

ARTICLE IV. - POLICE OFFICERS' RETIREMENT FUND

Footnotes:

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State Law reference— *Police Officers Retirement Law, F.S. ch. 185; authority to levy tax, F.S. § 185.08.*

DIVISION 1. - GENERALLY

Sec. 15-328. - Definitions.

The following words and phrases, as used in this article, shall have the following meanings, unless a different meaning is plainly required by the context:

Actuarial equivalence or *actuarially equivalent* means that any benefit payable under the terms of this plan in a form other than the normal form of benefit shall have the same actuarial present value on the date payment commences as the normal form of benefit. For purposes of establishing the actuarial present value of any form of payment, all future payments shall be discounted for interest and mortality by using seven percent interest and the 1983 Group Annuity Mortality Table for Males, with ages set ahead five years in the cases of disability retirees. In the case of a lump sum distribution, the actuarial present value shall be determined on the basis of the same mortality rates as just described and the Pension Benefit Guaranty Corporation's interest rates for terminating single employer plans which rates are in effect:

- (1) Ninety days prior to the member's date of termination, if distribution is made within six months of such date of termination; or
- (2) Ninety days prior to the distribution date, if distribution is made later than six months after the member's date of termination.

Average final compensation means one-twelfth of the average annual compensation of the five best years of the last ten years of creditable service prior to retirement, termination, or death.

Board or board of trustees means the board of trustees of the Police Officers' Retirement Fund created in this article.

Compensation or *salary* means, for non-collectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the total cash remuneration including overtime paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or special detail work

performed on behalf of a second party employer. Overtime may be limited before July 1, 2011, in a local law plan by the plan provisions. For non-collectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term "compensation" or "salary" has the same meaning, except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

- (1) Any retirement trust fund or plan that meets the requirements of this chapter does not, solely by virtue of this subsection, reduce or diminish the monthly retirement income otherwise payable to each police officer covered by the retirement trust fund or plan.
- (2) The member's compensation or salary contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code shall be deemed to be the compensation or salary the member would receive if he were not participating in such program, and shall be treated as compensation for retirement purposes under this chapter.
- (3) For any person who first becomes a member in any plan year beginning on or after January 1, 1996, compensation for that plan year may not include any amounts in excess of the Internal Revenue Code, section 401(a)(17) limitation, as amended by the Omnibus Budget Reconciliation Act of 1993, which limitation of \$150,000.00 shall be adjusted as required by federal law for qualified government plans and further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code, section 401(a)(17)(B). For any person who first became a member before the first plan year beginning on or after January 1, 1996, the limitation on compensation may not be less than the maximum compensation amount that was allowed to be taken into account under the plan in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code, section 401(a)(17)(1991).

Creditable service or credited service means the aggregate number of years of service and fractional parts of years of service of any police officer, omitting intervening years and fractional parts of years when such police officer may not have been employed by the municipality subject to the following conditions:

- (1) A police officer may not receive credit for years or fractional parts of years of service if he has withdrawn his contributions to the fund for those years or fractional parts of years of service, unless the police officer repays into the fund the amount he has withdrawn, plus interest, as determined by the board. The member has at least 90 days after his re-employment to make repayment.
- (2) A police officer may voluntarily leave his contributions in the fund for five years after leaving the employ of the police department, pending the possibility of his being rehired by the same department, without losing credit for the time he has participated actively as a police officer. If he is not re-employed as a police officer with the same department within five years, his contributions shall be returned without interest.
- (3) Credited service under this chapter shall be provided only for service as a police officer or for military service and may not include credit for any other type of service. A municipality, by local ordinance, may provide for the purchase of credit for military service occurring before employment as well as prior service as a police officer for some other employer, as long as the police officer is not entitled to receive a benefit for such prior service. For purposes of determining credit for prior service, in addition to service as a police officer in this state, credit may be given for federal, other state, or county service as long as such service is recognized by the criminal justice standards and training commission within the department of law enforcement as provided in F.S. ch. 943, or the police officer provides proof to the board of trustees that such service is equivalent to the service required to meet the definition of a police officer.
- (4) In determining the creditable service of a police officer, credit for up to five years of the time spent in the military service of the Armed Forces of the United States shall be added to the years of actual service if:
 - a. The police officer is in the active employ of the municipality before such service and leaves a position, other than a temporary position, for the purpose of voluntary or involuntary service in the Armed Forces of the United States.
 - b. The police officer is entitled to re-employment under the Uniformed Services Employment and Re-employment Rights Act.

- c. The police officer returns to his employment as a police officer of the municipality within one year after the date of his release from such active service.

Plan year or limitation year means each 12-month period ending on September 30.

Police officer means any person who is elected, appointed, or employed full-time by a municipality, who is certified or required to be certified as a law enforcement officer in compliance with F.S. § 943.1395, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The term "police officer" includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as those terms are defined in F.S. § 943.10. For the purposes of this chapter only, the term also includes a public safety officer who is responsible for performing both police and fire services. Any plan may provide that the police chief shall have an option to participate in that plan.

State Law reference— Similar definition, F.S. § 185.02(16).

Police officers' retirement fund, retirement fund or fund means a special fund created exclusively for the purposes provided in this article.

(Code 1975, § 17-34; Code 1992, § 15-216; Ord. No. 34-93, §§ 1, 2, 5-18-1993; Ord. No. 34-00, § 1, 6-20-2000; Ord. No. 49-03, § 3, 8-19-2003; Ord. No. 36-06, § 1, 7-5-2006; Ord. No. 43-10, § 1, 8-17-2010; Ord. No. 45-10, § 1, 8-17-2010; Ord. No. 46-11, § 2, 3-6-2012; Ord. No. 19-14, § 1, 4-22-2014; Ord. No. 30-14, § 1, 7-1-2014)

State Law reference— Similar definitions, F.S. § 185.02.

Sec. 15-329. - Creation and maintenance generally.

The police officer's retirement fund shall be created and maintained in the following manner:

- (1) By the net proceeds to be derived as follows: the base year as defined in F.S. ch. 185 for the determination of the use of insurance premium tax rebates for extra benefits shall be the level received in calendar year 2011 (\$611,245.00) when the stop/start occurs. Any sums in excess of the

actuarially calculated amount in the year in which the stop/start occurs and all years thereafter shall be reserved for distribution to individual accounts of members as determined by the active membership of the fund as set forth in the collective bargaining agreement between the town and the union and administered by the board of trustees. The board, by administrative rule, shall establish share accounts for members, in a manner approved by a vote of the active members of the fund as set forth by the collective bargaining agreement between the town and the union.

