

## ARTICLE V. - GENERAL EMPLOYEES' PENSION PLAN

*Footnotes:*

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**State Law reference—** Actuarial soundness, F.S. § 115.061 et seq.

## Sec. 62-181. - Definitions.

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

*Accumulated contributions* means a member's own contributions with interest at the rate of 3¾ percent per annum compounded annually as of October 1 each year. For those members who purchase credited service with interest or at no cost to the system, any payment representing the amount attributable to member contributions based on the applicable member contribution rate, interest and any required actuarially calculated payments for the purchase of such credited service, shall be included in accumulated contributions, without the crediting of interest.

*Actuarial equivalent* means a benefit or amount of equal value, based upon the RP 2000 Combined Healthy Unisex Mortality Table and an interest rate equal to the investment return assumption set forth in the last actuarial valuation approved by the board. This definition may only be amended by the city pursuant to the recommendation of the board, using assumptions adopted by the board with the advice of the plan's actuary, such that actuarial assumptions are not subject to city discretion.

*Average final compensation* means 1/12 of the average salary of the five best years of the last ten years of credited service prior to retirement, termination, or death, or the career average as a full-time general employee, whichever is greater. A year shall be 12 consecutive months.

*Beneficiary* means the person or persons entitled to receive benefits hereunder at the death of a member who has or have been designated in writing by the member and filed with the board. If no such designation is in effect, or if no person so designated is living, at the time of death of the member, the beneficiary shall be the estate of the member.

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

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

*Credited service* means the total number of years and fractional parts of years of service as a general employee with member contributions, when required, omitting intervening years or fractional parts of years when such member was not employed by the city as a general employee. Credited service shall also include periods for which a person is paid for vacation, holidays, temporary disability, illness, jury duty,

administrative leave, paid leave of absence and periods for which back-pay is awarded or agreed to by the city (irrespective of mitigation of damages). A member may voluntarily leave his or her accumulated contributions in the fund for a period of five years after leaving the employ of the city pending the possibility of being re-employed as a general employee, without losing credit for the time that he or she was a member of the system. If a vested member leaves the employ of the city, his or her accumulated contributions will be returned upon only his or her written request and if the member is not vested, his or her accumulated contributions, if \$1,000.00 or less, will be returned five years after termination. If a member who is not vested is not reemployed within five years, his accumulated contributions, if more than \$1,000.00, will be returned only upon the written request of the member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the board. Upon return of his or her accumulated contributions, all of his or her rights and benefits under the system are forfeited and terminated. Any member who terminated employment with the city as a general employee prior to April 2, 1998, and who subsequently returns to employment with the city as a general employee within five years, shall receive credit for the credited service which that member had accrued as of the date of his or her previous termination of employment. Unpaid absences under the Family and Medical Leave Act shall not be counted as credited service (except as provided for in [section 62-203](#)) but such absences shall not be deemed an interruption in service or a termination of employment.

In the event that a member of this system has also accumulated credited service in another pension system maintained by the city, then such other credited service shall be used in determining vesting as provided for in [section 62-189](#), and for determining eligibility for early or normal retirement. Such other credited service will not be considered in determining benefits under this system. Only his or her credited service and salary under this system on or after his or her date of membership in this system will be considered for benefit calculation. In addition, any benefit calculation for a member of this system who is or becomes eligible for a benefit from this system after he or she has become a member of another pension system maintained by the city, shall be based upon the member's average final compensation, credited service and benefit accrual rate as of the date the member ceased to be a general employee.

In the event that a member of this system has accrued 15 or more years of credited service during his or her current period of employment and such member has, during a previous period or periods of employment as a general employee, accrued sufficient prior credited service to be vested, determined using the current system vesting requirements and the current service bridging rules, the member shall then receive an additional benefit attributable to such previous period or periods of credited service. Previous credited service shall be determined as defined on the final day of the last period of previous employment and shall be allowed as provided in this paragraph only if such previous credited service is not currently included in the member's accrued credited service as currently provided for in the system. The additional benefit to be paid shall be based on the credited service, average final compensation, the benefit accrual rate and the normal retirement date and normal form of benefit in effect on the last day of the last period of previous employment. In order to receive such additional benefit, the member must repay any member

contributions previously withdrawn from the system, with interest, to be determined by the board, from the date of withdrawal to the date of repayment. The additional benefit amount shall be added to the benefit amount calculated pursuant to section 62-186, Benefit amounts and eligibility, and shall be payable as provided herein.

The years or parts of a year that a member performs "Qualified Military Service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L. 103-353), after separation from employment as a general employee to perform training or service, shall be added to his years of credited service for all purposes, including vesting, provided that:

- (1) The member is entitled to reemployment under the provisions of USERRA.
- (2) The member returns to his employment as a general employee within one year following the earlier of the date of his military discharge or his release from service, unless otherwise required by USERRA.
- (3) The member deposits into the fund the same sum that the member would have contributed, if any, if he had remained a general employee during his absence. The maximum credit for military service pursuant to this subdivision shall be five years. The member must deposit all missed contributions within a period equal to three times the period of military service, but not more than five years, following re-employment or he will forfeit the right to receive credited service for his military service pursuant to this paragraph.
- (4) This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a member dies on or after January 1, 2007, while performing USERRA Qualified Military Service, the beneficiaries of the member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the member had resumed employment and then died while employed.

Beginning January 1, 2009, to the extent required by Section 414(u)(12) of the Code, an individual receiving differential wage payments (as defined under Section 3401(h)(2) of the Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Leave conversions of unused accrued paid time off shall not be permitted to be applied toward the accrual of credited service either during each plan year of a member's employment with the city or in the plan year in which the member terminates employment.

*Effective date* means March 18, 1996.

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

*General employee* means any actively employed person in the regular full-time service of the city or the community redevelopment agency of the city, whose customary employment is for at least 35 hours per week and for at least 12 months per year, including those in their initial probationary employment period and including the members of the city council, but not including certified police officers and certified firefighters employed by the city.

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

*PBA member* means a member who is represented by the Gulf Coast Chapter Florida Police Benevolent Association.

*Non-PBA member* means a member who is not represented by the Gulf Coast Chapter Florida Police Benevolent Association.

- (1) Tier 1 member means a member who has elected to make contributions to the fund in the amount provided for in subsection 62-185(a)(1).
- (2) Tier 2 member means a member who has elected to receive an additional \$200.00 monthly supplement for the retiree's lifetime and to make contributions to the fund in the amount provided for in subsection 62-185(a)(1).
- (3) Tier 3 member means a member who has elected to receive a 2.5 percent annual cost of living adjustment for normal and early retirees and their beneficiaries or joint pensioners and vested terminated persons and disability retirees. A tier 3 member makes contributions to the fund in the amount provided for in subsection 62-185(a)(1).
- (4) Tier 4 member means a member who has elected to receive both a 2.5 percent annual cost of living adjustment for normal and early retirees and their beneficiaries or joint pensioners and vested terminated persons and disability retirees and an additional \$200.00 monthly supplement for the retiree's lifetime. A tier 4 member makes contributions to the fund in the amount provided for in subsection 62-185(a)(1).

Unless otherwise indicated, the term "member" shall include all members of the system.

*Plan year* means the 12-month period beginning October 1 and ending September 30 of the following year.

*Retiree* means a member who has entered retirement status.

*Retirement* means a member's separation from city employment with eligibility for immediate receipt of benefits under the system or entry into the deferred retirement option plan.

*Salary* means:

- (1) Effective February 6, 2014, for PBA members the base compensation for services rendered to the city as a general employee reportable on the member's W-2 form, including all tax deferred, tax sheltered or tax exempt items of income derived from elective employee payroll deductions or salary reductions otherwise includible in base compensation, including the first 300 hours of overtime per calendar year, but excluding lump sum payments of accumulated sick and annual leave pay and all overtime pay exceeding 300 hours per calendar year. For service earned after February 6, 2014 (the "effective date" for purposes of this definition), salary shall not include more than 300 hours of overtime per calendar year and shall also not include payments for accrued unused sick or annual leave. Provided however, in any event, payments for overtime in excess of 300 hours per calendar year or accrued unused sick or annual leave accrued as of the effective date and attributable to service earned prior to the effective date, may still be included in salary for pension purposes even if the payment is not actually made until on or after the effective date. In any event, with respect to unused sick leave and unused annual leave accrued prior to the effective date, salary will include the lesser of the amount of sick or annual leave time accrued on the effective date or the actual amount of sick or annual leave time for which the retiree receives payment at the time of retirement, regardless of whether the amount of sick or annual leave was, at some time prior to retirement, reduced below the amount on the effective date.
- (2) For non-PBA members, the base compensation for services rendered to the city as a general employee reportable on the member's W-2 form, including all tax deferred, tax sheltered or tax exempt items of income derived from elective employee payroll deductions or salary reductions otherwise includible in base compensation, including the first 300 hours of overtime per calendar year, but excluding lump sum payments of accumulated sick and annual leave pay and all overtime pay exceeding 300 hours per calendar year. In any event, with respect to unused sick leave and unused annual leave accrued prior to September 17, 2012, (the "effective date"), salary will include the lesser of the amount of sick or annual leave time accrued on the effective date or the actual amount of sick or annual leave time for which the retiree receives payment at the time of retirement, regardless of whether the amount of sick or annual leave was, at some time prior to retirement, reduced below the amount on the effective date. In any event, the member's accrued benefit shall not be less than his accrued benefit as of September 17, 2012.

Compensation in excess of the limitations set forth in section 401(a)(17) of the code as of the first day of the plan year shall be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each member taken into account in determining benefits or employee contributions for any plan year beginning on or after January 1, 2002, may not exceed \$200,000, as adjusted for cost-of-living increases in accordance with code Section 401(a)(17)(B). Compensation means compensation during the fiscal year, and the fiscal year is considered the determination period. The cost of living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months for all members, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12, as provided for in Treas. Reg. Section 1.401(a)(17)- 1(b)(3)(iii)(B). If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The limitation on compensation for an "eligible employee" shall not be less than the amount, which was allowed to be taken into account hereunder as in effect on July 1, 1993. "Eligible employee" is an individual who was a member before the first plan year beginning after December 31, 1995.

*Spouse* means the member's or retiree's spouse under applicable law at the time benefits become payable.

*System* means the city general employees' pension plan as contained herein and all amendments thereto.

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

(Code 1991, § 13-321; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3275, § 1, 5-16-2005; Ord. No. 3316, § 1, 3-6-2006; Ord. No. 3352, § 1, 10-2-2006; Ord. No. 3364, § 1, 11-6-2006; Ord. No. 3407, § 1, 6-18-2007; Ord. No. 3439, § 49, 1-22-2008; Ord. No. 3485, § 1, 9-2-2008; Ord. No. 3518, § 1, 8-17-2009; Ord. No. 3642, § 1, 9-17-2012; Ord. No. 3676, § 1, 9-3-2013; Ord. No. 3704, § 1, 6-2-2014; Ord. No. 3785, § 1, 11-7-2016; Ord. No. 4010, § 1, 1-16-2024)

**Cross reference—** Definitions and rules of construction, § 1-2.

Sec. 62-182. - Membership.

- (a) *Conditions of eligibility.* All general employees as of the effective date, and all future new general employees, shall become members of this system as a condition of employment.
- (b) *Designation of beneficiary.* Each general employee shall complete a form prescribed by the board designating a beneficiary or beneficiaries.
- (c) *Election of tier.* All general employees as of May 16, 2005, who have elected to be a tier 1, tier 2, tier 3, or tier 4 member pursuant to a benefit improvement options final participation agreement submitted to the board prior to April 15, 2005, shall become tier 1, tier 2, tier 3, or tier 4 members as elected. Any general employee failing to submit a benefit improvement options final participation agreement shall be deemed a tier 1 member.
- (d) *Filing of written election.* All future general employee shall, within three months of their employment, irrevocably elect, in writing, to be a tier 1, tier 2, tier 3, or tier 4 member. Failure to file a timely written election with the board shall be deemed an irrevocable election to be a tier 1 member. No member may purchase credited service for military service prior to employment pursuant to section 62-194 or for prior government service pursuant to section 62-207 until he or she has made his or her irrevocable election.
- (e) *Opt out option.* Notwithstanding (a) above, any new employee who is hired as city manager, assistant city manager, department director, mayor or member of city council may, in the event he has elected to participate in another pension program provided by the city, upon his employment as city manager, assistant city manager, department director, mayor or member of city council, notify the board and the city, in writing, of his election to not be a member of the system. Current employees of the city who are selected to become city manager, assistant city manager, department director, mayor or member of city council, are not eligible for the opt-out provided for herein. Thereafter, contributions to the plan in accordance with section 62-185 shall not be required, he shall not be eligible to be elected as a member trustee on the board or vote for a member trustee, and he shall not be eligible for any other benefits from the plan.

