

GENERAL EMPLOYEES' RETIREMENT SYSTEM

§ 34.010 DEFINITIONS.

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AMENDED PLAN OR SYSTEM or **PLAN**. The City General Employees Retirement System as contained herein and all amendments thereto.

AVERAGE MONTHLY EARNINGS. For members hired before June 8, 2011, one thirty-sixth of the earnings paid for the highest completed 78 bi-weekly pay periods preceding the actual retirement or termination date of a member times 1.0048. Compensation in excess of limitations set forth in Section 401(a)(17) of the Internal Revenue Code (as adjusted for cost-of-living increases under Section 401(a)(17)(B) of the Internal Revenue 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. For members hired on or after June 8, 2011 and before December 8, 2020, **AVERAGE MONTHLY EARNINGS** means the base compensation for one sixtieth of the earnings paid for the highest completed 130 bi-weekly pay periods preceding the actual retirement or termination date of a member times 1.0048 for service before December 8, 2020. Notwithstanding the preceding sentence, for members hired on or after June 8, 2011 and before December 8, 2020 who make contributions in accordance with § 34.025(D) and (E), **AVERAGE MONTHLY EARNINGS** for service before December 8, 2020 means one thirty-sixth of the earnings paid for the highest completed 78 bi-weekly pay periods preceding the actual retirement or termination date of a member times 1.0048. Effective December 8, 2020 for service on and after that date, **AVERAGE MONTHLY EARNINGS** means one thirty-sixth of the earnings paid for the highest completed 78 bi-weekly pay periods preceding the actual retirement or termination date of a member times 1.0048. Provided however, if a person is hired on or after June 8, 2011, and retires prior to attaining five years of continuous service, **AVERAGE MONTHLY EARNINGS** means the base compensation for earnings paid for the completed bi-weekly pay periods of the member, divided by the number of months of continuous service of the member times 1.0048.

BENEFICIARY. The person or persons entitled to receive any benefits at the death of a member who has or have been designated in writing by the member and filed with the Board. If no designation is in effect at the time of death of the member, or if no person so designated is living at that time, the Board shall have the authority to designate the beneficiary or beneficiaries as provided herein.

BOARD. The Board of Pension Trustees, which shall hold the plan assets for the city and shall supervise, administer, and manage the system herein provided and serve as trustees of the fund.

CONTINUOUS SERVICE.

(1) Uninterrupted service by a member (expressed as years and completed months), from the date he last entered employment as an employee until the date his employment shall be terminated by death, retirement or discharge; however, the continuous service of any member shall not be deemed to be interrupted by, although credit for benefit purposes shall not be granted for, the following.

(a) Any authorized leave of absence, provided all members similarly situated in similar circumstances are treated alike pursuant to uniform, nondiscriminatory rules.

(b) Transfer of employment category within the city to one not covered by this plan.

(2) A member who separates from city employment for active duty service in the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily, shall be entitled to continuous service under this plan for the period of such service, provided:

(a) The member must return to city employment within one year from the earlier of the date of military discharge or release from active service, unless otherwise provided by the Uniformed Services Employment and Reemployment Rights Act, as amended.

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

(c) The maximum amount of continuous service available under this subsection shall be five years.

COST OF LIVING ADJUSTMENT (COLA). A permanent increase in the retiree's monthly benefit calculated by multiplying the COLA amount by the retiree's existing monthly pension benefit immediately prior to the time the COLA takes effect.

DEFERRED RETIREMENT CALCULATION DATE. The date prior to a member's entering the DROP period when benefits under the DROP shall be calculated as provided in § 34.0263.

DROP. The Deferred Retirement Option Plan established by § 34.026(E).

DROP ACCOUNT. The bookkeeping account established by the plan for each member of the DROP pursuant to § 34.0263.

DROP ELECTION DATE. The date a member elects to participate in the DROP.

DROP PARTICIPANT. Any eligible member of the General Employees Retirement System who has validly elected to participate in the DROP.

DROP PERIOD. The period of time commencing on the deferred retirement calculation date and ending on the member's DROP termination date, which period may not exceed the maximum DROP period provided in § 34.0263.

DROP TERMINATION DATE. The date a DROP participant ceases to be an employee of the city and begins receiving their calculated retirement benefit.

EARNINGS. Basic wages and regular longevity wages paid to a member, excluding overtime, bonuses, and any other nonregular payments.

EFFECTIVE DATE. Thirty days following final approval of Ordinance No. 73-3 on the second reading by the City Commission (i.e. 11-8-72 is the second reading approval date).

ELECTED OFFICIALS AND APPOINTEES. The Mayor, City Commissioners, City Clerk, City Attorney, City Auditor and City Manager on the effective date of Ord. 2005-16, and any person who is elected or appointed to any of the foregoing positions after such date. A member shall be considered to be **ELECTED OFFICIALS AND APPOINTEES** as long as he or she holds one of the foregoing positions.

EMPLOYEE. All regular employees of the city's classification service except the members of the Fire Department with the job title of firefighter, driver/engineer, Fire Inspector, Fire Lieutenant, Paramedic Lieutenant, Fire Captain, Fire Marshal, Division Chief, Assistant Fire Chief, and Fire Chief and members of the Police Department with the job title of patrolman, Sergeant, Detective, Lieutenant, Captain, Major, Commander, Assistant Police Chief, or Police Chief. For this purpose, the term **REGULAR EMPLOYEE** shall include those who work for 26 hours or more per week and five months or more per year. This definition shall also include all former **EMPLOYEES** who were transferred to the Broward County Library System pursuant to the Interlocal Agreement between Broward County and the City of Pompano Beach Library, effective October 1, 1991, and who elected to remain in this System, all former **EMPLOYEES** who transferred to the Broward County Sheriff's Office and elected to remain in this system pursuant to the Interlocal Agreement between the Sheriff's Office of Broward County and the city relating to dispatch services, dated October 16, 1998, and all former **EMPLOYEES** who transferred to the Broward County Sheriff's Office and elected to remain in this system pursuant to the Agreement for Services adopted by Resolution No. 99-223 and Ordinance No. 99-46, effective August 1, 1999. Effective on the effective date of Ord. 2005-16, **EMPLOYEE** shall include elected officials and appointees as defined herein. Effective on the effective date of Ord. 2008-16, **EMPLOYEE** shall include senior management employees as defined herein.

FISCAL AGENT. The person or entity designated to serve as investment agent, or custodian of the fund of the retirement system.

FUND. The trust fund originally established and continued hereunder as part of the plan.

HIGHLY COMPENSATED EMPLOYEE. A **HIGHLY COMPENSATED EMPLOYEE** is a member of this plan who, during the taxable year or the preceding taxable year, received compensation in excess of \$75,000 from the city, or received compensation in excess of \$50,000 from the city and was in the top-paid group. An employee is considered to be in the top-paid group of employees for any year if the employee is in the group consisting of the top 20% of employees ranked on the basis of compensation paid during the year. For the purpose of determining the number of employee in the top-paid group, the following employees are excluded and disregarded:

- (1) Employees who have not completed six months of service;
- (2) Employees who normally work less than 17½ hours per week;
- (3) Employees who normally work six months or less during any year;
- (4) Employees under age 21;
- (5) Employees included in a unit of employees covered by a collective bargaining agreement (between employee representatives and the employer, and approved by the Secretary of Labor), except to the extent IRS regulations provide otherwise; and
- (6) Employees who are nonresident aliens and who receive no Code Sec. 911(d)(2) earned income (foreign earned income exclusion per Code Sec. 911) which is Code Sec. 861(a)(3) U.S. source income (source of income from personal services Code Sec. 862(a)(3)). With regard to items (1), (2), (3) and (4), above, the city may substitute a shorter period of service, smaller number of hours or months, or lower age, as the case may be. Any alternative used must be made on a uniform and consistent basis. The exclusions may be modified to substitute a zero service or age requirement for the year at issue.

MEMBER. An employee who fulfills the prescribed participation requirements.

NEW EMPLOYEE. A member who joins the system with no vested benefit due him at the time he joins the system, or a member that retired and received or is receiving benefits from this system and then returns to the employment of the city.

PLAN ADMINISTRATOR and ASSISTANT PLAN ADMINISTRATOR. The then current and serving Chairman and Vice-Chairman, respectively, of the Board.

PRIOR PLAN. The city's employees' pension plan as in effect prior to the adoption of this system.

RE-ENTERED EMPLOYEE. A former member of this system who is rehired by the city as a **REGULAR EMPLOYEE** and who has vested benefits no part of which he has received.

RETIRED. Retirees who are receiving monthly benefits from General Employees' Pension Plan or participating in the DROP.

RETIREE. A retired employee or, after the retired employee's death, the retired employee's survivor or beneficiary, who is receiving monthly benefits, normal retirement, early retirement, disability, or remainder of ten-year certain or survivor from the General Employees' Pension Plan. A DROP participant is considered a "retiree" for purposes of this subchapter. For purposes of this subchapter, a retired employee and, after the retired employee's death, the retired employee's survivor or beneficiary who is receiving monthly benefits on account of the retired employee's death, shall be considered the same retiree.

RETIREMENT DATE. The date the employee retired, entered the DROP, or if the employee died before retiring or entering the DROP, the date of death.

SENIOR MANAGEMENT EMPLOYEES. All full-time employees of the city who are employed and who are not eligible members of the city's General Employees' Retirement System on the effective date of Ord. 2008-16 or who were already members but whose current position had been specifically excluded from the plan by Ord. 96-85, effective September 10, 1996, and any person employed in the same or similar position held by such an employee after such date. A member shall be considered to be a senior management employee for as long as he or she is employed in the position, or in one of such positions.

SUFFICIENTLY FUNDED. The most recent annual actuarial valuation performed by the pension fund actuary and approved by the Pension Board of Trustees shows that the required city contribution for general employees is less than zero, and after payment of any variable cost of living adjustment remains less than zero; or shows that there is an actuarial gain attributable to general employees sufficient to fully fund the cost of any variable cost of living adjustment. The required city contribution may be found in the Discussion of Valuation Results section of the annual actuarial report. The actuarial gain attributable to general employees may be found in the annual actuarial report in the exhibit entitled Liquidation of the Unfunded Actuarial Liability. Actuarial wins and losses for each year shall be determined based on the funding methods and actuarial assumptions used in the most recent annual actuarial valuation.

('58 Code, § 11.02) (Ord. 73-3, passed 11-8-72; Am. Ord. 75-81, passed 9-16-75; Am. Ord. 80-29, passed 12-26-79; Am. Ord. 83-37, passed 2-8-83; Am. Ord. 86-82, passed 7-29-86; Am. Ord. 88-60, passed 5-24-88; Am. Ord. 91-16, passed 12-4-90; Am. Ord. 92-53, passed 7-21-92; Am. Ord. 94-41, passed 5-24-94; Am. Ord. 94-55, passed 7-19-94; Am. Ord. 96-21, passed 11-28-95; Am. Ord. 96-28, passed 12-26-95; Am. Ord. 96-85, passed 9-10-96; Am. Ord. 97-52, passed 4-22-97; Am. Ord. 99-1, passed 10-27-98; Am. Ord. 99-61, passed 7-27-99; Am. Ord. 2001-50, passed 3-27-01; Am. Ord. 2002-43, passed 3-26-02; Am. Ord. 2004-55, passed 7-27-04; Am. Ord. 2005-16, passed 12-14-04; Am. Ord. 2007-22, passed 1-9-07; Am. Ord. 2008-16, passed 12-11-07; Am. Ord. 2010-35, passed 6-22-10; Am. Ord. 2011-53, passed 6-14-11; Am. Ord. 2021-31, passed 12-8-20)

§ 34.011 ESTABLISHMENT.