- (2) By 7.56 percent of the salary of each full-time police officer duly appointed and enrolled as a member of the police department of the town, which shall be deducted by the town and paid over to the board of trustees, and that all such required contributions shall continue to be made by the employee until such time as the employee actually retires or enters the DROP program. No police officer shall have any right to any money so paid into the fund except as provided in this article. Effective on the first full pay period on or after October 1, 2012, the amount of employee contribution shall be 8.78 percent of the salary. Effective on the first full pay period on or after October 1, 2014, the amount of employee contribution shall be 9.25 percent of salary. Effective on the first full pay period on or after October 1, 2015, the employee contribution shall be ten percent of salary. Notwithstanding any other provision of this section, for 2012 only, there shall be an additional employee contribution of 30 percent of payroll, but not to exceed a dollar value of \$2,169,270.00. This additional employee contribution represents the accumulated increases in state moneys, and these accumulated increases in state moneys that are to be used to reduce the employees' one-time increase in contributions. The one-time increase in 2012 of the employee contributions shall be up to 30 percent, but not more than the percentage necessary to fully utilize the amount of accumulated increases in state moneys of \$2,169,270.00 needed in order to maintain or reinstate the employee contribution of 8.78 percent until October 1, 2014. The \$2,169,270.00 shall not be refundable as employee contributions.
- (3) By payment of the town or other sources of a sum equal to the normal cost and the amount required to fund over a 40-year basis any actuarial deficiency shown by a quinquennial actuarial valuation.

- (4) By all gifts, bequests and devises, when donated for the fund.
- (5) By all accretions to the fund by way of interest on bank deposits or otherwise.
- (6) By all other sources of income authorized by law for the augmentation of the police officers' retirement fund.

(Code 1975, § 17-35; Code 1992, § 15-217; Ord. No. 62-88, § 1, 11-1-1988; Ord. No. 9-95, § 1, 3-21-1995; Ord. No. 69-00, § 1, 2-20-2001; Ord. No. 19-01, § 1, 5-15-2001; Ord. No. 46-11, § 3, 3-6-2012; Ord. No. 30-14, § 2, 7-1-2014)

Sec. 15-330. - Notice of non-participation.

- (a) Any person who enters the employment of the town as a full-time police officer after the effective date of the plan provided for in the ordinance from which this article is derived, but prior to April 1, 1995, and who does not desire to accept the provisions of the plan, shall, within 12 months after employment, notify the officer or board paying the salary of such police officer in writing to that effect; and thence forward all police officers who have given such notice shall be barred from participating in the police officers' retirement fund. Notwithstanding the preceding sentence, any police officer who has previously declined membership in the retirement plan and who now desires to enter the plan may do so by giving written notice thereof to the retirement board on or before March 31, 1995.
- (b) Any person who enters the employment of the town as a full-time police officer on or after April 1, 1995, shall become a member of the retirement plan and shall remain a member as a condition of continued employment. Notwithstanding the foregoing, the chief of police, as an executive-level police department employee, shall have the option to opt out of the police pension plan by giving written notice of the decision to opt out to the board. The board may, pursuant to administrative rule, prescribe a medical exam for incoming members to determine the existence of preexisting medical conditions, which preexisting conditions shall not constitute a basis for a service-connected disability retirement. No person shall be excluded from the plan because of any preexisting medical condition.

(Code 1975, § 17-36; Code 1992, § 15-218; Ord. No. 9-95, § 2, 3-21-1995; Ord. No. 40-06, § 1, 7-18-2006; Ord. No. 12-09, § 2, 4-7-2009; Ord. No. 25-09, § 2, 7-21-2009)

Secs. 15-331—15-348. - Reserved.

DIVISION 2. - BOARD OF TRUSTEES

Footnotes:

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State Law reference— *Board of trustees, F.S. § 185.05.*

Sec. 15-349. - Composition; terms of office.

There is hereby created a board of trustees of the police officers' retirement fund, which board shall consist of five members determined as follows:

- (1) Two members shall be legal residents of the town and shall be appointed by the town council.
- (2) Two members shall be police officers and shall be elected by a majority of the police officers who are members of the retirement plan.
- (3) The fifth member shall be chosen by a majority of the previous four members. Such person's name shall be submitted to the town council who, as a ministerial duty, shall thereupon appoint such person as the fifth member of the board of trustees.

The fifth member shall have the same rights as each of the other four members appointed or elected, shall serve as trustee for a period of two years, and may succeed himself in office. Each resident member shall serve as trustee for a period of two years, unless sooner replaced by the legislative body at whose pleasure the member serves, and may succeed himself as a trustee. Each police officer member shall serve as trustee for a period of two years, unless he sooner leaves the employment of the town as a police officer, whereupon the town council shall choose his successor in the same manner as an original appointment. Each police officer may succeed himself in office.

(Code 1975, § 17-37(a)—(c); Code 1992, § 15-246; Ord. No. 36-87, § 1, 8-4-1987)

State Law reference— Similar provisions, F.S. § 185.05(1)(a).

Sec. 15-350. - Meetings; status.

The board of trustees shall meet at least quarterly each year. Each board of trustees 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.

(Code 1975, § 17-38(d); Code 1992, § 15-247; Ord. No. 36-87, § 1, 8-4-1987)

State Law reference— Similar provisions, F.S. § 185.05(3)(4).

Sec. 15-351. - Organization; compensation.

The trustees shall, by majority vote, elect from its members a chair and secretary. The secretary of the board of trustees 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.

(Code 1975, § 17-38(e); Code 1992, § 15-248; Ord. No. 36-87, § 1, 8-4-1987)

State Law reference— Similar provisions, F.S. § 185.05(2).

Sec. 15-352. - Quorum for action; conflicting interests; discrimination against participants.

Any and all acts and decisions of the board of trustees shall be by at least three of its members. No trustee shall take part in any action in connection with his own participation in the fund, and no unfair discrimination shall be shown to any individual participating in the fund.

(Code 1975, § 17-38; Code 1992, § 15-249)

Sec. 15-353. - General duties of board.

The general administration and the responsibility for the proper operation of the police officers' retirement fund are vested in the board of trustees.

(Code 1975, § 17-39; Code 1992, § 15-250)

Sec. 15-354. - Board's records.

The board of trustees shall keep and maintain a full and complete permanent record of all accounts, receipts, disbursements, deposits and all other official actions and proceedings of the board. These records shall be available to all members participating in the fund.

(Code 1975, § 17-40; Code 1992, § 15-251)

Sec. 15-355. - Investments generally.

