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Boynton Beach, FL Code of Ordinances

ARTICLE II. EMPLOYEES' PENSION PLAN

DIVISION 1. GENERALLY

Sec. 18-55. Definitions.

The following words and phrases, as used in this article, unless a different meaning is plainly required by the context, shall have the following meanings, and the same and similar terms when used in connection with any civil service system or any other ordinance of the city shall not necessarily apply to the members of the retirement system hereby created except when specifically adopted:

Actuarial equivalent. A benefit of equal value or equal cost when computed on the basis of such interest rates, mortality, and other actuarial tables as are in effect under the plan. For plan years beginning after December 31, 2002 for purposes of Code Section 415(b), the mortality table is the table used under Code Section 417(e) as prescribed by the Secretary of the Treasury in Rev. Rul. 2001-62.

Annuity. Annual payments for life to be paid in equal monthly installments with the first payment made as of the first day of the month in which retirement occurs and continuing until death with the last payment made as of the first day of the month in which death occurs.

Annual earnings. Gross earnings received by the employee as compensation for services to the city, including overtime pay. Bonuses shall be excluded. Flexible benefits shall be excluded. Effective June 18, 2013 overtime included in pensionable compensation is limited to 300 hours per member per year. Prior to June 18, 2013 all overtime is included in the definition of pensionable compensation. No hours of unused accumulated sick and vacation leave earned after June 18, 2013 shall be considered annual earnings. However, members may include all unused hours earned prior to June 18, 2013 provided that amount of hours is cashed in at retirement. Beginning with annual earnings after December 31, 2008, and pursuant to Internal Revenue Code Section 414(u)(7), the definition of annual earnings includes amounts paid by the city as differential wages to members who are absent from employment while in qualified military service.

Beneficiary. Any person in receipt of, or entitled to, an annuity, retirement allowance, or other benefit as provided by this article.

Board of Trustees. For the purposes of this article, "Board of Trustees," "Board" or "Trustees" shall be construed to mean the members of the City Council, unless the said Council, by resolution, designates additional or substitute individuals to perform the duties and functions of such Board of Trustees.

Charter. The charter of the city, as amended.

City. The City of Boynton Beach, Florida.

City's contribution. The annual contribution needed to fund actuarially the liability for annuities credited to employees on the basis of actuarial methods and assumptions approved by the Council.

Code. The Internal Revenue Code of 1986, as amended.

Creditable service. Service in the employment of the city for which credit is allowed under the terms of this article. Such service shall be computed to the nearest whole month of completed service but not including any fractional parts of a month.

Effective date of the plan. The date on which the operation of the plan is to commence for the purpose of determining eligibility, benefits and related matters, which is hereby fixed as the first day of April, 1968.

Employee. All full-time persons employed by the city and so classified under rules and regulations and personnel records of the city, including "probational" or permanent employees. Any appointed officer shall only be qualified under this plan under one office and that office being the one from which he receives the largest annual salary, compensation or remuneration. Independent contractors are excluded.

Fund or pension fund. All sums of money paid into the plan by the city, and all gifts and contributions to the fund, accepted from other sources, together with earnings and appreciation of the same, less disbursements made from said money, in accordance with the plan, or less any losses or depreciation, as asset value.

Gender. The masculine pronoun shall include the feminine pronoun.

General employee. A general employee shall include all employees, as defined in section 18-55 herein, other than policemen or firemen who have not elected to become members of this pension plan under the provisions of section 18-76.

Member. Any person employed by the city who is included in the membership of the plan as either an original member or a new member. However, a member shall be limited and restricted to the definition of employee.

Membership service. Service rendered as a full-time permanent employee since last becoming a member of the plan. Such service shall be computed to the nearest full month of completed service but not including any additional fractional parts of a month.

New member. Any permanent employee who becomes a member of the plan after the effective date of the plan.

Normal retirement date. The normal retirement date of a member shall be his or her normal retirement date as determined in accordance with the terms of the plan.

Original member. Any permanent employee of the city who becomes a member as of the effective date of the plan.

Past service. Continuous service rendered as a full-time employee from his or her date of employment to the effective date of the plan.

Permanent employee. An employee who has completed his or her probationary period, been approved for permanent status by the department head under whom he or she is employed, or the city council, if approved by it, and has been certified by the City Clerk or City Manager as a

permanent employee, or according to the personnel records of the city pertaining to such employee. Certification or approval for permanent status shall be subject to the rules of the career service system of the city.

Plan, pension plan or employees' pension plan. The system of retirement benefits provided under this article.

Plan year. A period of 12 consecutive months measured on the basis of the fiscal year, or from any anniversary thereof. The fiscal year will commence October 1 of each year and end September 30 of each year.

Retirement. Withdrawal from active employment by the city with retirement income granted under the provisions of this plan.

Retirement annuity option. An optional form of retirement annuity as described in section 18-118.

Social Security option. An optional form of retirement annuity as described in section 18-119.

Spouse. The spouse of a member who was married to the member throughout the two-year period ending on the date of the member's death.

Total and permanent disability. Includes any disablement caused by sickness or accident which prevents the member from working at any job for wage or profit and which will continue for the remainder of the member's life. The determination of whether or not a member is totally and permanently disabled shall be made by the city's Long Term Disability Company.

Treasurer. The treasurer of the plan is the city finance officer.

(Code 1958, § 21-25; Ord. No. 90-6, § 1, 4-17-90; Ord. No. 90-41, § 2, 9-18-90; Ord. No. 99-14, passed 6-1-99; Ord. No. 10-006, § 2, 2-16-10; Ord. No. 10-028, § 2, 11-3-10; Ord. 11-034, § 2, 1-3-12; Ord. No. 13- 035, § 2, 12-3-13; Ord. No. 15-008, § 2, 3-2-15)

Sec. 18-56. Establishment of system.

A pension and retirement system for full-time permanent employees in the service of the city is hereby established to provide retirement benefits as provided by this article. It shall be known as the Employees' Pension Plan of the City of Boynton Beach, Florida. This system is intended to be a tax qualified plan under Code Section 401(a) and meet the requirements of a governmental plan as defined in Code Section 414(d).

(Code 1958, § 21-26; Ord. No. 10-028, § 3, 11-3-10)

Sec. 18-57. Future changes in the operation of plan.

It is contemplated, and all original and new members of the plan shall be deemed to have notice, that the city commission of this city may in the future decide that it is in the best interests of the city and the members of the plan to modify or terminate trust agreements or contracts entered into with an insurance company or companies, to exercise options available to the city under the terms of such trust agreements or contracts, or to select another insurance company, trust, or other financial institution, as the depository for pension funds.

(Code 1958 § 21-27)

Sec. 18-58. Power to amend or terminate.

The city commission shall have continuous power to amend this article as provided by its Charter, including the power to suspend or discontinue contributions or to terminate the plan, provided that no such amendment shall (a) revest any part of the pension fund of the city, or (b) make possible the diversion of the pension fund, or any part thereof, to any person other than the exclusive benefit of the members of the plan.

(Code 1958, § 21-28)

Sec. 18-59. Discontinuance of contributions.

If the city permanently discontinues its contributions to the plan without terminating the plan, the assets of the pension fund, as of the last day of the plan year in which such discontinuance becomes effective, shall be deemed to be vested in the members of the plan on such date in the manner described in section 18-60, except that no distribution of assets shall be made in accordance with such vested right until the member entitled thereto retires or terminates his employment with the city. For the purposes of this section, the city shall be deemed to have permanently discontinued contributions if as of the last day of any plan year the unfunded liability is determined to be greater than the sum of its unfunded liabilities as of the effective date of the plan and any additional unfunded liabilities due to subsequent plan amendment or change in actuarial assumptions.

(Code 1958, § 21-28.1)

Sec. 18-60. Termination of plan.

In the event the plan is terminated, the board of trustees shall cause the assets of the plan to be valued as of the date of termination. Upon termination of the plan, all of the members are 100% vested in their accrued benefit. Such assets shall be allocated to active employees first to the extent of their individual contributions to the plan. Any assets in excess of employee contributions shall then be allocated to retired employees in the proportion that such assets bear to the actuarial value of the benefit which the retired employees are receiving. If after such allocation, any assets then remain, such additional assets shall be allocated to active employees in the ratio that the liability for benefits accrued by such employee which is in excess of their individual contribution bears to the aggregate liability for all such employees.

(Code 1958, § 21-28.2; Ord. No. 10-028, § 4, 11-3-10)

Sec. 18-61. City contribution irrecoverable.

It shall be impossible for any contributions made by the city under this plan to be used for or diverted to purposes other than the exclusive benefit of the members and their beneficiaries; except that if after all liabilities of the plan have been paid, any balance shall remain in the trust fund due to erroneous actuarial computations, such balance may be returned to the city. Additionally, contributions made due to a good faith mistake of fact may be returned to the city.

(Code 1958, § 21-28.3; Ord. No. 10-028, § 5, 11-3-10)

Sec. 18-62. Fraud and deceit prohibited; penalty.

Whosoever with intent to deceive shall make or cause to be made any statement, report, certificate, election, notice, claim or other instrument, authorized or required under this article, whether of the enumerated classes or otherwise, which shall be untrue, or who shall cause to be falsified any record comprising any part of the operation or administration of the plan contemplated by this article, shall be punished by a fine, not exceeding five hundred dollars (\$500.00), or by imprisonment not exceeding ninety (90) days, or by both such fine and imprisonment. Any such violation shall also be punishable as provided under the laws of the State of Florida.

(Code 1958, § 21-29)

Sec. 18-63. Temporary limitations.

Until April 1, 1978, but not thereafter, unless the full current costs of the plan have not been met as of April 1, 1978, in which event the provisions of this section will be continued until the first date thereafter when the full current costs have been met, the provisions of this plan, shall be subject to the following limitations with respect to any of the twenty-five (25) highest paid employees of the city as of April 1, 1968, whose prospective retirement benefits exceed \$1,500.00 per year:

(a) If the plan is terminated the benefits shall not exceed those provided by the city's contributions equal to the greater of the following amounts:

(1) \$20,000.00.

