

Sec. 15-91. - Definitions.

The masculine gender, where used herein, unless the context specifically requires otherwise, shall include both the feminine and masculine genders. 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, without interest. 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, and any payment representing interest and any required actuarially calculated payments for the purchase of such credited service shall be included in accumulated contributions.

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 the 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 one-twelfth ($1/12$) of the average salary of the five (5) best years of the last ten (10) 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 twelve (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.

City means City of Gulfport, Florida.

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. A member whose employment is terminated or who is granted an unpaid absence by the city and who returns to the full-time service of the city as a general employee within twelve (12) months of such date shall receive credit for service accrued prior to the termination or leave of absence. If a non-vested member leaves the employ of the city, his accumulated contributions, if less than one thousand dollars (\$1,000.00), will be returned. If a non-vested member is not reemployed within five (5) years, his accumulated contributions, if one thousand dollars (\$1,000.00) or more, 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. If a vested member leaves the employ of the city, his accumulated contributions, will be returned only upon his written request 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 a member's accumulated contributions, all of his rights and benefits under the system are forfeited and terminated.

In the event that a member of this system has accumulated credited service in another pension system maintained by the city as a police officer or firefighter, then such other credited service shall be used in determining vesting as provided for in section 15-98, vesting. Such other credited service will not be considered

in determining eligibility for benefits or for calculation of benefits under this system. Only his credited service under this system on or after his date of membership in this system will be considered for benefit eligibility and calculation.

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 (1) 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 (5) years. The member must deposit all missed contributions within a period equal to three (3) times the period of military service, but not more than five (5) 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 January 1, 1994.

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, including those in their initial probationary employment period, but not including certified police officers and certified firefighters employed by the city, the city manager, department directors and the city clerk. However, any department director or city clerk who was previously in the system and who has opted to again participate in this system pursuant to the provisions of section 15-92, subsection (3), and any general employee who is in the system but who is promoted to department director or city clerk and elects within ninety (90) days of the promotion to remain in the system shall be considered general employees for all purposes of this system.

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.

Plan year means the twelve (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.

Salary means total compensation for services rendered to the city as a general employee reportable on the member's W-2 form, not including lump sum distributions for annual leave and sick leave, and plus all tax deferred, tax sheltered or tax exempt items of income derived from elective employee payroll deductions or salary reductions. For service earned on or after January 2, 2012. Salary shall not include more than three hundred (300) hours of overtime per calendar year. Provided however, in any event, payments for overtime in excess of three hundred (300) hours per year accrued as of January 2, 2012 and attributable to service earned prior to January 2, 2012, may still be included in salary for pension purposes even if the payment is not actually made until on or after January 2, 2012. In any event with respect to unused sick leave and unused annual leave accrued prior to January 2, 2012, salary will include the lesser of the amount of sick or annual leave time accrued on January 2, 2012 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 January 2, 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 two hundred thousand dollars (\$200,000.00), as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). "Compensation" means compensation during the fiscal year. 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 twelve (12) months, 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 twelve (12). 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 of Gulfport general employees' pension plan as contained herein and all amendments thereto.

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2006-13, §§ 1, 2, 5-16-06; Ord. No. 2009-02, § 1, 3-3-09; Ord. No. 2012-14, § 1, 8-21-12; Ord. No. 2013-06, § 1, 6-18-13; Ord. No. 2017-02, § 1, 4-4-17)

Sec. 15-92. - 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.

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2006-13, § 3, 5-16-06; Ord. No. 2017-02, § 3, 4-4-17)

Sec. 15-93. - Board of trustees.

- (a) The sole and exclusive administration of and responsibility for the proper operation of the system and for making effective the provisions of this article is hereby vested in a board of trustees. The board is hereby designated as the plan administrator. The board shall consist of seven (7) trustees, as follows:
 - (1) Two (2) trustees who are residents of the city who shall be appointed by the city council; and
 - (2) Five (5) trustees who are general employee members of the system, who shall be elected by a majority of the general employees who are members of the system and who vote in the election.
- (b) Each council appointed trustee shall serve as trustee for staggered three-year terms, unless he sooner vacates the office or is sooner replaced by the city council at whose pleasure he shall serve.
- (c) Each member trustee shall serve as trustee for staggered three-year terms, unless he sooner leaves the employment of the city as a general employee or otherwise vacates his office as trustee, whereupon a successor shall be chosen in the same manner as the departing trustee was chosen.
- (d) Each trustee may succeed himself in office. The board shall establish and administer the nominating and election procedures for each election. The board shall meet at least quarterly each year. In the event a trustee has three (3) consecutive unexcused absences from board meetings, the trustee will be deemed to have resigned whereupon a successor shall be chosen in the same manner as the departing trustee was chosen. 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, by a majority vote, elect a chairman, vice-chairman 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 (1) vote on the board. Four (4) 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.
- (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.