The City Commission determines that the city should establish and adopt an actuarially-sound retirement and pension plan or system available to all employees, officers, and agents of the city.

('58 Code, § 11.01) (Ord. 73-3, passed 11-8-72)

Cross-reference:

Authority of city to provide a pension or retirement plan for its officers and employees, see Charter section 5 (23)

Old age and survivor's insurance, see §§ 34.080 - 34.087

§ 34.012 BOARD OF TRUSTEES.

(A) The general administration and responsibility for the proper operation of this retirement system and for making effective the provisions of this subchapter are hereby vested in a Board of Trustees consisting of seven persons, as follows. Three persons who are not members, either active or retired, of the retirement system shall be appointed by the City Commission. Three members of the retirement system, either active or retired, shall be elected as hereinafter provided. One person shall be elected by the six trustees selected in accordance with the foregoing.

(1) The term of office of each trustee shall be three years; however, the initial terms of the trustees of each class shall respectively be for one, two, and three years. The initial terms shall commence on December 8, 1972. Initially as among the employee members, the trustee receiving the most votes shall serve the three-year term, the second most votes the two-year term. The City Commission shall determine the term of office of each appointive trustee.

(2) The trustee elected by the remaining six Board members shall serve three years, and each succeeding member so designated shall serve three years.

(3) The elective trustees shall be elected in the following manner: by per capita vote of all members who come within the purview of this subchapter, both active and retired, at meetings to be held at places designated by the Board. At these meetings, all qualified members entitled to vote shall be notified in person or by mail, ten days in advance of the meeting. Voting shall be by secret paper ballot on a form provided by the Board Secretary either in person or by absentee ballot. An absentee ballot must be received by the Board Secretary on or before 4:00 p.m. on the day of the election. No member

shall be allowed to vote by proxy. In order to qualify as a candidate for election to the Trustee vacancy, each candidate must be nominated by three members of the system. The nomination period shall be held open for 15 days from the date of mailing of notification to the members. However, if only one candidate is duly nominated for the Trustee vacancy on the Board by the close of the nomination period as established by the Board, then there shall be no need for an election and that individual shall be deemed elected and shall fill the vacancy for the prescribed term. The candidate receiving the highest number of votes for each office shall be declared elected and shall take office immediately on commencement of the term of office for which elected or as soon thereafter as he shall qualify therefor. An election shall be held each year not more than 30 and not less than ten days prior to the commencement of the terms for which trustees are to be elected in that year. The Board of Trustees shall meet, organize, and elect one of their members as Chairman, and one member as Vice-Chairman, within ten days after trustees are elected and duly qualified.

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

(5) The trustees shall serve without compensation but they may be reimbursed from the expense fund for all necessary expenses such as travel, which they may actually expend in the performance of their duties as a member of the Board. The expenditure shall not exceed the limits placed by law, including but not limited to F.S. § 112.061.

(6) Each trustee shall, within ten days after his appointment or election, take an oath of office before the City Clerk, that so far as it develops upon him, he will diligently and honestly administer the affairs of the Board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system. The oath shall be subscribed to by the members making it and certified by the Clerk and filed in his office.

(7) Each trustee shall be entitled to one vote on the Board. Four votes shall be necessary for a decision by the trustees at any meeting of the Board. The Chairman shall have the right to one vote only.

(8) Subject to the limitations of this subchapter, the Board of Trustees shall from time to time establish uniform rules and regulations for the administration of funds created by this subchapter and for transactions of its business, including provisions for compulsory attendance of its members, which shall have the force of law. Board meetings shall be held in accordance with Robert's Rules of Order.

(9) The Board of Trustees shall by majority vote of its members appoint a Secretary, who may, but need not be, one of its members. It shall engage such actuarial and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by the Board of Trustees and all other expenses of the Board necessary for the operation of the retirement system shall be paid at those rates and in those amounts that the Board of Trustees shall agree, but in no case shall the expenditures for the services or operations exceed 3% of the maximum in the fund each fiscal year. All funds shall be disbursed by the Board of Trustees. The Secretary and any trustee authorized to handle or disburse funds or assets, or to sign checks, shall be bonded for a minimum of 10% of the assets of the fund with a maximum bond limit of \$100,000, the premium for the bond to be paid out of this fund.

(10) Any trustee who neglects the duties of his office shall be removed by the Board of Trustees upon affirmative vote of five members of the Board.

(11) The city may appoint employees to the Board to provide secretarial and clerical assistance, provided the Board reimburses the full cost of the employees to the city.

('58 Code, § 11.18) (Ord. 73-13, passed 1-30-73; Ord. 78-78, passed 9-26-78; Ord. 83-42, passed 3-29-83; Am. Ord. 88-60, passed 5-24-88)

(B) The duties, responsibilities and powers of the Board of Trustees shall include the following.

- (1) Construe the provisions of the system and determine all questions arising thereunder.
- (2) Determine all questions relating to eligibility and participation.
- (3) Determine and certify the amount of all retirement allowances or other benefits hereunder.
- (4) Establish uniform rules and procedures to be followed for administrative purposes, benefit applications, and all matters required to administer the plan.
- (5) Distribute at regular intervals to employees information concerning the plan.
- (6) Receive and process all applications for participation and benefits.
- (7) Authorize all payments whatsoever from the fund.
- (8) Approve of any and all changes in the provisions of the system.
- (9) Have performed an annual independent audit of the system's financial operations, books, and fund.
- (10) Sue and be sued.

(C) Effective as of January 1, 1989, the Board of Trustees may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

('58Code, § 11.19) (Ord.75-80, passed 9-16-75) (Ord. 73-3, passed 11-8-72; Am. Ord. 2010-35, passed 6-22-10)

§ 34.013 PENSION BOARD.

(A) As part of the system there is hereby established the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the system. The actual custody and supervision of the fund and assets thereof shall be vested in the Pension Board. Payment of benefits and disbursements from the fund shall be made only on authorization from the Pension Board.

('58 Code, § 11.20)

(B) The Pension Board may hire and appoint those persons, agents, entities, (including corporate fiduciaries), or attorneys as in its discretion may be required or advisable to enable it to perform its custodial and investment duties. Further, the Pension Board may enter into agency, investment, advisory, and custodial agreements for the purpose of securing investment and custodianship services for the system and fund.

('58 Code, § 11.21) (Ord. 75-80, passed 9-16-75)

(C) 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 employees on both an individual and aggregate account basis.
- (2) Receipts and disbursements.
- (3) Payments to retirees.
- (4) Current amounts clearly reflecting all moneys, funds, and assets whatsoever attributable to contributions and deposits from the city, including a valuation of all these, as well as other, assets of the fund on a market-value basis.
- (5) All interest, dividends, gains, or losses whatsoever.
- (6) Other entries that may be properly required to reflect a clear and complete financial report of the fund.

('58 Code, § 11.22) (Ord. 75-81, passed 9-16-75)

(D) The Board of Pension Trustees shall have the following investment powers and authority.

(1) The trustees shall invest and reinvest the funds in those securities or property real or personal wherever situated, as the trustees shall deem advisable, including but not limited to, stocks, common or preferred, bonds, and mortgages, and other evidences of indebtedness or ownership, although these may not be of the character permitted for trustees' investment by the laws of the state. The Board of Pension Trustees shall be vested with full legal title to the fund. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the Board or its agent in the fund, and the Board shall not be required to segregate or invest separately any portion of the fund.

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

(3) Neither the Board nor any 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 its name as trustee or into the name of the nominee it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.

(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 the securities; to deposit 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, comprising the fund which it may deem to be to the best interest of the fund to exercise.

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

(7) Where any action which the Board is required to take or any duty or function which it is required to perform either under the terms herein or under the general law applicable to it as a trustee under this subchapter, can reasonably be taken or performed only after receipt by it from a member, the city, or any person or entity, of specific information, certification, direction, or instructions, the Board shall incur no liability in failing to take that action or perform the duty or function until the information, certification, direction, or instruction has been received by it.

(8) Any significant or substantial overpayments or underpayments from the fund to a retired member or beneficiary caused by errors of computation may be adjusted by the Board, in its discretion, on a case by case basis. If, after appropriate investigation of the circumstances, an adjustment is found to be warranted based on the circumstances and

evidence presented, the adjustment shall be made with interest at the rate per annum approved by the Board. If, in the Board's discretion, adjustments are found to be necessary, then overpayments shall be charged against retirement payments next succeeding the adjustment and, accordingly, underpayments shall be made up from the trust fund.

(9) The Board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits herein provided for and shall be under no duty or obligation to inquire into the sufficiency of the payments made into the fund by the city. However, the Board shall be required to have annual actuarial valuations of the system performed as of September 30 each year, by an independent actuary or actuarial firm with membership in either the Society of Actuaries or the American Academy of Actuaries.

(10) In any application to, or proceeding or action in, the courts, only the city and the Board shall be necessary parties, and no member or other person having an interest in the fund shall be entitled to any notice of service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.

('58 Code, § 11.23)

(11) Assets of the fund may be invested in a tax-exempt group trust that has been determined by the Internal Revenue Service to be a pooled fund arrangement pursuant to Revenue Ruling 81-100, as modified by Revenue Rulings 2004-67 and 2011-1, that is operated or maintained exclusively for the commingling and collective investment of monies. In such case, the terms of the group trust shall be adopted as part of this Plan.

(E) Any of the foregoing powers and functions reposed in the Board may be performed and carried out by the Board through duly-authorized agents, provided the Board at all times maintains supervision over the acts of any agent. Further, legal title to the fund shall always remain in the Board of Pension Trustees.

('58 Code, § 11.24)

(F) No change in any of the provisions of the system shall be made without the approval of a majority of the Board of Trustees.

('58 Code, § 11.25)

(Ord. 73-3, passed 11-8-72; Am. Ord. 94-55, passed 7-19-94; Am. Ord. 96-21, passed 11-28-95; Am. Ord. 2014-21, passed 2-25-14)

§ 34.014 MEDICAL BOARD.

The Board of Trustees shall designate a Medical Board to be composed of three physicians who shall arrange for a pass on all medical examinations required under the provisions of this subchapter, shall investigate all essential statements or certificates made by or on behalf of a member in connection with an application for disability or retirement, and shall report in writing to the Board of Trustees its conclusions and recommendations on all matters referred to it. The payment for these services shall be determined by the Board of Trustees.

('58 Code, § 11.26) (Ord. 73-3, passed 11-8-72)

§ 34.015 CONDITIONS OF ELIGIBILITY.

(A) All employees at the time of the adoption of this retirement system, whether or not they are members of the city's employees' pension plan, shall be eligible to become members of this system. Membership shall be optional for these employees; however the option may be exercised only as of December 8, 1972.

(B) Provided the conditions of eligibility as set forth in subsection (C) hereof are met, any other employee upon employment by the city shall be required to become a member. However, that membership shall be optional for the Assistant City Manager.

(C) The following are conditions of eligibility for acceptance into the retirement system subsequent to December 8, 1972.

(1) The employee must satisfactorily complete and pass, subject to the approval of the Board of Pension Trustees, all medical examinations required by the city and the Board for an employee of his classification.

(2) The employee must meet all requirements of the merit system of the city.