(2) The amount computed by multiplying twenty per cent (20%) of such member's average annual compensation (not exceeding \$50,000.00) received from the city for five (5) years preceding the date of termination by the number of years intervening between April 1, 1968, and such termination.

(b) If a member retires from the city's employ, the amount of the benefits provided by the plan shall be paid to him only so long as the city continues to meet the full current costs of the plan; otherwise the benefits available to such member in any year, beginning with the year in which the city first fails to meet the full current costs of the plan shall be limited to the annual benefits which could have been provided under the plan with an amount equal to the sum to which he would then be entitled under paragraph (1) of subsection (a) of this section had this plan then terminated, plus his pro-rata share of all supplemental payments made by the city in such year, or in any later year or years, for all members affected by this paragraph; provided, however, that the total amount of such supplemental payments in any year shall not exceed the aggregate employer contributions already made under the plan in the year then current.

(c) If the employment of a member with the city is terminated for reasons other than death or retirement, benefits which thereupon may be distributed or made available to him shall not exceed the amount to which such member would then be entitled under paragraph (1) of subsection (a) of this section if the plan were then terminated. Any excess benefits to which such member would otherwise have been entitled may also be distributed or made available to him in the next succeeding year or years provided (1) the city has met the full current costs of the plan, and (2) the benefits distributed or made available in any succeeding year shall not exceed an amount which when added to the amounts previously distributed to him pursuant to this subsection will not exceed the amount to which he then would be entitled under said paragraph (1) if this plan were then terminated.

For the purposes of this section the full current costs of the plan shall be deemed to have been met as of any date if the city shall have contributed to the trustee sums sufficient so that the initial deficit, if any, in the pension fund shall not have increased.

(Code 1958, § 21-29.1)

§ 18-64 Limitation on compensation.

Compensation in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for "eligible employees" shall not be less than the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993. For this purpose, an "eligible employee" is an individual who was a member of the Pension Plan before the first plan year beginning after September 30, 1996.

(Ord. No. 96-36, § 1, 7-16-96)

Secs. 18-65—18-73. Reserved.

DIVISION 2. MEMBERSHIP AND SERVICE

Sec. 18-74. Original members.

All full-time, permanent city employees on the effective date of the plan who do not currently participate in either the pension plan for firemen or the pension plan for policemen in Boynton Beach may elect to become original members of the plan. Eligible employees who do not elect to become original members of the plan will not become original members.

(Code 1958, § 21-30)

Sec. 18-75. New members.

New, full-time, general city employees will participate in the plan on the first day of their becoming a full-time general city employee. Full-time, permanent employees who do not elect to become original members of the plan may elect to become new members of the plan as of any anniversary of the effective date of the plan by giving written notice to the City Manager at least one month before such anniversary date.

(Code 1958, § 21-31)

Sec. 18-76. Reserved.

Sec. 18-77. Creditable service.

Creditable service for the purpose of calculating benefits for general employees shall consist of the member's service rendered by the employee since he last became a member, plus past service, rendered continuously since the employee's last date of employment as defined in section 18-78 to the date of his or her separation from service by reason of death, disability, termination of employment or retirement. Creditable service shall also include any credit granted for military service pursuant to section 18-81, Military and related service.

(Code 1958, § 21-33; Ord. No. 79-20, Art. I, § 4, 4-17-79; Ord. No. 80-51, § 4, 12-16-80; Ord. 10-006, § 4, 2-16-10)

Sec. 18-78. Service before effective date of plan.

Credit will be given original members for continuous service to the city from their dates of employment (or most recent date of employment if service has not been continuous) to the effective date of the plan, with the exception as outlined in section 18-77.

(Code 1958, § 21-34)

Sec. 18-79. Termination of membership.

(a) Should any member separate from the service of the city for any reason except his or her retirement, death or termination after having completed five years of credited service or after total and permanent disability he or she shall thereupon cease to be a member of the plan and his or her credited service at that time shall be forfeited by him or her except as provided by section 18-117 of this article.

(b) No distributions under this section shall be made until after the member separates from employment.

(Code 1958, § 21-35; Ord. No. 78-15, § 1, 4-4-78; Ord. No. 78-30, § 1, 8-1-78; Ord. No. 78-38, § 1, 9-5-78; Ord. No. 00-75, § 2, 1-2-01; Ord. No. 10-028, § 6, 11-3-10)

Sec. 18-80. Leaves of absence.

Any member who has been granted a leave of absence (except for vacations, extended vacations, sick leave, extended sick leave, or leaves of absence of benefit to the city and approved by the City Manager) shall be allowed service credit earned prior to the start of leaves of absence, and with service credit to resume upon return to employment.

(Code 1958, § 21-36)

Sec. 18-81. Military and related service.

(a) When any member is inducted or enlists into any of the Armed Forces of the United States, or enlists in any reserve component, enlists in the United States Coast Guard, or in any other reserve component, or enters upon active duty in the Armed Forces of the United States, the United States Coast Guard, or the United States Public Health Service in response to an order or call to active duty, and is subsequently reemployed by the city as a full-time permanent general city employee under such circumstances that he or she thereby becomes entitled to return to work for the city within the time that reemployment rights are granted to him or her by law, he or she shall again become a member of the plan and shall be given service credit for the credited service he or she had accumulated before entering military or related service and shall again accumulate additional credited service commencing with the date of his or her reemployment by the city. If approved by the Board such member may also be granted service credit for the period of time spent in military or related service.

(b) Effective December 12, 1994, the member will at all times be entitled to the rights granted by the Internal Revenue Code Section 414(u), including:

(1) The member will not have break in service as a result of the military service.

(2) The right to purchase such service under the provisions of Section 414(u)(8).

(c) Effective January 1, 2007, members who die or become disabled while serving on active duty military service which intervenes the member's employment shall be entitled to the rights of this section even though such member was not re-employed by the city. Members who die or become disabled while on active duty military service shall be treated as though re-employed the day before the member became disabled or died, was credited with the service they would have been entitled to under this section, and then either died a non-duty death while employed or became disabled from a non-duty disability.

(Code 1958, § 21-37; Ord. No. 10-006, § 5, 2-16-10; Ord. No. 10-028, § 7, 11-3-10)

Sec. 18-82. Reemployment.

When any former employee of the city is reemployed, he or she will become a member of the plan upon reemployment as a full-time permanent general city employee. When a former employee of the city is reemployed and said employee had withdrawn contributions previously made to the plan, he or she may have forfeited credited service reinstated upon satisfaction of each of the following conditions:

(1) The break in city employment is not more than sixty (60) months; and

(2) The plan is paid the total amount previously withdrawn (consisting of accumulated member contributions plus any interest previously paid by the plan on those contributions). This total amount is brought forward with interest for the total number of months from the date of withdrawal to the date of repayment, calculated to the nearest month. This calculated amount equals the amount to be repaid to the plan in a lump sum. The interest to bring forward the total amount will be at the equivalent compound monthly rate derived from the earning rate assumed by the actuary in the most recent actuarial valuation submitted to the Division of Retirement pursuant to F.S. Chapter 112, part VII.

(3) Repayment of withdrawn contributions, interest thereon, and administrative processing fee, must be made no later than one (1) year from the date the fund's actuary delivers a repayment calculation to the employee.

(4) The application is made within one (1) year of reemployment by the city. Should a member fail to make application within one (1) year of reemployment for the purchase of prior city time, then the member may within five (5) years of reemployment by the city request the purchase of the prior city time. This time may be purchased at the full actuarial impact of the purchase of service, plus the cost of the actuarial services to calculate the buyback.

When a former employee of the city is reemployed and said employee had previously terminated his or her employment with a vested right to a deferred annuity, provided he or she had not withdrawn contributions previously made to the plan, he or she will again become a member of the plan as of the date of his or her reemployment as a full-time permanent general city employee. The credited service which such reemployed member had accumulated as of the date of his or her prior termination of employment shall be reinstated and he or she shall accrue additional credited service from the date of his or her reemployment. Any benefits to which such reemployed member subsequently becomes entitled shall be based on the sum of his or her

credited service prior to his or her previous termination of employment plus credited service subsequently to his or her reemployment.

(Code 1958, § 21-38; Ord. No. 96-04, § 1, 3-5-96; Ord. No. 98-02, § 1, 1-20-98; Ord. No. 98-12, § 1, 4-21-98; Ord. No. 15-008, § 3, 3-2-15)

Secs. 18-83—18-92. Reserved.

DIVISION 3. CONTRIBUTIONS AND FUNDING

Sec. 18-93. Pension fund designated.

The City of Boynton Beach Employees' Pension Fund shall be the fund in which shall be accumulated all contributions made for the Employees' Pension Plan of the City of Boynton Beach and from which shall be paid benefits and other payments in accordance with this article.

(Code 1958, § 21-39)

Sec. 18-94. Employee contributions required.

Subject to the limitations imposed in section 18-95, employees who are members of the plan shall contribute 7% of monthly earnings to the fund for that month. Pursuant to Code section 414(h)(2), the city shall pick up the member contributions required by this section. The contributions so picked up shall be treated as employer contributions in determining tax treatment under the Code. The city shall pick up the member contributions from funds established and available for salaries, which funds would otherwise have been designated as member contributions and paid to the Fund. Member contributions picked up by the city pursuant to this subsection shall be treated for purposes of making a refund of members' contributions, and for all other purposes of this and other laws, in the same manner and to the same extent as member contributions made prior to the effective date of this section.

(Code 1958, § 21-40; Ord. No. 79-20, Art. I, § 2, 7-17-79; Ord. No. 80-51, § 2, 12-16-80; Ord. No. 88-43, § 2, 9-21-88; Ord. No. 00-75, § 3, 1-2-01; Ord. No. 10-028, § 8, 11-3-10)

Sec. 18-95. Deduct contributions from pay.