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2009-02, § 1, 3-3-09; Ord. No. 2015-04, § 1, 8-18-15)

Sec. 15-94. - Finances and fund management.

(a) *Establishment and operation of fund.*

- (1) As part of the system, there is hereby established the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the system.
- (2) 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.
- (3) All funds of the general employees' pension plan may be deposited by the board with the administrative services director of the city, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he is liable for the safekeeping of funds for the city. However, any funds so deposited with the administrative services director of the city shall be kept in a separate fund by the administrative 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.
- (4) 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:
 - a. Current amounts of accumulated contributions of members on both an individual and aggregate account basis; and
 - b. Receipts and disbursements; and
 - c. Benefit payments; and
 - d. Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city; and
 - e. All interest, dividends and gains (or losses) whatsoever; and
 - f. Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.
- (5) An audit shall be performed annually by a certified public accountant for the most recent fiscal year of

the plan 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.

- (6) The board shall have the following investment powers and authority:
- a. 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.
 - b. All monies paid into or held in the fund shall be invested and reinvested in such securities or property wherever situated and whatever kind, as shall be approved by the board, including but not limited to stocks, common or preferred, bonds, other evidences of indebtedness or ownership, and mutual funds, but there shall be no direct investment in the following:
 1. Margin purchases.
 2. Commodities.
 3. Calls or straddles (not including covered call options).
 4. Warrants or other options, except as part of purchase of another security.
 5. Venture capital.
 6. Any investment prohibited by state or federal law.
 7. Bonds which are rated less than "A" by Standard and Poors and Moodys.
 8. Real property or real estate.
 - c. At least once every three (3) 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.
 - d. 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.
 - e. 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.
 - f. 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.
 - g. The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock or

other securities in any voting trust or any protective or like committee 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.

- h. 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.
- i. 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.
- j. 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. Underpayments shall be made up from the fund in a prudent manner.
- k. The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits provided for herein.
- l. 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.
- m. 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.
- n. The board shall develop and adopt a written investment policy statement setting forth goals and objectives of investments and setting quality and quantity limitations on investments. The investment policy statement shall be reviewed by the board at least annually

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2009-02, § 1, 3-3-09)

Sec. 15-95. - Contributions.

(a) *Member contributions.*

- (1) *Amount.* Each member of the system shall be required to make regular contributions to the fund in the amount of two and seven-tenths (2.7) percent of his salary. Member contributions withheld by the city on behalf of the member shall be deposited with the board immediately after each pay period. The contributions made by each member to the fund shall be designated as employer contributions pursuant to section 414(h) of the code. Such designation is contingent upon the contributions being excluded from the members' gross income for federal income tax purposes. For all other purposes of the system, such contributions shall be considered to be member contributions.

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

- (b) *City contributions.* So long as this system is in effect, the city shall make quarterly contributions to the fund in an amount equal to the required city contribution as shown by the applicable actuarial valuation of the system.
- (c) *Other.* Private donations, gifts and contributions may be deposited to the fund, but such deposits must be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used only for additional benefits for members, as determined by the board, and may not be used to reduce what would have otherwise been required city contributions.

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2009-02, § 1, 3-3-09)

Sec. 15-96. - Benefit amounts and eligibility.

