

five (5) or more members shall constitute a quorum of the Planning and Zoning Board. ('74 Code, § 18½-23) (Ord. 81-28, passed 8-20-81; Am. Ord. 2002-46, passed 7-2-02; Am. Ord. 2006-70, passed 7-6-06; Am. Ord. 2010-57, passed 10-21-10)

§ 52.143 RULES OF PROCEDURE FOR MEETINGS.

(A) The meetings of the Planning and Zoning Board shall be conducted in accordance with the "government in the sunshine" law, pursuant to Florida Statutes.

(B) The Planning and Zoning Board shall hold its initial meeting the first Wednesday after passage of this subchapter; beginning at 7:00 p.m. at the city hall of the city. The Board shall meet at least once per month on a day to be designated in its bylaws.

(C) As its first order of business, the Planning and Zoning Board shall be required to adopt a set of rules, regulations, and bylaws to determine the manner in which its meetings shall be held, and to appoint a person to be responsible for the indexing and safekeeping of all books, records, transcripts, materials, minutes, and other items that may come into the possession of the Planning and Zoning Board for delivery and preservation to the City Clerk who shall possess and dispose of such items as provided by law. The proposed rules, regulations and bylaws of the Board shall be submitted to the City Council for approval.

(D) The minutes of the Planning and Zoning Board shall be recorded and transcribed in accordance with state law. ('74 Code, § 18½-24) (Ord. 81-28, passed 8-20-81)

§ 52.144 EXPENSES; STAFF.

The City Council may appropriate funds at its discretion to the Planning and Zoning Board for expenses necessary in the conduct of its work. In

addition, the Planning and Zoning Board may request the city to employ such experts and staff as may be deemed proper with prior approval of City Council. ('74 Code, § 18½-25) (Ord. 81-28, passed 8-20-81)

***POLICE AND FIREFIGHTERS
RETIREMENT PENSION PLAN***

§ 52.160 BOARD OF TRUSTEES.

(A) The sole and exclusive administration of and responsibility for the proper operation of the system and for making effective the provisions of this subchapter is hereby vested in a Board of Trustees. The board is hereby designated as the plan administrator. The board shall consist 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 Palm Bay City Council; one (1) of whom shall be a police officer member of the system, who shall be elected by a majority of the police officers who are members of the system; and one (1) of whom shall be a firefighter member 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 by a majority of the previous four (4) trustees, as provided for herein, and such person's name shall be submitted to the Palm Bay City Council. Upon receipt of the fifth person's name, the Palm Bay City Council shall, as a ministerial duty, appoint such person to the Board of Trustees 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 two-year term unless he or she sooner vacates the office. Each resident trustee shall serve as trustee for a period of two (2) years, unless he or she sooner vacates the office or is sooner replaced by the Palm Bay City Council at whose pleasure he or she shall serve. Each member trustee shall serve as trustee for a period of two (2) years, unless he or she sooner leaves the employment of the city as a police officer or firefighter or otherwise vacates his or her office as trustee, whereupon a successor shall be chosen in the

chosen in the same manner as originally. Each trustee may succeed himself in office. The Board shall establish and administer the nominating and election procedures for each election. 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) The trustees shall, by a majority vote, elect from their number a chair, a vice-chair and a secretary. The secretary of the Board shall keep a complete minute book of the actions, proceedings or hearings of the Board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by Florida law.

(C) Each trustee shall be entitled to one vote on the Board. Three (3) affirmative votes shall be necessary for any decision by the trustees at any meeting of the Board.

CHAPTER 55: POLICE AND FIREFIGHTERS RETIREMENT PENSION PLAN

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§ 55.01 INTENT; PURPOSE.

It is deemed to be to the best interest of the city and the citizens, residents, inhabitants and taxpayers thereof, that the city establish and maintain a retirement system for police officers and firefighters, and to that end the system is established as herein set forth.

(Ord. 2000-15, passed 5-5-00)

§ 55.02 DEFINITIONS.

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated. The masculine gender, where used herein, unless the context specifically requires otherwise, shall include both the feminine and masculine genders.

ACCUMULATED CONTRIBUTIONS. A member's own contributions, together with regular interest thereon. For those members who purchase credited service with interest or at no cost to the system, only that portion of any payment representing the amount attributable to member contributions based on the applicable member contribution rate shall be included in accumulated contributions.

ACTUARIAL EQUIVALENCE or ACTUARIAL EQUIVALENT. A benefit payable under the terms of the system in a form other than the normal form of benefit, having 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, other than a lump sum distribution, all future payments shall be discounted for interest and mortality by using seven percent (7%) interest and the 1983 Group Annuity Mortality Table for Males, with ages set ahead five (5) years in the case of disability retirees.

AVERAGE FINAL COMPENSATION.

(1) For police officer members: one-twelfth (1/12) of the average annual compensation of the best five (5) years of the last ten (10) years of credited service prior to retirement, termination or death.

(2) For firefighter members: one-twelfth (1/12) of the average annual compensation of the best five (5) years of the last ten (10) years of credited service prior to retirement, termination or death.

A year shall be twelve (12) consecutive months or such other consecutive period of time as is used and consistently applied.

BENEFICIARY. A person receiving, or designated in writing by a member to receive, the balance of accumulated contributions or retirement or death benefits, if any, including any funds in the member's DROP account, to be paid in behalf of a member or retiree.

BOARD. The Board of Trustees, which shall serve as trustees of the fund and which shall have administrative authority and supervision of the system.

CITY. City of Palm Bay, Florida.

CODE. The Internal Revenue Code of 1986, as amended from time to time.

COMPENSATION or SALARY.

(1) For firefighter members, **COMPENSATION or SALARY** means the member's monthly remuneration including base pay, acting pay, field training pay, holiday pay, academic incentive pay, certification pay, EMT pay, paramedic pay, and special operation team pay; but excluding overtime, call back pay, terminal leave payouts, standby pay, vacation payouts, bonus/merit lump sum payments, longevity pay, and any other payment received by a member.

(2) For police officer members, **COMPENSATION or SALARY** includes base pay,

administrative pay, clothing allowance, expenses pay, longevity, subsistence pay, vacation buy-back, and effective October 1, 2005 up to thirty-five (35) hours of overtime per fiscal year; and effective October 1, 2006, up to fifty-four (54) hours per fiscal year; but excludes any other payments received by a member. Effective October 1, 2007, for police officer members who retire or enter the DROP on or after that date, compensation or salary shall mean total cash remuneration paid by the city for services rendered by the member including up to one hundred twenty-nine (129) hours of overtime per fiscal year, and excluding any payments for extra duty, special duty or special detail work performed on behalf of a second party employer.

(3) Compensation in excess of the 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 as in effect on July 1, 1993. **ELIGIBLE EMPLOYEE** is an individual who was a member before the first plan year beginning after December 31, 1995.

CREDITED SERVICE.

(1) The total number of years and fractional parts of years of service as a police officer or 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 police officer or firefighter. A member may voluntarily leave his or her accumulated contributions in the fund for a period of five (5) years after leaving the employ of the police department or fire department pending the possibility of being re-employed as a police officer or firefighter without losing credit for the time that he or she was a member of the system. If a vested member leaves the employ of the police department or fire department, his or her accumulated contributions will be returned only upon his or her written request. If a member who is not vested is not reemployed as a police officer or firefighter within five (5) years, his or her accumulated contributions shall be returned only upon written request. Upon return of a member's accumulated contributions, all of

his or her rights and benefits under the system are forfeited and terminated. Upon reemployment, a police officer or firefighter shall not receive credit for the years and fractional parts of years of service for which he or she has withdrawn his or her accumulated contributions from the fund unless he or she repays into the fund the contributions he or she has withdrawn, with interest, as determined by the Board, within ninety (90) days after his or her reemployment.

(2) The years or fractional parts of years that a member serves in the military service of the Armed Forces of the United States, voluntarily or involuntarily, after leaving active employment as a police officer or firefighter, to perform training or service, shall be added to his or her years of credited service for all purposes, including vesting, provided that:

(a) The member returns to his or her employment as a police officer or firefighter within one (1) year from the date of or release from such military service.

(b) The member is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act.

(c) The maximum credit for military service shall be five (5) years.

(3) Credited service shall not be deemed to be interrupted by any authorized leave of absence or vacation, provided that all members similarly situated shall be treated alike pursuant to uniform, nondiscriminatory rules. Leave granted pursuant to the Family and Medical Leave Act shall not constitute a break in service for vesting or eligibility purposes, but the period of such leave shall not be counted as credited service for benefit purposes unless the member pays into the fund the member contributions that would have been paid had the member not been on leave, plus interest as determined by the Board, within ninety (90) days after the member's return from leave, or within ninety (90) days following the effective date of this section, whichever is later.