The Director of Finance shall cause contributions provided for in section 18-94 of this article to be deducted from the compensation of each member on each and every payroll for each and every payroll. A member's contribution provided for herein shall be made notwithstanding that the minimum compensation provided by law for any member shall be changed thereby. Each member shall be deemed to consent and agree to the deduction made and provided for herein and payment of his compensation less said deduction shall be full and complete discharge of all claims and demands whatsoever for the service rendered by said member during the period covered by such payment, except as to the benefits provided by this plan. The Director of Finance shall cause the amount to be deducted from the compensation of each member for each and every payroll as authorized by this article and when deducted shall be paid into the fund of the plan and shall be credited to the individual member from whose compensation said deduction was made.

(Code 1958, § 21-41; Ord. No. 79-20, Art. I, § 3, 7-17-79; Ord. No. 80-51, § 3, 12-16-80; Ord. No. 10-006, § 6, 2-16-10)

Sec. 18-96. Return of accumulated employee contributions.

(a) Should any member cease to be an employee of the city for any reason except his or her retirement, disability or death, he or she shall be paid all of his or her accumulated contributions standing to his or her credit in the fund, as he or she shall demand on forms furnished by the City Commission in accordance with section 18-117.

(b) Except as otherwise provided in this plan, upon the death of a member, his or her accumulated contributions standing to his or her credit in the Pension Fund, at the time of his or her death, shall be paid to such person or persons as he or she shall nominate by written designation duly executed and filed with the City Commission. If there shall be no such designated person or persons surviving the said member, his or her said accumulated contributions shall be paid to his or her estate.

(c) No distributions under this section shall be made until after the member separates from employment.

(Code 1958, § 21-42; Ord. No. 78-15, § 2, 4-4-78; Ord. No. 10-028, § 9, 11-3-10)

Sec. 18-97. Gifts to fund.

All gifts, devises and bequests to the plan shall be credited to the pension fund. The city may accept gifts, devises, bequests, or appropriations for the fund from any source, but shall have the right to reject same if they are so conditioned as to conflict with the Charter or this article, or to make the administration of the same unreasonably difficult.

(Code 1958, § 21-43)

Sec. 18-98. City to bear costs in excess of contributions and gifts.

All costs of the pension plan in excess of sums received through employee contributions, gifts, devises, bequests, and from other sources, will be borne by the city.

(Code 1958, § 21-44)

Sec. 18-99. City's contribution.

The city shall pay into the fund amounts required in addition to funds received from employee contributions, gifts, devises, and so forth, to provide the benefits under the plan, as shall be determined by an actuarial investigation as provided in Division 5.

(Code 1958, § 21-45)

Sec. 18-100. Financial management.

Employee contributions, gifts, bequests, devises and appropriations to the fund shall be received by the Director of Finance who shall be liable for the safekeeping of the funds under his or her bond. The Director of Finance shall transfer to the Pension Fund all pension funds

appropriated by the City Commission. The Director of Finance shall be responsible for making all payments and disbursements from the pension fund.

(Code 1958, § 21-46)

Secs. 18-101—18-110. Reserved.

DIVISION 4. RETIREMENT AND RETIREMENT BENEFITS

Sec. 18-111. Normal retirement.

(a) An employee who retires on or after January 1, 1977, but before January 2, 2001, will normally retire on the first day of the month following his or her sixty-second birthday or the first day of the month following ten years of completed service with the city, whichever is later.

(b) An employee who retires prior to January 1, 1977, will normally retire on the first day of the month following his or her sixty-fifth birthday or the first day of the month following ten years of completed service with the city, whichever is later.

(c) On or after January 2, 2001, an employee will be eligible to retire on the first day of the month following his or her fifty-fifth birthday and the completion of 25 years of services, or his or her sixty-second birthday and the completion of five years of services, or the completion of 30 years of services regardless of age.

(d) In the event of normal retirement, the retiring employee shall be entitled to and shall be paid an annuity payable monthly beginning with the month of retirement and continuing until death. The amount of annuity to which the retiring employee will be entitled will be calculated as follows:

(1) An employee who retires prior to October 6, 1988, shall be eligible to receive a monthly benefit computed in accordance with the provisions of the plan as in effect as of the date of his or her retirement; provided, however, that with respect to those employees who retired prior to January 1, 1977, effective as of January 1, 1977 the retirement benefit payable to each such individual was increased by 25% as of that date; and, provided further, that effective as of October 6, 1988, the monthly benefit payable to each individual who retired before such date shall be increased by 2% of each such individual's current benefit times the number of full years between each such individual's most recent retirement date and October 6, 1988.

(2) An employee who retires prior to October 6, 1988, shall be eligible to receive a monthly benefit computed in accordance with the provisions of the plan as in effect as of the date of his or her retirement. An employee who retires on or after October 6, 1988, but before January 2, 2001, shall be entitled to, and shall be paid, an annuity payable monthly beginning with the month of retirement and continuing until death. The amount of the annuity to which the retired employee will be entitled will be equal to 50% of his or her final average monthly compensation plus 75% of the excess over \$825 of such final average monthly compensation; provided, however, the employee has completed at least 25 full years of credited service at his or her normal retirement date. If the employee's credited service at normal retirement date is less than 25 full years, the aforesaid amount shall be reduced for the shorter service by multiplying it by a fraction, the numerator of which is the employee's full years and fractions thereof in months of credited service at normal retirement date and the denominator of which is 25 years.

(3) An employee who retires on or after January 2, 2001, shall be entitled to and shall be paid an annuity in the amount of 3% times the number of years of his or her service to the city times his or her final average monthly compensation, subject in any event to a maximum of 75% of his or her final average monthly compensation.

(4) "Final average monthly compensation," for the purposes of this section, shall mean the monthly average of the employee's annual earnings during the highest 60 consecutive calendar months occurring in the 120 calendar months immediately preceding his or her normal retirement date if such date falls on or after January 1, 1979, and based upon compensation immediately preceding actual retirement date if normal retirement date preceded January 1, 1979, or he or she elected to continue to contribute after normal retirement date as provided in section 18-95. "Annual earnings" as used in the above sentence shall mean gross earnings received by the employee as compensation for service to the city as provided for in Section 18-55.

(5) *Elective benefits.* The city may, from time to time, offer elective benefits to employees, which benefits would be funded solely by employees contributions and would not result in any additional cost to the city. These benefits are provided for in section 18-128 of the plan.

(e) Commencing October 1, 2001, in lieu of receiving a cost of living increase, retirees may be eligible to receive a supplemental pension distribution payable by the following July 1, the amount of which shall be determined as of September 30 of each year. The amount of the distribution is equal to the amount the net investment return exceeds the assumed rate of investment return divided equally among all participants whose benefit was in pay status as of the previous October 1. The amount of the distribution shall be the same for all eligible retired members regardless of years of service, age, years retired, or amount of monthly benefit. In no event shall the supplemental benefit exceed the average monthly benefit of those retirees receiving a monthly benefit calculated as of the previous October 1.

(1) The actuary for the pension fund shall determine the rate of investment return on the pension fund assets during the 12-month period ending each September 30, and shall be the rate reported in the most recent actuarial report.

(2) The actuary for the pension fund shall, as of September 30, determine the actuarial present value of future pension payments to current retirees.

(3) The supplemental benefit shall not be paid in any year that the present value of such benefits does not exceed the net actuarial experience accumulated from all sources of gains and losses since this benefit was enacted.

(4) If there shall be a supplemental distribution, Board of Trustees shall authorize a supplemental pension distribution, unless the administrative expenses of distribution exceed the amount available for distribution.

(5) The eligible persons to receive a supplemental distribution are retirees, including participants in the DROP, and their beneficiaries.

(6) For members who participate in the DROP, as provided in § 18-127 of the plan, the supplemental pension distribution, if distributed, shall be deposited in the member's DROP account during their term of the participation in the DROP.

(f) An employee's right to his or her normal retirement benefit is non-forfeitable upon attainment of normal retirement age.

(Code 1958, § 21-47; Ord. No. 79-20, Art. I, § 5, 7-17-79; Ord. No. 80-51, § 5, 12-16-80; Ord. No. 88-43, § 3, 9-21-88; Ord. No. 98-15, § 1, 5-19-98; Ord. No. 00-75, § 4, 1-2-01; Ord. No. 02-026, § 2, 6-18-02; Ord. No. 06-079, § 2, 10-17-06; Ord. No. 10-028, § 10, 11-3-10; Ord. No. 13-035, § 3, 12-3-13)

Sec. 18-112. Minimum benefit.

In no event shall an employee's monthly retirement benefit determined under sections 18-111, 18-113, 18-114 or 18-117 be less than the monthly retirement benefit which such employee would have received based on his accrued benefit as of April 30, 1975, under the provisions of the plan as in effect immediately prior to May 1, 1975.

(Code 1958, § 21-48)

Sec. 18-113. Delayed retirement.

Any employee who does not desire to retire on his or her normal retirement day may delay retirement.

(Code 1958, § 21-49; Ord. No. 79-20, Art. I, § 1, 7-17-79; Ord. No. 80-51, § 1, 12-16-80; Ord. No. 10-006, § 7, 2-16-10)

Sec. 18-114. Retirement prior to normal retirement date.

(a) The early retirement date of an employee shall be the first day of any month prior to his or her normal retirement date and following, or coinciding with, the date of actual retirement, provided (s)he has then completed less than thirty (30) years of service, but at least: (a) ten (10) years of credited service and has attained his or her fifty-fifth (55th) birthday; or (b) twenty-five (25) years of service and has attained fifty-two (52) years of age. An employee who retires on an early retirement date shall be entitled to a deferred annuity payable beginning at his or her normal retirement date or, if (s)he so elects, to an immediate annuity beginning at his or her early retirement date. The amount of the deferred annuity will be equal to a benefit determined as for normal retirement under the provision of section 18-111, but based on the employee's final average monthly compensation as of his or her early retirement date and his or her credited service as of such early retirement date. If the retiring employee elects to receive an immediate annuity commencing at his or her early retirement date, the amount of such immediate annuity shall be the deferred annuity described in the preceding sentence, less one-quarter of one percent (.25%) times the number of months preceding his or her normal retirement date.

(b) Prior to January 2, 2001, if the employee retires after achieving fifty-two (52) years of age and twenty-five (25) years of service, the immediate annuity shall be the actuarial equivalent of the immediate annuity received had the employee retired at fifty-five (55) years of age with twenty-five (25) years of service.