(D) Reentry into the system after discontinuance of prior participation will be permitted on a uniform, nondiscriminatory basis, and in no event will any duplication of benefits result therefrom. All employees in similar circumstances shall be treated alike on a uniform, nondiscriminatory basis. Upon reentry, credit for prior service shall be granted only upon repayment in full; of all moneys previously refunded to the member, together with such interest at the rate or rates assumed for actuarial purposes, as shall be certified by the actuary to be due; one-half of the total amount due within three months from the date of reentry, and the balance of the total amount due within six months from the date of reentry. If repayment in full is not made as aforesaid, any moneys paid pursuant to this section shall be refunded, plus interest at the rate set forth in § 34.025(F)(1), and there shall be no further opportunity to obtain credit for prior service. Employees who have reentered the system prior to the effective date of this chapter may obtain credit for prior service upon complying with all of the provisions listed above; provided, however, that the time periods for repayment shall run from the effective date.

(E) Repealed.

(F) Second retirement. If an employee retires, and then returns to work as a regular employee with the city, during this second term of employment with the city, the employee's pension payment shall not be suspended. A second pension benefit shall be earned by the employee for the additional years of employment with the city, and then calculated, based upon average monthly earnings as defined in § 34.010 for that second period of service; provided, however, that the employee shall have worked a minimum of three continuous years during that second period of service and be at least age 62.

('58 Code, § 11.03) (Ord. 73-3, passed 11-8-72; Am. Ord. 75-81, passed 9-16-75; Am. Ord. 83-37, passed 2-8-83; Am. Ord. 85-22, passed 2-5-85; Am. Ord. 88-60, passed 5-24-88; Am. Ord. 95-54, passed 4-11-95; Am. Ord. 96-71, passed 5-28-96; Am. Ord. 2003-23, passed 11-26-02; Am. Ord. 2006-34, passed 4-25-06)

§ 34.016 APPLICATION FOR MEMBERSHIP.

In order to become a member of this system, each employee shall complete an application form, covering the following points, as well as any other points or items that may be prescribed by the Board of Pension Trustees.

(A) Employee's acceptance of the terms and conditions of the system.

(B) For members as of the effective date of this section, the amount of optional additional death benefits desired.

(C) Employee's designation of a beneficiary or beneficiaries.

(D) Employee's acknowledgment under oath that he or she is not eligible for disability benefits of any type arising from a physical or mental condition which already existed at the time of employment by the city.

('58 Code, § 11.04) (Ord. 73-3, passed 11-8-72; Am. Ord. 79-3, passed 10-10-78)

§ 34.017 CHANGE OF BENEFICIARY.

A member may from time to time change his designated beneficiary by written notice to the Board of Pension Trustees upon forms provided by the Board; no change of beneficiary shall be effective until written notice has been received by the Board. Upon change, the rights of all previously-designated beneficiaries to receive any benefit under the plan shall cease.

('58 Code, § 11.05) (Ord. 73-3, passed 11-8-72)

§ 34.018 NORMAL RETIREMENT DATE.

(A) A member may elect to retire on the first day of the month coincident with, or next following the attainment of age 55 and completion of 20 years of continuous service, or upon attainment of age 62 with at least three years of continuous service as a "regular employee" with the city.

(B) A member who is eligible for full primary Social Security old age benefits shall cease to be eligible for service-incurred and nonservice-incurred disability benefits. However, those members of the system who are eligible for full primary Social Security old age retirement benefits prior to the date of passage of this amendment to this section shall be exempt from this provision.

(C) Any current general employee with 18 or more combined years of service with the city as of May 1, 1984, as a general employee, Police Officer, or Firefighter, whose position is eliminated may, if approved by the City Commission, receive a retirement pension beginning at termination of employment equal to the amount that would have been received at normal retirement had the employee remained in employment until that time. This shall include credit for future service between termination and the normal retirement date and at a salary projected for that period. There shall be no actuarial reduction for early retirement.

('58 Code, § 11.06) (Ord. 73-3, passed 11-8-72; Am. Ord. 75-54, passed 5-13-75; Am. Ord. 80-29, passed 12-26-79; Am. Ord. 84-70, passed 6-26-84; Am. Ord. 88-60, passed 5-24-88)

§ 34.019 EARLY RETIREMENT DATE.

A member may retire on the first day of any month following the completion of 20 years of continuous service.

('58 Code, § 11.07) (Ord. 73-3, passed 11-8-72)

§ 34.020 NORMAL RETIREMENT BENEFIT.

(A) Amount.

(1) The monthly retirement benefit for any member retiring on or after October 1, 2005, shall be an amount equal to 2.75% of average monthly earnings as defined in § 34.010 times all years (and completed months) of continuous service, less the time spent on leave of absence, on voluntary or involuntary service with the armed forces of the United States, in an employment category within the city not covered by this plan or any period of time after December 8, 1972, during which the employee did not receive compensation from the city and contribute to the retirement system.

(2) For members hired on or after June 8, 2011, the monthly retirement benefit shall be an amount equal to 2.0% of average monthly earnings as defined in § 34.010 times all years (and completed months) of continuous service, less the time spent on leave of absence, on voluntary or involuntary service with the armed forces of the United States, in an

employment category within the city not covered by this plan or any period of time during which the employee did not receive compensation from the city and contribute to the retirement system, provided that the member's annual benefit shall not exceed the lesser of \$90,000, starting at age 62 plus cost of living adjustments, or 100% of the member's average base compensation for the five years immediately prior to retirement.

(3) Notwithstanding paragraph (2) above, for members hired on or after June 8, 2011 and before December 8, 2020 who make contributions in accordance with § 34.025(D) and (E), the monthly retirement benefit for service before December 8, 2020 shall be as provided in Section (A)(1).

(4) Effective December 8, 2020 for members hired on or after June 8, 2011 and before December 8, 2020, and members hired on or after December 8, 2020, the monthly retirement benefit for service on or after December 8, 2020 shall be as provided in Section (A)(1).

(B) Duration. A member retiring hereunder on his normal retirement date shall receive a monthly benefit which shall commence on his normal retirement date and be continued thereafter during his lifetime, with benefits ceasing upon the death of the member unless the member had previously selected an option providing for survivor benefits.

(C) Minimum normal retirement benefit. As regards any participant under the city general employees pension plan as of the date of adoption of this system, the normal retirement benefit shall not in any event be less than the normal retirement benefit would have been had the prior plan continued in existence.

(D) No member of this retirement system or plan who was not a member of the plan on October 1, 1978, shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. However, this restriction does not apply to Social Security coverage or benefits or federal benefits under Chapter 67, Title 10, United States Code.

('58 Code, § 11.08) (Ord.73-3, passed 11-8-72; Am. Ord. 76-19, passed 12-30-75; Am.Ord.80-29, passed 12-26-79; Am. Ord. 91-16, passed 12-4-90; Am. Ord. 2005-23, passed 1-11-05; Am. Ord. 2006-34, passed 4-25-06; Am. Ord. 2011-53, passed 6-14-11; Am. Ord. 2021-31, passed 12-8-20)

§ 34.021 EARLY RETIREMENT BENEFIT.

A member retiring hereunder on his early retirement date may receive either a deferred or an immediate monthly retirement benefit as follows.

(A) A deferred monthly retirement benefit which shall commence on his normal retirement date and shall be continued on the first day of each month thereafter during his lifetime. The amount of each deferred monthly retirement benefit shall be determined in the same manner as for retirement at his normal retirement date; however, continuous service and average monthly earnings shall be determined as of his early retirement date.

(B) In the alternative, an immediate monthly retirement benefit which shall commence on his early retirement date and shall be continued on the first day of each month thereafter during his lifetime. The maximum benefit payable, as determined in subsection (A) above, shall be reduced actuarially so that actuarially-equivalent benefits shall be payable in all cases wherein actual retirement date precedes a member's regular normal retirement date.

('58 Code, § 11.09) (Ord. 73-3, passed 11-8-72)

§ 34.022 DISABILITY.

(A) Service incurred. Any member who receives a service-connected injury, disease, or disability as determined by the Board of Pension Trustees, which permanently and totally incapacitates him, physically or mentally, so that the member cannot earn at least 75% of the earnings paid to him immediately prior to the disability, shall in that event receive in equal monthly installments an amount equal to 60% of earnings in effect at the date of disability. The benefit shall be payable until the earlier of death or recovery from disability.

(B) Nonservice incurred. Any member with ten years of continuous service or more who receives an injury which is determined by the Board of Pension Trustees upon the advice and counsel of the Medical Board to be a medically sustained nonservice-connected injury, illness, disease, or disability, which injury, disease or disability permanently and totally incapacitates him physically or mentally from regular and continuous duty as an employee, or any other gainful employment, shall in that event receive in equal monthly installments an amount equal to his accrued pension benefit as of the date of the disability subject to a minimum of 25% of earnings. The benefit shall be payable until the earlier of death, recovery from disability or return to gainful employment either with the city or some other employer.

(C) Service incurred aggravation of non-service incurred condition. Any benefit payable under this section by virtue of service incurred aggravation of an injury, disease, disability, impairment, or condition which existed at the time of the member's entry into the plan or of an injury, disease, disability, impairment, or condition which itself was not service incurred, shall be deemed to be a non-service incurred benefit, regardless of whether or not the injury, disease, disability, impairment, or condition was known or was symptomatic prior to the service incurred aggravation.

(D) Determination of disability. All questions relating to eligibility for continuance of disability benefits shall be determined by the Board of Pension Trustees, based upon the recommendation of the Medical Board.

(E) Exclusions, limitations, and other provisions relating to service-incurred and nonservice-incurred disability. No

disability benefits shall be payable from the retirement system, other than a refund of accumulated member contributions, plus interest, for any of the following.

- (1) Disability due to intentionally self-inflicted injuries during the first two years of a member's employment.
- (2) Disability resulting from the commission of a member of, or an attempt by a member to commit, an assault, battery, or felony.
- (3) Disability resulting directly from the use of alcohol, narcotics, or other similar substances or dangerous drugs.
- (4) Disability incurred while on leave of absence, during voluntary or involuntary service with the armed forces of the United States, while transferred to an employment category within the city not covered by this plan, or during any period of time during which the employee is not receiving compensation from the city and contributing to the retirement system.
- (5) Disability resulting from a physical or mental condition which, in the opinion of the Board of Pension Trustees based upon medical evidence or records, already existed at the commencement of the member's employment by the city. The decision of the Board of Pension Trustees shall be final and conclusive.
- (6) Injury, illness, disease or disability sustained by the member after his employment has terminated.

('58 Code, § 11.10) (Ord. 73-3, passed 11-8-72; Am. Ord. 73-66, passed 8-14-73; Am. Ord. 76-19, passed 12-30-75; Am. Ord. 79-4, passed 10-10-78; Am. Ord. 91-16, passed 12-4-90)

§ 34.023 PRERETIREMENT DEATH.

(A) Basic benefit. In the event of the death of a member prior to retirement, disability, or termination, a death benefit shall be payable to the deceased member's beneficiary in an amount equal to one year of an employee's base salary at the time of death plus a refund of the member's contributions accumulated with interest.

(B) Supplemental benefit. In addition, any member eligible under the system as of the effective date shall have the option of selecting a supplemental death benefit in an amount up to that provided him under the prior plan, but not to exceed \$40,000. The supplemental death benefit coverage shall terminate upon the earliest of the member's retirement, disability, termination of employment as an employee, or when a member becomes eligible for full primary Social Security old age benefits. Members selecting a supplemental death benefit shall be required to pay the full cost of the benefit through payroll deduction in the same manner as regular employee contributions. The cost shall be determined on a one year term basis and on the basis of 150% of the Male 1951 Group Annuity Mortality Table Projected by Scale C to 1970 (regraduated). Under procedures established by the Board of Pension Trustees, the cost for each member affected shall be redetermined annually based upon his age at that time. The cost of supplemental death benefits shall be deducted from the member's pay, and accounted for, separately from regular employee contributions to this system, and shall not be considered as employee contributions under the system. These deductions shall not be refundable, nor shall any interest be credited to them.