(4) Effective October 1, 2005, any police officer member who is employed by the city on that date or after and retires or enters the DROP after that date, who has served a minimum of ten (10) years as a sworn law enforcement officer for the city, and who, prior to city employment, had experience as a sworn law enforcement officer and/or in uniformed military service, may purchase up to four (4) years of credited service for such prior uniformed military experience or experience as a sworn law enforcement officer, but not more than a combined total of four (4) years of credited service, in accordance with this paragraph (4). The cost of the prior law enforcement and/or military service purchased pursuant to this paragraph (4) shall be based on the contributions the police officer member would have made for the purchased time based upon the contribution rates and compensation of the police officer member at the time of hire by the city. In addition to or in lieu of a cash payment, the member may use the value of their accrued sick and vacation leave to purchase all or a portion of the prior law enforcement and/or military service purchased pursuant to this paragraph (4). The member may use any combination of accrued sick or vacation leave, or a cash payment to purchase all or a portion of the prior law enforcement and/or military service. In no event may a member purchase more than four (4) years of prior law enforcement and/or military service pursuant to this paragraph (4). Effective August 3, 2007, a police officer member who is currently eligible to purchase prior law enforcement and/or military service in accordance with this paragraph (4) shall have thirty-six (36) months from August 3, 2007, to purchase the prior law enforcement and/or military service provided for in this paragraph (4). Effective August 3, 2007, a police officer member shall have thirty-six (36) months from the time the police officer member obtains a 100% vested interest pursuant to § 55.10 of the Code of Ordinances to purchase the prior law enforcement and/or military service provided for in this paragraph (4). The city reserves the right to provide input concerning the actuarial methods and calculations to be used to determine the cost of the prior law enforcement and/or military service purchased pursuant to this paragraph (4). The city

also reserves the right to engage an independent actuary to review the methods and calculations of the plan actuary, and if the two actuaries do not agree, the Board may consider the positions of both actuaries in making a final determination as to the methods and calculations to be used. All actuarial assumptions, cost methods, and procedures shall be individually realistic and based on the actuary's best estimates of anticipated future experience under the plan.

(5) Any firefighter member, prior to retirement, shall have the option to purchase up to four (4) years of military experience or four (4) years of paid sworn firefighter service, but not more than a combined total of four (4) years. To receive credit for either military experience or paid sworn firefighter service, the firefighter member shall pay the full actuarial cost thereof, as determined by the actuary and as approved by the Board. In no circumstances may a firefighter member purchase any military experience or paid sworn firefighter service for which another benefit has been obtained or will be obtained as a result of such experience. The Board may require such written proof or certification as it deems necessary to carry out the intent of this provision.

CUSTODIAN. The entity designated to serve as the custodian of the fund of the system.

DROP. The Palm Bay Police Officer and Firefighter's Pension Deferred Retirement Option Plan as set forth in §§ 55.28 et seq.

DROP ACCOUNT. The account established for each DROP participant under § 55.28(B)(1).

EFFECTIVE DATE. May 2, 1974.

FIREFIGHTER. Any person employed solely by the city who is certified as a firefighter and meets the definition of firefighter in F.S. § 175.032(8)(a). The fire chief shall have the option to participate, or not, in this system.

FUND. The trust fund established herein as part of the system.

INVESTMENT ADVISOR. An entity designated to supervise or manage the investment of assets of the fund.

MEMBER. An actively employed police officer or firefighter who fulfills the prescribed membership requirements.

PLAN YEAR. The twelve (12) month period beginning and ending as determined by the Board.

POLICE OFFICER. A person employed full time by the city, who is certified as a law enforcement officer and meets the definition of police officer in F.S. § 185.02(11). The police chief shall have the option to participate, or not, in this system.

PREEXISTING CONDITION.

(1) Any condition, disease or ailment which existed on or before the date a member became eligible for membership in the system; or

(2) Any condition, disease or ailment for which a member received medical or surgical treatment or advice within five (5) years prior to the date such a member became eligible for membership in the system; or

(3) Any complication or aggravation of such condition, disease or ailment.

REGULAR INTEREST. Such rate of interest as shall be determined and allowed from time to time by the Board.

RETIREE. A member who has retired under the provisions hereof and is receiving benefits from the fund.

RETIREMENT. A member's separation from city employment with eligibility for immediate receipt of benefits under the system.

SPOUSE. The lawful wife or husband of a member.

SYSTEM. The City of Palm Bay Police Officers' and Firefighters' Retirement System as contained herein and all amendments thereto.

(Ord. 2000-15, passed 5-5-00; Am. Ord. 2002-66, passed 10-17-02; Am. Ord. 2004-04, passed 1-22-04; Am. Ord. 2005-27, passed 6-20-05; Am. Ord. 2005-59, passed 10-6-05; Am. Ord. 2006-29, passed 5-4-06; Am. Ord. 2006-113, passed 11-2-06; Am. Ord. 2007-64, passed 9-6-07; Am. Ord. 2007-65, passed 9-6-07; Am. Ord. 2007-66, passed 9-6-07; Am. Ord. 2007-107, passed 11-15-07)

§ 55.03 MEMBERSHIP ELIGIBILITY AND CONDITIONS.

(A) *Conditions of eligibility.*

(1) For police officers: All full-time certified police officers shall be eligible for membership in the system. Membership shall be a mandatory condition of employment.

(2) For firefighters: All full-time certified firefighters shall be eligible for membership in the system. Membership shall be a mandatory condition of employment.

(B) *Application.* Each eligible employee shall complete an application form covering the following points, as well as such other points or items as may be prescribed by the Board:

(1) Such employee's acceptance of the terms and conditions of the system; and

(2) Such employee's designation of a beneficiary or beneficiaries. A member may from time to time change his or her designated beneficiary by written notice to the Board upon a form provided by the Board. Upon such change, the rights of all previously designated beneficiaries to receive any benefit under the system shall forever cease.

(Ord. 2000-15, passed 5-5-00; Am. Ord. 2000-48, passed 9-21-00)

§ 55.04 BOARD OF TRUSTEES.

(A) The sole and exclusive administration of and responsibility for the proper operation of the system and for making effective the provisions of this subchapter is hereby vested in a Board of Trustees. The Board is hereby designated as the plan administrator. The Board shall consist 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 Palm Bay City Council; one (1) of whom shall be a police officer member of the system, who shall be elected by a majority of the police officers who are members of the system; and one (1) of whom shall be a firefighter member 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 by a majority of the previous four (4) trustees, as provided for herein, and such person's name shall be submitted to the Palm Bay City Council. Upon receipt of the fifth person's name, the Palm Bay City Council shall, as a ministerial duty, appoint such person to the Board of Trustees 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 two (2) year term unless he or she sooner vacates the office. Each resident trustee shall serve as trustee for a period of two (2) years, unless he or she sooner vacates the office or is sooner replaced by the Palm Bay City Council at whose pleasure he or she shall serve. Each member trustee shall serve as trustee for a period of two (2) years, unless he or she sooner leaves the employment of the city as a police officer or firefighter or otherwise vacates his or her office as trustee, whereupon a successor shall be chosen in the same manner as originally. Each trustee may succeed himself or herself in office. The Board shall establish and administer the nominating and election procedures for each election. 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) The trustees shall, by a majority vote, elect from their number a chair, a vice-chair and a secretary. The secretary of the Board shall keep a complete minute book of the actions, proceedings or hearings of the Board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by Florida law.

(C) Each trustee shall be entitled to one vote on the board. Three (3) affirmative votes shall be necessary for any decision by the trustees at any meeting of the board.

(D) The board shall engage such actuarial, accounting, legal and other services as shall be required to transact the business of the system. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the system shall be paid from the fund at such rates and in such amounts as the board shall agree. In the event the board chooses to use the city's legal counsel, actuary or other professional, technical or other advisors, it shall do so only under terms and conditions acceptable to the board.

(E) The duties and responsibilities of the board shall include, but not necessarily be limited to, the following:

(1) To construe the provisions of the system and determine all questions arising thereunder.

(2) To determine all questions relating to eligibility and membership.

(3) To determine and certify the amount of all retirement allowances or other benefits hereunder.

(4) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system.

(5) To distribute to members, from time to time, information concerning the system.

(6) To receive and process all applications for benefits.

(7) To authorize all payments whatsoever from the fund and to notify the custodian, in writing, of approved benefit payments and other expenditures arising through operation of the system.

(8) To have performed actuarial studies and valuations, at least as often as required by law, and

make recommendations regarding any and all changes in the provisions of the system, including for benefit and other improvements.

(9) To maintain or have maintained accurate records of credited service, accumulated contributions and such other data as may be necessary or prudent.

(10) To prepare an annual report to the Palm Bay City Council.

(11) To perform such other duties as are required prudently to administer the system.

(12) Any valuation report, draft, or final, shall be deemed a public record and made available to the City Manager and any other interested party. (Ord. 2000-15, passed 5-5-00; Am. Ord. 2006-29, passed 5-4-06)

§ 55.05 FINANCES AND FUND MANAGEMENT; ESTABLISHMENT AND OPERATION OF FUND.

(A) As part of the system there exists the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the system.

(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 may be made by the custodian but only upon written authorization from the board.

(C) All funds of the system may be deposited by the board with the city, acting in a ministerial capacity only, which shall be liable in the same manner and to the same extent as it is liable for the safekeeping of funds for the city. However, any funds so deposited with the city shall be kept in a separate fund or clearly identified as such funds of the system. In lieu thereof, the board may deposit the funds of the system in a qualified public depository as defined in FLA. STAT. § 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of FLA. STAT. Chapter 280. In order to fulfill its

investment responsibilities as set forth herein, the board may retain the services of a custodian.

(D) All funds and securities of the system 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; and

(2) Receipts and disbursements; and

(3) Benefit payments; and

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

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

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

(E) An audit shall be performed annually by a certified public accountant for the most recent plan year of the system 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. Said report shall include other items normally included in a certified audit.

(F) The board shall have the following investment powers and authority, which may be delegated to one or more investment advisors selected and supervised by the board.

(1) The fund may be invested and reinvested in such securities or property real or personal wherever situated and of whatsoever kind, including but not limited to stocks, common or preferred, bonds and other evidences of indebtedness or ownership.

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

(3) No person or entity shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the fund, except that due to his or its own negligence, willful misconduct or lack of good faith.