(Code 1958, § 21-50; Ord. No. 88-43, § 4, 9-21-88; Ord. No. 095.01, § 1, 2-21-95; Ord. No. 00-75, § 5, 1-2-01)

Sec. 18-115. Death before retirement date.

(a) Prior to January 2, 2001, in the event of death of an employee prior to the receipt by such employee of any of the benefits under the provisions of this article, then the total amount of

contributions by said employee to the fund, up to the time of his death, shall be paid to the beneficiary of the deceased employee, together with interest thereon at the rate of three per cent (3%) per annum to January 1, 1977, and five per cent (5%) thereafter, computed in the manner provided in section 18-117, unless the employee has reached normal retirement age and the retirement annuity option provided in section 18-118 has been elected by the employee, in which case pension payments will be made as though the employee had retired on the date before he died.

(b) On or after January 2, 2001, in the event of the death of an employee prior to the receipt by such employee of any of the benefits under the provisions of this article, then the beneficiary of the deceased employee who was not vested, may receive the total amount of contributions by said employee to the fund, up to the time of his or her death, together with the interest thereon at the rate of five percent (5%) per annum thereafter, computed in the manner provided in section 18-117. The beneficiary of an employee who became vested prior to their death may receive the pension benefit earned by the employee as though the employee had retired on the date before (s) he died, payable either as an immediate lump sum payment or as a monthly survivor benefit for the remainder of the survivor's life.

(1) The immediate lump sum payment is equal to the greater of the employee's contributions, together with the interest thereon at the rate of five percent (5%) per annum, or the lump sum value of the actuarial calculation of the employees' accrued pension payable at the earliest date the employee could have retired.

(2) The monthly survivor benefit would be the actuarial calculation of the employee's accrued pension starting at the earliest date the member could have retired. If the beneficiary's age is more than fifteen (15) years less than the employee's age at the time of death, then the monthly benefit will be reduced as though the beneficiary was fifteen (15) years younger than the employee. The monthly survivor benefit is payable at the earliest date the employee could have retired.

(3) If the earliest date that the employee could have retired is before the normal retirement date, then the accrued death benefit will be subject to the early retirement penalty of three percent (3%) for each year prior to what would have been the employee's normal retirement date.

(4) If the beneficiary selects to receive the monthly survivor benefit but predeceases the date such payments commence, the employee's estate shall receive a refund of the employee's estate shall receive a refund of the employee's contributions, together with the interest thereon at the rate of five percent (5%) per annum.

(Code 1958, § 21-51; Ord. No. 00-75, § 6, 1-2-01; Ord. No. 02-027, § 2, 6-18-02)

Sec. 18-116. Death after retirement date.

In the event of the death of a retired employee prior to the receipt by said employee of benefits under this article in an amount equal to the total amount contributed by such employee to the pension fund, together with interest thereon at the rate of three per cent (3%) per annum to January 1, 1977, and five per cent (5%) per annum thereafter computed to the date of the employee's retirement as provided in section 18-117, then the excess of such contribution plus interest to the date of retirement over the amount of the benefits received by such employee under this section shall be paid to the beneficiary of such deceased employee unless the retired employee has elected the retirement annuity option provided in section 18-118 in which event

benefits will be paid in accordance with such option. The designated beneficiary of an employee who retired prior to January 1, 1977, but who dies subsequent thereto, shall be eligible to receive benefits computed in accordance with the provisions of the plan in effect as of the date of such employee's retirement.

(Code 1958, § 21-52)

Sec. 18-117. Termination of services prior to eligibility for retirement.

In the case of voluntary resignation or discharge of any member of the plan, the total amount contributed by said employee to the fund up to the time of his resignation or discharge (together with interest at the rate of three per cent (3%) per annum to January 1, 1977, and five per cent (5%) per annum thereafter compounded from the end of the year in which contributions are made to the date of termination of service) shall be returned and said employee shall immediately cease to be a member of the plan and shall not be entitled to any other benefits from the plan unless the member has completed five (5) years of credited service under the plan or is totally and permanently disabled. If he has completed five (5) or more years of credited service or is totally and permanently disabled he shall be fully vested and entitled to a deferred annuity commencing at his or her otherwise expected early or normal retirement date. The monthly amount of such deferred annuity shall be an amount computed in the same manner as the deferred annuity described for early retirement in section 18-114. For the purpose of such calculation, the member's date of termination of employment shall be considered as his early retirement date.

An employee who is entitled to a deferred annuity under the provisions of this section 18-117 may waive his right to such deferred annuity and accept in lieu thereof the total amount he has contributed to the pension fund (together with interest thereon as described above) up to the time of his resignation or discharge.

In the event of resignation or discharge of any member as described in this section 18-117, any contributions theretofore made by the city relating to such member, with accruals thereon, which have not vested in accordance with the provisions of this section 18-117, shall be used to reduce contributions to be made thereafter by the city and shall not be used to increase the benefits of any member.

(Code 1958, § 21-53; Ord. No. 00-75, § 7, 1-2-01; Ord. No. 13-035, § 4, 12-3-13)

Sec. 18-118. Retirement annuity option.

(a) At any time prior to or upon the date of normal retirement, a member may elect to receive annuity benefits payable under the plan with the approval of the pension board in the form of a joint and survivor annuity instead of the normal annuity form, which shall be the actuarial equivalent of the annuity which he would normally receive. A member may rescind such election at any time prior to his or her normal retirement date. Under the joint and survivor annuity, two-thirds ($2/3$) of the retirement annuity income continues to the surviving contingent annuitant, until his or her death. The election of a joint and survivor annuity shall be deemed to be automatically cancelled in the event of the death of the joint annuitant prior to the member's actual retirement.

(b) If a retired member has elected an option with a joint annuitant or beneficiary and his or her retirement income benefits have commenced, he or she may thereafter change the designated

joint annuitant or beneficiary with the approval of the Board of Trustees and the joint annuitant or beneficiary being removed. The retiree is required to provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed must be living. Any retired member who desires to change his or her joint annuitant or beneficiary shall file with the Board of Trustees a notarized notice of such change. Upon Board approval of a completed change of joint annuitant form or such other notice, the Board of Trustees shall adjust the retiree's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the retiree's current benefit and there is no impact to the Plan. The actuarial calculation will include a five (5) year age adjustment to keep the cost actuarially neutral. The Board will pay for the cost of the first recalculation of the benefit by the actuary; the retiree will be responsible for the cost of any subsequent recalculations. In the event that no joint annuitant or designated beneficiary survives the retiree, there is no benefit payable unless the retiree has not received benefit which total or exceed the amount of contributions made by the retiree. No retiree's current benefits shall be increased as a result of the change of joint annuitant or beneficiary.

(Code 1958, § 21-54; Ord. No. 85-46, § 1, 9-3-85; Ord. No. 14-021, § 2, 9-16-14)

Sec. 18-119. Social Security option.

An employee who retires before he is entitled to receive monthly benefits under the Federal Social Security system may elect to receive increased pension plan benefits before Social Security benefits begin, and decreased pension plan benefits thereafter to obtain, insofar as practical, a level total yearly retirement income from two (2) sources. The amounts he will receive, both before and after he becomes eligible for Social Security payments, shall be the actuarial equivalent of the benefits to which he would have been entitled had he not selected this option.

(Code 1958, § 21-55)

Sec. 18-120. Member records; status statements; beneficiary designations.

(a) A separate record of account shall be maintained for each member and among other things shall show his service record, his accumulated contributions to the plan, his exact age, his designation of beneficiary, together with any such information as is necessary for an active and comprehensive determination of his status under this plan.

(b) A member of the plan shall complete and file with the board a designation of beneficiary which names the person who is to receive any death benefits that may become payable under sections 18-115 and 18-116 other than benefits paid to a surviving spouse. Such designation of beneficiary is to be completed by the employee at the time he initially becomes a member of this plan. An employee who has failed to designate a beneficiary at the time of his initial membership in this plan may file a designation of beneficiary at any time thereafter. A member may change his designation of beneficiary at any time by filing a new designation of beneficiary form. If a member has failed to file a designation of beneficiary, any death benefits which would normally be paid to a designated beneficiary shall be paid in full to the first class of the following relative which has a member(s) (on a pro rata basis, if there is more than one member):

(1) The spouse married to the member on date of death;

- (2) Dependent children of the member;
- (3) The living parents of the member; or
- (4) The estate of the member.

This payment operates as a complete discharge of all obligations of the fund under the plan and shall not be subject to review but shall be final, binding and conclusive on all persons ever interested hereunder.

(Code 1958, § 21-56; Ord. No. 13-035, § 5, 12-3-13)

Sec. 18-121. Benefits unassignable and not subject to process.

The right of any member or any beneficiary to any benefits under the plan or any other right accrued or accruing to any persons under the provisions of the article shall not be subject to execution, garnishment, attachment, the operation of any bankruptcy or insolvency law or any other process of law whatever, and shall not be subject to assignment, pledge or hypothecation unless expressly authorized in this article.

(Code 1958, § 21-57)

Sec. 18-122. Errors, corrections and adjustments.

Should any change or error in the records of the plan be discovered, or any error in any calculation be made resulting in any member or beneficiary receiving from the plan more or less than he was entitled to receive, the council shall have the power to correct such error, and so far as possible to adjust the payments thereafter to be made in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled, be paid.

(Code 1958, § 21-58)

Sec. 18-123. No interest in the fund.

No member, employee, beneficiary or other persons shall have any interest in, or right in, or to the fund or any part thereof, or any assets comprising the same, except only as to the extent expressed and provided in this article.

(Code 1958, § 21-59)

Sec. 18-124. Payments in case of legal or other disability.

Whenever and/or as often as a person entitled to payments hereunder shall be under legal disability, or, in the sole judgment of the board, shall otherwise be unable to apply such payments to his best interests and advantage, the board in the exercise of its discretion may direct that all or any portion of the benefits of such members payable in any one or more of the following ways:

- (a) Directly to such person;
- (b) To his legal guardian or conservator;
- (c) To his spouse, or to any person to be expended for his benefit.

