the City Commission. Each city Trustee may succeed himself or herself as a Trustee.

(2) Two police officer participants of the City of Boynton Beach Police Officers Pension Fund, who are elected by a majority of the police officer participants in the fund. Elections shall be held under such rules and regulations as the Board of Trustees shall from time to time adopt. Effective for terms beginning after the effective date of Ord. No. 10-005, passed 2-2-10, each police officer Trustee shall serve as a Trustee for a period of four years, unless he or she sooner ceases to be a police officer in the employ of the Boynton Beach Police Department, whereupon their successor shall be elected by a majority of the participants of the Boynton Beach Police Officers' Pension Fund. Each police officer Trustee may succeed himself or herself as a Trustee.

(3) A fifth Trustee shall be chosen by the majority of the other four Trustees. This fifth Trustee's name shall be submitted to the City Commission, which shall, as a ministerial duty, appoint such person to the Board as a fifth Trustee. Effective for terms beginning after the effective date of Ord. No. 10-005, passed 2-2-10, the fifth Trustee shall serve as a Trustee for a period of four years, and may succeed himself or herself as a Trustee.

(b) *Board vacancies; procedures to fill same.* In the event a Trustee provided for in Section 18-166(a) (2) ceases to be a police officer in the employ of the City of Boynton Beach Police Department, he or she shall be considered to have resigned from the Board of Trustees. In the event such a Trustee shall resign, be removed, or become ineligible to serve as Trustee, the Board shall, by motion, declare that office of Trustee vacated as of the date of adoption of such motion. If such a vacancy occurs in the office of Trustee within 90 days of the next succeeding election for Trustee, the vacancy shall be filled at the next regular election for the unexpired portion of the term; otherwise, the vacancy shall be filled for the unexpired portion of the term at a special election called by the Board. In the event a Trustee provided for in Section 18-166(a)(1) and (3) shall resign, be removed or become ineligible to serve as Trustee, the Board shall, by motion, declare that office of Trustee vacated as of the date of adoption of the motion. The successor for the unexpired portion of the term shall be chosen in the same manner as an original appointment.

(c) *Board meetings; quorum; procedures.* The Board of Trustees shall hold meetings regularly, at least once each quarter and shall designate the time and place thereof. At any meeting of the Board, three Trustees shall constitute a quorum. Each Trustee shall be entitled to one vote on each question before the Board and at least three concurring votes shall be required for a decision by the Board at any of its meetings. The Board shall adopt its own rules and procedures and shall keep a record of its proceedings. All meetings of the Board shall be open to the public. No Trustee shall take part in any action in connection with their own participation in the fund, and no unfair discrimination shall be shown to any individual police officer participating in the fund.

(1) *Board chairman and secretary.*

a. The Board of Trustees shall, by majority vote, elect from its members a chairman and a secretary.

b. The secretary of the Board shall keep:

1. A complete minute book of the actions, proceedings or hearings of the Board;
2. A record of all persons receiving retirement payments under the plan which includes the time when the pension is allowed and when the pension shall cease to be paid; and
3. A list of all police officers employed by the municipality which includes the name, address and dates of hire and termination.

(d) *Compensation.* The Trustees of the Boynton Beach Police Officers' Pension Fund shall not receive any compensation for their services as such, but may receive expenses and per diem when performing official duties in administering the fund.

(Ord. 10-005, § 2, 2-2-10)

Sec. 18-167. Powers of the Board of Trustees.

(a) The Board of Trustees:

(1) May invest and reinvest the assets of the Boynton Beach Police Officers' Pension Fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all the participants in the Pension Fund shall be entitled under the provisions of this article, and pay the initial and subsequent premiums thereon from the integral part of the fund. If current state contributions are adequate to fund minimum requirements of F.S. Chapter 185, additional state funds may be used to provide benefits that exceed requirements of F.S. Chapter 185.

(2) Shall have the power and authority to invest and reinvest the monies of the fund, and to hold, purchase, sell, assign, transfer and dispose of any securities and investments held in the fund, including the power and authority to employ counseling or investment management services. The aim of the investment policies shall be to preserve the integrity and security of fund principal, to maintain a balanced investment portfolio, to maintain and enhance the value of the fund principal, and to secure the maximum total return on investments that is consonant with safety of principal; provided that such investments and re-investments shall be limited only by the investments permitted by the investment policy guidelines adopted by the Board in accordance with Florida law, notwithstanding the provisions of Section 18-221 of the code. Further, notwithstanding the foregoing, investments in foreign investments are limited in accordance with F.S. Section 185.06(1)(b)4. The Board must discharge these duties with respect to the plan solely in the interest of the participants and beneficiaries and: (i) for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan; (ii) with the care, skill, prudence and diligence under the circumstances then prevailing, that a prudent person, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; and (iii) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

(3) May issue drafts upon the Boynton Beach Police Officers Pension Fund pursuant to this article and rules and regulations prescribed by the Board of Trustees. All such drafts shall be consecutively numbered and shall be signed by the chairman and secretary of the Board or their designee and shall state upon their faces the purpose for which the drafts are drawn. The City Treasurer shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money shall be otherwise drawn from the fund.

(4) May convert into cash any securities of the Fund as it may deem advisable, having regard for the cash requirements of the fund.

(5) Shall keep a complete record of all receipts and disbursements, and of its acts and proceedings.

(6) 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, but the books and records shall at all times show that all investments are part of the fund.

(b) The sole and exclusive administration of, and the responsibilities for, the proper operation of the retirement fund and for making effective the provisions of this chapter are vested in the Board of Trustees.

(c) The Board of Trustees shall retain a professionally qualified independent consultant who shall evaluate the performance of any existing professional money manager and shall make recommendations to the Board of Trustees regarding the selection of money managers, if necessary. The term "professionally qualified independent consultant" shall have the meaning as set forth in F.S. Section 185.06(5)(b).

(d) The Board of Trustees may employ such independent professional, technical or other advisers as may be needed to fulfill the Board's responsibilities under this Pension Plan. These professionals include but are not limited to: legal counsel, actuary and certified public accountants. If the Board chooses to use the city's legal counsel, actuary or other professional, technical or other advisers, it must do so only under terms and conditions acceptable to the Board.

(e) Notwithstanding anything else in this subsection and as provided in F.S. Section 215.473, the Board of Trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section. Beginning January 1, 2010, the Board must proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have directly in that company. The divestiture of any such security must be completed by September 10, 2010. The Board and its named officers of investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the Board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by F.S. Section 215.473, as provided for in F.S. Section 185.06(7) and the manner of disposition, if any, is reasonable as to the means chosen. For purposes of determining which companies are scrutinized companies, the Board may utilize the list of scrutinized companies as developed by the Florida State Board of Administration. No person may bring any civil, criminal, or administrative action against the Board of Trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this subsection.