(Code 1991, § 13-322; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3275, § 2, 5-16-2005; Ord. No. 3406, § 1, 6-18-2007; Ord. No. 3421, § 1, 10-1-2007; Ord. No. 3518, § 2, 8-17-2009; Ord. No. 3785, § 2, 11-7-2016; Ord. No. 4010, § 2, 1-16-2024)

#### Sec. 62-183. - Board of trustees.

- (a) The sole and exclusive administration of and responsibility for the proper operation of the system, and for making effective the provisions of the article from which this article is derived, is hereby vested in a board of trustees. The board is hereby designated as the plan administrator. The board shall consist of seven trustees, as follows:
  - (1) The chairperson of the Fort Myers City Employees Union.

- (2) A trustee appointed by the Fort Myers City Employees Union.
  - (3) A nonunion city employee who is a member of the system, elected by the members of the system who are nonunion city employees. DROP participants can be elected as and vote for elected trustees.
  - (4) One trustee appointed by the city council.
  - (5) The city manager, or his designee, who shall serve as long as he continues to hold office of city manager and upon a change in the person holding the office of city manager, the successor shall succeed to the trustee position.
  - (6) A sixth and seventh trustee selected by the other six trustees. The sixth and seventh trustees shall serve staggered terms.
- (b) Each elected or appointed trustee shall serve a term of three years.
  - (c) A vacancy shall occur whenever a trustee resigns, is no longer eligible or qualified to serve as a trustee, dies or becomes incapacitated. The vacancy shall be filled in the same manner as was utilized to select the original trustee. Successors to elected or appointed trustees shall serve out the unexpired term of the prior trustee.
  - (d) The board shall establish and administer the nominating and election procedures for each election. The board shall meet at least quarterly each year. The board shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.
  - (e) The trustees shall annually, by a majority vote, elect a chair, vice-chair and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.
  - (f) Each trustee shall be entitled to one vote on the board. Four trustees shall constitute a quorum. At least four affirmative votes shall be necessary for any decision by the trustees at any meeting of the board. A trustee shall abstain from voting as the result of a conflict of interest and shall comply with the provisions of F.S. § 112.3143.
  - (g) The board shall engage such actuarial, accounting, legal, and other services as shall be required to transact the business of the system. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the system shall be paid from the fund at such rates and in such amounts as the board shall agree. In the event the board chooses to use the city's legal counsel, actuary or other professional, technical or other advisors, it shall do so only under terms and conditions acceptable to the board.
  - (h) The duties and responsibilities of the board shall include, but not necessarily be limited to, the following:
    - (1)



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

- (2) To determine all questions relating to eligibility and membership.
- (3) To determine and certify the amount of all retirement allowances or other benefits hereunder.
- (4) To establish uniform rules and procedures to be followed, for administrative purposes, benefit applications and all matters required to administer the system.
- (5) To distribute to members, at regular intervals, information concerning the system.
- (6) To receive and process all applications for benefits.
- (7) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund.
- (8) To have performed actuarial studies and valuations, at least as often as required by law, and make recommendations regarding any and all changes in the provisions of the system.
- (9) To perform such other duties as are required to prudently administer the system.

(Code 1991, § 13-323; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 34-7, § 2, 8-18-2007; Ord. No. 3518, § 3, 8-17-2009; Ord. No. 3603, § 1, 1-3-2012; Ord. No. 3856, § 1, 1-22-2019)

**Cross reference—** Boards, committees, commissions, § 2-71 et seq.

Sec. 62-184. - Finances and fund management; establishment and operation of fund.

- (a) As part of the system, there exists the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the system.
- (b) The actual custody and supervision of the fund (and assets thereof) shall be vested in the board. Payment of benefits and disbursements from the fund shall be made by the disbursing agent but only upon written authorization from the board.
- (c) All funds of the general employees pension plan may be deposited by the board with the financial services director of the city, acting a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the city. However, any funds so deposited with the financial services director of the city shall be kept in a separate fund by the financial services director or clearly identified as such funds of the general employees' pension plan. In lieu thereof, the board shall deposit the funds of the general employees' pension plan in a qualified public depository as defined in F.S. § 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of F.S. ch. 280. In order to fulfill its investment responsibilities as set forth herein, the board may retain the services of a custodian bank, an investment advisor registered under the Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance

company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.

- (d) All funds and securities of the system may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:
  - (1) Current amounts of accumulated contributions of members on both an individual and aggregate account basis, and
  - (2) Receipts and disbursements, and
  - (3) Benefit payments, and
  - (4) Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city and the agency, and
  - (5) All interest, dividends and gains (or losses) whatsoever, and
  - (6) Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.
- (e) An audit shall be performed annually by a certified public accountant for the most recent fiscal year of the system showing a detailed listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete evaluation of assets on both a cost and market basis, as well as other items normally included in a certified audit.
- (f) The board shall have the following investment powers and authority:
  - (1) The board shall be vested with full legal title to said fund, subject, however, and in any event to the authority and power of the city council to amend or terminate this fund, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this system, except as otherwise provided herein. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund.
  - (2) All monies paid into or held in the fund shall be invested and reinvested by the board and the investment of all or any part of such funds shall be subject to the following:
    - a. Notwithstanding any limitation in prior city ordinances to the contrary, all monies paid into or held in the fund may be invested and reinvested in such securities, investment vehicles or property wherever situated and of whatever kind, as shall be approved by the

board, including but not limited to common or preferred stocks, bonds, and other evidences of indebtedness or ownership.

- b. The board shall develop and adopt a written investment policy statement setting forth permissible types of investments, goals and objectives of investments and setting quality and quantity limitations on investments in accordance with the recommendations of its investment consultants. The investment policy statement shall be reviewed by the board at least annually.
- c. In addition, the board may, upon recommendation by the board's investment consultant, make investments in group trusts meeting the requirements of Internal Revenue Service Revenue Ruling 81-100, Revenue Ruling 2011-1, IRS Notice 2012-6 and Revenue Ruling 2014-24 or successor rulings or guidance of similar import, and operated or maintained exclusively for the commingling and collective investment of monies, provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under Section 401(a) of the code, individual retirement accounts that are exempt under Section 408(e) of the code, eligible governmental plans that meet the requirements of Section 457(b) of the code, and governmental plans under 401(a)(24) of the code. For this purpose, a trust includes a custodial account or a separate tax favored account maintained by an insurance company that is treated as a trust under Section 401(f) or under Section 457(g)(3) of the code. While any portion of the assets of the fund are invested in such a group trust, such group trust is itself adopted as a part of the system or plan.
  1. Any collective or common group trust to which assets of the fund are transferred pursuant to subsection c. shall be adopted by the board as part of the plan by executing appropriate participation, adoption agreements, and/or trust agreements with the group trust's trustee.
  2. The separate account maintained by the group trust for the plan pursuant to subsection c. shall not be used for, or diverted to, any purpose other than for the exclusive benefit of the members and beneficiaries of the plan.
  3. For purposes of valuation, the value of the separate account maintained by the group trust for the plan shall be the fair market value of the portion of the group trust held for the plan, determined in accordance with generally recognized valuation procedures.

(3)

At least once every three years, and more often as determined by the board, the board shall retain a professionally qualified independent consultant to evaluate the performance of all current investment managers and make recommendations regarding the retention of all such investment managers. These recommendations shall be considered by the board at its next regularly scheduled meeting.

- (4) The board may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the system.
- (5) Neither the board nor any trustee shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the fund, except that due to his or its own negligence, willful misconduct or lack of good faith.
- (6) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.
- (7) The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalization, consolidations, and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the fund which it may deem to be to the best interest of the fund to exercise.
- (8) The board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power contained herein.
- (9) Where any action which the board is required to take or any duty or function which it is required to perform either under the terms herein or under the general law applicable to it as trustee under this article, can reasonably be taken or performed only after receipt by it, from a member, the city, or any other entity, of specific information, certification, direction or instructions, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it, so long as the board has made a reasonable and timely request for such information, certification, direction or instruction.
- (10) Any overpayments or underpayments from the fund to a member, retiree or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board in such a manner that the actuarial equivalent of the benefit to which the

member, retiree or beneficiary was correctly entitled, shall be paid. Overpayments shall be charged against payments next succeeding the correction or collected in another manner if prudent. Notwithstanding the foregoing, the board shall have the discretion to not seek recovery of inadvertent overpayments from benefit recipients or other parties, including the city based on the circumstances of the overpayment, on a case-by-case basis, provided that any such actions are consistent with the provisions of the Secure Act 2.0 applicable to governmental plans with regard to inadvertent benefit overpayments and any applicable guidance subsequently issued by the Treasury and the Internal Revenue Service. Underpayments shall be made up from the fund in a prudent manner.

- (11) The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits herein provided for.
- (12) In any application to or proceeding or action in the courts, only the board shall be a necessary party, and no member or other person having an interest in the fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.
- (13) Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to said fund shall always remain in the board.

(Code 1991, § 13-324; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3344, § 1, 8-7-2006; Ord. No. 3518, § 4, 8-17-2009; Ord. No. 3676, § 2, 9-3-2013; Ord. No. 3785, § 3, 11-7-2016; Ord. No. 4010, § 3, 1-16-2024)

#### Sec. 62-185. - Contributions.

##### (a) *Member contributions.*

- (1) Amount. Each member of the system shall, effective upon the adoption of the ordinance amending this section until January 9, 2019, be required to make regular contributions to the fund as a percent of his salary for either Rate A tiers or Rate B tiers, as follows:

CONTRIBUTION RATES		
	Rate A - 1.8% Multiplier	Rate B - 3.0% Multiplier
Tier 1	1.45%	5.25%
Tier 2	3.25%	7.05%
Tier 3	7.75%	11.65%

Tier 4	10.55%	14.45%
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Each member of the system shall, effective January 10, 2019 until October 2, 2019, be required to make regular contributions to the fund as a percent of his salary for either Rate A tiers or Rate B tiers, as follows:

CONTRIBUTION RATES		
	Rate A - 1.8% Multiplier	Rate B - 3.0% Multiplier
Tier 1	2.20%	6.0%
Tier 2	4.0%	7.8%
Tier 3	8.5%	12.4%
Tier 4	11.3%	15.2%

Each member of the system shall, effective October 3, 2019, be required to make regular contributions to the fund as a percent of his salary for either Rate A tiers or Rate B tiers, as follows:

CONTRIBUTION RATES		
	Rate A - 1.8% Multiplier	Rate B - 3.0% Multiplier
Tier 1	3.0%	6.8%
Tier 2	4.8%	8.6%
Tier 3	9.3%	13.2%

Tier 4	12.1%	16.0%
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New non-PBA members hired after September 17, 2012 and new PBA members hired after February 6, 2014 shall only be eligible for Tier 1A, 2A, 3A or 4A and shall contribute accordingly and may not elect Rate B tiers. Member contributions withheld by the city on behalf of the member shall be deposited with the board at least monthly. The contributions made by each member to the fund shall be designated as employer contributions pursuant to section 414(h) of the code. Such designation is contingent upon the contributions being excluded from the members' gross income for federal income tax purposes. For all other purposes of the system, such contributions shall be considered to be member contributions. A member's new contribution rate (based upon selected tier) to the plan shall commence on the first pay period following employment, at the tier 1 contribution rate, and upon timely election to be a tier 2, tier 3, or tier 4 member, the higher contribution rate shall commence the first pay period following the election.

The contribution rates for tier 2, tier 3, and tier 4 members shall be reevaluated and recalculated by the board's actuary every three years and increased or decreased by resolution of the board if the current contribution rates for each tier/rate category is less than or greater than the actuarially required funding for the increased benefits being received by tier 2, tier 3, or tier 4 members at each rate category. Contribution rates may also be increased to fund additional benefits. A copy of each resolution of the board shall be provided to the city.

[2] Reserved.