The decision of the board shall, in each case, be final and binding on all persons including the affected member of the plan.

(Code 1958, § 21-60)

Sec. 18-125. Re-employment of members receiving benefits or full vested who leave the city.

The city may at its option employ any person receiving benefits under this chapter, except for disability benefits.

(1) *Re-employment full-time:* A person who leaves the employ of the city after vesting or receiving a pension from any one of the city's pension plans can be re-employed at the option of the city on a full-time basis, provided they are no longer a member of the plan they are or will be receiving benefits from. A person who is re-employed shall be entitled to participate in the city's pension plan for his/her position provided he/she is otherwise eligible to join that plan pursuant to the plans' provisions.

(2) *Re-employment on a part-time basis:* Said part-time employment shall not exceed one thousand six hundred (1,600) hours per year. During this period of part-time employment, the employee shall not be allowed to make contributions to the pension fund nor shall such period of service count toward credit for the employee's credible service nor in figuring the average final compensation of the employee.

(Ord. No. 80-52, § 1, 12-16-80; Ord. No. 93-31, § 1, 9-7-93)

Sec. 18-126. Disability retirement benefits.

(a) Any member with less than 10 years of service who receives a medically substantiated injury, disease or disability, which injury, disease or disability totally and permanently disabled him/her to the extent that, in the opinion of the Long Term Disability Company, he/she is unable to perform all the material duties of his/her occupation, and in the event of recovery prior to the otherwise normal retirement date, and return to full-time employment with the City of Boynton Beach, credit for service during the period of disability shall be granted for purposes of subsequent retirement benefits.

(b) For purposes of this plan, if the employee is found to be totally and permanently disabled by the city's Long Term Disability Company, the employee will be deemed to be totally and permanently disabled under the Plan. If the employee disagrees with the Long Term Disability Company's determination, an appeal must be made to the Pension Board in a timely manner. The Board shall conduct a preliminary determination as to whether the member is permanently and totally disabled based upon the written documentation presented. If the Board does not grant the application based on the written documentation, it shall inform the member in writing of the reasons for the denial of the application. The member may, within 30 days of receipt of the Board's preliminary denial, request a full evidentiary hearing before the Board. Said hearing will be conducted consistent with the principles of due process and the rules of evidence generally applicable to administrative proceedings shall apply. The Board shall have the power to issue subpoenas compelling the attendance of witnesses. At said hearing the applicant may present such oral and written evidence as the applicant deems necessary to establish its burden of proof. The Board may appoint special counsel as an advocate to cross-examine witnesses and to offer argument in opposition to the application. The attorney for the Board shall not serve both

as advocate and as advisor to the Board in the same proceeding. The applicant and the Board shall have the right to examine and cross-examine all witnesses. The decision of the Board shall be based solely upon the evidence presented and the law applicable to this plan. Following the conclusion of the hearing, the Board shall render an opinion in writing setting forth the reasons for the grant or denial of the benefit. In the event the disability is denied, the applicant shall have the right of judicial review by complaint for common law certiorari in the Circuit Court of Palm Beach County. The Board may prescribe rules of procedure to implement the provisions of this plan relating to the conduct of disability hearings.

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

1. That the disability resulted from an intentionally self-inflicted wound, injury or ailment, or
2. That the disability resulted from the use of narcotics, drugs or alcoholic beverages, or
3. That the disability resulted from a member's participation or involvement in riot, insurrection or unlawful assembly, or
4. That the disability resulted from a member's participation or involvement in the commission of a crime or unlawful act, or
5. That the disability resulted from injury or disease sustained by the member while serving in any armed forces. This exclusion does not affect members who have become disabled as a result of intervening military service under the federal Heroes Earnings Assistance and Relief Tax Act of 2008 (H.R. 6081; P.L. 110-245).

(Ord. No. 99-14, § 2, 6-1-99; Ord. No. 10-006, § 8, 2-16-10)

Sec. 18-127. Deferred retirement option plan.

- (a) A deferred retirement option plan ("DROP") is hereby created.
- (b) Eligibility to participate in the DROP is based upon eligibility for normal service retirement in the plan.
- (c) Participation in the DROP must be exercised within the first 30 years of employment; provided, however, that participation in the DROP, when combined with participation in the retirement plan as an active member may not exceed 35 years. The maximum period of participation in the DROP is five years. An employee's election to participate in the DROP plan shall be irrevocable and shall be made by executing a resignation notice on a form prescribed by the city.
- (d) Upon exercising the right to participate in the DROP, an employee's creditable service, accrued benefits and compensation calculation shall be frozen and shall utilize the average of the five highest of the ten years immediately preceding participation in the DROP as the compensation basis. Accumulated, unused sick and vacation leave shall be included in the compensation calculation as provided for and limited by the definition of annual earnings; provided, however, that a minimum balance of 120 hours of sick leave and 120 hours of vacation leave shall be maintained by the employee and excluded from this calculation. The retained leave balance, including any additions, shall be distributed at the conclusion of DROP participation and separation from service. In accordance with the definition of annual earnings, the

accumulated sick and vacation leave that is includable in the compensation calculation will phase out but hours may still be transferred up to the maximum permitted by the Code, provided the minimum number of sick and vacation leave remains on the books.

(e) Payment shall be made into the employee's DROP account as if the employee had terminated employment in the city in an amount determined by the employee's selection of the payment option.

(f) An employee's account in the DROP program shall earn interest in one of three ways. The selection of the earnings program shall be made prior to the first deposit in the DROP account and may be modified once each year by the participant during their participation in the DROP. The investment method may be changed each year effective January 1, however, the method must be elected prior to January 1 on a form provided by the Board of Trustees. The options are:

(1) Gain or lose interest at the same rate as the plan;

(2) At an annual fixed rate of 7%; or

(3) A percentage of the DROP account will be credited with interest gains or losses at the same rate earned by the pension plan and the remaining percentage will be credited with earnings at a guaranteed rate of 7%. The actual percentage shall be selected by the member on a form provided by the Board of Trustees. The total of the two percentages must equal 100%.

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

(g) An employee shall terminate service with the city at the conclusion of five years in the DROP.

(h) All interest shall be credited to the employee's DROP account on the last day of the month in which the member separates from service. In the event that a member dies while in the DROP, interest shall be prorated to the last business day of the month preceding the death of the member.

(i) Upon termination with the city, an employee may receive payment within 45 days of the member requesting payment or may defer payment until a time not later than the latest date authorized by Section 401(a)(9) of the Internal Revenue Code at the option of the member.

(j) Payments from the DROP may be received as a lump sum installment payment or annuity, provided, however, that at all times, the DROP shall be subject to the provisions of the Internal Revenue Code.

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

(l) If an employee shall die during participation in the DROP, a survivor benefit for the monthly pension amount shall be payable in accordance with the form of benefit chosen at the time of entry into the DROP. An employee entering into the DROP or a member participating in the DROP post employment may designate a beneficiary(ies) to receive payment of the DROP balance in a lump sum upon his or her death in accordance with sections 18-118 and 18-120. In the absence of the designation of a beneficiary, the remaining balance shall be paid in full to the first class of the following relative which has a member(s) (on a pro rata basis, if there is more than one member): the spouse married to the member on date of death; dependent children of the

member; the living parents of the member; or the estate of the member. This payment operates as a complete discharge of all obligations of the Fund under the Plan and shall not be subject to review but shall be final, binding, and conclusive on all persons ever interested hereunder.

(m) Upon commencement of participation in the DROP, the member shall no longer be eligible for disability retirement from the pension plan. If a member becomes disabled during the DROP period, the member shall be treated as if he or she retired on the day prior to the date of disability.

(n) Notwithstanding the provisions of Section 18-125 of this plan. Participants in the DROP must terminate employment and participation in the DROP before any re-employment may occur.

(Ord. No. 00-75, § 8, 1-2-01; Ord. No. 02-028, § 2, 6-18-02; Ord. No. 04-053, § 2, 8-3-04; Ord. No. 13-035, §§ 6-7, 12-3-13; Ord. No. 14-021, § 3, 9-16-14)

Sec. 18-128. Elective benefits.

(a) Effective February 16, 2010, members will no longer be able to enroll in elective benefits. Elective benefits were offered to the members of this plan and were voluntary elections, the costs of which are borne entirely by the member through payroll deductions during their employment with the city. Such deductions are taxable dollars at the time the deduction is made. Members who were enrolled in elective benefits as of February 16, 2010 may continue to participate in these benefits or elect to cancel participation. The employee contributions used to purchase such elective benefits shall be accounted for separately and are non-forfeitable.

(b) *Open enrollment.* A member may elect to cancel an elective benefit only during the open enrollment period as provided by the Board of Trustees. Contributions shall be reimbursed to the member on cancellation of the elective benefit and shall only be refunded for the elective benefit canceled. No interest earnings will be applicable to the premiums contributed or to the refunded amount. The cancellation of such elective benefit is irrevocable.

(c) *Costs.* The costs for all elective benefits are borne by the member through payroll deductions during employment with the city.

(d) In the event of death before retirement of any participant, all premiums paid shall be refunded to the beneficiary. If the employee was eligible for normal retirement and the retirement annuity option had already been selected by the employee, the deceased member's earned pension amount will be actuarially reduced to a joint and survivor form and two-thirds of this amount will be paid to the survivor for his or her lifetime. For the 25-year retirement at any age benefit option, the retirement factor used shall be the factor which provides the most benefit to the employee.

(e) *Elective benefits.* There were four elective benefits options. The elective benefit options were as follows:

(1) *Option 1A - health insurance subsidy.*

a. The health insurance subsidy will provide a monthly benefit up to \$200 per month upon normal retirement. In the event of death prior to retirement, where the member is eligible for normal retirement and the retirement annuity option has been elected by the employee, the \$200

per month will be actuarially reduced to a joint and survivor form of benefit and two-thirds of this amount will be paid to the survivor for his or her lifetime.

b. The amount to be received for the health insurance subsidy at retirement is based on years of contributions by the employee. The full benefit of \$200 per month is based upon 25 years of employees contributions. A prorated benefit will be provided for years of contributions less than 25 years.