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

(5) 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 or 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 of the fund which it may deem to be to the best interest of the fund.

(6) At least once every three (3) years, and more often as determined by the board, the board shall retain a professionally qualified independent consultant, as defined in FLA. STAT. §§ 175.071 and 185.06, to evaluate the performance of all existing investment advisors and make recommendations regarding retention of all such investment advisors or selection of replacements or additional investment managers. These recommendations shall be considered by the board at its next regularly scheduled meeting. (Ord. 2000-15, passed 5-5-00)

§ 55.06 CONTRIBUTIONS.

(A) Member contributions.

(1) Amount:

(a) Police officer members shall contribute eight and seventy-six one-hundredths percent (8.76%) of compensation, effective September 30, 2000.

(b) Firefighter members shall contribute five and twenty-nine one-hundredths percent (5.29%) of compensation, effective September 30, 2001. Firefighter members shall contribute six and eighty-six one-hundredths percent (6.86%) of compensation, effective October 1, 2003). Effective October 1, 2007, firefighter members shall contribute eight and seventy-six one-hundredths percent (8.76%) of compensation.

Member contributions withheld by the city on behalf of members shall be deposited in the fund immediately after each pay period. 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 system, such contributions shall be considered to be member contributions.

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

(3) Duration. Member contributions shall be deducted until a member has reached his or her actual retirement date or his or her termination date, whichever occurs first.

(4) Suspension. Should a member be suspended and subsequently reinstated as a police officer or firefighter, he or she may receive credit for the period he or she was under suspension by making member contributions for such period, and shall again become a member of the system. In the event that the reinstatement of such member is made on the basis that he or she is entitled to receive full credit for the

period of service prior to his or her date of suspension and for the period during his or her suspension as though his or her employment had never terminated, then the following shall apply:

(a) Member contributions shall be deducted from compensation that the city is required to pay for the period of suspension.

(b) If the suspended member had withdrawn his or her accumulated contributions, then he or she shall repay to the fund an amount equal to the amount of the withdrawal and the city shall pay interest thereon, at a rate to be determined by the Board, from the date of withdrawal to the date of repayment. These payments shall be made within ninety (90) days of the date of reinstatement.

(c) Upon satisfaction of these conditions, the suspended member shall reenter the system and receive service credit for his or her credited service prior to his or her suspension and for the period of suspension. During the period from the date of reinstatement to the date when the conditions set forth in subdivisions (a) and (b) above are satisfied, member contributions shall be made in the same manner as for other members of the system.

(d) In the event that such suspended member fails to comply with subdivision (a) above, his or her credited service shall begin as of his or her date of reinstatement and he or she shall forfeit all credited service prior to the date of reinstatement.

(5) Transfers between employment groups. In the event that a member of the system changes his or her job status with the city such that he or she is considered to be in a different employment group, he or she shall transfer to and become a member of the new group for purposes of the system as of the date when the change in job status occurs. An example of a transfer between employment groups is where a general employee becomes a police officer. In the event of such a transfer, the member's accumulated contributions as of the date of transfer shall remain allocable to the previous group. The member's retirement benefit payable by the previous group shall be calculated by using his or her credited service as of

the date of transfer and his or her average final compensation as of the date of his or her termination of employment or the date of transfer, whichever amount is greater. This benefit shall be payable commencing on the date when retirement benefits applicable to his or her new group status begin. The transferred employee shall not be eligible for any other benefits from the previous group. For purposes of determining his or her eligibility for vesting, death, disability and retirement benefits as a member of the new group, the employee's credited service prior to the date of transfer shall be included. For the purposes of determining the amount of any vesting and retirement benefits as a member of the new group, only service following the date of transfer shall be included. For purposes of determining the amount of any death or disability benefits as a member of the new group, the employee's credited service prior to date of transfer shall be included.

(B) State contributions.

(1) Any monies received or receivable by reason of the laws of the State of Florida for the purpose of funding and paying for retirement benefits for police officers or firefighters shall be used to provide benefits for police officers and firefighters that are in addition to or greater than benefits provided for general employees of the city. Additional or greater benefits may take the form of lower retirement ages, higher benefit accrual rates, higher disability benefits or any other type of extra benefit. Such monies shall be deposited in the fund immediately and under no circumstances more than five (5) days after receipt by the city. The city may provide authorization for the direct payment to the Board.

(2) Two separate sub-accounts shall be created within the fund, one for the state contributions received on behalf of police officers and one for the state contributions received on behalf of firefighters. The monies allocable to these sub-accounts shall be invested in securities or assets, as determined by the Board, that are separate from the securities and assets held by the main fund. The sub-accounts shall be increased by the respective payments received from the state and by the investment earnings attributable to the securities and assets attributable to such

sub-accounts. The sub-accounts shall be reduced by their share of administrative expenses of the system and by all benefits paid to police officers and firefighters as compared to general employees.

(3) Each year, as part of the actuarial valuation, the system's actuary shall determine the cost of benefits provided for police officer members and firefighter members over and above those provided for general employees of the city. The cost of additional benefits shall be equal to the excess of the required annual contribution for benefits of police officer members and firefighter members over the required annual contribution that will result if police officer members and firefighter members were covered by the same benefits as general employees of the city. In computing the latter amount, assets attributable to police officer members and firefighter members shall be reduced by the sub-account attributable to each group. The city shall take a credit against its required annual contribution in an amount equal to the lesser of the cost of the additional benefits or the monies received from the State of Florida for the year.

(C) City contributions. Each year the city shall make monthly contributions to the 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, as shown by the most recent actuarial valuation of the system. The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize all unfunded past service liability as provided in FLA. STAT. Part VII of Chapter 112.

(D) Other. Private donations, gifts and other contributions shall be deposited to the fund, but such deposits 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.

(Ord. 2000-15, passed 5-5-00; Am. Ord. 2001-64, passed 10-18-01; Am. Ord. 2004-04, passed 1-22-04; Am. Ord. 2007-108, passed 11-15-07)

§ 55.07 RETIREMENT DATES AND BENEFITS.

(A) *Normal retirement.*

(1) *Date.*

(a) The normal retirement date for police officer members shall be the earliest of:

1. The first day of the month coincident with or next following attainment of the member's fifty-fifth (55th) birthday; or

2. The first day of the month coincident with or next following attainment of the member's fifty-second (52nd) birthday and completion of twenty-five (25) years of credited service; or

3. Completion of thirty (30) years of credited service, regardless of age.

4. For police officer members who are employed on or after October 1, 2006 and retire or enter the DROP after that date, completion of twenty-eight (28) years of credited service as a police officer member, regardless of age.

5. For police officer members who are employed on or after April 5, 2012, completion of twenty-five (25) years of credited service as a police officer member regardless of age.

(b) The normal retirement date for firefighter members hired before March 15, 2012, shall be the earliest of:

1. The first day of the month coincident with or next following attainment of the member's fifty-fifth (55th) birthday; or

2. The first day of the month coincident with or next following attainment of the member's fifty-second (52nd) birthday and completion of twenty-five (25) years of credited service; or

3. Effective October 1, 2007, completion of twenty-five (25) years of credited

service, regardless of age, at eighty-five percent (85%) of average final compensation.

4. Effective October 1, 2007, completion of twenty-eight (28) years of credited service, regardless of age at a maximum of one hundred percent (100%) of average final compensation.

(c) The normal retirement date for firefighter members hired on or after March 15, 2012, shall be the first day of the month coincident with or next following the completion of twenty-five (25) years of credited service, regardless of age. Provided, however that a vested member who terminates prior to attaining 25 years of credited service shall be eligible for normal retirement benefits upon reaching age 55.

(2) *Benefit.*

(a) For each police officer member:

1. The normal retirement benefit shall be an amount equal to two percent (2%) of his or her average final compensation multiplied by his or her credited service prior to June 1, 1992 and two and one-half percent (2.50%) of his or her average final compensation multiplied by his or her credited service on and after June 1, 1992.

2. If such police officer has completed twenty (20) years of credited service as a police officer, instead of the amount described in subdivision 1. above, his or her monthly normal retirement benefit shall be an amount equal to three percent (3%) of his or her average final compensation multiplied by his or her credited service.

3. If such police officer has completed more than twenty (20) years of credited service as a police officer, in addition to the amount described in subdivision 2. above, his or her monthly normal retirement benefit shall be an amount equal to four percent (4%) of his or her average final compensation multiplied by his or her credit service in excess of twenty (20) years, to a maximum of one hundred percent (100%) of his or her average final compensation.

4. For police officer members who terminate city employment on or after October 1, 2006, and retire or enter the DROP after that date, if such member has completed more than twenty (20) years of credited service as a police officer, in addition to the amount described in subdivision 2. above, his or her monthly normal retirement benefit shall be an amount equal to five percent (5%) of his or her average final compensation multiplied by his or her credit service in excess of twenty (20) years, to a maximum of one hundred percent (100%) of his or her average final compensation.

(b) For each firefighter member:

1. The normal retirement benefit for members hired before March 15, 2012, shall be an amount equal to two percent (2%) of his or her average final compensation multiplied by his or her credited service prior to October 1, 1991 and two and one-half percent (2.5%) of his or her average final compensation multiplied by his or her credited service on and after October 1, 1991. Provided, however, that if such firefighter has completed twenty (20) years of credited service as a firefighter, instead of the amount described in the previous sentence, his or her monthly normal retirement benefit shall be an amount equal to three percent (3%) of his or her average final compensation multiplied by his or her credited service. Provided further, however, if such firefighter has completed more than twenty (20) years of credited service as a firefighter, in addition to the amount described in the previous sentence, his or her monthly normal retirement benefit shall be an amount equal to five percent (5%) of his or her average final compensation multiplied by his or her credited service in excess of twenty (20) years, to a maximum of one hundred percent (100%) of his or her average final compensation upon the completion of twenty-eight (28) years of service.