- (a) *Normal retirement age and date.* A member's normal retirement age is the earlier of the attainment of age sixty-two (62) and the completion of five (5) years of credited service. Each member shall become one hundred (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.* A member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his retirement and be continued thereafter during member's lifetime and ceasing upon death. The monthly retirement benefit shall be equal to two (2) percent of average final compensation for each year of credited service.
- (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 fifty-five (55) and the completion of five (5) 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 at age sixty-two (62) 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 subparagraph (d)(1) above, and is actuarially reduced from the amount to which he would have been entitled had he retired at age sixty-two (62).
- (e) *Review of retiree benefits.* The city council shall, every three (3) years, commencing October 1, 2009, review the status of all service retirees and beneficiaries who are receiving payments from the system for the purpose of considering an ad hoc increase in benefits for all such retirees. In determining the adjustment, if any, the city council shall consider the actuarial soundness of the system as set forth in the most recent actuarial valuation, the prevailing rate of inflation as reflected in the Consumer Price Index, and the recommendations of the board. For purposes of its recommendation regarding the granting of ad hoc cost-of-living increases, and in

consideration of the position of the state division of retirement, the board shall make a recommendation for an increase only if the net actuarial gains experienced since the most recent adjustment are sufficient to fully purchase the value of the additional benefits. The calculation of net actuarial gains and losses shall be computed by the board's actuary using generally accepted actuarial principles, and the cost method employed in the actuarial valuation of the fund, and shall be in compliance with F.S. § 112.61.

- (f) *Cost-of-living adjustment.* Effective on June 1, 2006, the monthly benefit being received by all retirees, joint pensioners or beneficiaries who were receiving a benefit on October 1, 2005 shall be increased by three (3) percent for each full year that the retiree has been retired as of that date or for each full year that the retiree would have been retired as of that date in the case of a joint pensioner or beneficiary. This is a one-time increase in these benefits.
- (g) *Required distribution date.* The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70½) or the calendar year in which the member terminates employment with the city.

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2006-13, § 4, 5-16-06; Ord. No. 2009-02, § 1, 3-3-09; Ord. No. 2012-14, § 2, 8-21-12; Ord. No. 2017-02, § 3, 4-4-17)

Sec. 15-97. - Pre-retirement 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 one hundred (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 (10) 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 (10) 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 (10) 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, except that the beneficiary may elect to receive a lump sum payment pursuant to section 15-99, subsection (g).
 - (4) A spouse beneficiary, in lieu of any benefit provided for in (b)(1) or (b)(2) above, may 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 December 31 of the calendar year immediately following the calendar year in which the member died, or by a date selected pursuant to the above provisions in this section that must be on or before December 31 of the calendar year in which the member would have attained seventy and one-half (70½).

- (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 (10) 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 (10) 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 15-99, 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 section 1.401(a)(9)-9 shall determine the payment period for the calendar year benefits commence, if necessary to satisfy the regulations.

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2009-02, § 1, 3-3-09; Ord. No. 2017-02, § 4, 4-4-17)

Sec. 15-98. - 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 five (5) years credited service upon termination, the member shall be entitled to a refund of his accumulated contributions or the member may leave it deposited with the fund.
- (2) If the member has five (5) or more years of credited service upon termination, the member shall be entitled to a monthly retirement benefit, determined 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 as of the date of termination, payable to him commencing at 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. 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.

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2009-02, § 1, 3-3-09)

Sec. 15-99. - 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 (1) of the following options:
 - (1) A retirement income of a monthly amount payable to the retiree for his lifetime, with one hundred twenty (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, one hundred (100) percent, seventy-five (75) percent, sixty-six and two-thirds ($66 \frac{2}{3}$) percent or fifty (50) percent of such monthly amount payable to a joint pensioner for his 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 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) The member may elect a percentage of benefit in a lump sum as follows:
 - a. Ten (10) percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining ninety (90) percent paid under the normal form or as per (1), (2) or (3) above.
 - b. Fifteen (15) percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining eighty-five (85) percent paid under the normal form or as per (1), (2) or (3) above.
 - c. Twenty (20) percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining eighty (80) percent paid under the normal form or as per (1), (2) or (3) above.
 - d. Twenty-five (25) percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining seventy-five (75) percent paid under the normal form or as per (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 the 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 (1) 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 designated beneficiary at any time, but may only change his joint pensioner if the designated joint pensioner and the member were married at the time of the 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 retirement shall be paid as provided in section 15-99.
- (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 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 15-97.
 - (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 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 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 (1), 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 15-99.
 - (4) If a member continues beyond his normal retirement date pursuant to the provisions of section 15-96(a), and dies prior to his 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 death occurred.
 - (5) The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70½) or the calendar year in which the member terminates employment with the city.
- (f) A retiree may not change his retirement option after the date of cashing or depositing his 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 one thousand dollars (\$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.