(Ord. 10-005, § 2, 2-2-10)

Sec. 18-168. Membership.

All police officers who are participants in the fund as of the effective date of this article shall be members of this retirement system. Each police officer shall be included in this plan on the date of hire.

(Ord. No. 10-005, § 2, 2-2-10)

Sec. 18-169. Requirements for retirement- benefit amounts.

(a) *Normal retirement.*

(1) *Normal retirement date.* The normal retirement date of each police officer will be the first day of the month coinciding with, or next following, the date on which he or she has attained and completed 20 years of service, or the first day of the month coinciding with, or next following, the date on which the police officer has attained age 55 and completed ten years of service or age 50 and completed 15 years of service. In the case of a retirement with 20 years of service, effective January 1, 2017, normal retirement age is the age a police officer has attained when retired at 20 years of service.

(2) *Normal retirement benefit.* The normal retirement benefit payable to a police officer who retires on or after the normal retirement date shall be an amount equal to the number of years of his or her credited service multiplied by 3.5% of his or her average final compensation. Effective [insert effective date], for all police officers hired on or after October 1, 2015, the 3.5% multiplier provided for in the paragraph shall be 3.0%.

(3) *Form of benefit.* A retired police officer's retirement benefit normally shall be payable in the form of a monthly life annuity with 120 monthly payments guaranteed. This form of annuity provides for a

retirement benefit payable monthly to the retired employee during their lifetimes with a guarantee that not less than 120 monthly retirement benefits shall be paid, even if the retired employee dies prior to the receipt of 120 payments.

(b) *Early retirement.*

(1) *Early retirement date.* An employee who has attained age 50 and completed at least ten years of credited service may elect to terminate employment and retire on an early retirement date which may be the first day of any month after ten years of service and attainment of age 50.

(2) *Early retirement benefit.* The monthly amount of early retirement benefits payable to a police officer who retires on the early retirement date shall be determined in accordance with Section 18-169(a) based on credited service to the early retirement date subject to an actuarial reduction of 1.5% per year of service to take into account the police officer's younger age and the earlier commencement of retirement benefits. The early retirement benefit shall be paid in accordance with Section 18-169(a).

(c) *Disability retirement.*

(1) *Service incurred.*

a. Any member who receives a medically substantiated service connected injury, disease or disability which injury, disease or disability totally and permanently disabled him or her to the extent that in the opinion of the Board of Trustees, he or she is wholly prevented from rendering useful and efficient service as a police officer shall receive a monthly benefit equal to $66 \frac{2}{3}\%$ of his or her basic rate of earnings in effect on the date of disability.

1. Such benefit shall be payable on the first day of each month, commencing on the first day of the month following the latter to occur of the date on which the disability has existed for three months and the date the Board of Trustees approved the payment of such retirement income. A disability retiree may select from the optional forms of benefits available to service retirees in accordance with Section 18-170.

2. In the event of recovery prior to the otherwise normal retirement date, credit for service during the period of disability shall be granted for purposes of subsequent retirement benefits. Subsequent retirement benefits will be actuarially reduced to account for the benefits that were paid during the period of disability.

3. The amount of the disability benefit payment from the fund shall be reduced by any amounts paid from worker's compensation and the federal social security system. The reduction for social security benefits shall be in the amount of the primary insurance amount (PIA) only, and future increases, if any, in the disabled member's social security disability benefits shall not serve to reduce any further the disability benefit from the fund. The reduction for social security shall terminate upon the attainment of age 65. The pension benefit may only be reduced to the extent that the total of the benefits from this fund, workers' compensation and social security benefits exceed 100% of the disabled member's basic rate of earnings on the date of disability. However, in all cases the benefit will be at least 42% of average final compensation.

b. Terminated persons, either vested or non-vested, are not eligible for disability benefits, except that those terminated by the city for medical reasons may apply for a disability within 30 days after termination.

c. Any condition or impairment of health of a member caused by tuberculosis; hypertension, heart disease, hardening of the arteries, hepatitis, or meningococcal meningitis resulting in total or partial disability or death, shall be presumed to be accidental and suffered in the line of duty unless the contrary be shown by competent evidence. Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the member, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty, provided that such member shall have successfully passed a physical examination upon entering such service, which physical examination including electrocardiogram failed to reveal any evidence of such condition.

In order to be entitled to presumption in the case of hepatitis, meningococcal meningitis, or tuberculosis, the member must meet the requirements of F.S. Section 112.181. The final decision whether a member meets the requirements for duty disability pension rests with the board and shall be based on substantial competent evidence on the record as a whole.

(2) *Nonservice incurred.* Effective October 1, 2000, any member with ten years of continuous service who receives a nonservice incurred injury, illness, disease or disability, and which illness, injury, disease or disability totally and permanently disables him or her to the extent that, in the opinion of the Board of Trustees, he or she is wholly prevented from rendering useful and efficient service as a police officer, shall receive from the fund in equal monthly installments an amount equal to 3.5% of his or her average final compensation for each year of continuous service until death or recovery from disability whichever shall first occur, provided, however, the maximum benefit to which a member may become entitled under this paragraph shall not exceed 60% of his or her average final compensation during said period, but in all cases the benefit will be at least 25% of average final compensation during said period. Such benefit shall be payable on the first day of each month, commencing on the first day of the month following the latter to occur of the date on which the disability has existed for three months and the date the Board of Trustees approved the payment of such retirement income. Effective [insert effective date], for all police officers hired on or after October 1, 2015, the 3.5% multiplier provided for in this paragraph shall be 3.0%. Terminated persons, either vested or non-vested, are not eligible for disability benefits, except that those terminated by the city for medical reasons may apply for a disability within 30 days after termination.

(3) *Medical Board.* Whenever it becomes necessary for the Board to avail itself of the services of physicians in the case of an application for disability retirement, the Board shall designate a Medical Board to be composed of competent medical authorities and/or specialists, as needed. The Medical Board shall arrange for and pass upon the medical examinations required under the provisions of this section, shall investigate all essential statements or certificates made by or on behalf of a member in connection with an application for disability retirement and shall report in writing to the Board its conclusions and recommendations upon all matters referred to it. The payment for such services shall be determined by the Board.