2. The normal retirement benefit for members hired on or after March 15, 2012, shall be as follows: The benefit formula for members with less than twenty (20) years of credited service shall be an amount equal to two and one-half percent (2.5%) of his or her average final compensation multiplied by his or her credited service. The benefit formula for members with 20 or more years of credited service

shall be three and two-tenths percent (3.2%) of average final compensation, with a maximum benefit of ninety percent (90%) of average final compensation, excluding supplemental benefits.

3. In addition, each firefighter member shall receive a supplemental monthly retirement benefit of one hundred and eighty-nine dollars (\$189.00). Effective October 1, 2006, this supplemental monthly retirement benefit shall be increased to four hundred fifty eight dollars (\$458.00) and paid for by Chapter 175 excise tax monies. This supplemental benefit shall only be paid during the member's lifetime.

(c) Benefits shall commence on the first day of the month coincident with or next following a member's retirement and shall be payable for life but with one hundred twenty (120) payments guaranteed in any event. Benefits payable by the system shall be in addition to federal Social Security benefits.

(B) *Early retirement.*

(1) *Date.*

Early retirement date shall be the earlier of:

(a) The first day of the month coincident with or next following attainment of the member's forty-fifth (45th) birthday and completion of twenty (20) years of credited service; or

(b) The first day of the month coincident with the next following attainment of the member's fiftieth (50th) birthday and completion of ten (10) years of credited service.

(2) *Benefit.*

For each member early retirement shall be as follows:

(a) A deferred monthly benefit commencing on the date that would have been his or her normal retirement date had he or she remained in employment, 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 early retirement date; or

(b) An immediate monthly benefit commencing on his or her early retirement date. The immediate monthly benefit shall be the actuarial equivalent of the deferred monthly benefit but in no event shall the immediate monthly benefit be reduced by more than three percent (3%) for each year by which the starting date of the immediate monthly benefit precedes the date that would have been his or her normal retirement date had he or she remained in employment.

(c) In addition to either of the foregoing monthly benefits, each firefighter member shall receive a supplemental monthly early retirement benefit of one hundred eighty-nine dollars (\$189.00). Effective October 1, 2006, this supplemental monthly early retirement benefit shall be increased to four hundred fifty-eight dollars (\$458.00) and paid for by Chapter 175 excise tax monies. This supplemental benefit shall only be paid during the member's lifetime.

(d) Benefits shall commence on the first day of the month coincident with or next following a member's early retirement and shall be payable for life but with one hundred and twenty (120) payments guaranteed in any event. The monthly benefits payable by the system shall be in addition to federal Social Security benefits.

(C) Supplemental Benefit for Police Officer Members. Effective October 1, 2006, police officer members who either terminate while vested or reach normal retirement or early retirement shall receive a supplemental benefit of twenty-five dollars (\$25.00) per month for each complete year of credited service. This benefit shall only be paid for the life of the member, and will not be paid to disabled members. The benefit shall commence upon receipt of a retirement benefit and separation from the city and shall cease when the member attains the age of sixty-five (65).

(D) Supplemental Benefit for Firefighter Members. Effective October 1, 2007, firefighter

members who either terminate while vested or reach normal retirement or early retirement shall receive a supplemental benefit of twenty-five dollars (\$25.00) per month for each year of credited service earned prior to March 15, 2012. Effective March 15, 2012, members who have not attained age 55 with 10 or more years of credited service or 25 years of credited service regardless of age on that date, who either terminate while vested or terminate upon reaching normal or early retirement shall receive a supplemental benefit of \$12.00 per month for each year of credited service earned on or after March 15, 2012. This benefit shall only be paid for the life of the member, and will not be paid to disabled members who are being retained on the City's insurance at the expense of the City. The benefit shall commence upon entry into the DROP or upon receipt of a retirement benefit and separation from the City. This benefit shall cease when the member attains the age of Medicare eligibility.

(Ord. 2000-15, passed 5-5-00; Am. Ord. 2000-48, passed 9-21-00; Am. Ord. 2001-64, passed 10-18-01; Am. Ord. 2003-09, passed 3-20-03; Am. Ord. 2004-04, passed 1-22-04; Am. Ord. 2005-27, passed 6-20-05; Am. Ord. 2006-29, passed 5-4-06; Am. Ord. 2006-132, passed 12-21-06; Am. Ord. 2007-64, passed 9-6-07; Am. Ord. 2007-108, passed 11-15-07; Am. Ord. 2007-111, passed 12-20-07; Am. Ord. 2011-69, passed 3-15-12; Am. Ord. 2012-09, passed 4-5-12)

§ 55.08 DEATH.

(A) *Post-retirement death.* Upon death of a retiree there shall be no further benefits paid, except for return of accumulated contributions not theretofore paid in the form of retirement benefits. However, if a retiree had elected an optional form of benefit, benefits, if any, shall be payable in accordance with such election.

(B) *Pre-retirement death benefits for police officer members.*

(1) Upon the death of a member not eligible for retirement, his or her beneficiary, or his or her estate if there is no beneficiary, shall receive the return of his or her accumulated contributions.

(2) Upon the death of a member eligible for retirement who had not elected an optional form of benefit, it shall be presumed that such member had elected a monthly benefit payable for life but with one hundred twenty (120) payments guaranteed in any event and retired immediately preceding his or her death; provided, however, that the resulting benefit may not be less than the amount of member's accumulated contributions. If the deceased member had elected an optional form of benefit, benefits, if any, shall be payable in accordance with such election.

(3) Upon the death of a member having at least ten (10) years of credited service, his or her beneficiary shall be entitled to the benefits otherwise payable at the member's early or normal retirement date.

(C) *Pre-retirement death benefits for firefighter members.*

(1) *Death in the line of duty.*

(a) Effective October 1, 2006, the beneficiary of any member whose death was directly caused by performance of the member's duties as a firefighter shall be entitled to a monthly pension benefit equal to the greater of the member's accrued benefit or seventy-five percent (75%) of the member's average final compensation provided that the member's death in the line-of-duty is established to the satisfaction of the Board.

(b) *Presumptions.*

1. Any death of a member caused by hypertension or heart disease shall be presumed to have been suffered in the line-of-duty unless the contrary is shown by competent evidence; provided that such member 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.

2. The presumptions regarding certain communicable diseases provided for in FLA. STAT. 112.181, as amended from time to time, shall

apply only to those conditions described in that statute that are diagnosed on or after January 1, 1996.

(2) *Death not in the line-of-duty.* Effective October 1, 2006, the beneficiary of any member, with at least ten (10) years of credited service, whose death was not directly caused by the performance of the member's duties as a firefighter shall be entitled to a monthly pension benefit equal to the greater of the member's accrued benefit or twenty-five percent (25%) of the member's average final compensation.

(3) Upon the death of a member eligible for retirement who had not elected an optional form of benefit, it shall be presumed that such member had elected a monthly benefit payable for life but with one hundred twenty (120) payments guaranteed in any event and retired immediately preceding his death; provided, however, that the resulting benefit may not be less than the amount of member's accumulated contributions. If the deceased member had elected an optional form of benefit, the benefits, if any, shall be payable in accordance with such election.

(4) Upon written request to the Board made within a time frame established by the Board, a beneficiary entitled to receive benefits under this subsection (C) shall have the option of receiving the return of the deceased member's accumulated contributions.
(Ord. 2000-15, passed 5-5-00; Am. Ord. 2003-09, passed 3-20-03; Am. Ord. 2007-108, passed 11-15-07)

§ 55.09 DISABILITY.

(A) *Disability benefits in line of duty.* Any member who shall become totally and permanently disabled to the extent that he or she is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a police officer or firefighter, which disability was directly caused by the performance of his or her duty as a police officer or firefighter, shall, upon establishing the same to the satisfaction of the Board, be entitled to a monthly pension as follows:

(1) Firefighters hired before March 15, 2012, and police officers shall be entitled to a monthly pension equal to the member's accrued benefit, but in any event, the minimum amount paid to such member shall be seventy-five percent (75%) of the member's average final compensation.

(2) Firefighter members hired on or after March 15, 2012, shall be entitled to a monthly pension equal to the member's accrued benefit, but in any event, the minimum amount paid to such member shall be sixty-six percent (66%) of the member's average final compensation.

(B) *In-line-of-duty presumption:*

(1) *Presumption.* Any condition or impairment of health of a member caused by hypertension or heart disease shall be presumed to have been suffered in line of duty unless the contrary is shown by competent evidence; provided, that such member shall have successfully passed a physical examination upon entering into such service, including cardiogram, which examination failed to reveal any evidence of such condition.

(2) *Additional presumption.* The presumption provided for certain communicable diseases in FLA. STAT. § 112.181, as amended from time to time, shall apply only to those conditions described in that statute that are diagnosed on or after January 1, 1996.

(C) *Disability benefits not in line of duty.* Any member with ten (10) years or more credited service who shall 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 or firefighter, which disability is not directly caused by the performance of his duties as a police officer or firefighter, shall, upon establishing the same to the satisfaction of the Board, be entitled to a monthly pension equal to his accrued benefit, but in any event the minimum amount paid to such member shall be twenty-five percent (25%) of average final compensation.