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

(4) Notwithstanding any other provision herein to the contrary, if a tier 2, tier 3, or tier 4 member leaves the employment of the city as a general employee prior to making contributions for at least three years at the applicable tier contribution rate, his retirement benefit will revert back to the benefits provided for a tier 1 member and the member will receive a refund of his accumulated contributions over and above the tier 1 contribution rate, without interest.

(5) Notwithstanding any other provision herein to the contrary, if a tier 2 member fails to remain employed as a general employee until the member has reached the date that he is eligible for early or normal retirement, then upon his death, disability retirement or termination of employment prior thereto, his retirement benefit will revert back to the benefits provided for a tier 1 member and he will receive a refund of his accumulated contributions over and above the tier 1 contribution rate, without interest.

(6)

Notwithstanding any other provision herein to the contrary, if a tier 4 member fails to remain employed as a general employee until the member has reached the date that he is eligible for early or normal retirement, then upon his death, disability retirement or termination of employment prior thereto, his retirement benefit will revert back to a tier 3 member and he or she will receive a refund of his accumulated contributions equal to the difference between the tier 1 and tier 2 contribution rates, without interest.

(Code 1991, § 13-325; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3275, § 3, 5-16-2005; Ord. No. 3485, § 2, 9-2-2008; Ord. No. 3518, § 5, 8-17-2009; Ord. No. 3642, § 2, 9-17-2012; Ord. No. 3647, § 1, 11-5-2012; Ord. No. 3654, § 1, 2-4-2013; Ord. No. 3704, § 2, 6-2-2014; Ord. No. 3811, § 1, 9-18-2017; Ord. No. 3832, § 1, 4-2-2018)

Sec. 62-186. - Benefit amounts and eligibility.

(a) *Normal retirement age and date.* A member's normal retirement age is the earlier of the attainment of age 62 and the completion of five years of credited service, the attainment of 30 years of credited service, regardless of age, or attainment of the age which when added to the years of credited service, equals 80 years. Each member shall become 100 percent vested in his accrued benefit at normal retirement age. A member's normal retirement date shall be the first day of the month coincident with or next following the date the member retires from the city after attaining normal retirement age.

(b) *Normal retirement benefit.*

(1) *Non-PBA Members:*

A non-PBA member as of September 17, 2012, retiring hereunder on or after his or her normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his or her retirement and be continued thereafter during member's lifetime and ceasing upon death. The monthly retirement benefit shall equal 2.1 percent of average final compensation, for each year of credited service prior to April 2, 1998, and three percent of average final compensation for each year of credited service from April 2, 1998, to September 17, 2012.

Effective September 17, 2012, for all current eligible non-PBA members in all tiers, the monthly retirement benefit for RATE A shall equal 1.8 percent of average final compensation for each year of credited service subsequent to September 17, 2012. Not later than 45 days following September 17, 2012, an election may be made by any current member on September 17, 2012, to increase his member contributions as provided for in section 62-185, to maintain the RATE B, three percent benefit accrual rate, but such change shall only apply to credited service accrued after the election.



In addition, beginning on September 1, 2014, any employee who was an active non-PBA member of the plan on September 17, 2012, may, prior to September 30, 2014, elect to contribute an additional contribution as set forth in Rate B for the appropriate tier, as adjusted, to increase his benefit accrual rate for future years to three percent or, if the member is currently accruing benefits at the rate of three percent, he may elect to reduce his benefit accrual rate to 1.8 percent for future years with a reduction in the contribution rate to the Rate A rate for the corresponding tier, as adjusted.

The normal retirement benefit for all new non-PBA members, hired on or after September 17, 2012, shall be equal to 1.8 percent of average final compensation for each year of credited service, and such new members may only elect Tier 1A, 2A, 3A or 4A. The option to elect to make additional contributions for the three percent benefit accrual rate as provided for in RATE B shall not be available to non-PBA members hired on or after September 17, 2012.

(2) *PBA members:*

A PBA member as of February 6, 2014, retiring hereunder on or after his or her normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his or her retirement and be continued thereafter during member's lifetime and ceasing upon death. The monthly retirement benefit shall equal 2.1 percent of average final compensation, for each year of credited service prior to April 2, 1998, and three percent of average final compensation for each year of credited service from April 2, 1998 to June 2, 2014.

Effective June 2, 2014, for all current eligible PBA members in all tiers, the monthly retirement benefit for RATE A shall equal 1.8 percent of average final compensation for each year of credited service subsequent to June 2, 2014. Not later than 45 days following June 2, 2014, an election may be made by any current PBA member on June 2, 2014, to increase his member contributions as provided for in section 62-185, to maintain the RATE B, three percent benefit accrual rate, but such change shall only apply to credited service accrued after the election.

In addition, beginning on September 1, 2014, any employee who was an active PBA member of the plan on June 2, 2014, may, prior to September 30, 2014, elect to contribute an additional contribution as set forth in Rate B for the appropriate tier, as adjusted, to increase his benefit accrual rate for future years to three percent or, if the PBA member is currently accruing benefits at the rate of three percent, he may elect to reduce his benefit accrual rate to 1.8 percent for future years with a reduction in the contribution rate to the Rate A rate for the corresponding tier, as adjusted.

The normal retirement benefit for all new PBA members, hired on or after June 2, 2014, shall be equal to 1.8 percent of average final compensation for each year of credited service, and such new members may only elect Tier 1A, 2A, 3A or 4A. The option to elect to make additional contributions for the three percent benefit accrual rate as provided for in Rate B shall not be available to PBA members hired on or after June 2, 2014.

- (c) *Early retirement date.* A member may retire on his early retirement date which shall be the first day of any month coincident with or next following the attainment of age 55 and the completion of seven years of credited service or attainment of age 60 and the completion of five years of credited service. Early retirement under the system is retirement from employment with the city on or after the early retirement date and prior to the normal retirement date.
- (d) *Early retirement benefit.* A member retiring hereunder on his early retirement date may receive either a deferred or an immediate monthly retirement benefit payable in the same form as for normal retirement as follows:
  - (1) A deferred monthly retirement benefit which shall commence on what would have been his normal retirement date had he continued employment as a general employee and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement on his normal retirement date except that credited service and average final compensation shall be determined as of his early retirement date; or
  - (2) An immediate monthly retirement benefit which shall commence on his early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in subsection (d)(1) of this section, reduced by four percent for each year by which the commencement of benefits precedes the date which would have been the member's normal retirement date had he continued employment as a general employee.
- (e) *Cost-of-living adjustment.* Effective October 1, 1995, the monthly benefit payable to all retirees retiring prior to April 11, 1988, who were receiving a service retirement benefit and whose benefit was previously offset by social security benefits, was adjusted to a benefit amount equal to the greater of (i) their current monthly benefit or (ii) an amount equal to \$100.00 plus \$5.00 for each completed year of credited service.
- (f) *Tier 2 members.* In addition to the benefits provided for in subsections (b) and (d) of this section and subject to the limitations in section 62-185, all tier 2 members who remain employed until and retire on or after their early or normal retirement date shall receive, in addition to their calculated benefit, a monthly \$200.00 benefit supplement payable for the life of the retiree only.
- (g) *Tier 3 members.* In addition to the benefits provided for in subsections (b) and (d) of this section and subject to the limitations in section 62-185, all tier 3 members, their joint pensioners or beneficiaries, including disability retirees and vested terminated persons, will receive, beginning

on the first October 1 following the commencement of retirement benefits and on each October 1 thereafter, a 2.5 percent cost-of-living increase to the benefit received by the benefit recipient the immediately preceding month. Any eligible retiree who, on the date of any adjustment has been retired less than one year, shall receive a prorated adjustment based on the number of full months of retirement as of the adjustment date. In addition, all current retirees, joint pensioners, beneficiaries or vested terminated persons receiving benefits under tier 3 shall receive a prorated adjustment on October 1, 2009, based on the number of months since the last adjustment was made and a full 2.5 percent adjustment on each October 1 thereafter.

(h) *Tier 4 members.* In addition to the benefits provided for in subsections (b) and (d) of this section and subject to the limitations in section 62-185, all tier 4 members, their joint pensioners or beneficiaries, including disability retirees and vested terminated persons, will receive, beginning on the first October 1 following the commencement of retirement benefits and on each October 1 thereafter a 2.5 percent cost-of-living increase to the benefit received by the benefit recipient the immediately preceding month. Any eligible retiree who, on the date of any adjustment has been retired less than one year, shall receive a prorated adjustment based on the number of full months of retirement as of the adjustment date. In addition, all current retirees, joint pensioners, beneficiaries or vested terminated persons receiving benefits under tier 4 shall receive a prorated adjustment on October 1, 2009, based on the number of months since the last adjustment was made and a full 2.5 percent adjustment on each October 1 thereafter. In addition, the retiree shall receive a monthly \$200.00 benefit supplement payable for the life of the retiree only. The supplement shall be in addition to the calculated benefit and shall not be used to calculate cost-of-living increases nor shall it be subject to the cost-of-living increase.

(i) *Retirement incentive window.*

- (1) Members who need or will need no more than four years of age or credited service or any combination thereof not to exceed four years in order to meet the requirements for early or normal retirement or who are otherwise eligible for early or normal retirement as set forth in this section on or before December 31, 2008, shall be deemed "eligible members" and shall receive the benefit set forth in subsection (2) on the condition that they make an irrevocable written election, delivered to the board on or before September 5, 2008, to retire and terminate employment between August 5, 2008, and December 31, 2008.
- (2) "Eligible members" shall be eligible to retire and receive a normal retirement benefit as set forth in subsection (b) of this section or an early retirement benefit as set forth in subsection (d) of this section, whichever is applicable, but for purposes of determining the pension benefit, the "eligible member's" benefit will be calculated utilizing a three percent benefit accrual rate for all years of credited service and be further maximized by application of one of the following alternatives:

a.

Add four years of credited service to his accumulated years of credited service on the date of his retirement; or

- b. Add four years to his age on the date of his retirement; or
- c. Add any combination of years of credited service to his accumulated years of credited service on the date of his retirement and years of age to his age on the date of his retirement that equals four combined.

(3) "Eligible members" shall not be permitted to participate in the DROP.

- (j) *Required distribution date.* The member's benefit under this section must begin to be distributed to the member no later than the member's required beginning date, as provided under section 62-195.

(Code 1991, § 13-326; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3275, § 4, 5-16-2005; Ord. No. 3478, § 1, 8-4-2008; Ord. No. 3518, § 6, 8-17-2009; Ord. No. 3642, § 3, 9-17-2012; Ord. No. 3704, § 3, 6-2-2014; Ord. No. 3785, § 4, 11-7-2016; Ord. No. 3925, § 1, 9-20-2021)

Sec. 62-187. - Preretirement death.

- (a) *Prior to vesting or eligibility for retirement.* The beneficiary of a deceased member who was not receiving monthly benefits or who was not yet vested or eligible for early or normal retirement shall receive a refund of 100 percent of the member's accumulated contributions.
- (b) *Deceased members vested or eligible for retirement with spouse as beneficiary.* This subsection (b) applies only when the member's spouse is the sole designated beneficiary. The spouse beneficiary of any member who dies and who, at the date of his death, was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:
  - (1) If the member was vested, but not eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the date that the deceased member would have been eligible for early or normal retirement, at the option of the spouse beneficiary. The benefit shall be calculated as for normal retirement, based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable. The spouse beneficiary may also elect to receive an immediate benefit, payable for ten years, which is actuarially reduced to reflect the commencement of benefits prior to the early retirement date.
  - (2) If the deceased member was eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the first day of the month following the member's death or at the deceased member's otherwise normal retirement date, at the option of the spouse beneficiary. The benefit shall be calculated as for normal retirement, based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable.