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2006-13, § 5, 5-16-06; Ord. No. 2009-02, § 1, 3-3-09; Ord. No. 2017-02, § 5, 4-4-17)

Sec. 15-100. - 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 failed to name a beneficiary in the manner prescribed in subsection (a), 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 commuted 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.

(Ord. 2004-02, § 1, 3-16-04)

Sec. 15-101. - Claims procedures.

- (a) The board shall establish administrative claims procedures to be utilized in processing written requests ("claims"), on matters which affect the substantial rights of any person ("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 proceedings 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 subpoenas not to exceed the fees set forth in state statutes.

(Ord. 2004-02, § 1, 3-16-04)

Sec. 15-102. - 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.

(Ord. 2004-02, § 1, 3-16-04)

Sec. 15-103. - Maximum pension.

- (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), 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 (5) 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 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
- (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 five and one-half (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 thirty-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 section 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 Internal Revenue Code and applicable treasury regulations.

(e) *Other adjustments in limitations.*

- (1) In the event the member's retirement benefits become payable before age sixty-two (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), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) annual benefit beginning at age sixty-two (62).

- (2) In the event the member's benefit is based on at least fifteen (15) years of credited service as a full-time em police or fire department of the city, the adjustments provided for in (e)(1) above shall not apply.
 - (3) The reductions provided for in (e)(1) above shall not be applicable to pre-retirement death benefits paid pursuant to section 15-97.
 - (4) In the event the member's retirement benefit becomes payable after age sixty-five (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 sixty-five (65). This adjustment shall be made in accordance with regulations promulgated by the secretary of the treasury or his delegate.
- (f) *Less than ten (10) years of participation.* The maximum retirement benefits payable under this section to any member who has completed less than ten (10) 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 (10). The reduction provided by this subsection cannot reduce the maximum benefit below ten (10) percent of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement death benefits paid pursuant to section 15-97.
- (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 (\$10,000.00) limit; less than ten years of service.* Notwithstanding anything in this section 15-103, 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 15-103 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 ten thousand dollars (\$10,000.00) for the applicable limitation year or for any prior plan 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 (10) years of credited service with the city, the limit under this subsection (h) of section 15-103 shall be a reduced limit equal to ten thousand dollars (\$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 (10).
- (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 15-113 and 15-115, 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 Internal Revenue 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 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 22 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, services outside the employee's regular working hours (such as overtime or shift differential), or other similar payments, and, absent a severance from employment, the payments would have been made 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 (j)(4)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 one hundred (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).

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2009-02, § 1, 3-3-09; Ord. No. 2013-06, § 2, 6-18-13; Ord. No. 2017-02, § 6, 4-4-17)

(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 Internal Revenue Code section 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Internal Revenue 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 (3), distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that related to section 242(b)(2) of TEFRA.

(b) *Time and manner of distribution.*

- (1) *Required beginning date.* The member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date which shall not be later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70½) or the calendar year in which the member terminates employment with the city.
- (2) *Death of member before distributions begin.* If the member dies before distributions begin, the member's entire interest will be distributed, or begin to be distributed no later than as follows:
 - a. If the member's surviving spouse is the member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by a date on or before December 31 of the calendar year in which the member would have attained age 70½, if later, as the surviving spouse elects.
 - b. If the member's surviving spouse is not the member's sole designated beneficiary, then, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died.
 - c. If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.
 - d. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subsection (b)(2), other than subsection (b)(2)a, will apply as if the surviving spouse were the member. For purposes of this subsection (b)(2), 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 2(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 a company or in a single sum on or before the required beginning date, as of the first distribution calendar year will be made in accordance with this section. If the member's interest is distributed in the form of an annuity from an insurance company, distributions thereunder will be made in accordance with the requirements of the code and treasury regulations. Any part of the member's interest which is in the form of an individual described in section 414(k) of the code will be distributed in a manner satisfying the requirements of section 414(k) 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:
- The annuity distributions will be paid in periodic payments made at intervals not longer than one (1) year.
 - The member's entire interest must be distributed pursuant to section 15-96, 15-97, 15-98, or 15-99 (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 15-97) is the payment that is required for one (1) 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.*
- The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Internal Revenue 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.
 - The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in Internal Revenue 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 twenty-five (25) percent of the cost for all of the members' benefits received from the retirement system.
- (e) *Definitions.*
- 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 before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that 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 15-97.