(D) *Conditions disqualifying disability benefits.* Each member who is claiming disability benefits shall establish, to the satisfaction of the Board, that such disability was not occasioned primarily by:

(1) Excessive or habitual use of any drugs, intoxicants or alcohol narcotics.

(2) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections, or while committing a crime.

(3) Injury or disease sustained while serving in any branch of the armed forces.

(4) Injury or disease sustained after his employment as a police officer or firefighter shall have terminated.

(5) Injury or disease sustained by the member while working for anyone other than the city and arising out of such other employment.

(E) *Physical examination requirement.* A member shall not be eligible for disability benefits until and unless he undergoes a physical examination

by one or more qualified physicians who shall be selected by the Board for that purpose.

(1) Any retiree receiving disability benefits hereunder may be periodically re-examined by one or more qualified physicians who shall be selected by the Board to determine if such 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 or firefighter, the Board shall recommend to the city that the retiree be returned to performance of duty as a police officer or firefighter. In the event a retiree so ordered to return shall refuse to comply with the order within thirty (30) days, or upon regaining certification where required and as herein provided, he shall forfeit the right to his disability pension. If recertification is required, then prior to returning to duty it shall be the responsibility of the retiree to begin, within thirty (30) days, to regain his certification as a police officer or firefighter, if he has lost such certification during his disability period. In such event, he shall return to work immediately after such recertification.

(2) The cost of the physical examination or re-examination of a member or retiree shall be borne by the fund. Any other reasonable costs as determined by the Board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, may be borne by the fund.

(3) If a retiree recovers from disability and re-enters the service of the city as a police officer or firefighter, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability pension 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 system.

(4) The Board shall have the power and authority to make the final decisions regarding all disability or recovery claims.

(F) *Duration of disability payments.* The monthly benefit to which a member is entitled in the event of his disability retirement shall be payable on

payable on the first day of the first month after the Board determines such entitlement. However, the monthly benefit 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 retiree recovers from the disability, the payment due next preceding the date of such recovery; or

(2) If the retiree dies without recovering from disability, the payment due next preceding his death or the 120th monthly payment, whichever is later.

(3) Provided, however, a disability retiree may select, at any time prior to the date on which disability benefit payments begin, an optional form of benefit payment as described below.

(Ord. 2000-15, passed 5-5-00; Am. Ord. 2000-48, passed 9-21-00; Am. Ord. 2004-04, passed 1-22-04; Am. Ord. 2011-69, passed 3-15-12)

§ 55.10 VESTING:

(A) If a member terminates his employment as a police officer or firefighter, either voluntarily or by discharge, and is not eligible for any other benefits under the system, the member shall be entitled to benefits determined pursuant to the following schedule:

Vesting Schedule

<i>Completed Years of Credited Service</i>	<i>Annual Vested Increment in Accrued Benefit</i>	<i>Cumulative Vested Interest</i>
Less than 5	0%	0%
5	50%	50%
6	10%	60%
7	10%	70%
8	10%	80%
9	10%	90%
10	10%	100%

(B) Any member not otherwise eligible for any other benefits hereunder, but who has a vested interest at time of termination, shall receive monthly benefits

commencing on the date that would have been his normal retirement date had he remained in employment. Alternatively, such member may elect to receive his vested benefit, reduced for early retirement, at any time on or after the date that would have been his early retirement date, it being further understood that actuarially equivalent amounts shall be payable under any form or manner of payment provided.

(Ord. 2000-15, passed 5-5-00)

§ 55.11 OPTIONAL FORMS OF BENEFITS.

(A) In lieu of the amount and form of retirement income payable as specified herein, a member, upon written request to the Board, may elect to receive a retirement income or benefit of actuarial equivalence, payable in accordance with one of the following options:

(1) A monthly benefit payable to the retiree for his lifetime only.

(2) A monthly benefit payable to the retiree for life but with one hundred twenty (120) payments guaranteed in any event.

(3) A monthly benefit payable to the retiree during his lifetime and following his death, one hundred percent (100%), seventy-five percent (75%), sixty-six and two-thirds percent (66-2/3%) or fifty percent (50%) of such monthly amount, payable for the beneficiary's lifetime. In no event, however, shall the present value of payments to the retiree be less than fifty percent (50%) of the total present value of payments to the retiree and his beneficiary.

(4) If a member retires prior to the time at which Social Security benefits are payable, he may elect to receive an increased monthly benefit until such time as Social Security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of retirement. The amounts payable shall be as recommended by the actuary for the system, based upon the Social Security law in effect at the time of the member's retirement.

(B) A member who elects any option in this section shall designate the beneficiary 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 shall name one or more primary beneficiaries where applicable. If a member has elected an option with a beneficiary and such member's retirement benefits have commenced, such member may thereafter change his or her designated beneficiary at any time, provided the beneficiary is alive at the time of the change.

(C) The Board may request such evidence of good health of the beneficiary being removed as it may require.

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

(E) Upon change of a retiree's beneficiary in accordance herewith, the amount of the monthly benefit payable to the retiree shall be actuarially recalculated to take into account the age and sex of the former beneficiary, of the new beneficiary and of the retiree. 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 recalculation. Each request for a change shall be made in writing on a form prepared by the Board. In the event that no designated beneficiary survives the retiree, such benefits as may be payable in the event of the death of the retiree shall be paid as provided in § 55.12.

(F) Monthly benefits shall be made under the option elected and shall be subject to the following limitations:

(1) If a member dies prior to his or her early retirement date, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under § 55.08.

(2) If the designated beneficiary dies before the member retires, the option elected will be canceled automatically and a monthly benefit in 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 or a new beneficiary is designated by the member prior to his or her retirement.

(3) If both the retiree and all beneficiaries designated by the member or retiree die before the full payment has been made under any option providing for payments for a period certain and life thereafter, 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 § 55.12.

(4) If a member continues employment beyond his or her normal retirement date and dies prior to his or her actual retirement and while an option is in effect, monthly benefits shall be paid under said option to the beneficiary or beneficiaries in an amount as if the member had retired under said option on the date on which his or her death occurred.

(G) A retiree may not change his or her retirement option after the date of cashing or depositing his or her first benefit check.

(H) 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 monthly benefit amount is less than one hundred dollars (\$100.00) or the total commuted value of the remaining monthly benefits to be paid do not exceed five thousand dollars (\$5,000.00). Any such payment made pursuant hereto shall operate as a complete discharge of all obligations under the system with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

(Ord. 2000-15, passed 5-5-00)

§ 55.12 BENEFICIARIES.

(A) Each member or retiree shall, on a form provided for that purpose, signed and filed with the Board, designate a beneficiary to receive the benefit, if any, that may be payable in the event of his or her death. Each designation may be revoked or changed by such member or retiree by signing and filing with the Board a new designation form. Upon such change, the rights of all previously-designated beneficiaries to receive any benefits under the system shall forever cease.

(B) If a deceased member or retiree duly failed to name a beneficiary or if all beneficiaries so named predecease the member or retiree, the death benefit, if any, that may be payable under the system with respect to such deceased member or retiree shall be paid to the estate of the member or retiree and the Board, in its discretion, may direct that the commuted value of the remaining monthly benefits be paid in a lump sum.

(C) Any such payment hereto shall operate as a complete discharge of all obligations under the system with regard to such member and any other persons with rights under the system, and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

(Ord. 2000-15, passed 5-5-00)

§ 55.13 CLAIMS PROCEDURES.

(A) The Board may establish administrative claims procedures to be utilized in processing written requests on matters which affect the substantial rights of any person, including members, retirees, beneficiaries or any person affected by a decision of the Board.

(B) The Board shall have the power to subpoena and require the attendance of witnesses and the production of documents for discovery prior to and at any proceedings provided for in the Board's claims procedures. A reasonable fee may be charged for the issuance of any subpoenas, not to exceed the maximum fee provided by law.

(Ord. 2000-15, passed 5-5-00)

§ 55.14 REPORTS TO DIVISION OF RETIREMENT.

Each year, on or before March 15, the Board shall submit an annual report to the Division of Retirement containing the documents and information required by F.S. §§ 175.261 and 185.221.

(Ord. 2000-15, passed 5-5-00)

§ 55.15 ROSTER OF RETIREES.

The secretary of the Board shall keep a record of all persons receiving pensions under the system in which it shall be noted the time when the pension is allowed and when 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. 2000-15, passed 5-5-00)

§ 55.16 MAXIMUM PENSION.

Notwithstanding any other provision of the system to the contrary, the annual benefit to which a member is entitled under the system shall not, in any limitation year, be in amount which would

exceed the applicable limitations under Section 415 of the Internal Revenue Code and the regulations issued thereunder. If the benefit payable under the system would (but for this section) exceed the limitations of Section 415 of the Code by reason of a benefit payable under another defined benefit plan aggregated with this system under Code Section 415(f), the benefit under this system shall be reduced only after all reductions have been made under such other plan. As of January 1 of each calendar year commencing on or after January 1, 2007, the dollar limitation as determined by the Commissioner of the Internal Revenue Service for that calendar year shall become effective as the maximum permissible dollar amount of benefit payable under the system during the limitation year ending within that calendar year. (Ord. 2000-15, passed 5-5-00; Am. Ord. 2007-66, passed 9-6-07)

§ 55.17 MINIMUM DISTRIBUTION OF BENEFITS.

(A) *General rules.*

(1) *Effective date.* The provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2007 calendar year.

(2) *Precedence.* The requirements of this section will take precedence over any inconsistent provisions of the system.

(3) *Requirements of treasury regulations incorporated.* All distributions required under this section will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Code.