- (a) The board of trustees, subject to the fiduciary standards in F.S. §§ 112.656, 112.661, and 518.11 and the Code of Ethics in F.S. §§ 112.311 through 112.3187, may:
- (1) Invest and reinvest the assets of the retirement trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the municipal police officers' retirement trust fund are entitled under this chapter, and pay the initial and subsequent premiums thereon.
 - (2) Invest and reinvest the assets of the retirement trust fund in:
 - a. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings and loan association insured by the Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.
 - b. Obligations of the United States or obligations guaranteed as to principal and interest by the United States.
 - c. Bonds issued by the State of Israel.
 - d. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided:
 1. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service; and
 2. The board of trustees may not invest more than five percent of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent of the outstanding capital stock of the company, or the aggregate of its investments under this subsection, at cost, exceed 50 percent of the fund's assets.

This subsection (a)(2) applies to all boards of trustees and participants. However, if a municipality has a duly enacted pension plan pursuant to, and in compliance with, F.S. § 185.35 and the trustees desire to vary the investment procedures, the trustees of such plan shall request a variance of the investment procedures as outlined herein only through a municipal ordinance or special act of the legislature; if a special act, or a municipality by ordinance adopted before July 1, 1998, permits a greater than 50 percent equity investment, such municipality is not required to comply with the aggregate equity investment provisions of this subsection (a)(2). Notwithstanding any other provision of law, this section may not be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this subsection (a)(2). Notwithstanding any other provision of law, the board of trustees may invest up to 25 percent of plan assets in foreign securities on a market-value basis. The investment cap on foreign securities may not be revised, amended, repealed, or increased except as provided by general law.

- (3) Issue drafts upon the municipal police officers' retirement trust fund pursuant to this division and rules prescribed by the board of trustees. All such drafts shall be consecutively numbered, be signed by the chair and secretary or by two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees under this subsection, and state upon their faces the purposes for which the drafts are drawn. The town treasurer or other depository shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money may otherwise be drawn from the fund.
- (4) Finally decide all claims to relief under the board's rules and regulations and pursuant to the provisions of this division.
- (5) Convert into cash any securities of the fund.
- (6) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

(b)

Any and all acts and decisions shall be effectuated by vote of a majority of the members of the board; however, no trustee shall take part in any action in connection with his own participation in the fund, and no unfair discrimination shall be shown to any individual employee participating in the fund.

- (c) The secretary of the board of trustees shall keep a record of all persons receiving retirement payments under the provisions of this chapter, in which shall be noted the time when the pension is allowed and when the pension shall cease to be paid. In this record, the secretary shall keep a list of each police officer employed by the municipality. The record shall show the name, address, and time of employment of such police officer and when he ceases to be employed by the municipality.
- (d) The sole and exclusive administration of, and the responsibilities for, the proper operation of the retirement trust fund, and for making effective the provisions of this chapter, are vested in the board of trustees; however, nothing herein shall empower a board of trustees to amend the provisions of a retirement plan without the approval of the municipality. The board of trustees shall keep in convenient form such data as shall be necessary for an actuarial valuation of the retirement trust fund and for checking the actual experience of the fund.
- (e) Independent evaluation of money manager.
 - (1) At least once every three years, the board of trustees shall retain a professionally qualified independent consultant who shall evaluate the performance of any existing professional money manager and shall make recommendations to the board of trustees regarding the selection of money managers for the next investment term. These recommendations shall be considered by the board of trustees at its next regularly scheduled meeting. The date, time, place, and subject of this meeting shall be advertised in the same manner as for any meeting of the board.
 - (2) For the purpose of this subsection, the term "professionally qualified independent consultant" means a consultant who, based on education and experience, is professionally qualified to evaluate the performance of professional money managers, and who, at a minimum:
 - a. Provides his services on a flat fee basis.
 - b. Is not associated in any manner with the money manager for the pension fund.
 - c.

Makes calculations according to the American Banking Institute method of calculating time-weighted rates of return. All calculations must be made net of fees.

d. Has three or more years of experience working in the public sector.

(f) To assist the board in meeting its responsibilities under this chapter, the board, if it so elects, may:

- (1) Employ independent legal counsel at the pension fund's expense.
- (2) Employ an independent enrolled actuary, as defined in F.S. § 185.02, at the pension fund's expense.
- (3) Employ such independent professional, technical, or other advisers as it deems necessary at the pension fund's expense.

If the board chooses to use the municipality's or special district's legal counsel or actuary, or chooses to use any of the municipality's other professional, technical, or other advisers, it must do so only under terms and conditions acceptable to the board.

(g) Notwithstanding subsection (a)(2) of this section and as provided in F.S. § 215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in that company beginning January 1, 2010. The divestiture of any such security must be completed by September 10, 2010. The board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by F.S. § 215.473, and the manner of the disposition, if any, is reasonable as to the means chosen. For the purposes of effecting compliance with that section, the pension fund shall designate terror-free plans that allocate their funds among securities not subject to divestiture. No person may bring any civil, criminal, or administrative action against the board of trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this subsection.

(Code 1975, § 17-41; Code 1992, § 15-252; Ord. No. 9-95, § 3, 3-21-1995; Ord. No. 14-99, § 1, 3-16-1999; Ord. No. 43-10, § 2, 8-17-2010; Ord. No. 20-11, § 1, 5-3-2011; Ord. No. 51-13, § 1, 1-7-2014)

State Law reference— Similar provisions, F.S. § 185.06.

Sec. 15-356. - Purchase of annuity and life insurance contracts.

As provided in F.S. § 185.061, the board of trustees may invest and reinvest the assets of the retirement fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all the participants in the police officers' retirement fund shall be entitled under the provisions stated in this article and pay the initial and subsequent premiums thereon.

(Code 1975, § 17-42; Code 1992, § 15-253)

State Law reference— Use of annuity or insurance policies, F.S. § 185.061.

Sec. 15-357. - Conversion of securities into cash.

The board of trustees may convert into cash any securities of the fund.

(Code 1975, § 17-43; Code 1992, § 15-254)

Sec. 15-358. - Issuance, numbering, contents, etc., of drafts.

The board of trustees may issue drafts upon the police officers' retirement fund pursuant to the rules and regulations prescribed by the board of trustees. All such drafts shall be consecutively numbered and signed by the chair and the secretary, and shall state upon their face the purposes for which the drafts were drawn. The finance director or other depository shall retain such drafts when paid as permanent vouchers for disbursements made, and no money shall otherwise be drawn from the fund.

(Code 1975, § 17-44; Code 1992, § 15-255)

Sec. 15-359. - Change in assumed rate of return; adjustment to employee contribution.

In the event the pension board changes the assumed rate of return, the town council may elect to make a corresponding adjustment to the employee contribution in order to share the increased cost between the town and the employee.