(Ord. No. 2006-13, § 6, 5-16-06; Ord. No. 2009-02, § 1, 3-3-09; Ord. No. 2017-02, § 7, 4-4-17)

Sec. 15-105. - Miscellaneous provisions.

- (a) *Interest of members in system.* 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) *No reduction of accrued benefits.* No amendment or ordinance shall be adopted by the city council of the City of Gulfport which shall have the effect of reducing the then vested accrued benefits of members or a member's beneficiaries.
- (c) *Qualification of system.* 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 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 Internal Revenue 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 Internal Revenue 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 one hundred (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 one hundred (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 Internal Revenue 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.

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2009-02, § 1, 3-3-09)

Sec. 15-106. - Repeal or termination of system.

- (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 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 (1) 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 (one hundred (100) percent) of benefits accrued to date of repeal and the assets of the system shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled in accordance with the provisions thereof.
- (c) The following shall be the order of priority for purposes of allocating the assets of the system as of the date of repeal of this 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 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 be less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.
 - (2) If there be any asset value remaining after the apportionment under subparagraph (1), 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 subparagraph (1), 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 be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.
 - (3) If there be any asset value after the apportionments under subparagraphs (1) and (2), apportionment shall be made in respect of each member in the service of the city on such date who is not entitled to an apportionment under subparagraphs (1) and (2) in the amount equal to member's accumulated contributions, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder such latter amount shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.
 - (4) If there be any asset value remaining after the apportionments under subparagraphs (1), (2) and (3),

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

- (5) In the event that there be asset value remaining after the full apportionment specified in subparagraphs (1), (2), (3) and (4), such excess shall be returned to the city.

The allocation of the fund provided for in this subsection may, as decided by the board, be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this subsection. The fund may be distributed in one (1) 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.

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

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2009-02, § 1, 3-3-09)

Sec. 15-107. - Domestic relations orders; retiree directed payments; exemption from execution, non-assignability.

- (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 the 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.

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2009-02, § 1, 3-3-09)

Sec. 15-108. - Pension validity.

The board shall have the power to examine into the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. The board is empowered to purge the pension rolls or correct the pension amount of any person heretofore granted a pension under prior or existing law or 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. Any overpayments or under-payments shall be corrected and paid or repaid in a reasonable manner determined by the board.

(Ord. 2004-02, § 1, 3-16-04)

Sec. 15-109. - Forfeiture of pension.

- (a) Any member who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his 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, if any, as of the date of termination. Specified offenses are as follows:
 - (1) The committing, aiding or abetting of an embezzlement of public funds;
 - (2) The committing, aiding or abetting of any theft by a public officer or employee from employer;
 - (3) Bribery in connection with the employment of a public officer or employee;
 - (4) Any felony specified in F.S. 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 power, 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 F.S. § 800.04, against a victim younger than sixteen (16) years of age, or any felony defined in F.S. ch. 794, against a victim younger than eighteen (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) Conviction shall be defined as an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or a nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the senate of an impeachable offense.
- (c) Court shall be defined as any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the board shall hold a hearing on which notice shall be given to the member whose benefits are being considered for forfeiture. Said member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the member shall be afforded a full opportunity to present his case against forfeiture.
- (d) Any member who has received benefits from the system in excess of his accumulated contributions after member's rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his accumulated contributions. The board may implement all legal action necessary to recover such funds.

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2009-02, § 1, 3-3-09)

Sec. 15-110. - Indemnification.

- (a) To the extent not covered by insurance contracts in force from time to time, 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 threat of 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. The city reserves the right, in its sole discretion, to settle or not settle the claim at any time, and to appeal or to not appeal from any adverse judgment or ruling, and in either event will indemnify, defend and hold harmless any members of the board from the judgment, execution, or levy thereon.
- (b) This section shall not be construed so as to relieve any insurance company or other entity liable to defend the claim or liable for payment of the judgment or claim, from any liability, nor does this section waive any provision of law affording the city immunity from any suit in whole or part, or waive any other substantive or procedural rights the city may have.
- (c) 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.

(Ord. 2004-02, § 1, 3-16-04)

Sec. 15-111. - Direct transfers of eligible rollover distributions; elimination of mandatory distribution.