(4) *Return to active duty from disability retirement.* In the event a member who has been retired on a pension on account of permanent and total incapacity regains his or her health and is found by the Medical Board designated by the Board to be in such physical and mental condition as to meet the requirements of the personnel department for service as a police officer of the city, the Board shall order his or her pension discontinued, and he or she shall be ordered to resume active duty in the city at the same rate of compensation currently in effect for his or her pay grade. The Board shall review periodically, in its discretion, the condition of any member receiving a pension for disability and if there is substantial evidence that the retired member is capable of performing service acceptable to the city as a police officer, he or she shall be ordered to resume active duty and his or her pension shall be discontinued.

(5) *Disability exclusions.* No member shall be granted a disability pension upon a showing to the satisfaction of the Board:

- a. That the disability resulted from an intentionally self-inflicted wound, injury or ailment, or
- b. That the disability resulted from excessive and habitual use of narcotics, drugs, or intoxicants (alcoholic beverages);
- c. That the disability resulted from an injury or disease sustained by the police officer while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime;
- d. That the disability resulted from an injury or disease sustained by the police officer while serving in any armed forces. This exclusion does not affect members who have become disabled as a result of intervening military service under the federal Heroes Earnings Assistance and Relief Tax Act of 2008 (H.R. 6081; P.L. 100-245);

e. That the disability resulted from an injury or disease sustained by the police officer after employment has been terminated; or

f. That, in the case of a duty disability only, the disability resulted from an injury or disease sustained by the police officer while working for anyone other than the city and arising out of such other employment.

(6) *Further disability provisions.* Each member applying for a service incurred disability benefit from this fund shall be required to apply for disability benefits under social security, and, if applicable, workers' compensation. Furthermore, each person granted a service incurred disability shall be required to submit to the Board, no later than March 1 of each year, a statement showing the monthly amount of social security (PIA only) and workers' compensation benefits received by him or her as of March 1. Willful refusal by such persons to comply with these regulations shall be grounds for the termination of or nonapproval of disability benefits from this system. However, the Board shall exercise its discretion in each case.

(d) *Death benefit.*

(1) If any member shall die prior to retirement or other termination of employment with the city and that death is found by the Board of Trustees to have occurred in the line of duty regardless of the years of service, a death benefit shall be payable to the deceased member's spouse. The benefit shall equal 3.5% of average final compensation for each year of continuous service; provided, however, the benefit will be at least 30% of average final compensation. It shall be payable in equal monthly installments commencing the first day of the month following the date of death and ceasing upon the death of the spouse. If there is no spouse, the deceased member's accrued benefit shall be payable to the designated beneficiary on file with the Board of Trustees, payable as the contingent annuitant 100% survivor benefit. If there is no spouse or designated beneficiaries, the benefit, if any, will be paid to the deceased participant's estate. Effective September 3, 2015, for all police officers hired on or after October 1, 2015, the 3.5% multiplier provided for in this paragraph shall be 3.0%.

(2) If any member with at least ten years of continuous service shall die prior to retirement or other termination of employment with the city, a death benefit shall be payable to the deceased member's spouse. The benefit shall equal 3.5% of average final compensation for each year of continuous service. It shall be payable in equal monthly installments commencing the first day of the month following the date of death and ceasing upon the death or remarriage of the spouse. If there is no spouse, the deceased member's accrued benefit shall be payable to the designated beneficiary on file with the Board of Trustees, payable as the contingent annuitant 100% survivor benefit. If there is no spouse or designated beneficiaries, the benefit, if any, will be paid to the deceased participant's estate. Effective September 3, 2015, for all police officers hired on or after October 1, 2015, the 3.5% multiplier provided for in this paragraph shall be 3.0%.

(3) If a member dies before being eligible to retire, the heirs, legatees, beneficiaries or personal representatives of such deceased member shall be entitled to a refund of 100% of the contributions made by the member to the fund, without interest.

(e) *Separation from service.*

(1) The vesting period for members hired on or after October 1, 2016, is ten years. The vesting period for members who were hired before October 1, 2016, and terminated after October 1, 2020, is five years of service. If a member leaves the service of the city before vesting, such member shall be entitled to a refund of all of his or her contributions made to the fund, without interest.

(2) *Benefit commencement date for ten-year vesting.* If any member who had been in the service of the city for at least ten years elects to leave his or her accrued contributions in the fund, such police officer upon attaining age 50 years or more (without reaching what would have been 20 years of service had he or she not terminated his or her employment) may receive an early retirement benefit at the actuarial equivalent of the amount of such retirement income otherwise payable to him or her at early retirement or upon attaining what would have been normal retirement had he or she not terminated his employment, such police officer may receive his or her accrued normal retirement benefit.

(3) *Benefit commencement date for five-year vesting.* If any member who had been in the service of the city for at least five years elects to leave his or her accrued contributions in the fund, the police officer upon attaining age 55 with ten or more years of service (had he or she not terminated employment) or reaching what would have been 20 years of service (had he or she not terminated his or her employment), may receive the accrued normal retirement benefit. The member may receive the benefits payable in the normal form or any option available under Section 18-170.

(f) *Monthly supplemental benefits.*

(1) Effective October 1, 2006, any eligible retiree, including DROP participants, or beneficiary receiving pension benefits is entitled to a monthly supplemental pension benefit. The benefit pool will be funded by 100% of the annual earnings and 10% of the principal created by the contributions set forth in subparagraph b. below.

a. Such benefit will be funded by a 1% contribution from the members and a 1% contribution from the 185 monies. The member and the 185 contributions shall be effective October 1, 2001. Employees will contribute to this benefit through 20 years of service.

b. The distribution provided for in this paragraph shall be divided among eligible retirees on a pro-rata basis in shares. The shares shall be determined based upon the sum of an eligible retiree's years and partial years of credited service (maximum credit is 20 years) plus the eligible retiree's years and partial retirement years as of September 30 of the current year (maximum credit of 20 years). The share value shall be determined by totaling all of the shares of eligible retirees divided into the current years' total distribution amount. An individual eligible retiree's distribution shall be equal to the number of the eligible retiree's shares multiplied by the share value.

c. This benefit shall be payable annually in a lump sum as of October 1, of each year, beginning December 1, 2006. The benefit shall be payable to the eligible retiree, including DROP participants, or any beneficiary eligible to receive benefits as a result of the death of a retiree. The benefit shall cease upon the death of the eligible retiree or beneficiary, whichever is the last surviving pension recipient.