(Code 1992, § 15-256; Ord. No. 69-00, § 2, 2-20-2001)

Secs. 15-360—15-376. - Reserved.

DIVISION 3. - BENEFITS

Sec. 15-377. - Retirement requirements.

Any police officer of the town who is participating in the police officers' retirement fund and has ten years credited service and is otherwise eligible to receive benefits thereunder, shall be eligible for normal retirement benefits. In such event, payment of retirement income will be governed by the following provisions:

- (1) The normal retirement date of each police officer will be as follows, whichever comes first:
 - a. *Option 1.* The first day of the month coincident with or next following the date on which the officer has attained the age of 60 years.
 - b. *Option 2.* The first day of the month coincident with or next following the date when the total of the officer's age, computed in terms of full months, plus the officer's credited service, computed in terms of full months, equals 780 months.
 - c. *Option 3.* The first day of the month coincident with or next following the date on which the police officer has completed ten or more years of creditable service and attained the age of 55 years.
 - d. *Option 4.* The first day of the month coincident with or next following the date on which the police officer has completed 25 years of credible service and attained the age of 52 years.

Each participant's accrued pension benefit shall be non-forfeitable, i.e., 100 percent vested upon attainment of his normal retirement date.

- (2) The amount of monthly retirement income payable to a police officer who retires on or after his normal retirement date shall be an amount equal to the number of his years of credited service multiplied by three percent of his average monthly salary, regardless of when the years of service were

rendered. Average monthly salary means one-twelfth of the average annual compensation of the five best years of the last ten years of creditable service prior to retirement, termination, or death.

- (3) The monthly retirement income payable in the event of normal retirement will be payable on the first day of each month. The first payment will be made on the police officers' normal retirement date, or on the first day of the month coincident with or next following his actual retirement, if later. The last payment will be the payment due next following the police officers' death, except that in the event the police officer dies after his retirement but before he has received retirement benefits for a period of ten years, the same monthly benefit will be paid to the beneficiary as designated by the police officer, for the balance of such ten-year period. If no beneficiary is so designated by the police officer, the same monthly benefit will be paid to the estate of the police officer. If a police officer continues in the service of the town beyond his normal retirement date and dies prior to his actual date of retirement, monthly retirement payments will be made to a beneficiary designated by the police officer, as if the police officer had retired on the date on which his death occurred, or, if no beneficiary is designated, to the estate of the police officer.

(Code 1975, § 17-45; Code 1992, § 15-271; Ord. No. 23-86, § 1, 6-17-1986; Ord. No. 4-91, § 1, 1-15-1991; Ord. No. 34-93, §§ 2, 3, 5-18-1993; Ord. No. 9-95, § 4, 3-21-1995; Ord. No. 34-00, §§ 2, 3, 6-20-2000; Ord. No. 69-00, § 3, 2-20-2001)

State Law reference— Similar provisions, F.S. § 185.16.

Sec. 15-378. - Supplemental retirement benefits.

All members of the plan not in DROP shall receive, in addition to the benefits set forth in section 15-377, a \$100.00 per month supplemental retirement benefit. In addition to the \$100.00 per month supplemental benefit which is available for healthcare premiums, all members of the plan who retire on or after October 1, 2001 shall receive an additional supplemental retirement benefit, which shall also be available for healthcare premiums. This additional supplemental retirement benefit shall be based on service credit at retirement. The benefit shall be \$5.00 for each year of credited service, with a minimum monthly additional supplemental retirement benefit of an additional \$30.00 per month and a maximum additional supplemental retirement

benefit of an additional \$150.00 per month. The benefits under this section shall be paid to all active members of the plan not in DROP commencing the first month of their retirement and to all deferred vested members upon their receipt of retirement benefits, and to all other retirees and survivors of the plan. Members in DROP are not eligible to receive supplemental retirement benefits until their DROP participation ends.

(Code 1992, § 15-271.1; Ord. No. 9-95, § 5, 3-21-1995; Ord. No. 41-02, § 1, 6-4-2002; Ord. No. 52-03, § 1, 8-19-2003)

Sec. 15-379. - Early retirement.

Early retirement under the plan is retirement from the service of the town, with the consent of the town, as of the first day of any calendar month which is prior to the police officer's normal retirement date but subsequent to the date as of which the police officer has both attained the age of 50 years and completed ten years of contributing service. In the event of early retirement, payment of retirement income will be governed as follows:

- (1) The early retirement date shall be the first day of the calendar month coincident with or immediately following the date a police officer retires from the service of the town under the provisions of this section prior to his normal retirement date.
- (2) The monthly amount of retirement income payable to a police officer who retires prior to his normal retirement date under the provisions of this section shall be an amount computed as described in section 15-377(2), taking into account his credited service to the date of actual retirement and his final monthly compensation as of such date, such amount of retirement income to be actuarially reduced to take into account the police officer's younger age and the earlier commencement of retirement income payments. In no event shall the early retirement reduction exceed three percent for each year by which the member's age at retirement preceded the member's normal retirement age, as provided in section 15-377(1).
- (3) The retirement income payable in the event of early retirement will be payable on the first day of each month. The first payment will be made on the police officer's early retirement date and the last payment will be the payment due next preceding the retired police officer's death; except that, in the event the police officer dies before receiving retirement benefits for a

period of ten years, the same monthly benefit will be paid to the beneficiary designated by the police officer for the balance of such ten-year period, or, if no designated beneficiary is surviving, the same monthly benefit for the balance of such ten-year period shall be payable as provided in F.S. § 185.162.

(Code 1975, § 17-46; Code 1992, § 15-272; Ord. No. 36-06, § 2, 7-5-2006)

State Law reference— Similar provisions, F.S. § 185.16(4).

Sec. 15-380. - Internal revenue code compliance.

(a) *Maximum amount of retirement income.*

- (1) The limitations of this subsection shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein, and are intended to comply with the requirements of the Pension Protection Act of 2006 and shall be construed in accordance with said Act and guidance issued thereunder. The provisions of this subsection shall supersede any provision of the plan to the extent such provision is inconsistent with this subsection. The annual pension, as defined in subsection (a)(2) of this section, otherwise payable to a member at any time, shall not exceed the dollar limitation for the member multiplied by a fraction whose value cannot exceed one, the numerator of which is the member's number of years (or part thereof, but not less than one year) of service with the town and the denominator which is ten. For this purpose, no more than one year of service may be credited for any plan year. If the benefit the member would otherwise accrue in a limitation year would produce an annual pension in excess of the dollar limitation, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the dollar limitation.
- (2) The term "annual pension" means the sum of all annual benefits, payable in the form of a straight life annuity. Benefits payable in any other form shall be adjusted to the larger of:
 - a. For limitation years beginning on or after July 1, 2007:
 1. The straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit; or
 - 2.