Illustration for prorated health insurance subsidy:

Member age @ hire 30

Member age @ retirement 55

Years of premium payment 5

$(5\text{yrs}/25\text{yrs} = 20\%)$

Monthly benefit \$40

$(\$200 \text{ subsidy} \times 20\%)$

Based upon this illustration, the employee contributed for five years which represents 5/25, or 20% of the full benefit calculated period. Therefore, the health insurance subsidy at normal retirement would be 20% of \$200, or \$40.

(2) *Option 1B - health insurance subsidy with 2% per year COLA.*

(a) The health insurance subsidy with 2% cost of living adjustment ("COLA") will provide an initial monthly benefit up to \$200 per month at normal retirement in 1999. In the event of death prior to retirement, where the member is eligible for normal retirement, and the retirement annuity option has been selected, the \$200 per month will be actuarially reduced to a joint an survivor form of benefit and two-thirds of this amount will be paid to the survivor for his or her lifetime. The \$200 per month will beindexed by 2% per year, compounded for all affected members.

(b) The amount to be received for the health insurance subsidy with 2% COLA at retirement is based upon years of contributions by the employee. The full benefit of the indexed insurance subsidy per month is based upon 25 years of employee contributions. A prorated benefit will be provided for years of employee contributions less than 25 years.

Illustration for prorated health insurance subsidy with 2% COLA:

Member age @ hire 30

Member age @ retirement 55

Years of premium payment 8

$(8\text{yrs}/25\text{yrs} = 32\%)$

1st year monthly benefit \$64

$(\$200 \text{ subsidy} \times 32\%)$

2nd year monthly benefit \$65.28

(\$204 subsidy x 32%)

(3) *Option 2 – Cost-of-Living Adjustment (“COLA”)*. The cost of living adjustment (“COLA”) provides a 5% deferred COLA commencing five years after retirement and compounded with additional 5% increases every three years thereafter. Spouse benefits, if elected, would also be eligible for the COLA, but the actuarial equivalent factors at retirement for conversion to the joint and two-third survivor benefit would need to be updated. A prorated benefit will be provided for years of employee contributions less than 25 years.

Illustration of the Cost-of-Living Adjustment (COLA):

Member age @ hire 50

Member age @ retirement 62

Years of premium payment 12

(12yrs/25yrs = 48%)

COLA Benefit 2.4%

(5% COLA x 48%)

An employee that made full contributions for this elective benefit option would receive a 5% COLA. Since the illustrated employee contributed 12 years toward the COLA it has been prorated to 2.40% which represents 48% of the fully contributed percentage.

(4) *Twenty-five-year service requirement (any age)*. The 25-year service requirement (any age) would allow the employee to retire with 25 years of service, regardless of age. This option will provide an increase in the early retirement factors based upon years contributed. The cost will be actuarially adjusted on an annual basis. A prorated benefit will be provided for years of employee contributions less than 25 years. The factors used for retirement based upon years of service are as follows:

25 years 72.51% of calculated benefit

26 years 76.91% of calculated benefit

27 years 81.81% of calculated benefit

28 years 87.36% of calculated benefit

29 years 93.41% of calculated benefit

30 years 100.00% of calculated benefit

Illustration of the 25-year service requirement (any age):

Member age at hire 20

Member age at retirement 45

(25 yrs of service)

Years of premium payment 5

(5 yrs/25yrs = 20%)

Average pay while contributing \$29,700

Percentage cost per year 1.89%

Aggregate premium \$2,807

ER factor 72.51%

Adjusted ER factor 78.01%

(27.49 diff (@ 20%)

(Adjusted factor of 72.51% + Differential of (100.00-72.51) x 20%)

(Ord. No. 006-027, § 2, 4-4-06; Ord. No. 10-006, § 9, 2-16-10; Ord. No. 10-028, § 11, 11-3-10)

Secs. 18-129—18-134. Reserved.

DIVISION 5. ADMINISTRATION OF THE PLAN

Sec. 18-135. Board of Trustees.

(a) *Composition of the Board.* The composition and terms of the seven members of the Board of Trustees of the Employees' Pension Plan of the city are hereby established as follows:

(1) The Mayor.

(2) The City Manager, or his or her designee. The appointment of a City Manager designee by the City Manager shall be ratified by the City Commission.

(3) Two individual citizens who shall be appointed by the City Commission to serve for four-year staggered terms.

(4) One employee representative member shall be elected at-large by the members of the plan to serve a four-year term.

(5) One employee representative member shall be elected to serve a four-year term by all members of the plan from the general membership of the plan, provided the member is a member of a bargaining unit of the city.

(6) One employee representative member shall be elected to serve a four-year term by all members of the plan from the general membership of the plan, provided the member is not a member of a bargaining unit of the city.

(7) Employee representatives on the Board must be actively employed at the city to be elected to the Board. An employee who enters the DROP as provided in section 18-127, may continue to serve out the remainder of their term on the Board, but an employee representative may not be elected to the Board if they have already entered into the DROP prior to the election.

(8) The terms of the employee representatives on the Board shall be staggered.

(b) *Vacancies.*

(1) If an elective seat on the Board is vacated for any reason, an election to fill the vacated position shall be conducted. However, if an elected Board member retires before the expiration of their term, such Board member may continue to hold such elective seat for the balance of their elected term.

(2) If an appointive seat on the Board is vacated for any reason, the seat shall be filled by appointment by the appointing body.

(3) A replacement member shall serve on the Board for the unexpired term of the person replaced.

(c) Conduct of elections.

(1) The Board of Trustees shall be elected by a per capita vote of all employees, retirees and individuals who are on approved disability leave. The candidate(s) receiving 50% plus one of the votes shall be declared elected and shall take office as soon thereafter as qualified.

a. Such election shall be conducted by first class mail. Such mailing shall include:

1. A letter of instruction written in a manner calculated to be understood by the average recipient;

2. A ballot approved by the Board;

3. A Board approved form which contains a description of each candidates' profile or description of qualifications which has been submitted to the pension office by the candidate no later than 30 days prior to an election; and

4. A postage paid return envelope.

b. Mail ballots must be received in the return envelope by the deadline provided by the Board.

c. All ballots shall be received and counted under the supervision of the Pension Administrator or other designee(s) of the Board.

d. Only one ballot per member shall be permitted.

(2) The Board may rely on the address maintained by the city's Human Resource Department as accurate and current with respect to persons entitled to vote for the purposes of notice and mailing ballots.

(3) Notice of the election shall be provided to all qualified persons entitled to vote in person, by mail and by notice posted on city bulletin boards and included with members paychecks and pension or disability checks 90 days in advance of an election. Candidates may register to run for a position on the Board 60 days prior to the conduct of the election. The ballots shall be mailed out 30 days prior to the election date.

(4) The results of the election shall be placed on the next Board agenda immediately following the election for certification of the election results.

(Ord. No. 06-026, § 2, 4-4-06; Ord. No. 07-022, § 2, 9-4-07; Ord. No. 10-006, § 10, 2-16-10)

Sec. 18-136. Compensation of Board.

The members of the Board shall serve without compensation for their services.

(Code 1958, § 21-62)

Sec. 18-137. Meetings of Board; quorum, vote required.

This plan or any matter herein may be considered and disposed of at any Board meeting. A majority of the membership shall constitute a quorum and all decisions, acts and resolutions of the Board shall be by affirmative vote of at least three members.

(Code 1958, § 21-63)

Sec. 18-138. Administrative regulations authorized; distribution.

The board by resolution may promulgate written rules and regulations not in conflict with the expressed terms of this article or the Charter to cover the operation of any phase or part of the plan as provided by this article. Copies of such rules and regulations shall be furnished to any member of the plan upon request and at least one copy thereof shall be kept available in the office of the city clerk for examination by any interested persons at any time during ordinary business hours. Otherwise, a copy of this article shall fully meet the provisions herein.

(Code 1958, § 21-64)

Sec. 18-139. Board to interpret plan.

The board has the power to construe all terms, rules, conditions and limitations of the plan, and its construction made in good faith shall be final and conclusive upon all parties' interests.

(Code 1958, § 21-65)

Sec. 18-140. Agents and employees.

The board shall have the power to select, employ and compensate, or cause to compensate from time to time such consultants, actuaries, accountants, attorneys, investment counsel and other agents and employees as they may deem necessary and advisable in the proper and efficient administration of the plan.

(Code 1958, § 21-66)

Sec. 18-141. Powers and duties not exclusive.

The powers and duties of the board or of any other persons as set out herein are not intended to be complete or exclusive but each such body or persons shall have such powers and duties as are reasonably implied under the terms of this article. Where not in conflict with this article, or the Charter, the trust agreement or contract entered into with the insurance company, shall govern.

(Code 1958, § 21-67)

Sec. 18-141.1. Application for benefits; procedure.

Any party who seeks benefits under the provisions of this chapter shall initiate his or her request by filing a written application with the secretary of the Board of Trustees of the pension plan.

(Ord. No. 80-53, § 1, 12-16-80)

Editor's note-*Ord. No. 80-53, § 1, amended 1958 Code by adding provisions designated § 21-67.5 which provisions have been included herein as § 18-141.1.*

Sec. 18-142. Secretary of board designated.

The city clerk or deputy clerk shall be secretary to the board under this plan.

(Code 1958, § 21-68)

Sec. 18-143. Duties of the secretary.

It shall be the duty of the secretary to keep accurate minutes and records of the acts of the board under this plan separate and apart from the regular minutes of city council meetings. This provision is made for the express purpose of having all proceedings in connection with this plan in one set of books, thereby saving going through all of the minutes of the various board meetings. They shall be available to the public, city officials and employees under this plan at all times.

It shall be further the duties of the secretary to receive all applications for benefits under this chapter from the applicants, to maintain files on said application and to give reasonable written notice to the applicant of all meetings and hearings of the pension board on any party's request for benefits pursuant to this chapter.

(Code 1958, § 21-69; Ord. No. 80-53, § 2, 12-16-80)

Sec. 18-143.1. Consideration of application for benefits.