(2) Beginning October 1, 2003, 100% of the money received pursuant to F.S. Chapter 185 ("185 money") each calendar year in excess of the base amount of \$465,087, plus 1% of payroll annually to fund the benefit as provided in paragraph (1), plus any 185 money held in reserve, shall be distributed to all current eligible retirees, including DROP participants, or beneficiaries receiving benefits. These supplemental benefit payments will be distributed according to the formula set for in subparagraph a. This distribution is in addition to the benefit provided for in paragraph (1) which shall begin October 1, 2006.

a. The distribution provided for in this subparagraph shall be divided among eligible retirees on a pro-rata basis in shares. The shares shall be determined based upon the sum of an eligible retiree's years and partial years of credited service (maximum credit is 20 years) plus the eligible retiree's years and partial retirement years as of September 30 of the current year (maximum credit of 20 years). The share value shall be determined by totaling all of the shares of eligible retirees divided into the current years' total distribution amount. An individual eligible retiree's distribution shall be equal to the number of the eligible retiree's shares multiplied by the share value.

b. Allocations for surviving spouses and surviving dependent children shall be based upon the formula in this subparagraph, adjusted by the percentage of the optional form of benefit selected.

c. This benefit shall be payable annually in a lump sum as of June 1 of each year, beginning June 1, 2004. The benefit shall be payable to the eligible retiree, including DROP participants, or any beneficiary eligible to receive benefits as a result of the death of a retiree. The benefit shall cease upon the death of the eligible retiree or beneficiary, whichever is the last surviving pension recipient.

(3) *Definitions.*

a. For purposes of this section only, "credited service" means the number of years and partial years of service originally used by the pension plan to determine pension benefits. For eligible retirees who

retired on a duty disability retirement, 20 years of service is credited for this part of the monthly supplemental benefit calculation at the time that the disability benefit begins. Non-duty disability retirees shall be credited with actual years of credited service.

b. For purposes of this section only, "retirement years" means the number of years and partial years that a retiree has received a pension benefit to include the number of years and partial years as a DROP participant. For eligible retirees who retired on a duty disability retirement, no retirement years will be accumulated for this part of the monthly supplemental benefit calculation until after the member would have attained 20 years of credited service, had he not retired on a duty disability retirement. Non-duty disability retirees shall be credited with actual years in receipt of a pension benefit.

c. For purposes of this section only, "eligible retirees" means current retirees who were retired as of September 30 of each year, including DROP participants, or beneficiaries receiving benefits.

(Ord. No. 10-005, § 2, 2-2-10; Ord. No. 15-014, § 2, 6-2-15; Ord. No. 15-022, § 2, 9-3-15; Ord. No. 18-006, §§ 3-5, 5-15-18)

Sec. 18-170. Optional forms of benefits.

(a) Each member entitled to a normal, early or disability retirement benefit shall have the right at any time prior to the date on which the benefit begins to elect to have the benefit payable under any of the options hereinafter set forth in lieu of the amount and form of benefits provided above, and to revoke any such elections and make a new election at any time prior to the actual commencement of payment.

(b) The value of optional benefits shall be the actuarial equivalent of the value of benefits otherwise payable. The member shall make an election by written request to the Board, such request being retained in the Board's files. The options available to the members of the fund are as follows:

(1) *Life annuity*. The member may elect to receive a benefit payable for the member's life only.

(2) *Contingent annuitant (joint and survivor option)*. The member may elect to receive a benefit during the joint lifetime of the member and a joint pensioner designated by the police officer, and following the death of either of them, 100%, 75%, 66²/₃% or 50% of such monthly benefit payable to the survivor for the lifetime of the survivor.

(3) *Survivor annuity*. The member may elect to receive a benefit during the member's lifetime and then following the death of the member, a reduced amount to a beneficiary. At the time of retirement, the member may choose a survivor benefit of 100%, 75%, 66²/₃% or 50% of the member's monthly benefit. This amount will be payable to the beneficiary of the lifetime of the beneficiary.

(c) The member upon electing any option of this section will designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the plan in the event of the member's death, and will have the power to change such designation from time to time but any such change shall be deemed a new election and will be subject to approval by the Pension Board. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a member has elected an option with a joint pensioner or beneficiary and his or her retirement income benefits have commenced, he or she may thereafter change the designated joint pensioner or beneficiary up to twice in accordance with F.S. Section 185.341 without the approval of the Board of Trustees or the current joint annuitant or beneficiary. The retiree is not required to provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living. Any retired member who desires to change his or her joint annuitant or beneficiary shall file with the Board of Trustees a notarized notice of such change. Upon receipt of a completed change of joint annuitant form or such other notice, the Board of Trustees shall adjust the member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit and there is no impact to the Plan. The member shall also be responsible for the cost of the recalculation of the benefit by the actuary. The consent of a member's joint pensioner or beneficiary to any such change shall not be required. Any subsequent requests for changes in beneficiary

will require Board of Trustees' approval and the joint pensioner being removed must be alive when the request for changes is made. The Board of Trustees may request such evidence of the good health of the joint pensioner that is being removed as it may require. In the event that no designated beneficiary survives the member, such benefits as are payable in the event of the death of the member subsequent to his or her retirement shall be paid as provided in Section 18-171.

(d) 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, no benefit will be payable under the option to any person, but the benefits, if any, will be determined under Section 18-169(d).

(2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the member's retirement under the plan, 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 member and the designated beneficiary (or beneficiaries) die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, the Board of Trustees may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum.

(4) If a member continues beyond his or her normal retirement date and dies prior to 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 police officer had retired under the option on the date on which death occurred.

(5) A member may not make any change in retirement option after the date of cashing or depositing the first retirement check.

(Ord. No. 10-005, § 2, 2-2-10)

Sec. 18-171. Beneficiaries.

(a) Each member may, on a form provided for that purpose which was signed and filed with the Board of Trustees, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of death; and each designation may be revoked by such member by signing and filing with the Board of Trustees a new designation of beneficiary form.

(b) If a deceased member officer failed to name a beneficiary in the manner prescribed above in subsection (a) of this section, or if the beneficiary (or beneficiaries) named by the deceased member predeceases the member, the death benefit, if any, which may be payable under the plan with respect to such deceased police officer may be paid at the discretion of the Board of Trustees to the estate of the deceased member, provided that the Board of Trustees may direct that the commuted value of the remaining monthly income payments be paid in a lump sum. Any payment made to any person pursuant to this section shall operate as a complete discharge of all obligations under the plan with regard to such deceased member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons ever interested hereunder.

(Ord. No. 10-005, § 2, 2-2-10)

Sec. 18-172. Buy back of service.