- (3) A spouse beneficiary may not elect an optional form of benefit; however, the board may elect to make a lump sum payment, pursuant to section 62-190(g).
  - (4) A spouse beneficiary may, in lieu of any benefit provided for in subsection (b)(1) or (2) of this section, elect to receive a refund of the deceased member's accumulated contributions.
  - (5) Notwithstanding anything contained in this section to the contrary, in any event, distributions to the spouse beneficiary will begin by no later than the beginning date provided under section 62-195.
  - (6) If the surviving spouse beneficiary commences receiving a benefit under subsection (1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the spouse beneficiary's estate in a lump sum.
- (c) *Deceased members vested or eligible for retirement with non-spouse beneficiary.* This subsection applies only when the member's spouse is not the beneficiary or is not the sole designated beneficiary, but there is a surviving beneficiary. The beneficiary of any member who dies and who, at the date of his death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:
- (1) If the member was vested, but not eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten years. The benefit will begin by December 31 of the calendar year immediately following the calendar year in which the member died. The benefit will be calculated as for normal retirement based on the deceased member's credited service and average final compensation and actuarially reduced to reflect the commencement of benefits prior to the normal retirement date.
  - (2) If the deceased member was eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten years, beginning on the first day of the month following the member's death. The benefit will be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced for early retirement, if applicable.
  - (3) A beneficiary may not elect an optional form of benefit, however the board may elect to make a lump sum payment pursuant to section 62-190, subsection (g).
  - (4) A beneficiary, may, in lieu of any benefit provided for in (1) or (2) above, elect to receive a refund of the deceased member's accumulated contributions.
  - (5) If a surviving beneficiary commences receiving a benefit under subsection (1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the surviving beneficiary's estate by December 31 of the calendar year of the beneficiary's death in a lump sum.
  - (6)

If there is no surviving beneficiary as of the member's death, and the estate is to receive the benefits, the actuarial equivalent of the member's entire interest must be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

- (7) The Uniform Lifetime Table in Treasury Regulations § 1.401(a)(9)-9 shall determine the payment period for the calendar year benefits commence, if necessary to satisfy the regulations.

(Code 1991, § 13-327; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3518, § 7, 8-17-2009; Ord. No. 3785, § 5, 11-7-2016; Ord. No. 3925, § 2, 9-20-2021; Ord. No. 4010, § 4, 1-16-2024)

Sec. 62-188. - Disability benefits.

(a) *Eligibility.*

- (1) Any PBA member with five years or more of credited service, who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to engage in his occupation for the city or any other gainful employment for the city, which the city makes available to the member, shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to 2.1 percent of his average final compensation multiplied by his years of credited service prior to April 2, 1998, three percent of his average final compensation multiplied by his years of credited service from April 2, 1998 to June 2, 2014, and 1.8 percent for each year of credited service for years after June 2, 2014, or three percent for each year of credited service after June 2, 2014, if the PBA member elects to make the additional contribution provided for in section 62-185 to receive the three percent multiplier.
- (2) Any non-PBA member, with five years or more of credited service, who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to engage in his occupation for the city or any other gainful employment for the city, which the city makes available to the member, shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to 2.1 percent of his average final compensation multiplied by his years of credited service prior to April 2, 1998, three percent of his average final compensation multiplied by his years of credited service from April 2, 1998 to September 17, 2012, and 1.8 percent for each year of credited service for years after September 17, 2012, or three percent for each year of credited service after September 17, 2012, if the member elects to make the additional contribution provided for in section 62-185 to receive the three percent multiplier.
- (3) Eligibility for Disability Benefits for PBA and Non-PBA Members. Subject to (3)d. below, only active members of the system on the date the board determines entitlement to a disability benefit are eligible for disability benefits.

a.

Terminated persons, either vested or non-vested, are not eligible for disability benefits.

- b. If a member voluntarily terminates his employment, either before or after filing an application for disability benefits, he is not eligible for disability benefits.
- c. If a member is terminated by the city for any reason other than for medical reasons, either before or after he files an application for disability benefits, he is not eligible for disability benefits.
- d. The only exception to a. above is:
  1. If the member is terminated by the city for medical reasons and he has already applied for disability benefits before the medical termination, or;
  2. If the member is terminated by the city for medical reasons and he applies within 30 days after the medical termination date.

If either d.1., or d.2. above applies, the member's application will be processed and fully considered by the board.

(b) *Conditions for disqualification.* Each member who is claiming disability benefits shall establish, to the satisfaction of the board, that such disability was not occasioned primarily by:

- (1) Excessive or habitual use of any drugs, intoxicants or alcohol.
- (2) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections.
- (3) Injury or disease sustained while committing a crime.
- (4) Injury or disease sustained while serving in any branch of the armed forces.
- (5) Injury or disease sustained after his employment as a general employee with the city shall have terminated.
- (6) Willful, wanton or intentional misconduct or gross negligence of the member.
- (7) Injury or disease sustained by the member while working for anyone other than the city and arising out of such employment.
- (8) A condition preexisting the member's membership in the system. No member shall be entitled to a disability pension, whether in the line of duty or not in the line of duty, because of or due to the aggravation of a specific injury, impairment or other medical condition preexisting at the time of membership in the system, provided that such preexisting condition and its relationship to a later injury, impairment or other medical condition shall be established by competent substantial evidence. Nothing herein shall be construed to preclude a disability pension to a member who, after membership in the system, suffers an injury, impairment or other medical condition different from some other injury, impairment, or other medical condition existing at or prior to said membership.

(c)

*Physical examination requirements; final decision authority.*

- (1) A member shall not become eligible for disability benefits until and unless he undergoes a physical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the board for that purpose. The board shall not select the member's treating physician or surgeon for this purpose, except in an unusual case where the board determines that it would be reasonable and prudent to do so.
  - (2) Any retiree receiving disability benefits under the provisions of this article may be required by the board to submit sworn statements of his condition, accompanied by a physician's statement (provided at the retiree's expense) to the board annually and may be required by the board to undergo additional periodic reexaminations by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the board, to determine if such disability has ceased to exist. If the board finds that the retiree is no longer permanently and totally disabled to the extent that he is unable to render useful and efficient service as a general employee, the board shall recommend to the city that the retiree be returned to performance of duty as a general employee, and the retiree so returned shall enjoy the same rights that he had at the time he was placed upon pension. In the event the retiree so ordered to return shall refuse to comply with the order within 30 days from the issuance thereof, he shall forfeit the right to his disability pension.
  - (3) The cost of the physical examination and/or reexamination of the member claiming, or the retiree receiving, disability benefits shall be borne by the fund. All other reasonable costs, as determined by the board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the fund.
  - (4) If the general employee recovers from disability and reenters the service of the city as a general employee, his service shall be deemed to have been continuous, but the period beginning with the first month for which the member received a disability retirement income payment and ending with the date he reentered the service of the city, will not be considered as credited service for purposes of the system. If the general employee fails to reenter the service of the city as a general employee within 30 days from the date the board determines that the retiree is no longer permanently and totally disabled as defined in subsection (a) of this section, the member's future benefits shall be determined as though he initially terminated employment on the date the board determined that he was permanently and totally disabled as defined in subsection (a) of this section.
  - (5) The board shall have the power and authority to make the final decision regarding all disability claims.
- (d) *Payments.* The monthly benefit to which a member is entitled in the event of the member's disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the



date the board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be:

- (1) If the retiree recovers from the disability prior to his normal retirement date, the payment due next preceding the date of such recovery, or
- (2) If the retiree dies without recovering from the disability or attains his normal retirement date while still disabled, the payment due next preceding his death.

(Code 1991, § 13-328; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3642, § 4, 9-17-2012; Ord. No. 3704, § 4, 6-2-2014; Ord. No. 3785, § 6, 11-7-2016; Ord. No. 3856, § 2, 1-22-2019)

#### Sec. 62-189. - Vesting.

If a member terminates his employment as a general employee, either voluntarily or by discharge, and is not eligible for any other benefits under this system, the member shall be entitled to the following:

- (1) If the member has less than seven years of credited service upon termination, the member shall be entitled to a refund of his or her accumulated contributions or the member may leave it deposited with the fund.
- (2) If the member has seven or more years of credited service upon termination, the member shall be entitled to a monthly retirement benefit, determined and payable in the same manner as for normal or early retirement and based upon the member's credited service, average final compensation and the benefit accrual rate or rates in effect as of the date of termination, payable to him commencing at the member's otherwise normal or early retirement date, determined as if he had remained employed, provided he does not elect to withdraw his accumulated contributions and provided the member survives to his otherwise normal or early retirement date. No retroactive payments will be made should the member delay his application for commencement of benefits beyond his otherwise early or normal retirement date. If the member does not withdraw his accumulated contributions and does not survive to his otherwise normal or early retirement date, his designated beneficiary shall be entitled to a benefit as provided herein for a deceased member, vested or eligible for retirement under pre-retirement death.

(Code 1991, § 13-329; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3485, § 3, 9-2-2008)

#### Sec. 62-190. - Optional forms of benefits.

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

A retirement income of a monthly amount payable to the retiree for his or her lifetime, but with 120 payments guaranteed in any event.

- (2) A retirement income of a modified monthly amount, payable to the retiree during the lifetime of the retiree and following the death of the retiree, 100 percent, 75 percent, 66⅔ percent or 50 percent of such monthly amount payable to a joint pensioner for his or her lifetime. Except where the retiree's joint pensioner is his spouse, the payments to the joint pensioner as a percentage of the payments to the retiree shall not exceed the applicable percentage provided for in the applicable table in the treasury regulations. (See Q & A-2 of 1.401(a)(9)-6)
- (3) If a member retires prior to the time at which Social Security benefits are payable, he or she may elect to receive an increased retirement benefit until such time as Social Security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of retirement. The amounts payable shall be as recommended by the actuaries for the system, based upon the Social Security law in effect at the time of the member's retirement.
- (4) For members who do not participate in the DROP pursuant to section 62-208, the member may elect a percentage of benefit in a lump sum as follows:
  - a. Ten percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining 90 percent paid under the normal form (life annuity) or as per subsections (1), (2) or (3) above.
  - b. Fifteen percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining 85 percent paid under the normal form (life annuity) or as per subsections (1), (2) or (3) above.
  - c. Twenty percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining 80 percent paid under the normal form (life annuity) or as per subsections (1), (2) or (3) above.
  - d. Twenty-five percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining 75 percent paid under the normal form (life annuity) or as per subsections (1), (2) or (3) above.
- (b) The member, upon electing any option of this section, will designate the joint pensioner (subsection (a)(2) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a member has elected an option with a joint pensioner or beneficiary and member's retirement income benefits have commenced, the member may thereafter change his or her designated beneficiary at any time, but may only change his or her joint pensioner if the designated joint pensioner and the member were married at the time of

member's retirement and are divorced subsequent thereto and the joint pensioner is alive at the time of the change. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume that the joint pensioner has deceased for purposes of calculating the new payment.

- (c) The consent of a member's or retiree's joint pensioner or beneficiary to any such change shall not be required. The rights of all previously-designated beneficiaries to receive benefits under the system shall thereupon cease.
- (d) Upon change of a retiree's joint pensioner in accordance with this section, the amount of the retirement income payable to the retiree shall be actuarially determined to take into account the age and sex of the former joint pensioner, the new joint pensioner and the retiree. Any such retiree shall pay the actuarial recalculation expenses. Each request for a change will be made in writing on a form prepared by the board and on completion will be filed with the board. In the event that no designated beneficiary survives the retiree, such benefits as are payable in the event of the death of the retiree subsequent to his or her retirement shall be paid as provided in section 62-191.
- (e) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:
  - (1) If a member dies prior to his or her normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under section 62-187.
  - (2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the member's retirement under the system, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the member upon his or her retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the member prior to his or her retirement.
  - (3) If both the retiree and the beneficiary (or beneficiaries) designated by member or retiree die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection (a), the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 62-191.
  - (4) If a member continues beyond his or her normal retirement date pursuant to the provisions of subsection 62-186(a), and dies prior to his or her actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the member in the amount or amounts computed as if the member had retired under the option on the date on which his or her death occurred.