(a) *Rollover distribution.*

- (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 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 (1) 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 (10) years or more; any distribution to the extent such distribution is required under section 401 (a)(9) of the Code and the portion of any distribution that is not 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 Internal Revenue Code section 401(a) or to an annuity contract described in Internal Revenue 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; or 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 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 nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E). However, a nonspouse 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 one thousand dollars (\$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.

Sec. 15-112. - Reemployment after retirement.

- (a) Any retiree who is retired under this system, may be reemployed by any public or private employer, except the city, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this system. 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 as a general employee after that retirement and, by virtue of that reemployment, is eligible to participate in this system, shall upon being reemployed select one of the following options:
 - (1) The retiree may elect to discontinue receipt of benefits. Upon reemployment, the retiree shall be deemed to be fully vested and the additional credited service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon initial retirement shall be based upon the benefit accrual rate, average final compensation, and credited service as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average final compensation and credited service as of the date of the subsequent retirement (based only on the subsequent employment period). The amount of any death benefit received as a result of a subsequent period of employment shall be reduced by the amount of accrued benefit eligible to be paid for a prior period of employment. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the member may select a different optional form and joint pensioner applicable to the subsequent retirement benefit; or
 - (2) The retiree may continue to receive retirement benefits previously earned and not be an active member of the system. If this option is selected, the subsequent employment period shall have no effect upon average final compensation, years of credited service or retirement benefits. Regardless of any other provision of this system, any reemployed retiree electing to continue to receive retirement benefits shall not be reinstated as an active member of the system.
- (c) Any retiree who is retired under normal retirement pursuant to this system and who is reemployed by the city after that retirement and, by virtue of that reemployment is ineligible to participate in this system, shall, during the period of such reemployment, continue to receive retirement benefits previously earned during any subsequent employment period.
- (d) *After early retirement.* Any retiree who is retired under early 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. If by virtue of that reemployment, the retiree is eligible to participate in this system, the retiree shall be deemed to be fully vested and the additional credited service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon retirement shall be based upon the benefit accrual rate, average final compensation, credited service and early retirement reduction factor as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average final compensation (based only on the subsequent employment period), and credited service as of the date of subsequent retirement. The amount of any death benefit received as a result of a subsequent period of employment shall be reduced by the amount of accrued

benefit eligible to be paid for a prior period of employment. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the member may select a different optional form and joint pensioner applicable to the subsequent retirement benefit. Retirement pursuant to an early retirement incentive program shall be deemed early retirement for purposes of this section if the member was permitted to retire prior to the customary retirement date provided for in the system at the time of retirement.

- (e) *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.

(Ord. No. 2012-14, § 3, 8-21-12; Ord. No. 2017-02, § 8, 4-4-17)

Sec. 15-113. - 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 Marine or the United States Coast Guard, voluntarily or involuntarily and 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 amount so that the crediting of the purchased 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 (6) months of his request for credit, but later than the retirement date, and shall be made in one (1) lump sum payment upon receipt of which credited service shall be given.
- (4) The maximum credit under this section shall be four (4) years.
- (5) Credited service purchased pursuant to this section shall count for all purposes, except vesting.

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2009-02, § 1, 3-3-09)

Sec. 15-114. - Family and Medical Leave Act.

The fractional parts of the twelve-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 an 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 amount so that the crediting of the purchased 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) The request for credited service for FMLA leave time for the twelve-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 twelve-month period ending March 1 and shall be made in one (1) lump sum payment upon receipt of which credited service shall be issued.
- (4) Credited service purchased pursuant to this section shall count toward vesting.

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2009-02, § 1, 3-3-09)

Sec. 15-115. - 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 accumulated 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 amount so that the crediting of the purchased 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 (6) months of his request for credit, but not later than the retirement date, and shall be made in one (1) lump sum payment upon receipt of which credited service shall be given.
- (4) There shall be no maximum purchase of credited service pursuant to this section for service with the city and credited service purchased shall count for all purposes including vesting. The maximum purchase of credited service for employment with any other government employer shall be five (5) years and credited service purchased shall count for all purposes, except vesting.
- (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 employers' retirement system or plan as set forth in subsection 15-103(l)(2).

(Ord. 2004-02, § 1, 3-16-04; Ord. No. 2009-02, § 1, 3-3-09; Ord. No. 2012-14, § 4, 8-21-12; Ord. No. 2017-02, § 9, 4-4-17)