(a) *Re-employment.* When any former police officer of the city is re-employed, he or she will become a member of the plan upon re-employment as a full time permanent police officer. When a former police officer of the city is re-employed and had withdrawn contributions previously made to the plan, he or she may reinstate the previous service provided the plan is paid the total amount previously withdrawn (consisting of accumulated member contributions plus any interest previously paid by the plan on those contributions) in a lump sum within six months of re-employment or, effective November 9, 2010, in installment payments over a period of up to 5 years and the installment payments must begin within 6 months of re-employment. The total amount is brought forward with interest for the total number of months from the date of withdrawal to the date of repayment, calculated to the nearest month. This calculated amount equals the amount to be repaid to the plan in a lump sum. If the member chooses to pay over time, interest will continue to accrue during the period of repayment. The interest to bring forward the total amount will be at the equivalent compound monthly rate derived from the earning rate assumed by the actuary in the most recent actuarial valuation submitted to the Division of Retirement pursuant to F.S. Chapter 112, Part VII. No credit shall be given for any service until all years of service which are to be repurchased, have been repurchased.

(b) *Prior police officer service.* Unless otherwise prohibited by law, the years or fractional parts of years that a police officer previously served as a police officer for any other municipal, county, state or federal police department or service in the military shall be added to the years of credited service provided that:

(1) The police officer contributes to the fund the sum that would have been contributed, based on the police officer's salary and the employee contribution rate in effect at the time that the credited service is requested, had the police officer been a member of this system for the years or fractional parts of years for which the credit is requested plus amount 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 requirement amount may be made within six months of the request for credit and in one lump sum payment, or the police officer can buy back this time over a period equal to the length of time being purchased or five years, whichever is greater, at an interest rate which is equal to the fund's actuarial assumption. A police officer may request to purchase a maximum of five years of service. No credit shall be given for any service until all years of service which are to be repurchased, have been repurchased.

(3) The credit purchased under this section shall count for benefit computation purposes, but not for vesting.

(4) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal, county or state police department, if such prior service forms or will form the basis of a retirement benefit or pension from another retirement system or plan. This subparagraph does not apply to military service.

(Ord. No. 10-005, § 2, 2-2-10; Ord. No. 11-011, § 2, 3-15-11)

Sec. 18-173. Rollovers.

(a) *Direct transfers of eligible rollover distributions.*

(1) *General.* This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the Board of Trustees, 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.*

a. *Eligible rollover distribution.* Any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover 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 Internal Revenue Code; and the portion of any distribution that is not includable in gross income.

b. *Eligible retirement plan.* An individual retirement account described in section 408(a) of the Internal Revenue Code, an individual retirement annuity described in section 408(b) of the Internal Revenue Code, an annuity plan described in section 403(a) of the Internal Revenue Code, or a qualified trust described in section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an *eligible retirement plan* is an individual retirement account or individual retirement annuity.

c. *Direct rollover.* A payment by the plan to the eligible retirement plan specified by the distributee.

d. *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 entitled to payment for alimony and child support under an income deduction order, are distributees with regard to the interest of the spouse or former spouse.

(b) *Rollovers from qualified plans.*

(1) A member may roll over all or a part of his or her interest in another qualified plan to the fund, provided all of the following requirements are met:

a. Some or all of the amount distributed from the other plan is rolled over to this plan no later than the sixtieth day after distribution was made from the plan or, if distributions are made in installments, no later than the sixtieth day after the last distribution was made.

b. The amount rolled over to this fund does not include any amount contributed by the member to the plan on a post-tax basis. Effective October 1, 2002, a member may rollover amounts contributed on a post-tax basis.

c. The rollover is made in cash.

d. The member certifies that the distribution is eligible for a rollover.

e. Any amount which the trustees accept as a rollover to this fund shall, along with any earnings allocated to them, be fully vested at all times.

(2) A rollover may also be made to this plan from an individual retirement account qualified under section 408 of the Internal Revenue Code when the individual retirement account was merely used as a conduit for funds from another qualified plan and the rollover is made in accordance with the rules provided in paragraphs a. through e. Amounts rolled over may be segregated from other fund assets. The trustees shall separately account for gains, losses, and administrative expenses of these rollovers. In addition, the fund may accept the direct transfer of a member's benefits from another qualified retirement plan or to a deferred compensation plan pursuant to section 457 of the Internal Revenue Code. The fund shall account for direct transfers in the same manner as a rollover and shall obtain certification from the member that the amounts are eligible for a rollover or direct transfer to this fund.

(c) *Transfer of accumulated leave.*

(1) Members eligible to receive accumulated sick leave, accumulated vacation leave or any other accumulated leave payable upon retirement, including entry into the DROP, shall have the leave transferred to the plan.

For purposes of this section, the term “separation” shall mean termination of service as a police officer with the city. Members on whose behalf leave has been transferred may elect one of the following distribution options within 30 days of separation. Members failing to elect a distribution option within 30 days of separation will be deemed to have elected option (a) below:

- a. Receive a lump sum equal to the transferred leave balance; or
- b. Transfer the entire amount of the transferred leave balance directly to any eligible retirement plan; or
- c. Purchase additional service credit as may be permitted by the Code. If the leave balance exceeds the cost of the service credit purchased, the balance shall be paid to the member in a lump sum; or
- d. Transfer the entire amount of the transferred leave balance into the member’s DROP account; or
- e. Maintain the entire leave balance within the plan. Earnings shall be paid as follows:
 1. Gains or losses at the same interest rate earned by the Pension Plan; or
 2. A guaranteed rate of 7%; or
 3. A percentage of the leave balance account will be credited with interest gains or losses at the same rate earned by the pension plan and the remaining percentage will be credited with earnings at a guaranteed rate of 7%. The actual percentage shall be selected by the member on a form provided by the Board of Trustees. The total of the two percentages must equal 100%.

These accounts will be assessed an administrative fee that is based upon the ratio that the employee's DROP account bears to the fund as a whole.

(2) If a member on whose behalf the city makes a transferred leave balance to the plan dies after retirement or other separation, but before making an election, as provided, or after making an election but before any distribution is made, the election option shall be void. In such an event, any person who would have received a death benefit had the member died in service immediately prior to the date of retirement or other separation, shall be entitled to receive an amount equal to the transferred leave balance in a lump sum. In the case of a surviving spouse or former spouse, an election may be made to transfer the leave balance to an eligible retirement plan in lieu of the lump sum payment. Failure to make such an election by the surviving spouse or former spouse within 60 days of the member’s death will be deemed an election to receive a lump sum payment.