Upon receipt of an application for benefits, pursuant to this chapter, the secretary of the board shall set the matter for an initial determination by the board of a party's eligibility for benefits pursuant to this chapter. The party seeking benefits shall be given reasonable notice of this meeting and shall have an opportunity to present any relevant information to the board at that time. The board may either award benefits at that time, seek further information, or make an initial determination that benefits pursuant to this chapter shall be denied. If the board makes an initial determination of denial it shall instruct the city attorney to inform the applicant, in writing, of the reasons for said denial, and give the applicant thirty (30) days to request a full hearing before the board to determine the applicant's eligibility for benefits under this chapter.

The board shall hold a full hearing within thirty (30) days of a request for the same by the applicant. All relevant evidence shall be received by the board at the time of the hearing. At the close of the full hearing the board shall make a final determination of the applicant's eligibility for benefits under the chapter.

Any party grieved by the board's decision shall have thirty (30) days to file a petition for writ of certiorari with the court.

(Ord. No. 80-53, § 3, 12-16-80)

Editor's note-*Section 18-143.1 is derived from Ord. No. 80-53, § 3 which amended Code 1958 by adding provisions designated § 21-69.5.*

Sec. 18-144. Preservation of records; notices to trustee.

All notices, elections, designations and changes of beneficiaries and similar writings pertaining to the operation of the plan shall be made and preserved in writing on such forms as the Board may direct. The secretary shall maintain all records in segregated files pertaining to the plan and they shall not be inter-mingled with other files of the city. Whenever there is any notice, election, designation, complaint, ruling or other written proceedings relating to a particular employee, the secretary shall furnish the trustee or the insurance company, when necessary, with a copy of same, as well as the employee.

(Code 1958, § 21-70)

Sec. 18-145. City of Boynton Beach Investment Policy for General Employees' Pension Fund.

(a) *General.* The Board of Trustees of the Boynton Beach General Employees' Pension Fund has established this Statement of Investment Policy. This policy has been identified by the Board as having the greatest expected investment return, and the resulting positive impact on asset values, funded status, and benefits, without exceeding a prudent level of risk. The Board determined this policy after evaluating the implications of increased investment return versus increased variability of return for a number of potential investment policies with varying commitments to stocks and bonds.

(b) *Purpose.* The purpose to this section is to:

(1) Provide the investment manager a more accurate understanding of the trustees' investment objectives; and

(2) Indicate the criteria by which the investment manager's performance will be evaluated.

(c) *Investment manager responsibilities.*

(1) Within the guidelines and restrictions set forth herein, it is the intention of the Board to give the investment manager full investment discretion, with respect to assets under its management. The investment manager shall discharge its responsibilities in the same manner as it would if the fund were governed by the fiduciary, responsibility provisions of the Employee-Retirement Income Security Act of 1974 (ERISA). Although the fund trustees acknowledge that ERISA does not apply to a governmental fund, it hereby imposes the fiduciary provisions of ERISA upon the investment manager whose performance shall conform to the statutory provisions, rules, regulations, interpretations, and case law of ERISA. The investment manager shall acknowledge, in writing, that it is a named fiduciary of the fund.

(2) The investment manager is expected to provide any reasonable information requested by the Board of Trustees. At a minimum, each manager shall provide a quarterly report detailing their investment activity, the portfolio's current value, and any changes in investment philosophy or strategy. The firm's investment manager is expected to meet with the Board of Trustees at least once per year. A designated representative will meet with the Board of Trustees, at least quarterly. A designated representative of a mutual fund company is not required to attend meetings with the Board of Trustees.

(3) Unless otherwise provided by the custodian, the investment manager will monitor portfolio activity to minimize uninvested cash balances.

(4) The investment manager shall be responsible only for those assets under its management.

(5) It will be the responsibility of the investment manager to review the monthly valuations provided by the custodian and to note, in writing, any significant discrepancies from the valuations provided in their own reports.

(d) *General objectives.*

(1) The primary investment objective of the Boynton Beach General Employees' Pension Fund is the preservation of invested capital. The secondary objective is to achieve moderate long-term real growth (after inflation) while minimizing the volatility of returns.

(2) To achieve these objectives, the Board seeks to create a well-diversified and balanced portfolio of high quality equity, fixed income and money market securities. The Board has determined that one or more outside investment managers shall be retained to assure that all investments are managed in both a prudent and professional manner and in compliance with the state investment guidelines.

(e) *Investment objectives.*

(1) Investment objectives are intended to provide quantifiable benchmarks to measure and evaluate portfolio return and risk. Most investment styles require a full market cycle to allow an investment manager to demonstrate his or her abilities. A full market cycle is generally defined as a three to five year period. As a result, performance objectives will be measured over three to five year periods. Monitoring shorter periods may be used to determine the trend of performance premiums or deficiencies.

(2) The specific objectives of the Boynton Beach General Employees' Pension Fund are as follows:

a. *Primary objective:*

1. To earn an average rate of return over the long term (three to five years) which exceeds the return of a Target Index. The Target Index for the Boynton Beach General Employees' Pension Fund is defined as a 55% investment in the Russell 1000 Stock Index, a 10% investment in the Russell 2000 Stock Index, a 20% investment in the MSCI Europe Australasia and Far East Stock Index (EAFE), a 10% investment in the NCREIF Property Index, and a 25% investment in the Barclays Capital Aggregate Bond Index.

2. In addition, it is expected that the total rate of return earned will rank above average when compared to a representative universe of other, similarly managed portfolios.

b. *Secondary objective:* A further goal of the Boynton Beach General Employees' Pension Fund shall be to achieve an average annual rate of return greater than the absolute return of 8%, over the longer term. This absolute return objective will be evaluated in the context of the prevailing investment market conditions.

c. *Volatility:* The volatility of the fund's total returns is expected to be similar to that of the Target Index and will be evaluated accordingly.

(3) The investment objectives set forth herein have been established for the entire Boynton Beach General Employees' Pension Fund. The specific investment objectives for each investment manager will be outlined in separate documents which will be addenda hereto and incorporated herein to this overall statement of investment policy.

(f) *Investment guidelines.*

(1) The Board of Trustees has established the following target asset allocation for the entire Boynton Beach General Employees' Pension Fund:

| | <i>Target Allocation (at market)</i> | <i>Target Range (at market)</i> |
|----------------------------|--|---|
| Equity securities | | |
| Domestic equity | 45% | 30% - 60% |
| Foreign equity | 20% | 5% - 25% |
| Fixed income & equivalents | | |
| Fixed income | 25% | 20% - 70% |
| Direct real estate | 10% | 5% - 15% |
| Cash equivalents | 0% | 0% - 10% |

(2) To implement this strategy, the Board has chosen to hire one or more professional investment managers. Specific assignments and additional guidelines for each investment manager will be outlined in addenda to this section. The following guidelines and restrictions apply to all fund investments.

(3) In accordance with the policies established by the Board of Trustees, the assets of the Boynton Beach General Employees' Pension Fund shall be invested in a diversified portfolio of fully negotiable, equity, fixed income, and money market securities, provided they meet the following criteria:

a. Equity securities:

1. Investments in equity securities shall be limited to no more than 75% at market valuation or 65% at cost valuation of the fund's total asset value;

2. All equity investments shall be limited to fully and easily negotiable equity securities;

3. No more than 5% at cost value of an investment manager's equity portfolio may be invested in the shares of a single corporate issuer;

4. Investments in stocks of foreign companies shall be limited to 25% (at market) of the total investment portfolio. American Depositary Receipts (ADRs) and foreign ordinary securities traded on domestic exchanges are United States dollar-denominated securities listed and traded on a United States exchange and are considered part of the ordinary investment strategy of the Board. These securities are not considered foreign securities;

5. Investment in those corporations whose stock has been publicly traded for less than one year are limited to 15% of the equity portfolio; and

6. Equities may be managed through the purchase of open-end, no-load mutual funds, exchange traded funds, or commingled funds. Those securities/funds purchased directly by investment advisors are expected to adhere to the guidelines herein. The Board implicitly accepts the policy of a mutual or commingled fund when it makes a direct investment.

b. Fixed income securities:

1. The fixed income portfolio shall comply with the following guidelines:

(A) The average credit quality of the fixed income portfolio shall be rated "A" or higher; and

(B) The duration of the fixed income portfolio should be less than 135% of the duration of the market index. The market index is defined as the Barclays Capital Aggregate Bond Index.

2. Investments in all corporate fixed income securities shall be limited to:

(A) Those securities rated "BAA" or higher by Moody's or by Standard & Poor's rating services. Fixed income securities, which are downgraded below the minimum rating, shall be sold at the earliest beneficial opportunity;

(B) Securities issued by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia; and

(C) No more than 10% at cost of an investment manager's total fixed income' portfolio shall be invested in the securities of any single corporate issuer.

3. Investments in Collateralized Mortgage Obligations (CMOs) shall be limited to 15% of the market value of the investment manager's total portfolio and shall be restricted to issues which meet all of the following criteria:

(A) All issues must be backed by mortgage securities issued, guaranteed, or fully insured by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA) or that are rated "Aaa" by Moody's or "AAA" by Standard & Poor's rating services.

4. There is no limit imposed on investments in fixed income securities issued directly by the United States government or any agency or instrumentality thereof.

5. Fixed income securities may be managed through the purchase of open-end, no-load mutual funds or commingled funds. Those securities/funds purchased directly by investment advisors are expected to adhere to the guidelines herein. The Board implicitly accepts the policy of a mutual or commingled fund when it makes a direct investment.

c. Cash equivalent securities:

1. The investment manager may invest only in the following short-term investment vehicles:

(A) The money market or STIF provided by the plan's custodian;

(B) Direct obligations of the United States government with a maturity of one year or less;

(C) Commercial paper with a maturity of 270 days or less that is rated A-1 or higher by Standard & Poor's or P-1 or higher by Moody's; and

(D) Bankers acceptances issued by the largest 50 banks in the United States (in terms of total assets).

(4) *Prohibited investments.* Investments in interest only or principal only CMOs, precious metals, limited partnerships of any kind, direct investment in real estate, repurchase agreements, venture capital, futures contracts, options contracts, municipal bonds, trading on margin and short selling are prohibited. Investments not specifically addressed in this section are considered prohibited investments.