(4) *TEFRA Section 242(b)(2) Elections.* Notwithstanding the other provisions of this Section other than this subsection (A)(4), distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that related to Section 242(b)(2) of TEFRA.

(B) *Time and manner of distribution.*

(1) *Required beginning date.* The member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date which shall not be later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70 ½) or the calendar year in which the member retires unless otherwise provided for in the Plan or required by law.

(2) *Death of member before distributions begin.* If the member dies before distributions begin, 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, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained age seventy and one-half (70 ½), if later.

(b) If the member's surviving spouse is not the member'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 member died.

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

(d) If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subsection (B)(2), other than subsection (B)(2)(a), will apply as if the surviving spouse were the member.

For purposes of this subsection (B)(2) and subsection (E), distributions are considered to begin on the member's required beginning date or, if

subsection (B)(2)(d) applies, the date of distributions are required to begin to the surviving spouse under subsection (B)(2)(a). If annuity payments irrevocably commence to the member before the member's required beginning date (or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (B)(2)(a), the date distributions are considered to begin is the date distributions actually commence.

(3) *Form of distribution.* Unless the member'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 subsections (C), (D), and (E) of this section. If the member'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 Treasury regulations. Any part of the Member'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 Treasury regulations that apply to individual accounts.

(C) *Determination of amount to be distributed each year.*

(1) *General annuity requirements.* If the member's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

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

(b) The distribution period will be over a life (or lives) or over a period certain not longer than the period described in subsection (D) or (E).

(c) 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.

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

1. By an annual percentage increase that does not exceed the cumulative 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 or by a fixed annual increase of five percent or less.

2. To the extent of the reduction in the amount of the member'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 described in subsection (D) dies or is no longer the member'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 accumulated contributions upon the member's death.

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

(2) *Amount required to be distributed by required beginning date.* The amount that must be distributed on or before the member's required beginning date (or, if the member dies before distributions begin, the date distributions are required to begin under subsection (B)(2)(a) or (B)(2)(b) is the payment that is required for one 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 member'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 member's required beginning date.

(3) *Additional accruals after first distribution calendar year.* Any additional benefits accruing to the member 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.

(D) *Requirements for annuity distributions that commence during a member's lifetime.*

(1) *Joint life annuities where the beneficiary is not the member's spouse.* If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member'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 member 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 member and a non-spouse beneficiary and a period certain annuity, the requirements in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(2) *Period certain annuities.* Unless the member'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 member's lifetime may not exceed the applicable distribution period for the member 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 member reaches age seventy (70), the applicable distribution period for the member 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 member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member'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 member's applicable distribution period, as determined under this subsection (D)(2), or the joint life and last survivor expectancy of the member and the member'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

member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

(E) *Requirements for minimum distributions where member dies before date distributions begin.*

(1) *Member survived by designated beneficiary.* If the member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the member's entire interest will be distributed, beginning no later than the time described in subsection (B)(2)(a) or (B)(2)(b), over the life of the designated beneficiary or over a period certain not exceeding:

(a) 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 member's death.

(b) 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.

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

(3) *Death of surviving spouse before distributions to surviving spouse begin.* If the member dies before the date distribution of his or her interest begins, the member's surviving spouse is the member's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this subsection will apply as if the surviving spouse were the member, except that the time by which distributions must begin will be determined without regard to Subsection (B)(2)(a).

(F) *Definitions.*

(1) *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.

(2) *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Subsection (B)(2).

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

(4) *Required beginning date.* The date specified in Subsection (B)(1).

(G) *Compliance with Internal Revenue Code.* Notwithstanding anything contained in this section to the contrary, the limitations, adjustments and other requirements prescribed in this section shall at all times comply with the provisions of Internal Revenue Code, Section 401(a)(9), and the regulations issued thereunder.

(Ord. 2000-15, passed 5-5-00; Am. Ord. 2007-66, passed 9-6-07)

§ 55.18 MISCELLANEOUS PROVISIONS.

(A) *Interest of members in system.* At no time prior to the satisfaction of all liabilities under the system 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

that shall have the effect of reducing the then-vested accrued benefits of any member or any member's beneficiaries.

(C) *Qualification of system.* It is intended that the system will constitute a qualified pension plan under the applicable provisions of the code, as now in effect or hereafter amended. Any modification or amendment of the system may be made retroactively, if necessary or appropriate, to qualify or maintain the system as a plan 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. Subject to the foregoing, the system is declared to be an irrevocable plan and trust, subject to the city's right to terminate in accordance with law.

(D) *Use of forfeitures.* Forfeitures arising from terminations of service of members shall serve only to reduce current or future contributions to the fund.

(E) *Correction of records.* Should any change or error in records result in any member or beneficiary receiving from the system more or less than he or she would have been entitled to receive had the records been correct, then on discovery of any such error the Board shall cause the same to be corrected and as far as practicable shall direct that the payments be adjusted in such manner that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled shall be paid.

(Ord. 2000-15, passed 5-5-00)

§ 55.19 REPEAL OR TERMINATION OF SYSTEM.

(A) The ordinance establishing the system and fund, and subsequent ordinances pertaining to said system and fund, may be modified, terminated or amended, in whole or in part; provided, that if this or any subsequent ordinance shall be amended or repealed in its application to any person benefitting 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 not be affected thereby, except to the extent that the assets of the fund may be determined to be inadequate.

(B) If this subchapter shall be repealed, or if contributions to the system are discontinued or if there is a transfer, merger or consolidation of government units, services or functions as provided in F.S. Chapter 121, the Board shall continue to administer the system in accordance with the provisions of this subchapter for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this ordinance who are designated by any of said members. In the event of repeal, discontinuance of contributions or transfer, merger or consolidation of government units, services or functions, there shall be full vesting (100%) of benefits accrued to date of repeal and the assets of the system shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled in accordance with the provisions thereof.

(C) The following shall be the order of priority for purposes of allocating the assets of the system as of the date of repeal of this subchapter, or if contributions to the system are discontinued, with the date of such discontinuation being determined by the Board:

(1) Apportionment shall first be made in respect of each retiree receiving a retirement or disability benefit hereunder on such date, each person receiving a benefit on such date on account of a retired or disabled (but since deceased) member and each member who has, by such date, become eligible for normal retirement but has not yet retired, in an amount that is the actuarial equivalent of such benefit; provided that, if such asset value be less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.

(2) If there be any asset value remaining after the apportionment under subdivision (1), apportionment shall next be made in respect of each member in the service of the city on such date who has service and who is not entitled to an

apportionment under subdivision (1) in an amount required to provide the actuarial equivalent of the accrued normal retirement benefit (but not less than accumulated contributions), based on credited service and average final compensation as of such date, and each vested former member then entitled to a deferred benefit who has not, by such date, begun receiving benefit payments, in an amount required to provide said actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions); provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(3) If there be any asset value after the apportionments under subdivisions (1) and (2), apportionment shall be made in respect of each member in service of the city on such date who is not entitled to an apportionment under subdivisions (1) and (2) in the amount equal to member's accumulated contributions; provided, that if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amount shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(4) If there be any asset value remaining after the apportionments under subdivisions (1), (2) and (3), apportionment shall lastly be made in respect of each member included in subdivision (3) above to the extent of the actuarial equivalent of the non-vested accrued normal retirement benefit, less the amount apportioned in subdivision (3), based on credited service and average final compensation as of such date; provided, that if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such amounts shall be reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(5) In the event that there be asset value remaining after the full apportionment specified in subdivisions (1), (2), (3) and (4), such excess shall be returned to the city, less return of the state's contributions to the state; provided, that if the excess

is less than the total contributions made by the city and the state to the date of termination, such excess shall be divided proportionately to the total contributions made by the city and the state.

The allocation of the fund provided for in this subsection may, as decided by the Board, be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this subsection. The fund may be distributed in one sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the Board may direct. The fund may be continued in existence for purposes of subsequent distributions.

If, at any time during the first ten (10) years after the effective date of the ordinance originally establishing this system, the system shall be terminated or the full current costs of the system shall not have been met, anything in the system to the contrary notwithstanding, city contributions which may be used for the benefit of any one of the twenty-five (25) highest paid members on the effective date whose anticipated annual retirement allowance provided by the city's contributions at member's normal retirement date would exceed one thousand five hundred dollars (\$1,500.00), shall not exceed the greater of either (a) twenty thousand dollars (\$20,000.00) or (b) an amount computed by multiplying the smaller of ten thousand dollars (\$10,000.00) or twenty percent (20%) of such member's average annual earnings during his or her last five (5) years of service by the number of years of service since the effective date. In the event that it shall hereafter be determined by statute, court decision, ruling by the Commissioner of Internal Revenue or otherwise that the provisions of this paragraph are not then necessary to qualify the system under the code, this paragraph shall be ineffective without the necessity of further amendment of this subchapter.

(D) After all the vested and accrued benefits provided hereunder have been paid and after all other liabilities have been satisfied, then and only then may any remaining funds revert to the general fund of the city.

(Ord. 2000-15, passed 5-5-00)

§ 55.20 EXEMPTION FROM EXECUTION, NONASSIGNABILITY.

Except as otherwise provided by law, the pensions, annuities or any other benefits accrued or accruing to any person under the provisions of the system and the accumulated contributions and the cash securities in the fund are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever, and shall be unassignable.

(Ord. 2000-15, passed 5-5-00)

§ 55.21 PENSION VALIDITY.