(C) Method of payment. The preretirement death benefit prescribed herein shall be paid as follows.

(1) The death benefit related to annual earnings shall be payable in equal monthly installments for 48 months, beginning the first month following proof of death.

(2) The refund of the member's contributions and interest shall be paid in a single lump sum immediately on proof of death. However, the Board shall have the authority under special circumstances as determined by the Board to approve any alternative methods of payment.

(D) Benefit for vested members and members eligible for early or normal retirement. The beneficiary of a member who is vested or is eligible for early or normal retirement but who becomes deceased while still actively employed by the city or after a vested termination with the city shall receive on a monthly basis for a period of ten years the vested benefit which would have been payable to the deceased member had he retired on the date of death under Option 2, ten-year certain and life thereafter. This benefit shall be payable in lieu of the basic benefit described in subsection (A) above but shall be subject to a minimum actuarial lump sum value equal to that of the basic benefit.

(E) Exclusions, limitations, and other provisions relating to preretirement death benefits. No death benefits shall be payable from the retirement system other than a refund of accumulated member contributions plus interest for any of the following.

- (1) Death due to intentionally self-inflicted injuries during the first two years of member's employment.
- (2) Death resulting from the commission by a member of, or an attempt by a member to commit, an assault, battery, or felony.
- (3) Death resulting from the use of alcohol, narcotics, or other similar substances or dangerous drugs during the first two years of a member's employment.
- (4) Death occurring while on leave of absence, during voluntary or involuntary service with the armed forces of the United States, while transferred to an employment category within the city not covered by this plan, or during any period of time during which the employee is not receiving compensation from the city and contributing to the retirement system.
- (5) Death resulting from a physical or mental condition which, in the opinion of the Board of Pension Trustees based

upon medical evidence or records, already existed at the commencement of the member's employment by the city. The decision of the Board of Pension Trustees shall be final and conclusive.

(F) Required distribution of benefits. The entire interest of an employee shall be distributed no later than the required beginning date, or beginning no later than the required beginning date over the life of the employee, the lives of the employee and a designated beneficiary, a period not extending beyond the life expectancy of the employee, or a period not extending beyond the life expectancy of the employee and a designated beneficiary. The required beginning date is April 1 of the calendar year following the calendar year in which the employee reaches age 70½ for all plan participants. A designated beneficiary is any individual designated as a beneficiary by the employee.

('58 Code, § 11.11) (Ord. 73-3, passed 11-8-72; Am. Ord. 78-21, passed 12-20-77; Am. Ord. 79-31, passed 1-16-79; Am. Ord. 79-52, passed 5-15-79; Am. Ord. 88-60, passed 5-24-88; Am. Ord. 91-16, passed 12-4-90; Am. Ord. 95-33, passed 1-3-95; Am. Ord. 95-50, passed 3-28-95)

§ 34.024 ACCRUED BENEFITS.

(A) If a member terminates his employment, either voluntarily or by lawful discharge, and is not at that time eligible for either a normal, early, or disability retirement benefit under this system, he shall be entitled to a percentage of his accrued benefit according to the following schedule.

VESTING SCHEDULE	
Completed Years of Continuous Service	Cumulative Vested Interest
Less than 7 years	None
7 years	100%

(B) Any member not eligible for a normal, early, or disability retirement benefit but who has a vested interest at time of termination of employment shall receive such benefit on a monthly, life annuity basis, or under any other optional form of benefit available to retirees, commencing at his regular normal retirement date, and provided further that such member shall leave his total accumulated contributions in the fund. In any event, and in lieu of any and all rights to benefits hereunder a member may elect to withdraw his accumulated contributions.

(C) Any member of this system who, for whatever reason, has his employment for purposes of this system with the city terminated but who remains or was previously employed by the city in the capacity as a police officer, police dispatcher, or firefighter so that his total continuous period of employment with the city is ten years or more, shall have all benefits accrued under this system preserved, provided he does not elect to withdraw his member contributions. The accrued benefits shall be paid at his otherwise retirement date in accordance with the provisions of this system.

(D) For the purposes of determining normal retirement age under this vesting provision, continuous service shall include all employment with the city as well as the period of time subsequent to termination as a member of this system; however, benefits shall not be payable under this system during any period of continued employment by the city.

(E) Any amounts attributable to city contributions which are forfeited by reason of nonvested terminations of employment shall remain in the fund and shall serve only to reduce current and future required contributions to the system.

(F) In addition to any other vesting provisions under the plan, a member shall be 100% vested in his or her normal retirement benefit upon attaining normal retirement age, which is age 55 with 20 years of continuous service or age 62 with three years of continuous service while employed with the city.

('58 Code, § 11.12) (Ord. 73-3, passed 11-8-72; Am. Ord. 75-81, passed 9-16-75; Am. Ord. 85-50, passed 4-23-85; Am. Ord. 89-19, passed 12-6-88; Am. Ord. 2012-61, passed 7-24-12; Am. Ord. 2015-44, passed 4-14-15)

§ 34.025 CONTRIBUTIONS.

(A) Members of the retirement system hired before June 8, 2011 shall make regular contributions to the trust fund at a rate equal to 7% of the member's earnings earned on or before October 11, 2006; at a rate equal to 8.5% of the member's earnings earned on or after October 12, 2006; and at a rate equal to 10% of the member's earnings earned on or after October 11, 2007.

(B) Members of the retirement system hired on or after June 8, 2011 and before December 8, 2020 shall make regular contributions to the trust fund at a rate equal to 7% of the member's earnings for service before December 8, 2020, except as otherwise provided in subsection (D) and (E) below.

(C) Members of the retirement system hired on or after June 8, 2011 and before December 8, 2020, and members hired on or after December 8, 2020 shall make regular contributions to the trust fund at a rate equal to 10% of the member's earnings for service on and after December 8, 2020.

(D) Members hired on or after June 8, 2011 and before December 8, 2020 who make an additional 3% member contribution for past service retroactive to the date

the member became eligible to participate in the pension plan shall be eligible for the same benefits as members hired before June 8, 2011 as provided in §§ 34.010 (definition of "average monthly earnings"), 34.020 (normal retirement benefit)

and 34.038 (pension adjustments). Such members may make the additional 3% member contribution for past service in any one or a combination of the following ways:

(1) Cash lump sum payment (single payment).

(2) Periodic cash lump sum payments over a period not exceeding the period between the date the member became eligible to participate in the pension plan and December 8, 2020, in accordance with a payment schedule agreed to by the member and pension board. In no event may such periodic payments extend beyond a member's entry into the DROP or separation from city employment, whichever occurs first.

(3) Direct transfer (rollover) from an IRA or another eligible retirement plan, or a direct trustee-to-trustee transfer from an eligible governmental 457(b) plan or 403(b) plan, as permitted under Internal Revenue Code sections 457(e)(17) and 403(b)(13).

(4) Payroll deduction from the member's earnings over a period not exceeding the period between the date the member became eligible to participate in the pension plan and December 8, 2020. In no event may such payroll deductions extend beyond a member's entry into the DROP or separation from city employment, whichever occurs first.

(5) For members with more than 160 hours of unused vacation leave or more than 320 hours of unused sick leave on December 31, 2020, a combined total of 100 hours of unused vacation and/or sick leave may be applied toward the additional 3% member contribution for past service under the Retirement Plan. A member must elect to apply unused vacation and/or sick leave pursuant to this paragraph no later than January 31, 2021. Such election shall be irrevocable. The application of unused vacation and/or sick leave pursuant to this paragraph is intended to be pre-tax if possible, but in any event will be subject to IRS requirements.

(E) For members hired on or after June 8, 2011 and before December 8, 2020 who make the additional 3% member contribution for past service retroactive to the date the member became eligible to participate in the pension plan, the additional member contribution payment must be

paid in full before a member enters the DROP or separates from city employment, whichever occurs first. In the event a member has not paid the additional 3% member contribution, in full, before the member enters the DROP or separates from city employment, whichever occurs first, all additional 3% member contribution payments shall be refunded to the member, without interest, and the portion of the member's retirement benefit based on service before December 8, 2020 shall be calculated in accordance with the Plan provisions for such members in effect before December 8, 2020.

(F) Eligible employees, as a condition of membership, shall agree in writing upon becoming a member to make the contributions specified herein. The contributions shall be deducted from earnings before the earnings are paid.

('58 Code, § 11.13)

(G) Effective January 1, 1991, the city shall assume and pay future member contributions in lieu of payroll deductions from member's earnings. No member shall have the option of choosing to receive the contributed amounts directly instead of having them paid by the city directly to the retirement system. All such contributions by the city shall be deemed and considered as a part of each member's accumulated contributions and subject to all provisions of the retirement system pertaining to accumulated contributions of the members. The city pick up of contributions shall be the result of a reduction of each member's base pay corresponding to the contribution amount, and is intended to comply with Section 414(H)(2) of the Internal Revenue Code. Base pay for purpose of overtime pay, pay supplements, including but not limited to merit pay, longevity pay, cost of living increases, and temporary assignment pay and retirement benefit calculations shall not be reduced.

(H) So long as this system is in effect, the city shall make an annual contribution of the trust fund in an amount equal to the difference each year between the total of aggregate member contributions for the year and the amount necessary for the year to maintain the system on a sound actuarial basis as shown by the most recent actuarial valuation and report for the system. The total cost for any year shall be defined as the total of normal cost plus the additional amount sufficient to amortize the accrued past service liability over the appropriate period as is prescribed by state law. ('58 Code, § 11.14)

(I) Unless otherwise specified herein, all retirement, death, and disability benefits payable under this system are in lieu of a refund of member contributions.

(1) In any event however, each member shall be guaranteed the payment of benefits at least equal in total amount to his accumulated contributions plus interest at the rate of 3% per annum, compounded annually. In lieu of any other benefits hereunder, a member shall have the option on termination of employment as an employee of withdrawing all of his accumulated contributions plus interest.

(2) Notwithstanding the provisions of §34.030 of this code, "pensions not assignable," a member shall have the right to pledge and assign his or her accumulated contributions plus interest for the purpose and use as collateral in obtaining credit or loans with the Employees Credit Union of the city, only if the pledge or assignment specifies that the member must first exercise his or her option, upon termination of employment with the city, of withdrawing all of his or her accumulated contributions plus interest from the plan, and it is only out of those refunded contributions, and not employee retirement benefits, that the pledge and assignment is to be satisfied. ('58 Code, § 11.15)

(J) All money representing member and city contributions and money from all other sources whatsoever, and held by or in custody of the city or any other entity, including insurance carriers or trustees, for purposes of funding pension benefits for

members herein, shall be included in this fund, including any interest gathered by these monies, and shall be transferred into this fund.

('58 Code, § 11.16)

(K) No annual benefit provided for in this retirement plan for an individual member who has not previously participated in such plan, before January 1, 1980, shall exceed 100% of the member's average final compensation.

(Ord. 73-3, passed 11-8-72; Am. Ord. 86-46, passed 3-4-86; Am. Ord. 91-16, passed 12-4-90; Am. Ord. 2006-34, passed 4-25-06; Am. Ord. 2007-22, passed 1-9-07; Am. Ord. 2007-35, passed 2-27-07; Am. Ord. 2011-53, passed 6-14-11; Am. Ord. 2021-31, passed 12-8-2020)

§ 34.026 OPTIONAL FORMS OF RETIREMENT BENEFITS.