(3) The Board, by rule, shall have the authority to enact administrative rules for purposes of administering the provisions of this section, consistent with the federal tax laws in effect on the date of transfer. No such rule shall conflict with the provisions of this section.

(4) The value of the leave transferred shall be determined in accordance with applicable city personnel policies or collective bargaining agreements.

(Ord. No. 10-005, § 2, 2-2-10)

Sec. 18-174. Miscellaneous.

(a) *Pension validity.* The Board of Trustees shall have the power to examine the facts upon which any pension shall have been granted or obtained erroneously, fraudulently, or illegally for any reason. The Board is empowered to purge the pension rolls of any person granted a pension under proper or existing law or granted under this article if the pension is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any pensioner who has under any prior or existing law or who shall hereafter under this article be erroneously, improperly, or illegally classified.

(b) *False or misleading statements made to obtain retirement benefits prohibited.*

(1) It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement or withhold or conceal material information to obtain any benefit under this plan.

(2) a. A person who violates subparagraph (1) commits a misdemeanor of the first degree, punishable as provided in F.S. Sections 775.082 or 775.083.

b. In addition to any applicable criminal penalty, upon conviction for a violation described in subparagraph (1), a participant or beneficiary of this plan may, in the discretion of the Board of Trustees, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled under this plan. For purposes of this subparagraph, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(c) *Incompetence.* 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 them from the fund, the Board may, unless and until claims have been made by a duly appointed guardian or committee of such person, make such payment or any part thereof to such person's spouse, children, parent or other person deemed by the Board to have incurred expenses or assumed responsibility for the expenses of such person. Any payments so made shall be a complete discharge of any liability under the system for such payment.

(d) *Rights and benefits not subject to legal process.* The rights and benefits provided for herein are vested rights of participants in the fund and shall not be subject to attachment, garnishment, execution or any other legal process. However:

(1) The Board shall honor an income deduction order for alimony or child support in accordance with rules and procedures adopted by the Board; and

(2) Upon written request by the retiree, the Board of Trustees may authorize the plan administrator to withhold from the monthly retirement payment funds necessary to:

a. Pay for benefits being received through the city;

b. Pay the certified bargaining agent; or

c. Pay for premiums for accident health and long-term care insurance for the retiree's spouse and dependents. A retirement plan does not incur liability for participation in this permissive program if its actions are taken in good faith pursuant to F.S. Section 185.05(6).

(e) *Lump sum payment of small retirement income.* Notwithstanding any provision of the fund to the contrary, if the monthly retirement income payable to any person entitled to benefits hereunder is less than \$30 or if the single sum value of the accrued retirement income is less than \$5,000 as of the date of retirement or termination of service, whichever is applicable, the Board of Trustees, in the exercise of its discretion, may specify that the actuarial equivalent of such retirement income be paid in lump sum.

(f) *Required distributions.*

(1) In accordance with section 401(a)(9) of the Internal Revenue Code, all benefits under this plan will be distributed, beginning not later than the required beginning date set forth below, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and a beneficiary.

(2) Any and all benefit payments shall begin by the later of:

a. April 1 of the calendar year following the calendar year of the member's retirement date; or

b. April 1 of the calendar year following the calendar year in which the member attains age 70.5.

(3) If an employee dies before his or her entire vested interest has been distributed to him or her, the remaining portion of such interest will be distributed at least as rapidly as provided for under this plan.

(g) *Internal Revenue Code limits.*

(1) *Basic limitations.* Subject to the adjustments in paragraph (3), the maximum amount of the actual annual retirement income paid in any year with respect to a participant under this plan shall not exceed the dollar amount allowable for any calendar year pursuant to section 415(b) of the Code, as adjusted in such calendar year for increases in the cost of living in accordance with regulations issued by the Secretary of the Treasury under section 415(d) of the Code. For purposes of applying the basic limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by Treasury Regulations, so that such benefits are the actuarial equivalent of a straight life annuity. For purposes of this subsection, the following benefits shall not be taken into account:

a. Any ancillary benefit which is not directly related to retirement income benefits;

b. Any other benefit not required under section 415(b)(2) of the Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of section 415(b)(1) of the Code.

(2) *Participation in other defined benefit plans.* The limitation of this subsection with respect to any participant who at any time has been a participant in any other defined benefit plan (as defined in section 414(j) of the Code) maintained by the city shall apply as if the total benefits payable under all defined benefit plans in which the participant has been a participant were payable from one plan.

(3) *Adjustments in limitations.*

a. In the event the participant's retirement benefits become payable before age 62, the maximum amount of annual retirement income limitation prescribed by this article shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of section 415(b) of the Code, so that such limitation (as reduced) equals an annual benefit (beginning when such retirement income begins) which is equivalent to the Code section 415(b) maximum amount of annual retirement income beginning at age 62.

b. In the event the participant's benefit is based on at least 15 years of credited service, the adjustments provided for in subparagraph a. above shall not apply.

c. The reductions provided for in subparagraph a. above shall not be applicable to disability benefits pre-retirement death benefits.

d. In the event the participant's retirement benefit becomes payable after age 65, for purposes of determining whether this benefit meets the basic limitation set forth in paragraph (1) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age 65. This adjustment shall be made using an assumed interest rate of 5% and shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his or her delegate.

e. *Less than ten years of service.* The maximum retirement benefits payable under this article to any participant who has completed less than ten years of credited service with the city shall be the amount determined under paragraph (1) multiplied by a fraction, the numerator of which is the number of the participant's years of credited service and the denominator of which is ten. The reduction provided for in this subparagraph shall not be applicable to disability benefits or pre-retirement death benefits.

f. *Ten thousand dollar limit.* Notwithstanding the foregoing, the retirement benefit payable with respect to a participant shall be deemed not to exceed the limitations in this subsection if the benefits payable, with respect to such participant under this plan and under all other qualified defined benefit pension plans to which the city contributes, do not exceed \$10,000 for the applicable plan year and for any prior plan year and the city has not at any time maintained a qualified defined contributions plan in which the participant participated.

g. *Reduction of benefits.* Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the participant's benefit under any defined benefit plans in which participant participated, such reduction to be made first with respect to the plan in which participant most

recently accrued benefits and thereafter in such priority as shall be determined by the Board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the participant participated, such reduction to be made first with respect to the plan in which participant most recently accrued benefits and thereafter in such priority as shall be established by the Board and the plan administrator for such other plans provided, however, that necessary reductions may be made in different manner and priority pursuant to the agreement of the Board and the plan administrator of all other plans covering such participant.

h. *Cost-of-living adjustments.* The limitations as stated herein shall be adjusted annually in accordance with any cost-of-living adjustments prescribed by the Secretary of the Treasury pursuant to section 415(d) of the Code.