The Board shall have the power to examine into 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 hereafter granted a pension under the system 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 the system 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. 2000-15, passed 5-5-00)

§ 55.22 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 the system, except for the return of his or her accumulated contributions as of the date of termination. Specified offenses are as follows:

(1) The committing, aiding or abetting of an embezzlement of public funds.

(2) The committing, aiding or abetting of any theft by a public officer or employee from employer.

(3) Bribery in connection with the employment of a public officer or employee.

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

(5) The committing of an impeachable offense.

(6) 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 of the right to receive the faithful performance of his or her duty as a public officer or employee; 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 a nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.

(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 system in excess of his or her accumulated contributions after member's 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. 2000-15, passed 5-5-00)

**§ 55.23 CONVICTION AND FORFEITURE;
FALSE, MISLEADING OR FRAUDULENT
STATEMENTS.**

(A) 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 from the system.

(B) A person who violates division (A) commits a misdemeanor of the first degree, punishable as provided in F.S. §§ 775.082 or 775.083.

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

(Ord. 2000-15, passed 5-5-00)

**§ 55.24 DIRECT TRANSFERS OF ELIGIBLE
ROLLOVER DISTRIBUTIONS.**

(A) This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the system 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 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 life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) 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 distribution that is not includable in gross income.

(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 an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) **DISTRIBUTEES.** 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.
(Ord. 2000-15, passed 5-5-00)

§ 55.25 FIDUCIARIES AND FIDUCIARY RESPONSIBILITY.

(A) *Definition.* A fiduciary shall be any person or entity that exercises any discretionary authority or control regarding management or administration of the system or its assets, and any person or entity that renders or that has authority or responsibility to render investment advice.

(B) *Standards of responsibility.* All fiduciaries shall discharge their duties with respect to the system solely in the interest of members and beneficiaries, and more particularly as follows:

(1) For the exclusive purpose of providing benefits to members and their beneficiaries and defraying reasonable system administrative expenses; and

(2) 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 alike character and with like aims; and

(3) By performing their duties in accordance with the documents and instruments setting forth and governing the system.
(Ord. 2000-15, passed 5-5-00)

§ 55.26 INDEMNIFICATION AND DEFENSE OF CLAIMS.

(A) To the extent not covered by insurance contracts in force from time to time, the city shall indemnify 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 such individuals because of acts or circumstances connected with or arising out of their official duties 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 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, the Board or the trustees immunity from any suit in whole or part, or waive any other substantive or procedural rights they may have.

(C) This section shall not apply to claims arising out of acts or omissions of members of the Board that constitute felonies or gross malfeasance or gross misfeasance in office.

(Ord. 2000-15, passed 5-5-00)

§ 55.27 COST-OF-LIVING ADJUSTMENT FOR MEMBERS AND THEIR BENEFICIARIES.

(A) The purpose of subsections (A) and (B) is to provide a cost-of-living adjustment to the benefits payable to members who become retirees on or after September 30, 2000, and their beneficiaries.

(B) Commencing on the thirtieth (30th) day of September, 2003, and on the thirtieth (30th) day of each September thereafter, the benefit of each police officer retiree or beneficiary shall be adjusted as follows:

(1) The amount of the monthly benefit payable for the twelve (12) month period commencing on the first adjustment date shall be the amount of the monthly benefit plus three percent (3%). The amount of monthly benefit payable for subsequent twelve (12) month periods shall be the amount of the monthly benefit being received on September 30 immediately preceding the adjustment date plus an amount equal to three percent (3%) of said benefit.

(2) To receive a cost-of-living adjustment hereunder, a police officer member must have been a retiree for at least three (3) years as of an adjustment date. However, a cost-of-living adjustment shall be paid on a pro rata basis for any fractional year in excess of three (3) years as of an adjustment date.

(3) For purposes of determining eligibility of a beneficiary for a cost-of-living adjustment hereunder, the police officer member's date of retirement shall govern.

(C) The purpose of this subsection (C) is to provide a cost-of-living adjustment to the benefits payable to firefighter members hired before March 15, 2012, who become retirees on or after September

30, 2001 and their beneficiaries. Commencing on September 30, 2007 and on each September 30 thereafter, the benefit of each firefighter retiree who was hired before March 15, 2012, or beneficiary of such member shall be adjusted as follows:

(1) The amount of the monthly benefit payable for the twelve (12) month period commencing on the first adjustment date shall be the amount of the monthly benefit plus three percent (3%). The amount of the monthly benefit payable for subsequent twelve-month periods shall be the amount of the monthly benefit being received on September 30 immediately preceding the adjustment date plus an amount equal to three percent (3%) of said benefit.

(2) To receive a cost-of-living adjustment hereunder, a firefighter member must have been a retiree for at least six (6) years as of an adjustment date. However, a cost-of-living adjustment shall be paid on a pro-rata basis for any fractional year in excess of six (6) years as of an adjustment date.

(3) For purposes of determining eligibility of a beneficiary for a cost of living adjustment hereunder, the firefighter member's date of retirement shall govern.

(D) The purpose of this subsection (D) is to provide a cost-of-living adjustment to the benefits payable to firefighter members who are hired on or after March 15, 2012, and their beneficiaries. Commencing on September 30, 2012, and on each September 30 thereafter, the benefit of each firefighter retiree who was hired on or after March 15, 2012, or beneficiary of such member shall be adjusted as follows:

(1) The amount of the monthly benefit payable for the twelve (12) month period commencing on the first adjustment date shall be the amount of the monthly benefit plus two percent (2%). The amount of monthly benefit payable for subsequent twelve (12) month periods shall be the amount of the monthly benefit being received on September 30 immediately preceding the adjustment date plus an amount equal to two percent (2%) of said benefit.

(2) To receive a cost-of-living adjustment hereunder, a member must have been a retiree for at least six (6) years as of an adjustment date.

(3) For purposes of determining eligibility of a beneficiary for a cost-of-living adjustment hereunder, the member's date of retirement shall govern.

(Ord. 2000-48, passed 9-21-00; Am. Ord. 2001-64, passed 10-18-01; Am. Ord. 2011-69, passed 3-15-12)

§ 55.28 DEFERRED RETIREMENT OPTION PLAN.

(A) Participation in the DROP.

(1) *Eligibility to participate.* In lieu of terminating his or her employment as a police officer or firefighter, any police officer or firefighter actively employed by the city who is or has been eligible for normal retirement, may elect to participate in the DROP.

(2) *Election to participate.* A police officer or firefighter's election to participate in the DROP must be made in writing in a time and manner determined by the Board and shall be effective on the first day of the first calendar month following the Board's acceptance of such notification.

(3) *Period of participation.* No police officer or firefighter shall participate in the DROP for more than sixty (60) months.

(4) Termination of participation.

(a) A police officer or firefighter shall cease DROP participation by

1. terminating employment with the city.
2. participating in the DROP for 60 months.

(b) Upon termination of participation in the DROP, amounts shall cease to be transferred

from the Retirement System to the police officer or firefighter DROP Account, and shall be disbursed in the normal manner for retirement benefits. Any amounts remaining in his or her DROP Account shall be paid to him or her in accordance with the provisions of division (C) of this section when he or she terminates employment with the city.

(c) A police officer or firefighter who terminates his or her participation in the DROP under division (A)(4) of this section shall not be permitted to again become a participant of the Retirement System or DROP.

(5) Effect of DROP Participation on the Retirement System.

(a) A police officer or firefighter's Credited Service and accrued benefit under the Retirement System shall be determined on the date his or her election to participate in the DROP becomes effective. A police officer or firefighter shall not accrue any additional Credited Service or additional benefits under the Retirement System (except for any benefits provided under any cost of living adjustments in the Retirement System) while he or she is a participant of the DROP.

(b) No amounts shall be paid to a police officer or firefighter from the Retirement System while a police officer or firefighter is a participant in the DROP. Unless otherwise specified in the Retirement System and/or DROP provisions, if a police officer or firefighter terminates his or her participation in the DROP other than terminating his or her employment with the city, no amounts shall be paid to him or her from the Retirement System until he or she terminates his or her employment with the city.

1. Unless otherwise provided for within the Retirement System or DROP provisions, amounts transferred to the firefighter member DROP Account shall be paid directly to the firefighter member only on or after the earliest date after the quarterly interest posting and declaration of interest, net of fees by the Board for the quarter following the firefighter member's termination of employment with

the city. Anything herein to the contrary notwithstanding, upon request of the firefighter member, the Board, based upon performance of the plan during the then-current quarter, may make payment directly to the firefighter member of up to seventy-five percent (75%) of the amount in the firefighter member's DROP Account on or as soon as practical after the firefighter member's termination of employment with the city. The balance, if any, shall be paid directly to the firefighter member after the quarterly interest posting and declaration of interest, net of fees, by the Board for the quarter following the firefighter member's termination of employment with the city. If it is subsequently determined by the Board that the firefighter member has been overpaid, the firefighter member shall forthwith repay the Board the amount of such overpayment, plus interest and the Board may withhold from future benefit payments to the firefighter member the amount of any such overpayment, plus interest.

2. Unless otherwise provided for within the Retirement System or DROP provisions, amounts transferred to the police officer's DROP Account shall be paid directly to the police officer only on or after the earliest date after the quarterly interest posting and declaration of interest, net of fees by the Board for that quarter following the police officer's termination of employment with the city.

(c) Participant's contributions to the Retirement System cease on effective date of DROP participation.

(d) In the event of death of a DROP participant, DROP participation ceases. Retirement benefit is paid according to the form of benefit chosen upon election to participate in the DROP, and Drop Account becomes payable at that time.

(B) Funding.