Each member entitled to an early, normal, or disability retirement or a deferred vested retirement benefit, shall have the right at any time prior to his actual retirement to elect to have his benefit payable under any one of the options hereinafter set forth in lieu of the retirement benefits otherwise provided herein, and to revoke any such elections and make a new election at any time prior to actual retirement. The value of optional retirement benefits shall be actuarially equivalent to the value of benefits otherwise payable. The member shall make an election by written request to the Board of Pension Trustees and such an election shall be subject to the approval of the Board.

(A) *Option 1. Joint and last survivor option.* A retiring member may elect to receive a decreased retirement benefit during his lifetime and have the decreased retirement benefit, or a designated fraction thereof, continued after his death to and during the lifetime of his designated beneficiary. The election of option 1 shall be null and void if the designated beneficiary dies before the member's retirement. The present value of the payments to the retired member must initially be at least 50% of the total combined present value of payments to both the member and the designated beneficiary.

(B) *Option 2. Ten years certain and life thereafter.* A retiring member may elect to receive a decreased retirement benefit with 120 monthly payments guaranteed. If, after retiring, the member should die before the 120 monthly payments are made, payments are then continued to his designated beneficiary until 120 payments in all have been made, at which time benefits cease. After expiration of the certain period, should the retired member be then alive, payments shall be continued during his remaining lifetime. The retired member shall have the absolute privilege of changing his designated beneficiary at any time.

(C) *Option 3. Other.* In lieu of the other optional forms enumerated in this section, retirement benefits may be paid in any form approved by the Board so long as actuarial equivalence with the benefits otherwise payable is maintained.

(D) *Required Distribution of Benefits.* The entire interest of a member shall be required to be distributed pursuant to § 34.0261. The actuarial assumption which shall be used for calculation purposes under this plan shall be: 1971 Group Annuity Mortality Tables for Males at 7% interest.

(E) A Deferred Retirement Option Plan (DROP) is hereby established. The DROP is to be administered by the Board of Trustees subject to the terms and conditions set forth in § 34.0623. In no event shall the Board administer a plan in a way which results in the disqualification of the system under the Internal Revenue Code.

('58Code, § 11.17) (Ord.73-3, passed 11-8-72; Am. Ord. 75-81, passed 9-16-75; Am. Ord. 85-50, passed 4-23-85; Am. Ord. 88-60, passed 5-24-88; Am. Ord. 91-16, passed 12-4-90; Am. Ord. 2004-55, passed 7-27-04; Am. Ord. 2010-35, passed 6-22-10)

§ 34.0261 REQUIRED DISTRIBUTION OF BENEFITS.

Notwithstanding any other provision of this plan to the contrary, the plan shall pay all benefits in accordance with a good faith interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. The plan is subject to the following conditions:

(A) If any retirement income is payable before the member's death:

(1) It shall either be distributed or commence to the member not 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 1/2) years or the calendar year in which he retires.

(2) The distribution shall commence not later than the calendar year defined in subsection (A) above and (i) shall be paid over the life of the member or over the lifetimes of the member and his designated beneficiary, or (ii) shall be paid over the period extending not beyond the life expectancy of the member or the life expectancies of the member and his designated beneficiary.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the member dies before his entire interest in the plan has been distributed, the remaining portion of such interest in the plan shall be distributed no less rapidly than under the form of distribution in effect at the time of the member's death.

(B) If the member's death occurs before the distribution of his interest in the plan has commenced, his entire interest in the plan shall be distributed within five years of his death, unless it is to be distributed in accordance with the following rules:

(1) If the member's surviving spouse is the sole designated beneficiary, the member's remaining interest in the plan is

distributed or begins to be distributed 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 participant would have attained age 70 1/2, if later, and if the surviving spouse dies before the distribution to the surviving spouse begins, this section shall be applied as if the surviving spouse were the plan member; or

(2) If the member's surviving spouse is not the sole designated beneficiary, the member's remaining interest is to be distributed over the life of the designated beneficiary or over a period not extending beyond the life expectancy of the designated beneficiary; and such distribution begins no later than December 31 of the calendar year immediately following the calendar year of the member's death.

(C) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

(D) The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the members' benefits received from the plan.

(E) Notwithstanding the other provisions of the plan or the provisions of the Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

(Ord. 93-73, passed 9-21-93; Am. Ord. 2010-35, passed 6-22-10)

§ 34.0262 ROLLOVER DISTRIBUTIONS TO ELIGIBLE RETIREMENT PLANS.

(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 plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(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 of the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code ("IRC"); and the portion of any distribution that is not includible in gross income. Effective January 1, 2002, any portion of any distribution which would be includible in gross income will be an eligible rollover distribution if the distribution is made to (i) an individual retirement account described in IRC Section 408(a), to an individual retirement annuity described in IRC Section 408(b) or to a qualified contribution plan described in IRC Section 401(a); (ii) on or after January 1, 2007, to a qualified defined benefit plan described in IRC Section 401(a) or to an annuity contract described in IRC Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or (iii) on or after January 1, 2008, to a Roth IRA described in IRC Section 408A.

(2) **ELIGIBLE RETIREMENT PLAN.** An eligible retirement plan is (i) an individual retirement account described in Section 408(a) of the IRC, (ii) an individual retirement annuity plan described in Section 408(b) of the IRC, (iii) an annuity plan described in Section 403(a) of the IRC, (iv) a qualified trust described in Section 401(a) of the IRC, (v) effective January 1, 2002, an eligible deferred compensation plan described in Section 457(b) of the IRC which is maintained by an eligible employer described in Section 457(e)(1)(A) of the IRC and which agrees to separately account for amounts transferred into such plan from this plan, (vi) effective January 1, 2002, an annuity contract described in Section 403(b) of the IRC, and (vii) effective January 1, 2008, a Roth IRA described in Section 408A of the IRC, that accepts the distributee's eligible rollover distribution. Effective January 1, 2002, this definition shall apply in the case of an eligible distribution to the surviving spouse.

(3) **DISTRIBUTEES.** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse are distributees with regard to the interest of the spouse. Effective January 1, 2009, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the IRC. However, a nonspouse beneficiary may roll over the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(4) **DIRECT ROLLOVER.** A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(C) Rollovers or transfers into the Fund. On or after January 1, 2002, the Plan will accept, solely for the purpose of purchasing continuous service if the purchase of continuous service is allowed, permissible member requested transfers of funds from other retirement or pension plans, member rollover cash contributions and/or direct cash rollovers of distributions made on or after January 1, 2002, as follows:

(1) Transfers or direct rollovers or member rollover contributions from other plans. The Plan will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in Section 401(a) or 403(a) of the IRC, from an annuity contract described in Section 403(b) of the IRC or from an eligible plan under Section 457(b) of the IRC which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The Plan will also accept legally permissible member requested transfers of funds from other retirement or pension plans.

(2) Member rollover contributions from IRAs. The Plan will accept a member rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Section 408(a) or 408(b) of the IRC that is eligible to be rolled over and would otherwise be includible in gross income.

(Ord. 93-73, passed 9-21-93; Am. Ord. 2007-22, passed 1-9-07; Am. Ord. 2008-16, passed 12-11-07; Am. Ord. 2010-35, passed 6-22-10)

§ 34.0263 DEFERRED RETIREMENT OPTION PLAN (DROP).

(A) Eligibility.

(1) An active member shall be eligible to elect to enter DROP upon or after he or she has reached age 55 and completed 20 or more years of service, or has reached age 62 with three or more years of service.

(2) Prior service purchased pursuant to this chapter shall be included for purposes of determining eligibility for the DROP to the extent provided in § 34.015.

(3) A plan member must be an active employee of the city in order to enter DROP. Members who have left city service and who have elected deferred retirement pursuant to § 34.021(A) will not be eligible to participate in the DROP provisions until and unless they return to city service covered by the General Employees Retirement System after the DROP has been adopted by the city.

(B) Each member, before electing to participate in DROP, shall be given information regarding how benefits under DROP would be calculated and a comparison of the member's anticipated benefits at retirement with and without participation in DROP. All members are advised to seek advice from professional tax and investment advisors before electing to participate in DROP.

(C) DROP election.

(1) Any member who elects to participate in the DROP shall provide the city and the board at least 30 days notice and make the election on a form prescribed and retained by the Board. On that form the member shall do all of the following:

(2) Members of the retirement system who entered the DROP before December 8, 2020 and members who enter the DROP on or after December 8, 2020 with less than 20 years of service on the date of DROP entry shall designate a DROP period that will not exceed 60 months of elapsed time, irrevocably agree to terminate covered employment under the system no later than the end of that designated period, and acknowledge that participation in the DROP is not a guarantee of continued employment for any period.

(3) Members of the retirement system who enter the DROP on or after December 8, 2020 who are age 55 or older with at least 20 years of service shall designate a DROP period that will not to exceed 96 months of elapsed time, irrevocably agree to terminate covered employment under the system no later than the end of that designated period, and acknowledge that participation in the DROP is not a guarantee of continued employment for any period.

(4) Members of the retirement system who are participating in the DROP on December 8, 2020 and had completed 20 years of service prior to entering the DROP may extend their DROP period up to a maximum of 96 months from the date of DROP entry. Members who elect to extend their DROP period must submit a completed DROP extension form to the city and pension board by January 31, 2021, agree to terminate city employment no later than the end of the extended DROP period, and acknowledge that participation in the DROP is not a guarantee of continued employment for any period.

(5) Waive any claims with respect to age and other discrimination in employment laws as are required by the employer or the system.

(6) Waive the right to any disability retirement benefits from the system. This waiver shall include, but not be limited to, any rights the member may have under § 34.022.

(7) Waive the right to pre-retirement death benefits under §34.023 if death occurs during the DROP period.

(8) Acknowledge that his or her COLA will not begin until one year after DROP participation ends, payable in accordance with § 34.038.

(9) Acknowledge that his or her election to participate in the DROP may not later be changed or modified.

(10) Make an irrevocable election as to whether the member wishes to select any optional retirement allowance pursuant to § 34.026(A), (B) or (C) and, if so, make such a selection.

(11) Designate a person or persons as beneficiaries of the balance in the member's DROP account in the event the member dies during the DROP period. The beneficiary or beneficiaries shall be designated on a form prescribed by the board, signed by the member, and filed with the board.

(D) (1) From and after the deferred retirement calculation date, the member shall cease to accrue retirement service credit under this chapter and shall no longer be required to make member contributions in accordance with § 34.025 and, instead, shall begin to accrue benefits under the DROP pursuant to the terms of this section, which benefits shall be credited to the member's DROP account.

(2) A member's election to participate in the DROP shall be irrevocable.

(3) A member in the DROP shall have all of the rights, privileges, and benefits, and is subject to all terms and conditions of active employment including, but not limited to, seniority, accrual and use of vacation and sick leave, pay increases, and eligibility for other city benefit programs not related to retirement benefits.

(E) *DROP account.*

(1) A DROP account shall be established as a nominal, bookkeeping account within the system for each member. No system assets shall be separately segregated for any DROP account. A member may not have a claim on any specific assets of the system.

(2) A member's DROP account shall be credited with an amount equal to the retirement benefit (calculated in accordance with § 34.020, including a COLA if one is later included as part of the DROP) the member would have received if the member had retired for service on the deferred retirement calculation date, taking into consideration any optional form of benefit selected under § 34.026.