(4) *Additional limitation on pension benefits.* Notwithstanding anything herein to the contrary:

a. The normal retirement benefit or pension payable to a retiree who becomes a participant of the plan on or after January 1, 1980, and who has not previously participated in such plan, shall not exceed 100% of his or her average final compensation. However, nothing contained in this article shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.

b. No participant of the plan shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the participant is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement plan. This restriction does not apply to social security benefits, military benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

(Ord. No. 10-005, §2, 2-2-10)

Sec. 18-175. Deferred retirement option plan.

(a) A deferred retirement option plan ("DROP") is hereby created.

(b) Eligibility to participate in the DROP is based upon eligibility for normal service retirement in the plan. Members shall elect to participate by applying to the Board of Trustees on a form provided for that purpose.

(c) Participation in the DROP must be exercised within the first 25 years of combined credited service.

(d) A member shall not participate in the DROP beyond the time of attaining 30 years of service and the total years of participation in the DROP shall not exceed five years. For example:

(1) Members with 20 years of credited service at time of entry shall only participate for five years.

(2) Members with 25 years of credited service at time of entry shall participate for five years.

(3) Members with 26 years of credited service at time of entry shall only participate for four years.

(e) Upon a members election to participate in the DROP, he or she shall cease to be a member and is precluded from accruing any additional benefit under the Pension Fund. For all fund purposes, the member becomes a retirant. The amount of credited service and final average salary freeze as of the date of entry into the DROP. Accumulated, unused sick and vacation leave shall be included in the compensation calculation; provided however, that a minimum balance of 120 hours of sick leave and 120 hours of vacation leave shall be maintained by the employee and excluded from this calculation. The retained leave balance, including any additions, shall be distributed at the conclusion of DROP participation and separation from service.

(f) Payment shall be made into the employee's DROP account as if the employee had retired from the employ of the city. The amounts paid will be determined in accordance with this Plan and the employee's

selection of the payment option. Payments into the DROP will be made monthly over the period the employee participates in the DROP, up to a maximum of 60 months.

(g) Effective January 1, 2003, DROP participants have the option to select optional methods to credit investment earnings to their account less any outstanding loan balances. The method may be changed each year effective January 1, however, the method must be selected prior to January 1 on a form provided by the Board of Trustees. The methods are:

(1) Gains or losses at the same interest rate earned by the Pension Plan; or

(2) A guaranteed rate of 7%; or

(3) A percentage of the DROP account will be credited with interest gains or losses at the same rate earned by the pension plan and the remaining percentage will be credited with earnings at a guaranteed rate of 7%. The actual percentage shall be selected by the member on a form provided by the Board of Trustees. The total of the two percentages must equal 100%. Employee's DROP accounts will be assessed an administrative fee that is based upon the ratio that the Employee's DROP account bears to the fund as a whole.

(4) Participants in the DROP, as of December 31, 2002, may change their method for the crediting of earnings. This change in the crediting of earnings is a one time opportunity. The election to change the method for crediting must be made during the month of January 2003. The method, if changed, will be effective February 1, 2003.

(h) An employee's participation in the DROP shall terminate at the end of five years or 30 years of service, whichever comes first. Failure to end DROP participation may result in penalties at the discretion of the Trustees, up to and including forfeiture of the DROP account. Upon entering into the DROP, an employee shall file with the Board a binding letter of resignation from city employment. The binding letter of resignation shall establish a deferred termination date in accordance with the limitations of this DROP, which may be amended.

(i) All interest shall be credited to the employee's DROP account less any outstanding loan balances on a quarterly basis with quarterly statements provided. In the event that a member dies while in the DROP, interest shall be pro-rated to the last business day of the month preceding the death of the member.

(j) Upon termination of employment, participants in the DROP will receive the balance of the DROP account in accordance with the following rules:

(1) Members may elect to begin to receive payment upon termination of employment or defer payment of DROP until the latest day as provided under sub-subparagraph (3).

(2) Payments may be made in the following ways:

a. *Lump sum.* The entire account balance will be paid to or on behalf of the retirant upon approval of the Board of Trustees.

b. *Installments.* The account balance will be paid out to the retirant in five equal annual payments paid over five years, the first payment to be made upon approval of the Board of Trustees.

c. *Monthly installments.* The account balance will be paid out to the retirant on a monthly basis until the account balance is paid out based on actuarial tables provided by the actuary.

d. *Partial lump sum withdrawals.* Part of the account balance will be paid to or on behalf of the retirant upon approval of the Trustees.

(3) Any form of payment selected by a police officer must comply with the minimum distribution requirements of section 401(A)(9) of the Internal Revenue Code, and is subject to the requirements of Section 18-174(f), e.g., payments must commence by age 70.5.

(4) The beneficiary of the DROP participant who dies before payments from DROP begin shall have the same right to select payment options as the participant in accordance with this subsection. A DROP participant may designate a beneficiary to receive the DROP balance in the event of the participant's death prior to pay out of the full DROP balance.

(k) No payments will be made from DROP until the employee actually separates from service with the city.

(l) If an employee shall die during participation in the DROP, a survivor benefit shall be payable in accordance with the form of benefit chosen at the time of entry into the DROP.

(m) Upon commencement of participation in the DROP, the member shall no longer be eligible for disability retirement from the pension plan.

(n) *Loans from the DROP.*

(1) *Availability of loans.*

a. Loans are available to members only after termination of employment, provided the member had participated in the DROP for a period of 12 months.

b. Loans may only be made from a member's own account.

c. There may be no more than one loan at a time.

(2) *Amount of loan.*

a. Loans may be made up to a maximum of 50% of account balance.

b. The maximum dollar amount of a loan is \$50,000, reduced by the highest outstanding loan balance during the last 12 months.

c. The minimum loan is \$5,000.

(3) Limitations on loans shall be made from the amounts paid into the DROP and the earnings thereon.

(4) *Term of loan.*

a. The loan must be for at least one year.

b. The loan shall be no longer than five years.

(5) *Loan interest rate.*

a. The interest rate shall be fixed at time the loan is originated for the entire term of loan.

b. The interest rate shall be equal to the prime rate published by an established local bank on the last day of each calendar quarter preceding the date of loan application.