- (5) The member's benefit under this section must begin to be distributed to the member no later than the member's required beginning date, as provided under section 62-195.
- (6) A member reaching early or normal retirement and terminating employment or reaching normal retirement and entering DROP in accordance with section 62-208, must elect an optional form of benefit as provided for in (a) of this section 62-190, not later than 120 days after his early or normal retirement date or entry into the DROP. If no optional form of benefit election is timely made, the member's benefit election will default to the normal form of benefit (life annuity).
- (f) A retiree may not change his or her retirement option after the date of cashing or depositing his or her first retirement check.
- (g) Notwithstanding anything herein to the contrary, the board in its discretion, may elect to make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the monthly income payments to be paid do not exceed \$1,000.00. Any such payment made to any person pursuant to the power and discretion conferred upon the board by the preceding sentence shall operate as a complete discharge of all obligations under the system with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

(Code 1991, § 13-330; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3316, § 2, 3-6-2006; Ord. No. 34-7, § 3, 6-18-2007; Ord. No. 3518, § 8, 8-17-2009; Ord. No. 3785, § 7, 11-7-2016; Ord. No. 3925, § 3, 9-20-2021; Ord. No. 4010, § 5, 1-16-2024)

#### Sec. 62-191. - Beneficiaries.

- (a) Each member or retiree may, on a form provided for that purpose, signed and filed with the board, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his death. Each designation may be revoked or changed by such member or retiree by signing and filing with the board a new designation-of-beneficiary form. Upon such change, the rights of all previously designated beneficiaries to receive any benefits under the system shall cease.
- (b) If a deceased member or retiree fails to name a beneficiary in the manner prescribed in subsection (a) of this section, or if the beneficiary (or beneficiaries) named by a deceased member or retiree predeceases the member or retiree, the death benefit, if any, which may be payable under the system, with respect to such deceased member or retiree, shall be paid to the estate of the member or retiree, and the board, in its discretion, may direct that the present value of the remaining monthly income benefits be paid in a lump sum.
- (c) Any payment made to any person pursuant to this section shall operate as a complete discharge of all obligations under the system with regard to the deceased member and any other persons with rights under the system and shall not be subject to review by anyone, but shall be final,

binding and conclusive on all persons ever interested hereunder.

(Code 1991, § 13-331; Ord. No. 3201, § 1, 5-17-2004)

Sec. 62-192. - Claims procedures.

- (a) The board shall establish administrative claims procedures to be utilized in processing written requests (referred to in this section as "claims"), on matters which affect the substantial rights of any person (referred to in this section as "claimant"), including members, retirees, beneficiaries, or any person affected by a decision of the board.
- (b) The board shall have the power to subpoena and require the attendance of witnesses and the production of documents for discovery prior to and at any proceeding provided for in the board's claims procedures. The claimant may request, in writing, the issuance of subpoenas by the board. A reasonable fee may be charged for the issuance of any subpoena, not to exceed the fees set forth in state statutes.

(Code 1991, § 13-332; Ord. No. 3201, § 1, 5-17-2004)

Sec. 62-193. - Roster of retirees.

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

(Code 1991, § 13-333; Ord. No. 3201, § 1, 5-17-2004)

Sec. 62-194. - Maximum pension; reductions; cost-of-living adjustments.

- (a) *Basic limitation.* Notwithstanding any other provisions of this system to the contrary, the member contributions paid to, and retirement benefits paid from, the system shall be limited to such extent as may be necessary to conform to the requirements of Code Section 415 for a qualified retirement plan. Before January 1, 1995, a plan member may not receive an annual benefit that exceeds the limits specified in Code Section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a plan member may not receive an annual benefit that exceeds the dollar amount specified in Code Section 415(b)(1)(A) \$160,000.00, subject to the applicable adjustments in Code Section 415(b) and subject to any additional limits that may be specified in this system. For purposes of this section, "limitation year" shall be the calendar year.

For purposes of Code Section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Code Section 415(n) and to rollover contributions (as defined in

Code Section 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(b) *Adjustments to basic limitation for form of benefit.* If the benefit under the plan is other than the annual benefit described in subsection (a), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations. If the form of the benefit without regard to any automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Code Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:

- (1) For a benefit paid in a form to which Section 417(e)(3) of the code does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:
  - a. The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or
  - b. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the code); or
- (2) For a benefit paid in a form to which Section 417(e)(3) of the code applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:
  - a. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
  - b. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table

specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the code); or

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

- (3) The actuary may adjust the 415(b) limit at the annuity starting date in accordance with subsections (1) and (2) above.

(c) *Benefits not taken into account.* For purposes of this section, the following benefits shall not be taken into account in applying these limits:

- (1) Any ancillary benefit which is not directly related to retirement income benefits;
- (2) Any other benefit not required under § 415(b)(2) of the Code and Regulations thereunder to be taken into account for purposes of the limitation of Code Section 415(b)(1); and
- (3) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity.

(d) *COLA effect.* Effective on and after January 1, 2003, for purposes of applying the limits under Code Section 415(b) (the "Limit"), the following will apply:

- (1) A member's applicable limit will be applied to the member's annual benefit in the member's first limitation year of benefit payments without regard to any automatic cost of living adjustments;
- (2) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable benefit limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Code Section 415(d), and the regulations thereunder; but

(3)

In no event shall a member's benefit payable under the system in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d) and the regulations thereunder.

Unless otherwise specified in the system, for purposes of applying the limits under Code Section 415(b), a member's applicable limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Code and applicable Treasury Regulations.

(e) *Other adjustments in limitations.*

- (1) In the event the member's retirement benefits become payable before age 62, the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Code Section 415(b) of the Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a \$160,000.00 annual benefit beginning at age 62.
  - (2) In the event the member's benefit is based on at least 15 years of credited service as a full-time employee of the fire or police department of the city, the adjustments provided for in subsection (e)(1) above shall not apply.
  - (3) The reductions provided for in subsection (e)(1) above shall not be applicable to disability benefits pursuant to section 62-188, or pre-retirement death benefits paid pursuant to section 62-187.
  - (4) In the event the member's retirement benefit becomes payable after age 65, for purposes of determining whether this benefit meets the limit set forth in subsection (a) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age 65. This adjustment shall be made in accordance with regulations promulgated by the secretary of the treasury or his delegate.
- (f) *Less than ten years of participation.* The maximum retirement benefits payable under this section to any member who has completed less than ten years of participation shall be the amount determined under subsection (a) of this section multiplied by a fraction, the numerator of which is the number of the member's years of participation and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below ten percent of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits paid pursuant to section 62-188, or pre-retirement death benefits paid pursuant to section 62-187.
- (g) *Participation in other defined benefit plans.* The limit of this section with respect to any member who at any time has been a member in any other defined benefit plan as defined in Code Section 414(j) maintained by the city shall apply as if the total benefits payable under all city defined benefit plans in which the member has been a member were payable from one plan.



- (h) *Ten thousand dollar limit; less than ten years of service.* Notwithstanding anything in this section 62-194, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection (h) of section 62-194 if the benefits payable, with respect to such member under this system and under all other qualified defined benefit pension plans to which the city contributes, do not exceed \$10,000.00 for the applicable limitation year or for any prior limitation year, and the city has not at any time maintained a qualified defined contribution plan in which the member participated; provided, however, that if the member has completed less than ten years of credited service with the city, the limit under this subsection (h) of section 62-194 shall be a reduced limit equal to \$10,000.00 multiplied by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten.
- (i) *Reduction of benefits.* Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be determined by the board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be established by the board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the board and the plan administrator of all other plans covering such member.
- (j) *Service credit purchase limits.*
- (1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the system, as allowed in sections 62-204, 62-207, and 62-210, then the requirements of this section will be treated as met only if:
    - a. The requirements of Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Code Section 415(b), or
    - b. The requirements of Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Code Section 415(c).

For purposes of applying subparagraph (j)(1)a., the system will not fail to meet the reduced limit under Code Section 415(b)(2)(C) solely by reason of this subparagraph, and for purposes of applying subparagraph (j)(1)b. the system will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Code solely by reason of this subparagraph.

- (2) For purposes of this subsection the term "permissive service credit" means service credit:
- a. Recognized by the system for purposes of calculating a member's benefit under the plan,
  - b. Which such member has not received under the plan, and
  - c. Which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may, if otherwise provided by the system, include service credit for periods for which there is no performance of service, and, notwithstanding clause (j) (2)b., may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system.

(k) *Contribution limits.*

- (1) For purposes of applying the Code Section 415(c) limits which are incorporated by reference and for purposes of this subsection (k), only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a calendar limitation year, except as noted below and as permitted by Treasury Regulations Section 1.415(c)-2, or successor regulations. Unless another definition of compensation that is permitted by Treasury Regulations Section 1.415(c)-2, or successor regulation, is specified by the system, compensation will be defined as wages within the meaning of Code Section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Code Sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2).
- a. However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Code Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning after December 31, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of Code Section 132(f)(4).
  - b. For limitation years beginning on and after January 1, 2007, compensation for the limitation year will also include compensation paid by the later of 2½ months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:
    - 1.

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

2. The payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.
  - c. Back pay, within the meaning of Treasury Regulations Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.
- (2) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Code Section 415 by using the following methods:
- a. If the law requires a lump sum payment for the purchase of service credit, the board may establish a periodic payment deduction plan for the member to avoid a contribution in excess of the limits under Code Sections 415(c) or 415(n).
  - b. If payment pursuant to subparagraph (k)(2)a. will not avoid a contribution in excess of the limits imposed by Code Section 415(c), the board may either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.
- (3) If the annual additions for any member for a limitation year exceed the limitation under Section 415(c) of the Code, the excess annual addition will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).
- (4) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of this subsection (k) shall not exceed the annual limit under Section 401(a)(17) of the Code.
- (l) *Additional limitation on pension benefits.* Notwithstanding anything herein to the contrary:
- (1) The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1, 1980, shall not exceed 100 percent of his average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.
  - (2) No member of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different

employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 1223, Title 10, U.S. Code.

- (m) *Effect of direct rollover on 415(b) limit.* If the plan accepts a direct rollover of an employee's or former employee's benefit from a defined contribution plan qualified under Code Section 401(a) which is maintained by the employer, any annuity resulting from the rollover amount that is determined using a more favorable actuarial basis than required under Code Section 417(e) shall be included in the annual benefit for purposes of the limit under Code Section 415(b).

(Code 1991, § 13-334; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3518, § 9, 8-17-2009; Ord. No. 3676, § 3, 9-3-2013; Ord. No. 3785, § 8, 11-7-2016)

Sec. 62-195. - Minimum distribution of benefits.

(a) *General rules.*

- (1) *Effective date.* Effective as of January 1, 1989, the plan will pay all benefits in accordance with a good faith interpretation of the requirements of Code Section 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Code Section 414(d). Effective on and after January 1, 2003, the plan is also subject to the specific provisions contained in this section. The provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- (2) *Precedence.* The requirements of this section will take precedence over any inconsistent provisions of the plan.
- (3) *TEFRA section 242(b)(2) elections.* Notwithstanding the other provisions of this section other than this subsection, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that related to section 242(b)(2) of TEFRA.

(b) *Time and manner of distribution.*

(1) *Required beginning date.*

- a. The member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date. The member's required beginning date is April 1 of the calendar year following the later of (i) the calendar year in which the member attains age the applicable or (ii) the calendar year in which the member terminates employment with the city.
- b. Applicable age.
  1. For a member who attained age 70½ before December 31, 2019, the applicable age is 70½.
  2. For a member who attained age 72 before January 1, 2023, the applicable age is 72.

3. For a member who attains age 72 after December 31, 2022, the applicable age as defined in Code Section 401(a)(9)(C)(v).
- (2) *Death of member before distributions begin.* If the member dies before distributions begin, the member's entire interest will be distributed, or begin to be distributed no later than as follows:
- If the member's surviving spouse is the member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by a date on or before December 31 of the calendar year in which the member would have attained the applicable age, as the surviving spouse elects. Effective for calendar years beginning after December 31, 2023, a surviving spouse who is the member's sole designated beneficiary may elect to be treated as if the surviving spouse were the employee as provided under Code Section 401(a)(9)(B)(iv).
  - If the member's surviving spouse is not the member's sole designated beneficiary, then, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died.
  - If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.
  - If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subsection (b)(2), other than subsection (b)(2)a, will apply as if the surviving spouse were the member.
- For purposes of this subsection (b)(2), distributions are considered to begin on the member's required beginning date or, if subsection (b)(2)d applies, the date of distributions are required to begin to the surviving spouse under subsection (b)(2)a. If annuity payments irrevocably commence to the member before the member's required beginning date (or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(2)a), the date distributions are considered to begin is the date distributions actually commence.
- (3) *Death after distributions begin.* If the member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.
- (4) *Form of distribution.* Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with

this section. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the code and treasury regulations. Any part of the member's interest which is in the form of an individual account described in section 414(k) of the code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the code and treasury regulations that apply to individual accounts.