(3) For members who entered the DROP before December 8, 2020, on the effective date that the member enters the DROP, the city will calculate the member's accrued sick and vacation leave payout utilizing existing payout formulas. The city will pay to the member his or her leave payout in five equal payments over the next five years, with each payment being made on the member's DROP participation anniversary date. However, should the member terminate participation in the DROP and terminate employment with the city before the full 60 months, the remainder of the member's leave payout shall be paid to the member upon termination.

(4) For members who enter the DROP on or after December 8, 2020, the city will calculate the member's accrued sick and vacation leave payout utilizing existing payout formulas. The city will divide to the member's leave payout into five equal portions, and those five portions will be paid to the member over the next four years based on the following schedule: the first 2/5ths will be paid on the member's 1st DROP anniversary date and the remaining 3/5ths will be paid in 1/5th increments that will be made on the member's 2nd, 3rd and 4th DROP participation anniversary dates. However, should the member terminate participation in the DROP and terminate city employment before the full 60 months, the remainder of the member's leave payout shall be paid to the member upon termination.

(5) Any accrued sick leave in excess of the maximum number of hours accruable for payout purposes will be carried over into the DROP. The member will continue to accrue sick and vacation leave while participating in the DROP. Leave accrual will be in accordance with the appropriate collective bargaining agreement. However, at the member's conclusion of participating in the DROP, the member will forfeit all unused accumulated sick and annual leave and thus will not be compensated for any portion of said leave.

(6) The participant's DROP account will be credited with interest or lose principle at the same rate as the investment earnings assumption for the pension plan. The investment earnings assumption may be adjusted up or down during an employee's participation in the DROP, which will result in a change in the prospective interest rate credit on the employee's DROP account.

(F) The board shall provide a statement to the member that displays the value or balance of the member's DROP account and summarizes any credits to the account or other transactions that occurred after the immediately preceding evaluation date. The statement of account shall be provided at least once annually to each member, and may be provided more often.

(G) The right of a member to benefits under the DROP is not subject to execution or any other process whatsoever, except to the extent permitted by F.S. Ch. 61 and is unassignable except as specifically provided under § 34.030. The rights of a member or his or her beneficiary/spouse under the DROP shall be subject to any applicable provisions of law or court orders relating to child support.

(H) (1) If a member dies during the DROP period, he or she shall be deemed to have terminated employment with the city on his or her date of death and his or her benefits shall be calculated as provided in divisions (H)(2) and (H)(3).

(2) If the member has elected an optional form of benefit under §34.026(A), (B) or (C), a monthly benefit will be paid in accordance with division (K) below to the beneficiary designated by the member for this purpose.

(3) The balance in the member's DROP account shall be distributed pursuant to subsection (L)(2)(b) below to the beneficiary designated by the member for this purpose.

(I) Participation in DROP shall be completed and the member shall be entitled to benefits under the DROP upon the first occurrence of either of the following during the DROP period:

(1) Termination of the member's employment from the city, whether voluntary or involuntary.

(2) Death of the member.

(J) Upon termination of employment the DROP participant shall:

- (1) Receive a distribution, in the manner prescribed in division (L), of the balance in the member's DROP account.
- (2) Begin receiving a monthly retirement allowance in an amount calculated pursuant to division (K).

(K) The member's monthly allowance shall be an amount equal to the monthly allowance the member would have received if he or she had retired under normal retirement on the deferred retirement calculation date, subject to the following:

(1) The member's allowance shall be adjusted based on any election by the member made at the time he or she entered the DROP of any optional retirement allowance pursuant to § 34.026(A), (B) or (C). The adjustment shall be based on the ages of the member and, if applicable, the member's beneficiary as of the deferred retirement calculation date.

(2) The member's allowance will be adjusted with a COLA pursuant to §34.038 effective on the first anniversary of his or her DROP termination date, payable on the following October 1, and on each October 1 thereafter.

(3) The right of a member to benefits under the DROP is not subject to execution or any other process whatsoever, except to the extent permitted by F.S. Ch. 61 and is unassignable except as specifically provided under § 34.030. The rights of a member or his or her beneficiary/spouse under the DROP shall be subject to any applicable provisions of law or court orders relating to child support.

(L) (1) The balance in the member's DROP account shall be distributed to the member in a single lump-sum payment at the time of retirement. If requested by the member, the payment may be immediately deposited into a qualified tax deferred account established by the member.

(2) Notwithstanding any other provision of this section, a member or beneficiary may not be permitted to elect a distribution under this article that does not satisfy the requirements of § 401(a)(9) of Title 26 of the United States Code, including the incidental death benefit requirements of § 401(a)(9)(G) and the regulations thereunder. The required beginning date of distributions that reflect the entire interest of the member shall be as follows:

(a) In the case of a lump-sum distribution to the member, the lump-sum payment shall be made, at the member's option, not later than April 1 of the calendar year following the latter of the calendar year in which the member attains the age of 70½ (or age determined by the Internal Revenue Service) or the calendar year in which the member terminates all employment for the employer.

(b) In the case of a benefit payable on account of the member's death, distribution shall be paid as soon as is administratively feasible, but no later than December 31 of the calendar year in which the first anniversary of the member's date of death occurs.

(M) (1) A member may change the person or persons designated as beneficiaries of the balance in the member's DROP account at any time during the DROP period. The new beneficiary or beneficiaries shall be designated on a form prescribed by the board, signed by the member, and filed with the board.

(2) Unless otherwise provided in the beneficiary designation form, each designated beneficiary shall be entitled to equal shares of the lump-sum distribution that shall be payable from the member's DROP account upon the death of the member.

(3) If the member dies without a valid beneficiary designation on file, or if no designated beneficiary survives the member, any balance remaining in the member's account shall be payable to the member's estate as provided under Florida Law.

(N) *Legal challenge to DROP.*

(1) If for any reason, a court of competent jurisdiction determines that the irrevocable election is not enforceable, and a member chooses to remain in the employment of the city beyond five years, the general employees' retirement benefit will be calculated as if the member had never entered the DROP, and the member will be required to make contributions to the pension fund in an amount sufficient to cover the employee and city contributions that would have been made had the member not elected to participate in the DROP, along with interest, as determined by the Board of Trustees upon the advice of the actuary. The member shall forfeit any and all rights to the funds in his or her DROP account and said funds cannot be used to satisfy the contributions required in this section.

(2) Should any person challenge the validity of the terms of the DROP, including the irrevocability of the election, or otherwise attempt to remain employed beyond the maximum DROP period provided herein, the prevailing party of such litigation shall be entitled to receive from the non-prevailing party all of its reasonable costs including reasonable attorney fees.

(3) In the event a court of competent jurisdiction determines that the irrevocable election of the DROP is not enforceable, the city may, in its sole and exclusive discretion, refuse to allow employees to enter the DROP until such time as the DROP is amended or repealed.

(O) The Board of Trustees shall have the power to make administrative rules as are necessary for the efficient implementation and operation of the DROP and to ensure its continued compliance with the tax qualification requirements of the Internal Revenue Code, and provided such administrative rules are not inconsistent or contradicted by this section.

(Ord. 2004-55, passed 7-27-04; Am. Ord. 2021-31, passed 12-8-20)

§ 34.0264 RETIREMENT BENEFITS FOR ELECTED OFFICIALS AND APPOINTEES.

(A) All provisions of the plan shall apply to elected officials and appointees, except to the extent that any provision in this section is different than a provision in any other section of the plan, in which case the provisions of this section shall control with respect to elected officials and appointees.

(1) Participation in this plan shall be mandatory for elected officials and appointees, except that the Mayor and City Commissioners may elect to participate in the elected officers' class of the Florida Retirement System upon adoption of a Resolution by the City Commission authorizing such participation.

(2) Elected officials and appointees shall acquire a 100% vested interest in this plan upon completing five years of continuous service.

(3) Elected officials and appointees who become members of this plan on the effective date of this ordinance shall be credited with continuous service under the Plan for all years and completed months of city service prior to such date.

(4) The city shall pay the member contribution for elected officials and appointees, and such contribution shall not be deducted from the employee's pay and shall not be considered a "pick up" pursuant to § 34.025(D). An elected official or appointee member shall not be entitled to withdraw such contributions upon termination of employment.

(5) If an elected official or appointee member terminates city employment and is subsequently reemployed by the city, prior to receipt of retirement benefits, the continuous service earned during the earlier period of employment may be combined with the continuous service earned in the subsequent period of employment for the purpose of calculating the retirement benefits due the member; and if the member attained five or more years of continuous service during the earlier period of employment, such member will be considered to have a 100% vested interest in the plan.

(6) No elected official or appointee member shall serve as Trustee or vote as a member of this plan.

(Ord. 2005-16, passed 12-14-04)

§ 34.0265 RETIREMENT BENEFITS FOR SENIOR MANAGEMENT EMPLOYEES.

All provisions of the plan shall apply to senior management employees, except to the extent that any provision of this section is different than a provision in any other section of the plan, in which case the provisions of this section shall control with respect to the senior management employees.

(A) Participation in this plan shall be mandatory for senior management employees hired after the effective date of this section. Senior management employees who are employed in a senior management position on the effective date of this section, and are not in the plan as of that date, may choose to become participants in the plan by, within 60 days following such date, making an irrevocable written election on a form provided by the Board to participate in this plan. Senior management employees who elect to participate in this plan may also participate in a city-sponsored 401(a) defined contribution plan; however, the city shall no longer contribute to the 401(a) plan on behalf of such employees.

(B) Senior management employees shall acquire a 100% vested interest in this plan upon the earlier of the completion of ten years of continuous service or the completion of five years of continuous service as a senior management employee.

(C) Senior management employees who are employed in a senior management position on the effective date of this section and elect to participate in this plan in accordance with subsection (A) above may purchase credit for prior continuous service for all or any portion of their employment with the city. The election to purchase prior service must be made on a form to be supplied by the Board within 90 days of the effective date of this section. Senior management employees may purchase such credit for continuous service by paying the full actuarial cost thereof, plus interest, as determined by the plan actuary. The purchase amount may be paid through a cash payment or a direct trustee-to-trustee transfer or rollover from an eligible plan in accordance with § 34.0262. In addition, senior management employees may utilize up to 250 hours of accrued vacation leave toward the purchase of prior continuous service. A senior management employee who elects to purchase prior continuous service will have four years from the effective date of this section to complete the purchase. Only that time purchased by the earlier of the date that the employee leaves senior management service or retires will be counted toward vesting or benefit accrual.

(D) As used in this section, **FULL ACTUARIAL COST** means the increase in present value of benefits attributable to the continuous service being purchased by the employee. The cost related to this service will be calculated on the basis of the actuarial assumptions adopted by the Board for the actuarial valuation as of October 1, 2006.

(E) If a senior management employee terminates city employment and is subsequently reemployed by the city prior to receipt of retirement benefits, the continuous service earned during the earlier period of employment may be combined with the continuous service earned in the subsequent period of employment for the purpose of calculating the retirement benefits due the member; and if the member attained five or more years of continuous service as a senior management employee during the earlier period of employment, such member will be considered to have a 100% vested interest in the plan.

(Ord. 2008-16, passed 12-11-07)

§ 34.027 DENIAL OF BENEFITS.

On compulsory retirement of a member by an act of the Board of Trustees or denial of benefits to a member by an act of the Board of Trustees, the member shall have the following rights concerning the Board action.

(A) The Board must, within 15 days of its decision on the compulsory retirement of a member or denial of member

benefits, notify the member in writing of that decision, stating as clearly and concisely as is possible its findings and conclusions.