(6) *Defaults on loans.*

a. Loans shall be in default if two consecutive months' repayments are missed or if a total of four months' repayments are missed.

b. Upon default, the entire balance becomes due and payable immediately.

c. If a loan in default is not repaid in full immediately, the loan may be canceled and the outstanding balance treated as a distribution, which may be taxable.

d. Upon default of a loan, a member will not be eligible for additional loans.

(7) *Miscellaneous provisions.*

- a. All loans must be evidenced by a written loan agreement signed by the member and the Board of Trustees. The agreement shall contain a promissory note.
- b. A member's spouse must consent in writing to the loan. The consent shall acknowledge the effect of the loan on the member's account balance.
- c. Loans shall be considered a general asset of the fund.
- d. Loans shall be subject to administrative fees to be set by the Board of Trustees.
- e. Outstanding loan balances shall not be credited with earnings or losses. As the outstanding balance is repaid with interest, earnings and losses shall be applied to the payments and interest as provided for in Section 18-175(i).

(Ord. No. 10-005, § 2, 2-2-10; Ord. No. 11-011, § 3, 3-15-11)

Sec. 18-176. Termination of plan and distribution of fund.

Upon termination of the plan by the municipality for any reason, or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in F.S. Chapter 112, or upon written notice to the Board of Trustees by the municipality that contributions under the plan are being permanently discontinued, the rights of all employees to benefits accrued to the date of such termination or discontinuance and the amounts credited to the employees' accounts are nonforfeitable. The fund shall be apportioned and distributed in accordance with the following procedures:

- (a) The Board of Trustees shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits 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.
- (b) The Board of Trustees shall determine the method of distribution of the asset value, 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 (c).
- (c) 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 (b) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the employee'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.
- (d) If there is asset value remaining after the full distribution specified in paragraph (c), and after 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.
- (e) The Board of Trustees shall distribute, in accordance with the manner of distribution determined under paragraph (b), the amounts distributed under subsection (c). If, after 24 months after the date the plan terminated or the date on which the Board received written notice that the contributions thereunder were being permanently discontinued, the municipality or the Board of Trustees of the municipal police officers' retirement 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. 10-005, § 2, 2-2-10)

Sec. 18-177. Cost of living adjustment.

(a) Subject to the conditions set forth in this section, the Board of Trustees shall annually a cost of living adjustment, the amount of which shall be determined as of each September 30. The amount of the cost of living adjustment shall be equal to the actuarial present value of future pension payments to current pensioners multiplied by the positive difference, if any, between the rate of investment return and 8%. The actuary shall determine whether there may be a cost of living adjustment based on the following factors:

(1) The actuary for the Pension Fund shall determine the rate of investment return on the Pension Fund assets during the 12-month period ending each September 30. The rate determined shall be the rate reported in the most recent actuarial report submitted pursuant to F.S. Chapter 112, Part VII.

(2) The actuary for the Pension Fund shall, as of September 30, determine the actuarial present value of future pension payments to current pensioners. The actuarial present values shall be calculated using an interest rate of 8% a year compounded annually, and a mortality table approved by the Board of Trustees and as used in the most recent actuarial report submitted pursuant to F.S. Chapter 112, Part VII. This will be the pool of funds available to fund the cost of living adjustment.

(3) If the actuary determines there may be a cost of living adjustment, the Board of Trustees shall authorize such a distribution unless the administrative expenses of distribution exceed the amount available for the distribution.

(4) The cost of living adjustment shall be funded only if the present value of the pool of funds does not exceed the net actuarial experience accumulated from all sources of gains and losses.

(b) Cost of living adjustments will be made to pensioners, including DROP members, and beneficiaries, who are referred to as eligible persons.

(c) The cost of living adjustment shall be allocated among eligible persons based upon the participant's years of service in the proportion that the participants years of service bear to the aggregate amount of years of service of all eligible persons. Allocations for beneficiaries will be in proportion that the beneficiary benefit bears to the retiree benefit Maximum service credits shall be 20 years. Minimum allocations for duty disability pensioners shall be based on 13.33 years of service.

(d) The cost of living shall be made as of July 1, 2001 and each July 1 thereafter. Each eligible person shall be paid his or her allocated portion from the preceding September 30. Eligible persons must be retired for one year from September 30 to receive a cost of living adjustment. A pensioner's estate is entitled to a pro-rata share of the deceased retirant's cost of living adjustment based on a number of months that the deceased retirant received a pension during the year ending the September 30 prior to the retirant's death.

(Ord. No. 10-005, § 2, 2-2-10)

Sec. 18-178. Reemployment after retirement.

(a) Any retiree who is retired under this fund, except for disability retirement, may be reemployed by any public or private employer, except the City, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this fund. Reemployment of a retiree by the City on or after January 1, 2017, shall be subject to the limitations set forth in this section.

(b) *Reemployment in a position other than as a police officer or in a position supervising police officers.* Notwithstanding any other provision of this plan, a retiree who is retired from the fund on a normal retirement at normal retirement age, and who is subsequently reemployed by the city in a position other than as a police officer or in a position supervising police officers, shall, upon being reemployed, continue receipt of benefits from this fund. The benefit paid from this fund shall not be changed in any way by such reemployment. These payments shall be considered in-service distributions.

(c) *Reemployment as a police officer.* In the event a retiree who is retired from the fund is subsequently reemployed by the city as a police officer or into a position that supervises police officers, the benefit

payable to the retiree from this fund shall be suspended for the period of such reemployment until the retiree terminates employment with the city.

(1) If by virtue of re-employment as a police officer, the retiree is eligible to participate in this plan, the retiree shall be deemed to be 100% vested upon re-employment.

(2) The additional credited service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement.

(3) Calculations of benefits for each retirement shall be based upon the benefit accrual rate, average annual earnings, credited service, cost-of-living adjustment as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average annual earnings (based only on the subsequent employment period), credited service, cost-of-living adjustment, if applicable, as of the date of subsequent retirement.

(4) The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the member may select a different optional form and joint pensioner applicable to the subsequent retirement benefit.

(d) *Re-employment of terminated vested persons.* Re-employed terminated vested persons, including those elected or appointed to the City Commission, shall not be subject to the provisions of this section until such time as they begin to actually receive benefits after termination of employment in accordance with Section 18-169(e).

(e) Notwithstanding any provision of subsection (a), (b) (c) or (d) above, a retiree who has retired on an early retirement or a disability retirement may not be reemployed by the city and continue to receive a benefit from this fund. Retirement pursuant to an early retirement incentive program shall be deemed early retirement for purposes of this section if the member was permitted to retire prior to the customary retirement date provided for in the plan at the time of retirement.

(Ord. No. 18-006, § 6, 5-15-18)