The actuarially equivalent straight life annuity commencing at the same annuity starting date, computed using a five percent interest rate and the mortality basis prescribed in Internal Revenue Code, section 415(b)(2)(E)(v).

b. For limitation years beginning before July 1, 2007:

1. The actuarially equivalent straight life annuity commencing at the same annuity starting date, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan for the particular form of payment; or
2. The actuarially equivalent straight life annuity commencing at the same annuity starting date, computed using a five percent interest rate and the mortality basis prescribed in Internal Revenue Code, section 415(b)(2)(E)(v).

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, pre-retirement incidental death benefits, and post-retirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this subsection (a), and the amount payable under the form of benefit in any limitation year shall not exceed the limits of this subsection (a) applicable at the annuity starting date, as increased in subsequent years pursuant to section 415(d) of the Internal Revenue Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

- (3) The term "dollar limitation" means, effective for the first limitation year beginning after January 1, 2001, \$160,000.00, automatically adjusted under Internal Revenue Code, section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a

member's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The dollar limitation shall be further adjusted based on the age of the member when the benefit begins as follows:

- a. For annuity starting dates in limitation years beginning on or after July 1, 2007.
 1. If the annuity starting date for the member's benefit is after age 65.
 - (i) If the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the dollar limitation at the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation with actuarial equivalence computed using a five percent interest rate assumption and the mortality basis prescribed in Internal Revenue Code, section 415(b)(2)(E)(v) for that annuity starting date (and expressing the member's age based on completed calendar months as of the annuity starting date).
 - (ii) If the plan does have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the dollar limitation at the member's annuity starting date is the lesser of: (A) the dollar limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of this subsection (a); and (B) the limitation determined under subsection (a)(3)a.1.(i) of this section. For this purpose, the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date is the annual amount of such annuity payable to the member, computed disregarding the member's accruals after

age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the plan at age 65 is the annual amount of such annuity that would be payable under the plan to a hypothetical member who is age 65 and has the same accrued benefit as the member.

2. Except with respect to a member who is a "qualified member" as defined in section 415(b)(2)(H) of the Internal Revenue Code, for benefits (except survivor and disability benefits as defined in section 415(b)(2)(I) of the Internal Revenue Code), if the annuity starting date for the member's benefit is before age 62.
 - (i) If the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the dollar limitation at the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation with actuarial equivalences computed using a five percent interest rate assumption and the mortality basis prescribed in Internal Revenue Code, section 415(b)(2)(E)(v) for that annuity starting date (and expressing the member's age based on completed calendar months as of the annuity starting date).
 - (ii) If the plan does have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the dollar limitation at the member's annuity starting date is the lesser of: (A) the dollar limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity

under the plan at age 62, both determined without applying the limitations of this subsection (a); and (B) the limitation determined under subsection (a)(3)a.2.(i) of this section.

- b. For annuity starting dates in limitation years beginning before July 1, 2007.

<i>Age as of Annuity Starting Date:</i>	<i>Adjustment of Dollar Limitation:</i>
Over 65	The smaller of:
	(a) The actuarial equivalent of the limitation for age 65, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan; or
	(b) The actuarial equivalent of the limitation for age 65, computed using a five percent interest rate and the mortality basis prescribed in Internal Revenue Code, section 415(b)(2)(E)(v).
	Any increase in the dollar limitation determined in accordance with this paragraph shall not reflect a mortality decrement between age 65 and the age at which benefits commence, if benefits are not forfeited upon the death of the member. If any benefits are forfeited upon death, the full mortality decrement is taken into account.
62 to 65	No adjustment.
Less than 62	The smaller of:
	(a) The actuarial equivalent of the limitation for age 62, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan; or
	(b) The actuarial equivalent of the limitation for age 62, computed using a five percent interest rate and the mortality basis prescribed in Internal Revenue Code, section 415(b)(2)(E)(v).

	This adjustment shall not apply to any qualified member as defined in section 415(b)(2)(H), nor to survivor and disability benefits as defined in section 415(b)(2)(I) of the Internal Revenue Code.
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- (4) With respect to subsections (a)(3)a.1.(i), (3)a.2.(i) and (3)b. of this section, no adjustment shall be made to the dollar limitation to reflect the probability of a member's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the member prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the member's death if the plan does not charge members for providing a qualified pre-retirement survivor annuity, as defined in Internal Revenue Code, section 417(c), upon the member's death.
- (5) The term "limitation year" means the 12-month period which is used for application of the limitations under Internal Revenue Code, section 415, and shall be the calendar year.
- (6) The limitations set forth in this subsection (a) shall not apply if the annual pension does not exceed \$10,000.00, provided the member has never participated in a defined contribution plan maintained by the town.
- (7) Cost-of-living adjustments in the dollar limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under section 415(d) of the Internal Revenue Code.
- (8) In the case of a member who has fewer than ten years of participation in the plan, the dollar limitation set forth in subsection (a)(3) of this section shall be multiplied by a fraction, the numerator of which is the number of years (or part thereof) of participation in the plan, and the denominator of which is ten.
- (9) Any portion of a member's benefit that is attributable to mandatory member contributions (unless picked up by the town) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under section 415 of the Internal Revenue Code.
- (10)

Should any member participate in more than one defined benefit plan maintained by the town, in any case in which the member's benefits under all such defined benefit plans (determined as of the same age) would exceed the dollar limitation applicable at that age, the accrual of the member's benefit under this plan shall be reduced so that the member's combined benefits will equal the dollar limitation.

- (11) For a member who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to section 1.401(a)-20, Q&A 10(d), and with regard to section 1.415(b)(1)(b)(1)(iii)(B) and (C) of the Income Tax Regulations.
- (12) The determination of the annual pension under subsection (a)(2) of this section shall take into account (in the manner prescribed by the regulations under section 415 of the Internal Revenue Code) social security supplements described in section 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant section 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.
- (13) The above limitations are intended to comply with the provisions of section 415 of the Internal Revenue Code, as amended, so that the maximum benefits provided by plans of the town shall be exactly equal to the maximum amounts allowed under section 415 of the Internal Revenue Code and regulations thereunder. If there is any discrepancy between the provisions of this subsection (a) and the provisions of section 415 of the Internal Revenue Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of section 415 of the Internal Revenue Code. The value of any benefits forfeited as a result of the application of this subsection (a) shall be used to decrease future employer contributions.
- (14)

For the purpose of applying the limitations set forth in sections 401(a)(17) and 415 of the Internal Revenue Code, compensation shall include any elective deferral (as defined in Code section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in this subsection (a), compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code. For limitation years on or after July 1, 2007, compensation shall include payments that otherwise qualify as compensation and that are made by the later of: (a) 2½ months after severance from employment with the employer, and (b) the end of the limitation year that includes the date of severance. With respect to plan years beginning on or after December 31, 2008, compensation shall also include differential wage payments within the meaning of section 3401(h)(2) of the Internal Revenue Code.