(B) Within 15 days of the mailing of notification of the Board's decision to the member, the member shall, before commencement of any action in any court of competent jurisdiction against the Board or city, file a request for a public rehearing and review by the Board, with the Board Secretary, in writing.

(C) Within 90 days of the timely receipt of the request for rehearing and review by the member, the Board shall meet, after giving a minimum of 15 days' notice to the member, and at that time the member shall have the right to be present with legal counsel and present all additional evidence or testimony in support of the member's claim for benefits before the Board for rehearing, review, and reconsideration of the Board's previous decision. At its option, the Board may call witnesses and place evidence in the record itself.

(D) If the Board's decision, upon formal rehearing and review, is adverse to the member, the member may then, within 30 days, appeal the Board's final decision to the circuit court in and for the Seventeenth Judicial Circuit of Broward County, and the court shall sit as an appellate court. The member's appeal to the court of the Board's formal rehearing and review of the member's claim, shall be for review by certiorari only, and not by trial de novo.

(E) The member, during the rehearing and review process, and any subsequent appeals, shall be responsible for his own attorneys' fees and none shall be assessed against the Board. In addition, costs shall not be assessed against the Board unless it shall affirmatively appear to the court that it acted with gross negligence, or in bad faith, with malice in making the decision appealed from.

(F) The term **MEMBER** as used in this section and as defined in §34.010 shall also include where applicable, and be synonymous with the term **BENEFICIARY** as defined in §34.010 in cases concerning death claims and shall, in addition, also apply to a member's legally-appointed guardian in cases where the member has been adjudicated to be incompetent.

('58 Code, § 11.27) (Ord. 80-29, passed 12-26-79)

§ 34.028 DISCHARGE.

Members entitled to a pension shall not forfeit it upon dismissal from the city, but shall be retired as herein described.

('58 Code, § 11.28) (Ord. 73-3, passed 11-8-72)

§ 34.029 RECOVERY FROM DISABILITY.

In the event a member who has been receiving a disability pension regains his health and is physically able to perform his former duties as an employee, whether or not he is rehired by the city, the Board shall discontinue the disability pension. However, if the member has been retired for service-incurred disability, shall not have reached the age of full primary Social Security old age benefit eligibility and shall within 18 months after resuming his position with the city pay into the fund an amount equal to the aggregate contributions, computed on his annual earnings at the time of his disability retirement, he would have been required to make hereunder during the period of his disability retirement had he not been retired, the member shall receive creditable service for the period of the disability retirement.

('58 Code, § 11.29) (Ord. 73-3, passed 11-8-72; Am. Ord. 88-60, passed 5-24-88)

§ 34.030 PENSIONS NOT ASSIGNABLE.

No pension provided for herein shall be assignable or subject to garnishment for debt or for other legal process.

('58 Code, § 11.30) (Ord. 73-3, passed 11-8-72)

§ 34.031 DURATION OF PENSION.

Pensions granted to retired members shall be paid to them for life and shall not be revoked nor in any way diminished except as provided in this subchapter, and the payments of the member of this fund shall cease upon his retirement and acceptance of a pension.

('58 Code, § 11.31) (Ord. 73-3, passed 11-8-72)

§ 34.032 PENSION VALIDITY.

The Board of Pension Trustees shall have the power to examine into the facts upon which any pension has 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 of any person granted a pension under prior or existing law or hereafter granted under this subchapter, if it is found to be erroneous, fraudulent, or illegal for any reason; and to reclassify any pensioner who has under any prior or existing law, or who shall hereafter under this subchapter, be erroneously, improperly, or illegally classified.

('58 Code, § 11.32) (Ord. 73-3, passed 11-8-72)

§ 34.033 INCOMPETENCE.

If any participant or beneficiary is a minor or is, in the judgment of the Pension Board, otherwise incapable of personally

receiving and giving a valid receipt for any payment due him under the system, the Board may, unless and until claims have been made by a duly-appointed guardian or committee of the person, make the payment or any part thereof to the person's spouse, children, or other person deemed by the Board to have incurred expenses or assumed responsibility for the expenses of the person. Any payment so made shall be a complete discharge of any liability under the system for that payment.

('58 Code, § 11.33) (Ord. 73-3, passed 11-8-72)

§ 34.034 WAGE CONTROL LAW VIOLATIONS.

The Board of Pension Trustees will furnish the actuary with all data required for necessary actuarial computations under the system. No payment or any benefit, contribution, or other sum which would constitute a violation of any applicable wage control law shall be made hereunder.

('58 Code, § 11.34) (Ord. 73-3, passed 11-8-72)

§ 34.035 CONTINUOUS SERVICE CREDIT; TRANSFERS.

(A) Following the effective date hereof, as regards any member of the system who changes his category of employment with the city so as to preclude his continued eligibility, the member's accrued benefits as of date of transfer shall become fully vested under this system and payable in accordance with the provisions herein.

('58 Code, § 11.35 (b))

(B) Following the effective date hereof, as regards any city employee not eligible for coverage under this system, who subsequently changes his employment category with the city and then becomes eligible hereunder, the employee's accrued benefit as of date of transfer shall become fully vested under the city pension system of which he is a member at time of transfer and be payable in accordance with the provisions therein.

('58 Code, § 11.35 (c))

(Ord. 73-3, passed 11-8-72)

§ 34.036 RECORDS AND DATA.

(A) As regards any member of the system of the effective date of this subchapter, his total years of continuous service from date of employment with the city to date of retirement or termination within the category of any eligible employee shall be included for benefit computation purposes under the system.

('58 Code, § 11.35 (a))

(B) Upon request, and as specified in the request, by the Board of Pension Trustees, the Finance Department shall maintain any or all records and data necessary for the proper administration of this system, and shall make the records and data available to the Board of Trustees. The records shall include, but not necessarily be limited to, the following list and any other similar items necessary for proper administration of the system.

- (1) Deduct employee contributions; transmit funds to Board each pay period.
- (2) Maintain employee contribution accounts; determine interest to be credited annually as per trustees' instructions.
- (3) Receive and retain one copy of each form of application for participation, and beneficiary designation form.
- (4) For terminating participants.
 - (a) Notify trustees as to amount of contribution refund due.
 - (b) Note date of termination on original application form and retain in separate file.
- (5) For pending retirements, complete basic data form, including determination of average monthly earnings.
- (6) Prepare annually employee data needed for actuarial valuation.
- (7) Deposit city and state contributions to fund.
- (8) For employees with supplemental death benefit coverages.
 - (a) Determine annually, according to table prepared by actuary, additional amount to be deducted from paycheck (not to be added to employee contribution accounts).
 - (b) Notify trustees regarding amount of death claims.

('58 Code, § 11.36)

(Ord. 73-3, passed 11-8-72)

§ 34.037 TERMINATION OF THE SYSTEM.

(A) In the event of termination of the system, or complete discontinuance of city contributions to the system, the fund

held on the effective date of termination or discontinuance shall be administered for the sole benefit of the then members, active and retired and beneficiaries then receiving benefits and any future beneficiaries entitled to receive benefits who are designated by any of the members. Subject to the provisions of this subsection, the fund shall be promptly allocated by the trustees in an equitable manner to provide benefits for the persons stated herein, in accordance with the provisions of the system, in the following order of priority, and after first allocating accumulated employee contributions with interest not yet paid in the form of benefits under the system.

(1) Members already retired under the normal retirement provisions of this system and those eligible for normal retirement but not actually retired, and their beneficiaries, in proportion to and to the extent of the then actuarially determined present value of the benefits payable.

(2) If any funds remain, then members already retired or eligible for retirement under the early retirement provisions of this system and their beneficiaries in the same manner as in (1) above.

(3) If any funds remain, then all other members and their beneficiaries in the same manner as in (1) above but based upon continuous service and average monthly earnings as of the date of termination of the system, and with any benefits vested given precedence.

(B) The allocation of the fund provided for may, as decided by the Board of Pension Trustees, be carried out through the purchase of insurance company contracts to provide the benefits as determined. The fund may be distributed in one sum to the persons entitled to the benefits in the proportion of the then present value of the benefits, or the distribution may be carried out in any other equitable manner that the trustees may direct.

(C) Under no circumstances before the satisfaction of all liabilities to members and their beneficiaries shall any part of the corpus or income of the trust fund be used for, or diverted to, purposes other than for the exclusive benefit of members and their beneficiaries; and until such liabilities are satisfied, all city contributions will remain in the fund for the benefit of the members or beneficiaries in the event that the system is terminated or city contributions cease.

(D) Upon the termination of the system or upon the complete discontinuance of contributions under the system, each member will have nonforfeitable 100% vested rights to the benefits accrued to date of termination or discontinuance to the extent funded at that time.

(E) If, at any time during the first ten years after its effective date, this system shall be terminated or the full current costs of the system, consisting of the normal costs and interest on any accrued liability, shall not have been met, and until such time thereafter as the full current costs 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 25 highest paid general employees of the city on the effective date, whose anticipated annual retirement allowance provided by the city's contributions at his normal retirement date would exceed \$1,500, shall not exceed the greater of either \$20,000, or an amount computed by multiplying the smaller of \$10,000 or 20% of the employee's average annual earnings during his last five years of service by the number of years of service since the effective date.

(F) 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 subsection are not then necessary to qualify the system under the Internal Revenue Code, this subsection shall be ineffective without the necessity of further amendment of this subchapter.

('58 Code, § 11.37) (Ord. 73-3, passed 11-8-72; Am. Ord. 75-81, passed 9-16-75)

§ 34.038 PENSION ADJUSTMENTS.

(A) Retirees who have been retired from the General Employees Pension Plan for a period of at least one year prior to or on October 1, 2000, shall be granted an increase in pension benefits effective October 1, 2000, and each October 1 thereafter. Annual pension benefits shall be increased by a "fixed" (guaranteed) percentage equal to 2%. In addition to the "fixed" increase, pension benefits shall be increased by a "variable" percentage, in an amount certified by the pension plan actuary as supportable and funded solely by the pension plan assets, but not more than 1%. The "variable" component of the cost-of-living adjustment may be granted only when the plan is sufficiently funded and only if all other provisions of this section are satisfied. The sum of the "fixed" and "variable" portions of the adjustment shall not exceed 3% per year nor be less than 2%.

(B) Retirees who reach the first anniversary of retirement after October 1, 2000 shall be granted an annual increase in pension benefits effective on the first retirement anniversary date, payable on the following October 1, and on each October 1 thereafter, in the percentage amount paid the previous October 1 under subsection (A) above.

(C) (1) Effective June 8, 2011, for members who were hired on or after June 8, 2011 and before December 8, 2020, retirees who receive normal retirement benefits shall be granted an increase in pension benefits effective on the fifth retirement anniversary date, payable on the following October 1, and each October 1 thereafter, as follows, except as otherwise provided in subsection (D) below:

(a) Eligible retirees under the age of 55 on October 1 of any given year shall not be entitled to any annual pension increase.

(b) Eligible retirees between the ages of 55 and 64 on October 1 of any given year shall be entitled to a 1% increase in pension benefits.

(c) Eligible retirees age 65 and older on October 1 of any given year shall be entitled to a 2% increase in pension

benefits.

(2) In addition to the adjustments provided for in subparagraphs (b) and (c) above, pension benefits for eligible retirees shall be increased by a "variable" percentage in an amount certified by the pension plan actuary as supportable and funded solely by the pension plan assets but not more than one percent (1%). The "variable" component of the cost-of-living adjustment may be granted only when the plan is sufficiently funded and only if all other provisions of this section are satisfied. The sum of the pension adjustments provided for in subparagraphs (b) and (c) and the "variable" adjustment in this paragraph shall not exceed 3%.