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

- (1) *General requirements.* If the member's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:
  - a. The annuity distributions will be paid in periodic payments made at intervals not longer than one year.
  - b. The member's entire interest must be distributed pursuant to section 62-186, section 62-187, section 62-189, or section 62-190 (as applicable) and in any event over a period equal to or less than the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary. The life expectancy of the member, the member's spouse, or the member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.
- (2) *Amount required to be distributed by required beginning date.* The amount that must be distributed on or before the member's required beginning date (or, if the member dies before distributions begin, the date distributions are required to begin under section 62-187) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., monthly. All of the member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.
- (3) *Additional accruals after first distribution calendar year.* Any additional benefits accruing to the member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(d) *General distribution rules.*

- (1) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Code Section 401(a)(9)(G), and effective for any annuity commencing on or after January 1, 2008, the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

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

(e) *Definitions.*

- (1) *Designated beneficiary.* The individual who is designated as the beneficiary under the plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.
- (2) *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section 62-187.

(Code 1991, § 13-335; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3316, § 3, 3-6-2006; Ord. No. 3518, § 10, 8-17-2009; Ord. No. 3785, § 9, 11-7-2016; Ord. No. 3925, § 4, 9-20-2021; Ord. No. 4010, § 6, 1-16-2024)

Sec. 62-196. - Miscellaneous provisions.

- (a) *Interest of members.* All assets of the fund are held in trust, and at no time prior to the satisfaction of all liabilities under the system, with respect to retirees and members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.
- (b) *Reduction of accrued benefits.* No amendment or ordinance shall be adopted by the city council which shall have the effect of reducing the then vested accrued benefits of members or a member's beneficiaries.
- (c) *Qualification.* It is intended that the system will constitute a qualified public pension plan under the applicable provisions of the code for a qualified plan under Code Section 401(a) and a governmental plan under Code Section 414(d), as now in effect or hereafter amended. Any modification or amendment of the system may be made retroactively, if necessary or appropriate, to qualify or maintain the system as a plan meeting the requirements of the applicable provisions of the code, as now in effect or hereafter amended, or any other applicable provisions of the U.S. federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder.
- (d) *Use of forfeitures.* Forfeitures arising from terminations of service of members or pursuant to section 62-200 shall serve only to reduce future city contributions.

- (e) *Prohibited transactions.* Effective as of January 1, 1989, a board may not engage in a transaction prohibited by Code Section 503(b).
- (f) *USERRA.* Effective December 12, 1994, notwithstanding any other provision of this system, contributions, benefits and service credit with respect to qualified military service are governed by Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended. To the extent that the definition of "credited service" sets forth contribution requirements that are more favorable to the member than the minimum compliance requirements, the more favorable provisions shall apply.
- (g) *Vesting.*
  - (1) Member will be 100 percent vested in all benefits upon attainment of the plan's age and service requirements for the plan's normal retirement benefit; and
  - (2) A member will be 100 percent vested in all accrued benefits, to the extent funded, if the plan is terminated or experiences a complete discontinuance of employer contributions.
- (h) *Electronic forms.* In those circumstances where a written election or consent is not required by the plan or the Code, an oral, electronic, or telephonic form in lieu of or in addition to a written form may be prescribed by the board. However, where applicable, the board shall comply with Treasury Regulations, Section 1.401(a)-21.
- (i) *Missing benefit recipients.* The system shall follow the procedures outlined in the IRS Employee Plans Compliance Resolution System (EPCRS) program and other applicable IRS guidance to locate any missing individuals to whom a full unreduced benefit payment is due and if, at the conclusion of such efforts, the individual cannot be located, the existing procedure of cancelling payments otherwise due (provided that, if the individual is later located, the benefits due shall be paid) will apply.

(Code 1991, § 13-336; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3518, § 11, 8-17-2009; Ord. No. 3856, § 3, 1-22-2019)

Sec. 62-197. - Repeal or termination.

- (a) This article establishing the system and fund, and subsequent ordinances pertaining to said system and fund, may be modified, terminated, or amended, in whole or in part, provided that, if this article or any subsequent ordinance shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which, at the time of any such alteration, amendment, or repeal, shall have accrued to the member or beneficiary shall not be affected thereby, except to the extent that the assets of the fund may be determined to be inadequate.
- (b) If this article shall be repealed, or if contributions to the system are discontinued, or if there is a transfer, merger or consolidation of government units, services or functions as provided in F.S. ch. 121, the board shall continue to administer the system in accordance with the provisions of



this article, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this article who are designated by any of said members. In the event of repeal, discontinuance of contributions, or transfer, merger or consolidation of government units, services or functions, there shall be full vesting (100 percent) of benefits accrued to the date of repeal and the assets of the system shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled in accordance with the provisions thereof.

- (c) The following shall be the order of priority for purposes of allocating the assets of the system as of the date of repeal of this article, or if contributions to the system are discontinued with the date of such discontinuation being determined by the board:
- (1) Apportionment shall first be made in respect of each retiree receiving a retirement or disability benefit hereunder on such date, each person receiving a benefit on such date on account of a retired or disabled (but since deceased) member, and each member who has, by such date, become eligible for normal retirement, but has not yet retired, an amount which is the actuarial equivalent of such benefit, provided that, if such asset value shall be less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.
  - (2) If there shall be any asset value remaining after the apportionment under subsection (c)(1) of this section, apportionment shall next be made in respect of each member in the service of the city on such date, who is vested and who is not entitled to an apportionment under subsection (c)(1) of this section, in the amount required to provide the actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions), based on the credited service and average final compensation as of such date, and each vested former member then entitled to a deferred benefit who has not, by such date, begun receiving benefit payments, in the amount required to provide said actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions), provided that, if such remaining asset value shall be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.
  - (3) If there shall be any asset value after the apportionments under subsections (c)(1) and (2) of this section, apportionment shall be made in respect to each member in the service of the city on such date, who is not entitled to an apportionment under subsections (c)(1) and (2) of this section, in the amount equal to the member's accumulated contributions, provided that, if such remaining asset value shall be less than the aggregate of the amounts apportioned hereunder, such latter amount shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

- (4) If there shall be any asset value remaining after the apportionments under subsections (c)(1), (2) and (3) of this section, apportionment shall lastly be made in respect to each member included in subsection (c)(3) of this section, to the extent of the actuarial equivalent of the nonvested accrued normal retirement benefit, less the amount apportioned in subsection (c)(3) of this section, based on the credited service and average final compensation as of such date, provided that, if such remaining asset value shall be less than the aggregate of the amounts apportioned hereunder, such amounts shall be reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.
- (5) In the event that there shall be asset value remaining after the full apportionment specified in subsections (c)(1), (2), (3), and (4) of this section, such excess shall be returned to the city.  
The allocation of the fund provided for in subsection (c) of this section may, as decided by the board, be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with subsection (c) of this section. The fund may be distributed in one sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the board may direct. The fund may be continued in existence for purposes of subsequent distributions.
- (6) After all the vested and accrued benefits provided hereunder have been paid and after all other liabilities have been satisfied, then and only then shall any remaining funds revert to the general fund of the city.

(Code 1991, § 13-337; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3518, § 12, 8-17-2009)

Sec. 62-198. - Domestic relations orders; retiree directed payments; exemption from execution; nonassignability.

(a) *Domestic relations orders.*

- (1) Prior to the entry of any domestic relations order which affects or purports to affect the system's responsibility in connection with the payment of benefits of a retiree, the member or retiree shall submit the proposed order to the board for review to determine whether the system may legally honor the order.
- (2) If a domestic relations order is not submitted to the board for review prior to entry of the order, and the system is ordered to take action that it may not legally take, and the system expends administrative or legal fees in resolving the matter, the member or retiree who submits such an order will be required to reimburse the system for its expenses in connection with the order.

- (b) *Retiree directed payments.* The board may, upon written request by a retiree or by a dependent, when authorized by a retiree or the retiree's beneficiary, authorize the system to withhold from the monthly retirement payment those funds that are necessary to pay for the benefits being

received through the city, to pay the certified bargaining agent of the city, to make payment to insurance companies for insurance premiums and to make any payments for child support or alimony.

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

(Code 1991, § 13-338; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3518, § 13, 8-17-2009)

Sec. 62-199. - Validity; overpayments and underpayments.

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

(Code 1991, § 13-339; Ord. No. 3201, § 1, 5-17-2004)

Sec. 62-200. - Forfeiture.

- (a) Any member who is convicted of the following specified offenses, committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this system, except for the return of his accumulated contributions, but without interest, as of the date of termination:
- (1) The committing, aiding or abetting of an embezzlement of public funds;
  - (2) The committing, aiding or abetting of any theft by a public officer or employee from his employer;
  - (3) Bribery in connection with the employment of a public officer or employee;
  - (4) Any felony specified in F.S. ch. 838;
  - (5) The committing of an impeachable offense;
  - (6) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he acts or in which he is employed, of the right to receive the faithful performance of his duty as a public officer or employee, realizes or

obtains, or attempts to obtain, a profit, gain, or advantage for himself or for some other person through the use, or attempted use, of the powers, rights, privileges, duties or position of his public office or employment position; or

- (7) The committing on or after October 1, 2008, of any felony defined in Section 800.04, Florida Statutes, against a victim younger than 16 years of age, or any felony defined in Chapter 794, Florida Statutes, 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.
- (b) For the purposes of this section, the term "conviction" means an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or a nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the senate of an impeachable offense.
- (c) For the purposes of this section, the term "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. Prior to forfeiture, the board shall hold a hearing, on which notice shall be given to the member whose benefits are being considered for forfeiture. Said member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the member shall be afforded a full opportunity to present his case against forfeiture.
- (d) Any member who has received benefits from the system in excess of his accumulated contributions after the member's rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his accumulated contributions, but without interest. The board may implement all legal action necessary to recover such funds.

(Code 1991, § 13-340; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3518, § 14, 8-17-2009)

Sec. 62-201. - Indemnification.

- (a) The board of trustees may maintain fiduciary liability insurance coverage to protect the plan from fiduciary risks. The city shall pay the cost of the waiver of recourse rider to the policy.
- (b) To the extent of any deductible provided for in the fiduciary policy provided for in subsection (a) of this section, the city shall indemnify, defend and hold harmless members of the board from all personal liability for damages and costs, including court costs and attorneys' fees, arising out of claims, suits, litigation, or the threat of the same (herein referred to as "claims"), against these individuals because of acts or circumstances connected with or arising out of their official duty as members of the board.
- (c) This section shall not be construed so as to relieve any insurance company or other entity liable to defend the claim or liable for payment of the judgment or claim, from any liability, nor does this section waive any provision of law affording the city immunity from any suit, in whole or part,

or waive any other substantive or procedural rights the city may have.

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

(Code 1991, § 13-341; Ord. No. 3201, § 1, 5-17-2004)

Sec. 62-202. - Direct transfers of eligible rollover distributions; elimination of mandatory distributions.

(a) *Rollover distributions.*

- (1) *General.* This section applies to distributions made on or after January 1, 2002.

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

(2) *Definitions.*

- a. *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the code; and the portion of any distribution that is not includible in gross income. Effective January 1, 2002, any portion of any distribution which would be includible in gross income as after-tax employee contributions will be an eligible rollover distribution if the distribution is made to an individual retirement account described in section 408(a); to an individual retirement annuity described in section 408(b); to a qualified defined contribution plan described in section 401(a) or 403(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or on or after January 1, 2007, to a qualified defined benefit plan described in Code Section 401(a) or to an annuity contract described in Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.
- b. *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in section 408(a) of the code; an individual retirement annuity described in section 408(b) of the code; an annuity plan described in section 403(a) of the code;

effective January 1, 2002, an eligible deferred compensation plan described in section 457(b) of the code which is maintained by an eligible employer described in section 457(e)(1)(A) of the code and which agrees to separately account for amounts transferred into such plan from this plan; effective January 1, 2002, an annuity contract described in section 403(b) of the code; a qualified trust described in section 401(a) of the code; or effective January 1, 2008, a Roth IRA described in Section 408A of the code, that accepts the distributee's eligible rollover distribution. This definition shall also apply in the case of an eligible rollover distribution to the surviving spouse.