- (b) *Required beginning date.* Notwithstanding any other provision of the plan, payment of a participant's retirement benefits under the plan shall commence not later than the participant's required beginning date, which is defined as the later of:
 - (1) April 1 of the calendar year that next follows the calendar year in which the participant attains or will attain the age of 70½ years; or
 - (2) April 1 of the calendar year that next follows the calendar year in which the participant retires.
- (c) *Required minimum distributions.*
 - (1) Required beginning date. The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date as defined in subsection (b) of this section.
 - (2) Death of participant before distributions begin.
 - a. If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

1. If the participant's surviving spouse is the participant'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 participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.
 2. If the participant's surviving spouse is not the participant'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 participant died.
 3. If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
- b. The participant's entire interest shall be distributed as follows:
1. *Participant survived by designated beneficiary.* If the participant dies before the date distribution of his interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in subsection (c)(2)a of this section, over the life of the designated beneficiary or over a period certain not exceeding:
 - (i) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or
 - (ii) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.
 - 2.

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

- c. Death of surviving spouse before distributions to surviving spouse begin. In any case in which (i) the participant dies before the date distribution of his interest begins, (ii) the participant's surviving spouse is the participant's sole designated beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, subsections (c)(2)a and b of this section shall apply as though the surviving spouse were the participant.
- (3) Requirements for annuity distributions that commence during participant's lifetime.
- a. *Joint life annuities where the beneficiary is not the participant's spouse.* If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a non-spousal beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6 of the treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a non-spousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.
 - b. *Period certain annuities.* Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform

Lifetime Table set forth in section 1.401(a)(9)-9 of the treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the treasury regulations plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this subsection (c)(3)b, or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

- (4) Form of distribution. Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year, distributions will be made in accordance with subsections (c)(4)a, (c)(4)b and (c)(4)c of this section. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Internal Revenue Code and the treasury regulations. Any part of the participant's interest which is in the form of an individual account described in section 414(k) of the Internal Revenue Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the Internal Revenue Code and the treasury regulations that apply to individual accounts.

- a. *General annuity requirements.* If the participant's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:

- 1. The annuity distributions will be paid in periodic payments made at intervals not longer than one year;

2. The distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in subsections (c)(2) or (c)(3) of this section, whichever is applicable, of this section;
 3. Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
 4. Payments will either be non-increasing or increase only as follows:
 - (i) By an annual percentage increase that does not exceed the annual percentage increase in a cost of living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
 - (ii) To the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p) of the Internal Revenue Code;
 - (iii) To provide cash refunds of employee contributions upon the participant's death; or
 - (iv) To pay increased benefits that result from a plan amendment.
- b. *Amount required to be distributed by required beginning date.* The amount that must be distributed on or before the participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under subsection (c)(2)a.1 or (c)(2)a.2 of this section, whichever is applicable) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval, even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually or annually. All of the participant'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 participant's required beginning date.

c. *Additional accruals after first distribution calendar year.* Any additional benefits accruing to the participant 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.

(5) For purposes of this subsection (c), distributions are considered to begin on the participant's required beginning date. If annuity payments irrevocably commence to the participant (or to the participant's surviving spouse) before the participant's required beginning date (or, if to the participant's surviving spouse, before the date distributions are required to begin in accordance with subsection (c)(2)a of this section), the date distributions are considered to begin is the date distributions actually commence.

(6) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Designated beneficiary means the individual who is designated as the beneficiary under the plan and is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-4 of the treasury regulations.

Distribution calendar year means a calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to subsection (c)(2) of this section.

Life expectancy means life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the treasury regulations.

(d) *Eligible rollover distributions.*

(1)

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

(2) Definitions. The following definitions apply to this section:

Eligible retirement plan means an individual retirement account described in section 408(a) of the Internal Revenue Code, an individual retirement annuity described in section 408(b) of the Internal Revenue Code, an annuity plan described in section 403(a) of the Internal Revenue Code, an annuity contract described in section 403(b) of the Internal Revenue Code, a qualified trust described in section 401(a) of the Internal Revenue Code, an eligible plan under section 457(b) of the Internal Revenue 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 and which agrees to separately account for amounts transferred into such plan from this plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of Internal Revenue Code, section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.

Eligible rollover distribution means 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:

1. Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;
2. Any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code;
3. The portion of any distribution which is made upon hardship of the member; and
4. The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities),

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

Direct rollover means a payment by the plan to the eligible retirement plan specified by the distributee.

Distributee means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code, are distributees with regard to the interest of the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated beneficiary as defined in section 401(a)(9)(E) of the Internal Revenue Code who is not the surviving spouse and who elects a direct rollover to an individual retirement account described in section 408(a) of the Internal Revenue Code or an individual retirement annuity described in section 408(b) of the Internal Revenue Code shall be considered a distributee.

(e) *Maximum amount of mandatory distribution.* Notwithstanding any other provision of this plan, the maximum amount of any mandatory distribution, as defined in section 401(a)(31) of the Internal Revenue Code, payable under the plan shall be \$1,000.00.

(f) *Compensation limitations under section 401(a)(17).*

(1) In addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the plan to the contrary, the annual compensation of each participant taken into account under the plan shall not exceed the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) annual compensation limit for limitation years beginning after December 31,

2001. The EGTRRA annual compensation limit is \$200,000.00, as adjusted by the commissioner for increases in the cost of living in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost of living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator, which is 12.

(2) Any reference in the plan to the limitation under section 401(a)(17) of the Internal Revenue Code means the EGTRRA annual compensation limit set forth in this provision.

(g) *Fund used for exclusive benefit.* At no time prior to the satisfaction of all liabilities under the plan with respect to 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.

(h) *Other provisions apply.* The provisions of the Heroes Earnings Assistance and Relief Tax (HEART) Act shall apply to the fund.

(Code 1992, § 15-272.1; Ord. No. 34-93, § 5, 5-18-1993; Ord. No. 21-94, § 1, 1-18-1994; Ord. No. 49-03, § 1, 8-19-2003; Ord. No. 45-10, § 2, 8-17-2010; Ord. No. 46-11, § 4, 3-6-2012; Ord. No. 19-14, §§ 2—4, 4-22-2014; Ord. No. 30-14, § 3, 7-1-2014; Ord. No. 13-15, § 1, 5-5-2015)

Sec. 15-381. - Optional forms of retirement income.