(D) For members hired on or after June 8, 2011 and before December 8, 2020 who make contributions in accordance with § 34.025(D) and (E), retirees shall be granted an annual increase in pension benefits based on service before December 8, 2020, effective on the first retirement anniversary date, payable on the following October 1, and on each October 1 thereafter, in a fixed percentage equal to 2%. In addition to the "fixed" increase, pension benefits shall be increased by a "variable" percentage, in an amount certified by the pension plan actuary as supportable and funded solely by the pension plan assets, but not more than 1%. The "variable" component of the cost-of-living adjustment may be granted only when the plan is sufficiently funded and only if all other provisions of this section are satisfied. The sum of the "fixed" and "variable" portions of the adjustment shall not exceed 3% per year nor be less than 2%.

(E) For members hired on or after June 8, 2011 and before December 8, 2020, and members hired on or after December 8, 2020, retirees shall be granted an annual increase in pension benefits based on service on and after December 8, 2020, effective on the first retirement anniversary date, payable on the following October 1, and on each October 1 thereafter, in a fixed percentage equal to 2%. In addition to the "fixed" increase, pension benefits shall be increased by a "variable" percentage, in an amount certified by the pension plan actuary as supportable and funded solely by the pension plan assets, but not more than 1%. The "variable" component of the cost-of-living adjustment may be granted only when the plan is sufficiently funded and only if all other provisions of this section are satisfied. The sum of the "fixed" and "variable" portions of the adjustment shall not exceed 3% per year nor be less than 2%.

(F) In the event the pension plan is not sufficiently funded so as to provide a full 1% "variable" COLA in any year, a retroactive "variable" COLA, retroactive to the first year in which the full 1% "variable" COLA was not paid, shall be provided in subsequent years in which the plan is sufficiently funded, in order to provide an average compounded "variable" COLA of 1% per year, to the extent such amount is certified by the pension fund actuary to be supportable solely by the assets of the plan. The purpose of the retroactive additional COLA is to make retirees whole for any years in which the full 1% "variable" COLA could not be granted because the pension plan was not sufficiently funded.

(G) The annual actuarial valuation shall assume that the fixed 2% annual COLA adjustments provided in subsections (A) and (B) above and the fixed annual COLA adjustments provided in subsection (C)(1)(b) and (c) above will be repeated on an annual basis for future years. The "variable" COLA will not be assumed to be granted every year for future years because it is granted only in those years when the plan is sufficiently funded.

(Ord. 2001-50, passed 3-27-01; Am. Ord. 2011-53, passed 6-14-11; Am. Ord. 2021-31, passed 12-8-20)

§ 34.039 MAXIMUM PENSION.

(A) Basic limitation. Notwithstanding any other provisions of the plan to the contrary, the member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415 of the IRC for a qualified pension plan.

(B) Participation in other qualified plans; aggregation of limits.

(1) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Section 414(j) of the IRC maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one plan.

(2) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in Section 414(i) of the IRC maintained by the member's employer in this plan shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one plan.

(C) *Basic 415(b) limitation.* Subject to the adjustments hereinafter set forth, the maximum amount of annual benefit payable with respect to a member under this plan shall not exceed \$160,000. For purposes of applying this limitation, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the IRC) and to rollover contributions (as defined in Section 415(b)(2)(A) of the IRC). The "benefit attributable" shall be determined in accordance with Treasury Regulations. For purposes of this section, the following benefits shall not be taken into account:

- (1) Any ancillary benefit which is not directly related to retirement income benefits;
- (2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

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

(D) *Adjustments to basic 415(b) limitation for form of benefit* If the benefit under the plan is other than the annual benefit specified in subsection (C) above, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using

factors prescribed in Treasury Regulations.

(1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the IRC limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:

(2) For a benefit paid in a form to which Section 417(e)(3) of the IRC does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

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

(b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the IRC (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the IRC); or

(3) For a benefit paid in a form to which Section 417(e)(3) of the IRC applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) of the IRC limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

(a) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(b) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5% interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the IRC (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the IRC); or

(c) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate then in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the IRC (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the IRC), divided by 1.05.

(E) *Other adjustments in limitations.*

(1) In the event the member's retirement benefits become payable before age 62, the \$160,000 limitation prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Section 415(b) of the IRC, so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a \$160,000 annual benefit beginning at age 62.

(2) The reductions provided for in (E)(1) above shall not be applicable to disability benefits or pre-retirement death benefits.

(3) The reductions provided for in (E)(1) above shall not be applicable in the event the member's benefit is based on at least 15 years of service as a full-time employee of any police or fire department or on 15 years of military service.

(4) In the event the member's retirement benefit becomes payable after age 62, there shall be no adjustment to the limitation set forth in subsection (A) herein based on the member's age at benefit commencement.

(5) The reductions provided for in (E)(1) above shall be applied separately with each change in the benefit structure to the extent provided for in Treasury Regulations.

(F) *Less than ten years of participation or service.* The maximum retirement benefits payable under this section to any member who has completed less than ten years of credited service with the city shall be the amount determined under subsection (C) of this section, as adjusted under subsection (D) and/or (E), multiplied by a fraction, the numerator of which is the number of the member's years of participation (but no less than one) and the denominator of which is ten. The limit under subsection (G) (concerning the \$10,000 limit) shall be similarly reduced for any member who has accrued less than ten years of credited service, except the fraction shall be determined with respect to years of service instead of years of

participation. The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to disability benefits or pre-retirement death benefits.

(F) *Less than ten years of service.* The maximum retirement benefits payable under this section to any member who has completed less than ten years of credited service with the city shall be the amount determined under subsection (C) of this section multiplied by a fraction, the numerator of which is the number of the member's years of credited service (but no less than one) and the denominator of which is ten. The reduction provided for in this subsection shall not be applicable to disability benefits or pre-retirement death benefits.

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

(H) *Effect of COLA without a lump sum component on 415(b) testing.* Effective on and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the IRC (the "limit") to a member with no lump sum benefit, the following will apply:

(1) A member's applicable limit will be applied to the member's annual benefit in the member's first limitation year without regard to any cost of living adjustments under § 34.038;

(2) To the extent that the member's annual benefit equals or exceeds the limit, the member will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the limit; and

(3) Thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under § 34.038, shall be tested under the then applicable benefit limit including any adjustment to the Section 415(b)(1)(A) of the IRC dollar limit under Section 415(d) of the IRC, and the regulations thereunder.

(I) *Effect of COLA with a lump sum component on 415(b) testing.* On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the IRC and applicable Treasury Regulations.

(J) *Section 415(c) limitations on contributions and other additions.* After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of \$40,000 (as adjusted pursuant to Section 415(d) of the IRC) or 100% of the member's compensation.

(1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying Section 415(c) of the IRC and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under Section 414(h) of the IRC shall not be treated as compensation.

(3) Compensation will be defined as wages within the meaning of Section 3401(a) of the IRC and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the IRC and will be determined without regard to any rules under Section 3401(a) of the IRC that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the IRC).

(a) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the IRC. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the IRC.

(b) For limitation years beginning on and after January 1, 2008, compensation for the limitation year shall also include compensation paid by the later of two and one-half months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

1. The payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

2. The payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or

3. Payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.

Any payments not described in this paragraph are not considered compensation if paid after severance from employment, even if they are paid within two and one-half months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the IRC) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

An employee who is in qualified military service (within the meaning of Section 414(u)(1) of the IRC) shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(c) Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) For limitation years beginning on or after January 1, 2008, a member's compensation for purposes of this subsection shall not exceed the annual limit under Section 401(a)(17) of the IRC.

(K) *Service purchases under section 415(n)*. Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of Section 415(n) of the IRC will be treated as met only if:

(1) The requirements of Section 415(b) of the IRC are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for the purposes of Section 415(b) of the IRC, or

(2) The requirements of Section 415(c) of the IRC are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the IRC.

(3) For purposes of applying this section, the plan will not fail to meet the reduced limit under Section 415(b)(2)(C) of the IRC solely by reason of this subsection and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the IRC solely by reason of this section.

(4) For purposes of this section, the term **PERMISSIVE SERVICE CREDIT** means service credit:

(a) Recognized by the plan for purposes of calculating a member's benefit under the plan,

(b) Which such member has not received under the plan, and

(c) Which such member may receive only by making a voluntary additional contribution, in an amount determined under the plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (b), may include service credited in order to provide an increased benefit for service credit which a member is receiving under the plan.

(5) The plan will fail to meet the requirements of this section if:

(a) More than five years of nonqualified service credit are taken into account for purposes of this subparagraph, or

(b) Any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under the plan.

(6) For purposes of paragraph (5), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term **NONQUALIFIED SERVICE CREDIT** means permissive service credit other than that allowed with respect to:

(a) Service (including parental, medical, sabbatical, and similar leave) as an employee of the government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Section 415(k)(3) of the IRC),

(b) Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (a)) of an education organization described in Section 170(b)(1)(A)(ii) of the IRC which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(c) Service as an employee of an association of employees who are described in clause (a), or

(d) Military service (other than qualified military service under Section 414(u) of the IRC) recognized by the plan.

In the case of service described in clause (a), (b), or (c), such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the IRC or Section 457(e)(17)(A) of the IRC applies (without regard to whether the transfer is made between plans maintained by the same employer):

(a) The limitations of paragraph (5) will not apply in determining whether the transfer is for the purchase of permissive service credit, and

(b) The distribution rules applicable under federal law to the plan will apply to such amounts and any benefits attributable to such amounts.

(8) For an eligible member, the limitation of Section 415(c)(1) of the IRC shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a plan as in effect on August 5, 1997. For purposes of this paragraph an **ELIGIBLE MEMBER** is an individual who first became a member in the plan before January 1, 1998.

(L) *Modification of contributions for 415(c) and 415(n) purposes.* Notwithstanding any other provision of law to the contrary, the plan may modify a request by a member to make a contribution to the plan if the amount of the contribution would exceed the limits provided in Section 415 of the IRC by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the plan may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the IRC.

(2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the IRC, the plan may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

(M) *Repayments of cashouts.* Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the city shall not be taken into account for purposes of Section 415 of the IRC, in accordance with applicable Treasury Regulations.

(N) *Reduction of benefits.* Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the board and the plan administrator of all other plans covering such member.

(O) *Cost-of-living adjustments.* The limitations as stated in subsections (A), (B), (D) and (F) herein shall be adjusted to the time payment of a benefit begins in accordance with any cost-of-living adjustments prescribed by the Secretary of the Treasury pursuant to Section 415(d) of the IRC.

(P) *Limitation year.* For 415 testing purposes, the limitation year is the calendar year.

(Ord. 2007-22, passed 1-9-07; Am. Ord. 2010-35, passed 6- 22-10; 2012-61, passed 7-24-12)

§ 34.040 COMPLIANCE WITH INTERNAL REVENUE CODE.

(A) All references to the Internal Revenue Code or IRC mean the Internal Revenue Code of 1986, as amended. This Plan is expressly subject to the condition that the Internal Revenue Service shall issue a favorable determination letter to the effect that the Plan continues to meet the requirements of the Federal Internal Revenue Code and regulations issued thereunder with respect to employees' trusts.

(B) Notwithstanding any other provision of this Plan, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code.

(C) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in the Plan, are entitled to any additional benefits that the Plan would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes.

(D) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code)) from the city shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(Ord. 2007-22, passed 1-9-07; Am. Ord. 2010-35, passed 6-22-10)