(1) *Establishment of DROP account.* A DROP account shall be established for each police officer or firefighter participating in the DROP.

A police officer or firefighter's DROP account shall consist of:

(a) amounts transferred to the DROP under division (B)(2), and

(b) investment earnings or losses on those amounts.

Such amounts will not be segregated or invested separate from the System, but accounted for separately.

(2) Transfers from retirement system.

(a) As of the first day of each month of a police officer or firefighter's period of participation in the DROP, the monthly retirement benefit he or she would have received under the Retirement System had he or she terminated his or her employment as a police officer or firefighter and elected to receive monthly benefit payments there under shall be transferred to his or her DROP Account. A police officer or firefighter's period of participation in the DROP shall be determined in accordance with the provisions of division (A) of this section, but in no event shall it continue past the date he or she terminates employment with the city.

(b) Amounts credited to a police officer or firefighter's DROP Account under division (B)(2)(a) of this section shall be credited monthly.

(c) Investment earnings or losses shall be credited or debited quarterly to a police officer or firefighter's DROP Account with the quarterly net investment return, net of money manager fees and other expenses, determined by the Board on the assets of the Retirement System. Individuals entering the DROP during a quarter would have investment earnings or losses, net of money manager fees and other expenses, determined by the Board on the assets of the Retirement System for the specific number of months the funds were considered in the DROP during that quarter; however, interest would be posted at quarter-end.

(C) Distribution of DROP Account Funds on termination of employment.

(1) *Eligibility for benefits.* A police officer or firefighter shall receive the balance in his or her

DROP Account in accordance with the provisions of this section upon his or her termination of employment as a police officer or firefighter. Except as provided in division (C)(4) of this section, no amounts shall be paid to a police officer or firefighter from the DROP prior to his or her termination of employment as a police officer or firefighter. Should the police officer or firefighter elect any combination of the forms of distribution, the rollover and/or lump sum portions of the DROP account shall be deducted from the balance prior to the calculation of annual installment amount.

(2) *Forms of distribution.*

(a) Annual installments. The amount of the annual installment shall be fixed upon termination from employment as a police officer or firefighter, and shall be no less than 10% (1/10th) or ten thousand dollars (\$10,000), whichever is greater, of the balance of the member's DROP account at the time of termination. Annual installments shall be distributed each December and continue until either the member's DROP account is depleted, or the member chooses a Rollover or Lump Sum distribution, as listed below.

(b) Rollover. The balance or any portion of the balance of a member's DROP account may be rolled over to another qualified retirement plan.

(c) Lump sum. The balance or any portion of the balance of a member's DROP account may be paid directly to the member.

(d) In the event that a police officer or firefighter dies before total distribution of his or her DROP account, the balance in his or her DROP account shall be paid in an immediate lump sum to his or her beneficiary.

(3) *Date of payment of distribution.*

(a) Distribution of a police officer or firefighter's DROP Account shall begin as soon as administratively practicable following the police officer or firefighter's termination of employment as a police officer or firefighter in accordance with

divisions (A)(5)(b) and (C)(2)(a) through (d) of this section.

(b) Any amounts in the DROP Account of a police officer or firefighter who terminated his or her participation in the DROP in accordance with division (A)(4)(a)1. of this section by terminating his or her employment as a police officer or firefighter shall continue to be invested as part of the DROP's funds and shall be credited or debited with the net investment on those funds in accordance with division (B)(2)(c) of this section until such amounts are distributed to the police officer or firefighter or his or her beneficiary.

(4) *Proof of death and right of beneficiary or other person.* The Board may require and rely upon such proof of death and evidence of the right of any beneficiary or any other person to receive the value of a deceased police officer or firefighter's DROP Account as the Board may deem proper and its determination of the right of that beneficiary or other person to receive payment shall be conclusive.

(D) *Administration of the DROP.*

(1) *Board responsibilities.* The general administration of the DROP, the responsibility for carrying out the provisions of the DROP and the responsibility for overseeing the investment of the DROP's assets shall be placed with the Board. However, DROP assets will not be segregated or invested separate from the system's assets. The Board may adopt such administrative procedures and regulations as it deems desirable for the conduct of its affairs; may authorize one or more of its number or any agent to execute or deliver any instrument or make any payment on its behalf; may retain counsel, employ agents and provide for such clerical, accounting, actuarial and consulting services as it may require in carrying out the provisions of the DROP; and may allocate among its members or delegate to other persons all or such portion of its duties under the DROP, other than those granted to the Board as a trustee under any trust agreement adopted for use in implementing the DROP, as it, in its sole discretion shall decide.

(2) *Individual accounts, records, and reports.* The Board shall maintain, or cause to be maintained, records showing the operation and condition of the DROP, including records showing the individual balances in each police officer or firefighter's DROP account, and the Board shall keep, or cause to be kept, in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The Board shall prepare or cause to be prepared and distributed to each police officer or firefighter participating in the DROP and shall file with the appropriate governmental agencies, all necessary descriptions, reports, information returns, and data required to be distributed or filed for the DROP pursuant to the Internal Revenue Service Code, the Employee Retirement Income Security Act and any other applicable laws.

(3) *Establishment of rules.* Subject to the limitations of the DROP, the Board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The Board shall have discretionary authority to construe and interpret the DROP (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in the DROP). The determination of the Board as to the interpretation of the DROP or its determination of any disputed question shall be conclusive and final to the extent permitted by applicable law.

(4) *Limitation of liability.*

(a) The members of the Board shall not incur any liability individually or on behalf of any other individuals for any act or failure to act, made in good faith in relation to the DROP or the funds of the DROP.

(b) Neither the Board nor any member of the Board shall be responsible for any reports furnished by any expert retained or employed by the Board, but they shall be entitled to rely thereon as well as on certificates furnished by an accountant or an actuary, and on all opinions of counsel. The Board shall be fully protected with respect to any action

taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.

(E) *General provisions.*

(1) *Amendment of DROP.* The Board reserves the right at any time and from time to time, and retroactively if deemed necessary and if permissible, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment to this section shall be made which has the effect of decreasing the balance of the DROP account of any police officer or firefighter.

(2) *Facility of payment.* If a police officer or firefighter or other person entitled to a benefit under the DROP has a duly appointed legal representative, payment shall be made to such legal representative in complete discharge of the liabilities of the DROP for that benefit.

(3) *Information.* Each police officer or firefighter, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or her or on his or her account under the DROP, shall file with the Board the information that it shall require to establish his or her rights and benefits under the DROP.

(4) *Written elections and notifications.*

(a) Any elections, notifications or designations made by a police officer or firefighter pursuant to the provisions of the DROP shall be made in writing and filed with the Board in a time and manner determined by the Board under rules uniformly applicable to all employees similarly situated. The Board reserves the right to change from time to time the time and manner for making notifications, elections or designations by police officers or firefighters under the DROP if it

determines after due deliberations that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making and election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.

(b) Each police officer or firefighter or former police officer or firefighter who has a DROP account shall be responsible for furnishing the Board with his or her current address, along with any financial institution information required by the Board to facilitate direct transfers of funds. Any notice required to be given to a police officer or firefighter or former police officer or firefighter hereunder shall be deemed given if directed to him or her at the last such address given to the Board and mailed by registered or certified United States mail. If any such correspondence or funds transfer is returned, future disbursement of funds shall be suspended until such time as the police officer or firefighter or former police officer or firefighter notifies the Board of his or her address and financial institution information.

(5) *Benefits not guaranteed.* All benefits payable under the DROP shall be paid only from the assets of the DROP and neither the city nor the Board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by applicable law. A positive or negative quarterly earnings may occur throughout DROP participation and the distribution period. The principal balance could be reduced due to lowered market investment returns while in the DROP.

(6) *Administrative expenses.* The Board may pay the reasonable and necessary expense of administering the DROP, including, but not limited to, expenses incurred in connection with investing the DROP's assets, from the funds of the system to the extent that they are not otherwise paid by the city.

(7) *Construction.*

(a) The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.

(b) The masculine pronoun shall mean the feminine wherever appropriate.

(c) The titles and heading of the articles and sections in this Plan are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

(8) *Forfeiture of retirement benefits.* Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the System. DROP participants shall be subject to the forfeiture of all retirement benefits, including DROP benefits. (Ord. 2000-48, passed 9-21-00; Am. Ord. 2001-64, passed 10-18-01; Am. Ord. 2006-113, passed 11-2-2006; Am. Ord. 2007-66, passed 9-6-07; Am. Ord. 2009-18, passed 5-7-09)

CHAPTER 60: EX OFFICIO DUTIES OF COUNCILMEMBERS

Section

60.01 Ex officio duties of Councilmembers

§ 60.01 EX OFFICIO DUTIES OF COUNCILMEMBERS.

(A) The City Council shall have the authority to appoint one (1) or more of its members to the following boards, commissions, or other position:

(1) The Board of Trustees of the Police and Firefighters Retirement System as set forth in § 55.04 of this Code, to serve as a resident member of the board.

(2) Any authorized seat on the Space Coast Transportation Planning Organization (TPO), as set forth in FLA. STAT. § 339.175.

(B) Any appointment pursuant to this section shall constitute service ex officio to the member's service on the City Council and shall not constitute unlawful dual office-holding under Article II, Section 5(a), Florida Constitution.

(C) Any member of the City Council who is appointed to any board, commission, or other position pursuant to this section shall be considered to have voluntarily and irrevocably resigned such seat immediately and simultaneously with the surrender of his or her Council seat under any circumstance.
(Ord. 2010-07, passed 4-1-10)