(a) In lieu of the amount and form of retirement income payable in the event of normal or disability retirement, a police officer, upon written request to the board of trustees, and subject to the approval of the board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

(1) *Option 1.* A retirement income of a larger amount, payable to the police officer for his lifetime only.

(2)

Option 2. A retirement income of a reduced monthly amount, payable to the police officer during the joint lifetime of the police officer and a joint pensioner designated by the police officer, and following the death of either of them 100 percent, 66 2/3 percent or 50 percent of such monthly amount payable to the survivor for the lifetime of the survivor.

- (3) *Option 3.* Joint and survivor option. A reduced optional retirement income continuing during the lifetime of the retired participant, and further continuing after his death at 50 percent, 75 percent or 100 percent (according to the election of the participant) of the reduced optional retirement income, to his designated joint annuitant during the lifetime of such joint annuitant after the death of the participant.
 - (4) *Pop-up option.* This option is available only to those persons who have chosen option 3, joint and survivor option. This option provides the original life annuity amount to the retiree if the beneficiary predeceases the retiree.
 - (5) *Other options.* Such other amount and form of retirement payments or benefit as, in the opinion of the board of trustees, will best meet the circumstances of the retiring police officer.
- (b) Any police officer electing either option of this section will designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the plan in the event of his death, and will have the power to change such designation from time to time; but any such change will be deemed a new election and will be subject to approval by the board. If a police officer has elected an option with a joint pensioner or beneficiary and his retirement income benefits have commenced, he may thereafter change the designated joint pensioner or beneficiary up to two times without the approval of the board or the current designated pensioner. The police officer need not provide proof of the good health of the designated beneficiary being removed, and the designated beneficiary being removed need not be living. The board of trustees may request such evidence of good health of the joint pensioner that is being removed. The amount of the retirement income payable to the police officer upon the designation of a new joint pensioner shall be actuarially redetermined taking into the account the ages of the former joint pensioner, the new joint pensioner, and the police officer.

(Code 1975, § 17-47; Code 1992, § 15-273; Ord. No. 34-93, § 6, 5-18-1993; Ord. No. 21-94, § 2, 1-18-1994; Ord. No. 34-00, §§ 4, 5, 6-20-2000; Ord. No. 50-03, § 1, 8-19-2003; Ord. No. 43-10, § 3, 8-17-2010; Ord. No. 45-10, § 3, 8-17-2010)

State Law reference— Similar provisions, F.S. § 185.161.

Sec. 15-382. - Disability retirement.

Any police officer of the town who is participating in the police officers' retirement fund and is eligible to benefits thereunder may retire from the services of the town under the plan provided for in this article if, prior to his normal retirement date, he becomes totally and permanently disabled as a result of injuries or disease. Such retirement shall be referred to herein as disability retirement. In such event, payment of retirement income will be governed by the following provisions:

- (1) A police officer will be considered totally disabled if, in the opinion of the board of trustees, he is wholly prevented from rendering useful and efficient service as a police officer; and a police officer will be considered permanently disabled if, in the opinion of the board of trustees, such police officer is likely to remain so disabled continuously and/or permanently.
- (2) No police officer shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, to be selected by the board of trustees for that purpose, and found by the board of trustees to be disabled in the degree and in the manner specified in this section. Any police officer retiring under this section shall be examined annually by a duly qualified physician or surgeon to be selected by the board of trustees for that purpose to determine if such disability has ceased to exist.
- (3) The benefits payable to a police officer who retires from the service of the town upon total and permanent disability shall be the greater of 60 percent of the officer's compensation at the time of disability or the monthly income payable for ten years certain and life which can be provided by the single-sum value of the deferred monthly retirement income beginning at the normal retirement date which has accrued to the officer's date of disability as provided in section 15-377. In lieu of the amount and form of retirement income payable as provided in this subsection, a police officer who received a

disability retirement after September 30, 1996, upon written request to the board of trustees, and subject to the approval of the board, may elect to receive a retirement income or benefit of equivalent actuarial value as provided in section 15-379.

- (4) The monthly retirement income to which a police officer is entitled in the event of his disability retirement will be payable on the first day of each month. The first payment will be made on the first day of the first month after the board of trustees determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determines such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be:
 - a. If the police officer recovers from disability prior to his normal retirement date, the payment due next preceding the date of such recovery;
 - b. If the police officer dies without recovering from his disability or attains his normal retirement date while still disabled, the payment due following his death, or the 120th monthly payment, whichever is later; or
 - c. Any monthly retirement payments due after the death of a police officer who is receiving a disability retirement shall be paid to the police officer's designated beneficiary, or in the event there is no designated beneficiary surviving, to the estate of the police officer.

Any monthly retirement payments due after the death of a disabled police officer shall be paid to the police officer's designated beneficiary.

- (5) If the board of trustees finds that a police officer who is receiving a disability retirement income is, at any time prior to his normal retirement date, no longer disabled as provided in this section, the board of trustees shall direct that the disability retirement income be discontinued. Recovery from disability as used herein means the ability of the police officer to render useful and efficient service as a police officer.
- (6) Benefits under this section for injuries incurred other than in the line of duty shall be payable only to members who have completed ten years of credited service as of the date of injury.
- (7) A police officer will not be entitled to receive any disability retirement income

if the disability is a result of:

- a. Excessive and habitual use by the police officer of drugs, intoxicants or narcotics;
 - b. Injury or disease sustained by the police officer while willfully and illegally participating in fights, riots or civil insurrections or while committing a crime;
 - c. Injury or disease sustained by the police officer while serving in any armed forces;
 - d. Injury or disease sustained by the police officer after his employment has terminated;
 - e. Injury or disease sustained by the police officer while working for anyone other than the town and arising out of such employment.
- (8) If a police officer recovers from disability and re-enters the service of the town as a police officer, his service will be deemed to have been continuous; but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he re-entered the service of the town will not be considered as credited service.

(Code 1975, § 17-48; Code 1992, § 15-274; Ord. No. 9-95, § 6, 3-21-1995; Ord. No. 34-00, § 6, 6-20-2000; Ord. No. 50-03, §§ 2, 3, 8-19-2003; Ord. No. 83-04, § 2, 12-21-2004; Ord. No. 46-11, § 5, 3-6-2012)

State Law reference— Similar provisions, F.S. § 185.18.

Sec. 15-383. - Payment of retirement benefits in lump sum.