(5) *Review of policy.* It is the intention of the Board of Trustees of the Boynton Beach General Employees' Pension Fund to review this statement of investment policy and its addenda periodically to amend it to reflect any changes in philosophy or objectives. However, if at any time the investment manager believes that the specific objectives defined herein cannot be met or that these guidelines unnecessarily constrict performance, the Board shall be so notified in writing.

(Code 1958, § 21-71; Ord. No. 80-16, § 1, 4-1-80; Ord. No. 94-56, § 1, 1-3-95; Ord. No. 00-74, § 3, 1-2-01; Ord. No. 04-069, § 2, 8-3-04; Ord. No. 10-006, § 11, 2-16-10)

Sec. 18-145.1. Reserved.

Sec. 18-146. Annual reports by trustee or insurance company.

The trustee or insurance company or companies with which a trust agreement or contract or contracts are entered into for the administration of the plan shall submit a statement of the condition of the funds on deposit to the credit of the plan at least once yearly, and may be required to supply copies of such statements to an actuarial consultant designated by the board. The original shall be retained among the records of the secretary of the Board.

(Code 1958, § 21-72)

Sec. 18-147. Actuarial review and services.

The Board shall employ an actuary to review the operation of the plan at intervals of not more than two years, and to make his or her recommendations to the Board as to the actuarial solvency of the plan, the amount of the city's contributions to the fund which in his or her opinion is necessary to be made from the current operation of the plan, what benefits the plan can afford to pay on the basis of accumulated contributions to the plan, and current rates of contribution, and such other information as the Board may require. The actuary's report shall be submitted in writing and copies thereof shall be available to members of the plan upon request. The Board may also retain said actuary or some other actuary as a consultant, and provide for compensation for services.

(Code 1958, § 21-73)

Sec. 18-148. Adoption of tables.

In making any actuarial computation provided in this article, the tables, charts and other statistical information shall be selected by the Board from standard sources in common use by other annuity and pension plans, including but not limited to those operated by governmental bodies in the United States of America, or by the United States Internal Revenue Service.

(Code 1958, § 21-74)

Sec. 18-149. Responsibilities of members and beneficiaries.

Each member or beneficiary or other interested member shall be responsible for advising the Board of his or her current mailing address, and promptly advising the Board relating to any error, in whosoever's favor, in connection with the payment of benefit or any other payment under or in connection with the plan.

(Code 1958, § 21-75)

Sec. 18-150. Interest on delayed payments.

Pension payments, although not promptly paid for any reason, and any other payments to be made out of the fund, although not paid promptly for any reason, shall not bear interest unless so ordered by the Board, who shall have discretion to fix the rate and calculate any such interest, and in such event, the interest to be paid shall not exceed the then current rates of interest being returned on the funds on deposit with the trustee or the insurance company, or other financial institution.

(Code 1958, § 21-76)

Sec. 18-151. Personal liability.

Each member of the Board shall use ordinary care and diligence in the performance of his or her duties and shall not be liable for any loss unless resulting from his or her own gross negligence, or his or her willful misconduct; nor shall such members be personally liable upon or with respect to any agreement, act, transaction or omission executed, committed himself or herself as one or a member of said body or by any other member, agent, representative, or employee of any body; moreover said bodies and members and agents thereof shall each be fully protected in relying on the advice of the city attorney or his or her assistants, or upon any other attorney employed by the city, or said bodies, or either of them insofar as legal matters are concerned, or any accountant similarly employed insofar as accounting matters are concerned, and of any actuaries similarly employed so far as actuarial matters are concerned. Any person having any claim under the plan shall look solely to the assets of the fund for the satisfaction of such claims.

(Code 1958, § 21-77)

Sec. 18-152. Small annuities; lump sum payments.

(a) Whenever any retirement annuities shall be less than \$10 per month, the Board may elect to have payments made quarterly. If the annuity payable at quarterly intervals shall be less than \$10, the Board may elect to pay the commuted value of the same, calculated at regular interest,

in one lump sum. Such election shall be made within six months after the member's retirement unless he or she consents in writing to a subsequent election by the Board under this section.

(b) In the event of a mandatory distribution pursuant to subsection (a) is in excess of \$1,000 and the member does not elect to receive the distribution directly then the Board shall make a transfer to an individual retirement plan of the Board's choosing and shall notify the member in writing of such transfer.

(Code 1958, § 21-78; Ord. No. 10-028, § 12, 11-3-10)

Sec. 18-153. "Filing" defined.

Where any notice election or other instrument is required or permitted by this article to be filed with the Board, the same may be filed with its secretary.

(Code 1958, § 21-79)

Sec. 18-154. Qualified pension fund.

(a) The city intends the pension fund to be a qualified plan under Section 401 of the Code, as amended, and that the trust be an exempt organization under Section 501 of the Code. The Board of Trustees shall administer the pension fund so as to fulfill this intent.

(b) 415(b) Internal Revenue Code Limits

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

(A) Any ancillary benefit which is not directly related to retirement income benefits;

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

(2) For purposes of applying the limitations of Code Section 415(b), compensation includes those items as set forth in Reg. 1.415-2(d). This definition specifically includes the crediting of compensation while absent from service for military duty; such crediting shall not exceed the compensation that would have been credited under the System if System services had continued.

(c) Should the Code Section 414(h)(2) member contributions or the elective contributions made in accordance with plan section 18-128 be in excess of the required contribution, then such contributions shall be disbursed as a corrective disbursement pursuant to the requirements of

Code Reg. Section 1.415-6(b)(6)(iv). This provision applies to limitation years prior to July 1, 2007.

(d) For distributions after December 31, 2002 for purposes of Code Section 415(b), the mortality table is the table used under Code Section 417(e) as prescribed by the Secretary of the Treasury in Rev. Ruling 2001-62.

(e) 401(a)(9) Required Distributions

(1) Effective for distributions after December 31, 1996, in accordance with IRC Section 401(a)(9), including the minimum distribution incidental benefit requirements of section 1.401(a)(9)-2 and including the incidental death benefit of Code Section 401(a)(9)(G), all benefits under this plan will be distributed, beginning not later than the required beginning date set forth below, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and a beneficiary.

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

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

B. April 1 of the calendar year following the calendar year in which the member attains age 70½.

(3) If an employee dies before his entire vested interest has been distributed to him, the remaining portion of such interest will be distributed at least as rapidly as provided for under this plan and will comply with the incidental death benefit under Code Section 401(a)(9)(G).

(4) Notwithstanding any provisions of this plan to the contrary, all distributions under this plan will be made in accordance with this section. Code Section 401(a)(9) and the regulations thereunder (Reg. Sections 1.401(a)(9)-2 through 1.401(a)(9)-9), effective beginning January 1, 2003.

(f) 401(a)(31) Rollovers

(1) Direct transfers of eligible rollover distributions.

A. General. This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) Definitions.

A. *Eligible rollover distribution* is any distribution of all or any portion of the balance to the credit of the distributee or an alternate payee under a court order that complies with IRC Section 414(p)(2), except that an eligible rollover does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code, excluding hardship distributions. For purposes of a direct rollover, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion

consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Code Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

B. *Eligible retirement plan* is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust, an annuity plan described in section 403(a) of the Code, an eligible deferred compensation plan described in section 457(b) which is maintained by eligible employer described in section 457(e)(1)(A) of the Code or an annuity contract described in 403(b) of the Code, that accepts the distributee's eligible rollover distribution and agrees to separately account for amounts contributed into such plan from this plan.

C. *Distributee* includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is entitled to payment under a domestic relations order determined to be qualified by 414(p)(2) of the Code and this Fund are distributees with regard to the interest of the spouse or former spouse.

D. *Direct rollover* is a payment by the Plan to the eligible retirement plan specified by the distributee.

(Ord. No. 93-5, § 1, 5-4-93; Ord. No. 10-028, § 13, 11-3-10)

Sec. 18-155. Forfeiture of retirement benefits.

(a) Notwithstanding any provisions of the Plan to the contrary, any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense, shall forfeit all rights and benefits under this Plan, except for the return of his or her accumulated contributions as of the date of termination.

(b) **DEFINITIONS.** As used in this section, unless the context otherwise requires, the term:

(1) *Conviction* and *convicted* mean an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or of nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.

(2) *Court* means any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense.

(3) *Public officer or employee* means an officer or employee of any public body, political subdivision, or public instrumentality within the state.

(4) *Specified offense* means:

A. The committing, aiding, or abetting of an embezzlement of public funds;

B. The committing, aiding, or abetting of any theft by a public officer or employee from his or her employer;

- C. Bribery in connection with the employment of a public officer or employee;
- D. Any felony specified in chapter 838, except ss. 838.15 and 838.16;
- E. The committing of an impeachable offense;

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

G. The committing on or after October 1, 2008, of any felony defined in s. 800.04 against a victim younger than 16 years of age, or any felony defined in chapter 794 against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

(c) FORFEITURE DETERMINATION.

(1) If the Board receives notice or has reason to believe that the rights and privileges of any person under the plan is required to be forfeited, then the Board shall give notice and hold a hearing for the purpose of determining whether such rights and privileges are required to be forfeited. If the Board determines that such rights and privileges are required to be forfeited, the Board shall order such rights and privileges forfeited.

(2) Any order of forfeiture of plan rights and privileges is appealable to the district court of appeal.

(3) The payment of retirement benefits ordered forfeited, except payments drawn from employee contributions, shall be stayed pending an appeal as to a felony conviction. If such conviction is reversed, no retirement benefits shall be forfeited. If such conviction is affirmed, retirement benefits shall be forfeited as ordered in this section.

(4) If any person's rights and privileges under the plan are forfeited pursuant to this section and that person has received benefits from the plan in excess of his or her accumulated contributions, such person shall pay back to the system the amount of the benefits received in excess of his or her accumulated contributions. If he or she fails to pay back such amount, the board may bring an action in circuit court to recover such amount, plus court costs.

(Ord. No. 10-028, § 14, 11-3-10)

Secs. 18-156—18-163. Reserved.