- c. *Distributee*: A distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse. Effective January 1, 2007, it further includes a non-spouse beneficiary who is a designated beneficiary as defined by Code Section 401(a)(9) (E). However, a non-spouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.
  - d. *Direct rollover*: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.
- (b) *Rollovers or transfers into the fund*. On or after January 1, 2002, the system will accept, solely for the purpose of purchasing credited service as provided herein, permissible member requested transfers of funds from other retirement or pension plans, member rollover cash contributions and/or direct cash rollovers of distributions made on or after January 1, 2002, as follows:
  - (1) *Transfers and direct rollovers or member rollover contributions from other plans*. The system will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in section 401(a) or 403(a) of the code, from an annuity contract described in section 403(b) of the code or from an eligible plan under section 457(b) of the code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The system will also accept legally permissible member requested transfers of funds from other retirement or pension plans
  - (2) *Member rollover contributions from IRAs*. The system will accept a member rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over.
- (c) *Elimination of mandatory distributions*. Notwithstanding any other provision herein to the contrary, in the event this plan provides for a mandatory (involuntary) cash distribution from the plan not otherwise required by law, for an amount in excess of \$1,000.00, such distribution shall

be made from the plan only upon written request of the member and completion by the member of a written election on forms designated by the board, to either receive a cash lump sum or to rollover the lump sum amount.

(Code 1991, § 13-342; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3316, § 4, 3-6-2006; Ord. No. 3518, § 15, 8-17-2009)

#### Sec. 62-203. - Family and Medical Leave Act.

The fractional parts of the 12-month period ending each March 1 that a member is on leave without pay from the city pursuant to the Family and Medical Leave Act (FMLA) shall be added to his credited service, provided that:

- (1) The member contributes to the fund the sum that he would have contributed, based on his salary and the member contribution rate in effect at the time that the credited service is requested, had he been a member of the system for the years or fractional parts of the years for which he is requesting credit, plus the sum which is actuarially determined so that the crediting of service does not result in any cost to the fund, plus payment of costs for all professional services rendered to the board in connection with the purchase of periods of credited service.
- (2) The request for credited service for FMLA leave time for the 12-month period prior to each March 1, and payment of professional fees shall be made on or before March 31.
- (3) Payment by the member of the required amount shall be made on or before April 30 for the preceding 12-month period ending March 1 and shall be made in one lump sum payment, upon receipt of which credited service shall be issued.
- (4) Credited service purchased pursuant to this section shall not count toward vesting.

(Code 1991, § 13-343; Ord. No. 3201, § 1, 5-17-2004)

#### Sec. 62-204. - Military service prior to employment.

The years or fractional parts of years that a general employee serves or has served on active duty in the military service of the Armed Forces of the United States, the United States Merchant Marines or the United States Coast Guard, voluntarily or involuntarily, honorably or under honorable conditions, prior to first and initial employment with the city shall be added to his years of credited service, provided that:

- (1) The member contributes to the fund the sum that he would have contributed, based on his salary and the member contribution rate in effect at the time that the credited service is requested, had he been a member of the system for the years or fractional parts of years for

which he is requesting credit, plus amounts actuarially determined so that the crediting of service does not result in any cost to the fund, plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.

- (2) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.
- (3) Payment by the member of the required amount shall be made within six months of his request for credit, but, in any event, prior to retirement, and shall be made in one lump sum payment, upon receipt of which credited service shall be given or the member may elect to make payment for the requested credited service over a period of time as provided for in subsection (6) of this section.
- (4) The maximum credit under this section shall be four years.
- (5) Credited service purchased pursuant to this section shall count for all purposes, except vesting and eligibility for disability benefits.
- (6) In lieu of the lump sum payment provided for in subsection (3) of this section, a member may elect to make payments over a period of time in order to fully pay the amount provided for in subsection (1) of this section. The member shall be required to notify the board, in writing, of his election to make payments in the manner provided for in this subsection. The payment plan provided for in this subsection shall be subject to the following terms:
  - a. The principal amount to be paid shall be determined as set forth in subsection (1) of this section.
  - b. The original principal amount shall be amortized over the period beginning with the first payment and ending no later than 60 months from the date of the first payment.
  - c. Payments shall consist of principal, interest and a one percent per annum administrative fee, with interest at a rate of return equal to the actuarially assumed rate of investment return.
  - d. Payments shall be made by payroll deduction from each paycheck on an after-tax basis.
  - e. In the event that a member dies, retires (including entry into any deferred retirement option plan (DROP)) or otherwise terminates his employment, without having made full payment of the principal amount necessary to receive all credited service requested, the member shall receive so much of the credited service requested, determined using procedures established by the actuary, which could be purchased with the amount of principal paid by the member to the date of his death or termination of employment.
  - f. In the event that the member's employment is terminated for any reason and he is not entitled to any benefit from the plan, other than the return of the amounts he has had deducted from his paycheck as his normal contribution to the plan, the amounts which



the member has paid pursuant to this subsection (6) to purchase additional credited service, shall be returned to him, less all interest paid and the one percent administrative fee.

(Code 1991, § 13-344; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 4010, § 7, 1-16-2024)

Sec. 62-205. - Employment after retirement.

- (a) *Generally.* Any retiree under this system may be reemployed by any public or private employer, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this system. Notwithstanding the previous sentence, reemployment by the city shall be subject to the limitations set forth in this section.
- (b) *After normal retirement.* Any retiree who is retired under normal retirement pursuant to this system and who is reemployed by the city shall, upon being reemployed, continue receipt of retirement benefits during any such employment period if he is at least age fifty-nine and one-half (59½), otherwise the system shall discontinue receipt of benefits until he reaches age fifty-nine and one-half (59½). A retiree who returns to work under the provisions of this subsection shall not accumulate additional credited service for periods of employment described in this subsection, shall not be required to make contributions to the system, nor shall he be eligible for any other benefit, other than the retiree's normal retirement benefit.
- (c) *After early or disability retirement.* Any retiree who is retired under early or disability retirement pursuant to this system and who subsequently becomes an employee of the city in any capacity, shall discontinue receipt of benefits from the system until the earlier of termination of employment or such time as the reemployed retiree reaches age fifty-nine and one-half (59½). A retiree who returns to work under the provisions of this subsection shall not accumulate additional credited service for periods of employment described in this subsection, shall not be required to make contributions to the system, nor shall he be eligible for any other benefit, other than the retiree's early retirement benefit, when he again becomes eligible as provided herein. Retirement pursuant to an early retirement incentive program shall be deemed early retirement, for purposes of this subsection, if the member was permitted to retire prior to the customary retirement date provided for in the system at the time of retirement.
- (d) *Reemployment of terminated vested persons.* Reemployed terminated vested persons shall not be subject to the provisions of this section until such time as they begin to actually receive benefits. Upon receipt of benefits, terminated vested persons shall be treated as normal or early retirees for purposes of applying the provisions of this section and their status as an early or normal retiree shall be determined by the date they elect to begin to receive their benefit.
- (e) *DROP participants.* Retirees who were in the Deferred Retirement Option Plan shall, following termination of employment after DROP participation, have the options provided for in this section for reemployment.

(Code 1991, § 13-345; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3785, § 10, 11-7-2016; Ord. No. 3856, § 4, 1-22-2019; Ord. No. 3925, § 5, 9-20-2021)

Sec. 62-206. - Reserved.

**Editor's note**— Ord. No. 3518, § 16, adopted Aug. 17, 2009, deleted § 62-206. Former § 62-206 pertained to separation from employment for military service and derived from Code 1991, § 13-346; and Ord. No. 3201, § 1, adopted May 17, 2004.

Sec. 62-207. - Prior government service.

Unless otherwise prohibited by law, the years or fractional parts of years that a general employee who was previously a member, but who terminated employment and received a refund of his contributions or who terminated employment and is not otherwise entitled to credited service for such previous period of employment as a general employee, or the years or fractional parts of years that a member previously served as an employee for any governmental agency in the United States, including but not limited to federal, state or local government service, and for which he does not otherwise qualify for and receive credit under this system, shall be added to his years of credited service, provided that:

- (1) The member contributes to the fund the sum that he would have contributed, based on his salary and the member contribution rate in effect at the time that the credited service is requested, had he been a member of the system for the years or fractional parts of years for which he is requesting credit, plus amounts actuarially determined so that the crediting of service does not result in any cost to the fund, plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.
- (2) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.
- (3) Payment by the member of the required amount shall be made within six months of his request for credit, but, in any event, prior to retirement, and shall be made in one lump sum payment, upon receipt of which credited service shall be given or the member may elect to make payment for the requested credited service over a period of time as provided for in subsection (6) of this section.
- (4) There shall be no maximum purchase of credited service pursuant to this section and credited service purchased shall count for all purposes, including vesting, but shall not count for eligibility for disability benefits.
- (5) In no event, however, may credited service be purchased pursuant to this section for prior service with any other governmental agency, if such prior service forms or will form the basis of a retirement benefit or pension from a different employer's retirement system or plan as set forth in subsection 62-194(l)(2).

- (6) In lieu of the lump sum payment provided for in subsection (3) of this section, a member may elect to make payments over a period of time in order to fully pay the amount provided for in subsection (1) of this section. The member shall be required to notify the board, in writing, of his election to make payments in the manner provided for in this subsection. The payment plan provided for in this subsection shall be subject to the following terms:
- a. The principal amount to be paid shall be determined as set forth in subsection (1) of this section.
  - b. The original principal amount shall be amortized over the period beginning with the first payment and ending no later than 60 months from the date of the first payment.
  - c. Payments shall consist of principal, interest and a one percent per annum administrative fee, with interest at a rate of return equal to the actuarially assumed rate of interest return.
  - d. Payments shall be made by payroll deduction from each paycheck on an after-tax basis.
  - e. In the event that a member dies, retires (including entry into any deferred retirement option plan (DROP)) or otherwise terminates his employment, without having made full payment of the principal amount necessary to receive all credited service requested, the member shall receive so much of the credited service requested, determined using procedures established by the actuary, which could be purchased with the amount of principal paid by the member to the date of his death or termination of employment.
  - f. In the event that the member's employment is terminated for any reason and he is not entitled to any benefit from the plan, other than the return of the amounts he has had deducted from his paycheck as his normal contribution to the plan, the amounts which the member has paid pursuant to subsection (6) of this section to purchase additional credited service shall be returned to him, less all interest paid and the one percent administrative fee.

(Code 1991, § 13-347; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3518, § 17, 8-17-2009; Ord. No. 3785, § 11, 11-7-2016; Ord. No. 4010, § 8, 1-16-2024)

Sec. 62-208. - Deferred retirement option plan.

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

*DROP* means the City of Fort Myers General Employees' Deferred Retirement Option Plan.

*DROP account* means the account established for each DROP participant under subsection (c).

*Total return of the assets* means for purposes of calculating earnings on a member's DROP account pursuant to subsection (c)(2)b.2., for each fiscal year quarter, the percentage increase (or decrease) in the interest and dividends earned on investments, including realized and unrealized gains (or losses), of the

total plan assets.

(b) *Participation.*

- (1) *Eligibility to participate.* In lieu of terminating his or her employment as a general employee, any member who is eligible for normal retirement under the system may elect to defer receipt of such service retirement pension and to participate in the DROP.
- (2) *Election to participate.* A member's election to participate in the DROP must be made in writing in a time and manner determined by the board and shall be effective on the first day of the first calendar month which is at least 15 business days after it is received by the board.
- (3) *Period of participation.* A member who elects to participate in the DROP under subsection (b) (2), shall participate in the DROP for a period not to exceed 60 months beginning at the time his or her election to participate in the DROP first becomes effective. A member may participate only once. An election to participate in the DROP shall constitute an irrevocable election to resign from the service of the city not later than the date provided for in the previous sentence. Any retiree who has retired under normal retirement who did not previously participate in the DROP and who is reemployed, may elect to enter the DROP as provided herein.
- (4) *Termination of participation.*
  - a. A member's participation in the DROP shall cease at the earlier of:
    1. The end of his or her permissible period of participation in the DROP as determined under subsection (b)(3); or
    2. Termination of his or her employment as a general employee.
  - b. Upon the member's termination of participation in the DROP, pursuant to subsection 1 above, all amounts provided for in subsection (c)(2), including monthly benefits and investment earnings and losses or interest, shall cease to be transferred from the system to his or her DROP account. Any amounts remaining in his or her DROP account shall be paid to him or her in accordance with the provisions of subsection (d) when he or she terminates his or her employment as a general employee.
  - c. A member who terminates his or her participation in the DROP under this subsection (b) (4) shall not be permitted to again become a participant in the DROP.
- (5) *Effect of DROP participation on the system.*
  - a. A member's credited service and his or her accrued benefit under the system shall be determined on the date his or her election to participate in the DROP first becomes effective. For purposes of determining the accrued benefit, the member's salary for the purposes of calculating his average final compensation shall include an amount equal to any lump sum payments which would have been paid to the member and included as

salary as defined herein, had the member retired under normal retirement and not elected DROP participation. Member contributions attributable to any lump sums used in the benefit calculation and not actually received by the member shall be deducted from the first payments to the member's DROP account. The member shall not accrue any additional credited service or any additional benefits under the system (except for any additional benefits provided under any cost-of-living adjustment for retirees in the system) while he or she is a participant in the DROP. A member shall not be eligible for disability or pre-retirement death benefits while he or she is a participant in the DROP. After a member commences participation, he or she shall be permitted to again contribute to the system and be eligible for disability or pre-retirement death benefits only as provided for in section 62-205.

- b. No amounts shall be paid to a member from the system while the member is a participant in the DROP.

(c) *Funding.*

- (1) *Establishment of DROP account.* A DROP account shall be established for each member participating in the DROP. A member's DROP account shall consist of amounts transferred to the DROP under subsection (c)(2), and earnings or interest on those amounts.

- (2) *Transfers from retirement system.*

- a. As of the first day of each month of a member's period of participation in the DROP, the monthly retirement benefit he or she would have received under the system had he or she terminated his or her employment as a general employee and elected to receive monthly benefit payments thereunder shall be transferred to his or her DROP account, except as otherwise provided for in subsection (b)(4)b. A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (b)(3) and (b)(4), but in no event shall it continue past the date he or she terminates his or her employment as a general employee.
- b. Except as otherwise provided in subsection (b)(4)b., a member's DROP account under this subsection (c)(2) shall be debited or credited with either:
  - 1. Interest at an effective rate of three percent per annum compounded monthly determined on the last business day of the prior month's ending balance and credited to the member's DROP account as of such date (to be applicable to all current and future DROP participants); or
  - 2. Earnings, to be credited or debited to the member's DROP account, determined as of the last business day of each fiscal year quarter and debited or credited as of such date, determined as follows:

- i.

The average daily balance in a member's DROP account shall be credited or debited at a rate equal to the net investment return realized by the system for that quarter. "Net investment return" for the purpose of this paragraph is the total return of the assets in which the member's DROP account is invested by the board net of brokerage commissions, transaction costs and management fees.

- ii. For purposes of calculating earnings on a member's DROP account pursuant to this subsection (c)(2)b.2., brokerage commissions, transaction costs, and management fees shall be determined for each quarter by the investment consultant pursuant to contracts with fund managers as reported in the custodial statement. The investment consultant shall report these quarterly contractual fees to the board. The investment consultant shall also report the net investment return for each manager and the net investment return for the total plan assets.
- iii. Upon electing participation in the DROP, the member shall elect to receive either interest or earnings on his or her account to be determined as provided above. The member may, in writing, elect to change his or her election only once during his or her DROP participation. An election to change must be made prior to the end of a quarter and shall be effective beginning the following quarter.
- c. A member's DROP account shall only be credited or debited with earnings and monthly benefits while the member is a participant in the DROP. A member's final DROP account value for distribution to the member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation for participants electing the net plan return and at the end of the month immediately preceding termination of participation for participants electing the flat interest rate return, plus any monthly periodic additions made to the DROP account subsequent to the end of the previous quarter or month, as applicable, and prior to distribution. If a member is employed by the city after participating in the DROP for the permissible period of DROP participation, then beginning with the member's first month of employment following the last month of the permissible period of DROP participation, the member's DROP account will no longer be credited or debited with earnings and monthly benefits will then be paid directly to the member only upon termination of employment, subject to the limitations on reemployment in section 62-205.

(d) *Distribution of DROP accounts on termination of employment.*

- (1) *Eligibility for benefits.* A member shall receive the balance in his or her DROP account in accordance with the provisions of this subsection (d) upon his or her termination of employment.
- (2) *Form of distribution.*

- a. Unless the member elects otherwise, distribution of his or her DROP account shall be made in a cash lump sum, subject to the direct rollover provisions set forth in subsection (d)(6). Elections under this paragraph shall be in writing and shall be made in such time or manner as the board shall determine.
  - b. If a member dies before his or her benefit is paid, his or her DROP account shall be paid to his or her beneficiary in such optional form as his or her beneficiary may select. If no beneficiary designation is made, the DROP account shall be distributed to the member's estate.
- (3) *Date of payment of distribution.* Except as otherwise provided in this subsection (d), distribution of a member's DROP account shall be made as soon as administratively practicable following the member's termination of employment. Distribution of the amount in a member's DROP account will not be made unless the member completes a written request for distribution and a written election on forms designated by the board to either receive a cash lump sum or a rollover of the lump sum amount.
  - (4) *Proof of death and right of beneficiary or other person.* The board may require and rely upon such proof of death and such evidence of the right of any beneficiary or other person to receive the value of a deceased member's DROP account as the board may deem proper and its determination of the right of that beneficiary or other person to receive payment shall be conclusive.
  - (5) *Distribution limitation.* Notwithstanding any other provision of this subsection (d), all distributions from the DROP shall conform to the "minimum distribution of benefits" provisions as provided for herein.
  - (6) *Direct rollover of certain distributions.* This subsection applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the DROP to the contrary to have any portion of an eligible rollover distribution paid in a direct rollover as otherwise provided under the system in section 62-202.
- (e) *Administration of DROP.*
- (1) *Board administers the DROP.* The general administration of the DROP, the responsibility for carrying out the provisions of the DROP and the responsibility of overseeing the investment of the DROP's assets shall be placed in the board. The members of the board may appoint from their number such subcommittees with such powers as they shall determine; may adopt such administrative procedures and regulations as they deem desirable for the conduct of their affairs; may authorize one or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical, accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP; and may allocate among themselves or delegate to

other persons all or such portion of their duties under the DROP, other than those granted to them as trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A trustee shall not vote on any question relating exclusively to himself or herself.

- (2) *Individual accounts, records and reports.* The board shall maintain, or cause to be maintained, records showing the operation and condition of the DROP, including records showing the individual balances in each member's DROP account, and the board shall keep, or cause to be kept, in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The board shall prepare or cause to be prepared and distributed to members participating in the DROP and other individuals or filed with the appropriate governmental agencies, as the case may be, all necessary descriptions, reports, information returns, and data required to be distributed or filed for the DROP pursuant to the code, the applicable portions of the Act and any other applicable laws.
- (3) *Establishment of rules.* Subject to the limitations of the DROP, the board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The board shall have discretionary authority to construe and interpret the DROP (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in the DROP). The determination of the board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law. The board shall also oversee the investment of the DROP'S assets.
- (4) *Limitation of liability.*
  - a. The trustees shall not incur any liability individually or on behalf of any other individuals for any act or failure to act, made in good faith in relation to the DROP or the funds of the DROP.
  - b. Neither the board nor any trustee of the board shall be responsible for any reports furnished by any expert retained or employed by the board, but they shall be entitled to rely thereon as well as on certificates furnished by an accountant or an actuary, and on all opinions of counsel. The board shall be fully protected with respect to any action taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.

(f) *General provisions.*

- (1) *The DROP is not a separate retirement plan.* Instead, it is a program under which a member who is eligible for normal retirement under the system may elect to accrue future retirement benefits in the manner provided in this section 62-208 for the remainder of his employment,



rather than in the normal manner provided under the plan. Upon termination of employment, a member is entitled to a lump sum distribution of his or her DROP account balance or may elect a rollover. The DROP account distribution is in addition to the member's monthly benefit.

- (2) *Notional account.* The DROP account established for such a member is a notional account, used only for the purpose of calculation of the DROP distribution amount. It is not a separate account in the system. There is no change in the system's assets, and there is no distribution available to the member until the member's termination from the DROP. The member has no control over the investment of the DROP account.
- (3) *No employer discretion.* The DROP benefit is determined pursuant to a specific formula which does not involve employer discretion.
- (4) *IRC limit.* The DROP account distribution, along with other benefits payable from the system, is subject to limitation under Internal Revenue Code Section 415(b).
- (5) *Amendment of DROP.* The DROP may be amended by an ordinance of the city at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP account of any member.
- (6) *Facility of payment.* If the board shall find that a member or other person entitled to a benefit under the DROP is unable to care for his or her affairs because of illness or accident or is a minor, the board may direct that any benefit due him or her, unless claim shall have been made for the benefit by a duly appointed legal representative, be paid to his or her spouse, a child, a parent or other blood relative, or to a person with whom he or she resides. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.
- (7) *Information.* Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or her or on his or her account under the DROP, shall file with the board the information that it shall require to establish his or her rights and benefits under the DROP.
- (8) *Written elections, notification.*
  - a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the board in a time and manner determined by the board under rules uniformly applicable to all employees similarly situated. The board reserves the right to change from time to time the manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the

DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.

- b. Each member or retiree who has a DROP account shall be responsible for furnishing the board with his or her current address and any subsequent changes in his or her address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him or her at the last such address given to the board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the board of his or her address.

(9) *Benefits not guaranteed.* All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP account and neither the city nor the board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.

(10) *Construction.*

- a. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.
- b. The titles and headings of the subsections in this section 13-348 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

(11) *Forfeiture of retirement benefits.* Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.

(12) *Effect of DROP participation on employment.* Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

(Code 1991, § 13-348; Ord. No. 3201, § 1, 5-17-2004; Ord. No. 3316, § 5, 3-6-2006; Ord. No. 3518, § 18, 8-17-2009; Ord. No. 3785, § 12, 11-7-2016; Ord. No. 3856, § 5, 1-22-2019)

Sec. 62-209. - Reserved.

**Editor's note—** Ord. No. 3518, § 19, adopted Aug. 17, 2009, deleted § 62-209. Former § 62-209 pertained to privatization of Edison and Ford Winter Estates, Dissolution of Community Redevelopment Agency and derived from Ord. No. 3351, § 1, adopted Sept. 18, 2006; and ord. No. 3364, § 2, adopted Nov. 6, 2006.

Sec. 62-210. - Purchase of credited service.

Unless otherwise prohibited by law, any member who has accrued at least five years of participation (which does not include purchased service) shall be permitted to purchase up to five years of additional credited service under this system for periods when there was no performance of service ("air time"), provided that:

- (1) The member contributes to the fund the sum that he would have contributed had he been a member of the system for the years or fractional parts of years for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.
- (2) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.
- (3) Payment by the member of the required amount shall be made within six months of his or her request for credit, but, in any event, prior to retirement, and shall be made in one lump sum payment upon receipt of which credited service shall be given, or the member may elect to make payment for the requested credited service over a period of time as provided for in paragraph (5) below.
- (4) Service purchased pursuant to this section shall count for all purposes except vesting and eligibility for disability benefits.
- (5) In lieu of the lump sum payment provided for in paragraph (3) above, a member may elect to make payments over a period of time in order to fully pay the amount provided for in paragraph (1). The member shall be required to notify the board, in writing, of his election to make payments in the manner provided for in this paragraph. The payment plan provided for in this paragraph shall be subject to the following terms:
  - a. The principal amount to be paid shall be determined as set forth in paragraph (1) above.
  - b. The original principal amount shall be amortized over the period beginning with the first payment and ending no later than 60 months from the date of the first payment.
  - c. Payments shall consist of principal and interest at a rate equal to the actuarially assumed rate of return on plan investments.
  - d. Payments shall be made by payroll deduction from each paycheck on an after-tax basis.
  - e. In the event that a member dies, retires (including entry into any Deferred Retirement Option Plan (DROP)) or otherwise terminates his employment, without having made full payment of the principal amount necessary to receive all credited service requested, the member shall receive so much of the credited service requested, determined using procedures established by the actuary, which could be purchased with the amount of principal paid by the member to the date of his death or termination of employment.

- f. In the event that the member's employment is terminated for any reason and he is not entitled to any benefit from the system other than the return of the amounts he has had deducted from his paycheck as his normal contribution to the system, the amounts which the member has paid pursuant to this subsection to purchase additional credited service, shall be returned to him including all interest paid, however, no interest shall accrue on amounts paid to purchase service.

(Ord. No. 3421, § 2, 10-10-2007; Ord. No. 4010, § 9, 1-16-2024)