Notwithstanding any provision of the plan to the contrary, if the monthly retirement income payable to any person entitled to benefits hereunder is less than \$100.00 or if the single-sum value of the accrued retirement income is less than \$2,500.00 as of the date of retirement or termination of service, whichever is applicable, the board of trustees, in the exercise of its discretion, may specify that the actuarial equivalent of such retirement income be paid in a lump sum.

(Code 1975, § 17-49; Code 1992, § 15-275)

State Law reference— Similar provisions, F.S. § 185.191.

Sec. 15-384. - Death benefits.

- (a) *Line of duty death benefit.* In the event a police officer dies in the line of duty, there shall be paid a death benefit equal to the greater of 60 percent of average monthly salary or the accrued benefit. The death benefit shall be paid to the surviving spouse or domestic partner (as defined in and approved pursuant to the town's domestic partner benefits policy) of such police officer for the spouse's or domestic partner's lifetime, or until all the police officer's minor children reach age 18, whichever comes later. If there is no spouse, domestic partner or minor children at the time of death, the death benefit shall be paid to the participant's estate for 120 monthly payments.
- (b) *Non-line of duty death benefit.* Should any police officer die not in the line of duty prior to vesting, the police officer's contributions, with interest, not to exceed four percent, shall be paid to the police officer's spouse or domestic partner (as defined in and approved pursuant to the town's domestic partner benefits policy), if the police officer had a spouse or domestic partner, but if there is no spouse or domestic partner, it shall be paid to the police officer's estate. If the police officer is vested, the death benefit shall be equal to the accrued benefit and shall be paid to the spouse or domestic partner, if alive. If the spouse or domestic partner is not alive, the benefit shall be paid to the police officer's estate for 120 monthly payments.
- (c) *Death on or after January 1, 2007, while performing USERRA-qualified military service.* In the event a member dies on or after January 1, 2007, while performing Uniformed Services Employment and Re-employment Rights Act (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.

(Code 1975, § 17-50; Code 1992, § 15-276; Ord. No. 41-98, § 1, 7-21-1998; Ord. No. 14-99, § 2, 3-16-1999; Ord. No. 43-10, § 4, 8-17-2010; Ord. No. 46-10, § 2, 8-17-2010)

State Law reference— Death prior to retirement, F.S. § 185.21.

Sec. 15-385. - Termination benefits.

- (a)

Should any police officer leave the service of the town before accumulating aggregate credited service time of ten years toward retirement and before being eligible to retire under the provisions of the plan provided by this article, such police officer shall be refunded all of his contributions made to the fund, with interest, not to exceed four percent per annum, less any benefits paid to him.

- (b) Should any police officer who has been in the service of the police department of the town for at least ten years elect to leave his accrued contributions in the fund, such police officer, upon attaining age 50 years or more, may retire at the actuarial equivalent of the amount of such retirement income otherwise payable to him. The actuarial equivalent, prior to October 1, 2005, shall be computed as though the normal retirement is the attainment of the age of 60 years. Effective October 1, 2005, the actuarial equivalent shall be computed as though the normal retirement is the attainment of the age of 55 years.
- (c) In order to ensure that benefits are definitely determinable, forfeitures may not be used to increase the benefits of participants under the plan. Forfeitures may only be used to decrease future contributions.

(Code 1975, § 17-51; Code 1992, § 15-277; Ord. No. 34-93, § 7, 5-18-1993; Ord. No. 36-06, § 3, 7-5-2006)

Sec. 15-386. - Termination of plan.

Upon termination of the plan provided by this article for any reason, the fund shall be apportioned and distributed in accordance with F.S. § 185.37.

- (1) The board of trustees shall determine the date of distribution and the asset value required to fund all of the non-forfeitable benefits after taking into account the expenses of such distribution. The board shall inform the town if additional assets are required, in which event, the town shall continue to financially support the retirement fund until all non-forfeitable benefits have been fully funded.
- (2) In the event of the termination or partial termination of this plan, each participant's accrued pension benefit shall become non-forfeitable, i.e., 100 percent vested.
- (3)

In no event may any part of the fund revert to the employer except after the satisfaction of all liabilities and expenses and except for reversions which are permitted by Internal Revenue Service Revenue Ruling 77-200, or any succeeding ruling, regulation or statute of similar import.

- (4) If at any time during the first ten years after the effective date of the plan, the plan shall be terminated or the full current costs of the plan (consisting of the normal costs and interest on any accrued liability) shall not have been met, anything in the plan to the contrary notwithstanding, town contributions which may be used for the benefit of any one of the 25 highest paid employees of the town on the effective date, whose anticipated annual retirement allowance provided by the town's contributions at his normal retirement date would exceed \$1,500.00 shall not exceed the greater of either \$20,000.00 or an amount computed by multiplying the smaller of \$10,000.00 or 20 percent of such employee's average annual earnings during his last five years of service by the number of years of service since the effective date. In the event that it shall hereafter be determined by statute, court decision, ruling by the Commissioner of Internal Revenue, or otherwise, that the provisions of this subsection are not then necessary to qualify the plan under the Internal Revenue Code, this subsection shall be ineffective without the necessity of further amendment.

(Code 1975, § 17-52; Code 1992, § 15-278; Ord. No. 34-93, § 9, 5-18-1993; Ord. No. 43-10, § 5, 8-17-2010)

State Law reference— Termination of plan and distribution of fund, F.S. § 165.37.

Sec. 15-387. - Decision of claims to relief.

The board of trustees may finally decide all claims to relief under the board's rules and regulations.

(Code 1975, § 17-53; Code 1992, § 15-279)

Sec. 15-388. - Tax deferral of police officer contributions.

Effective on the first day of the calendar quarter following receipt of a favorable determination letter from the Internal Revenue Service, or as soon thereafter as is practicable, the town shall agree to assume and pay member contributions in lieu of direct contributions by the member, with such contributions being paid into the plan on behalf of members. No member subject to such agreement shall have the option of choosing to receive the contributed amounts directly instead of having them paid by the town directly to the plan. All such contributions by the town shall be deemed and considered as part of the member's accumulated contributions and subject to all provisions of this plan pertaining to accumulated contribution of members. The intent of this language is to comply with section 414(h)(2) of the Internal Revenue Code.

(Code 1992, § 15-279.1; Ord. No. 34-93, § 10, 5-18-1993)

Sec. 15-389. - Dissolution of marriage.

Unless otherwise specifically required by state or federal law, no benefits under the retirement plan shall be payable to any person other than as provided for in this article, except the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit those funds necessary to pay for the benefits being received through the town, to pay the certified bargaining agent of the town, and to make any payments for child support or alimony. In the event that a member's interest in benefits under this article is subject to distribution under the terms of a dissolution of marriage order, the member shall be responsible to provide the board with a copy of the proposed distribution order prior to its entry by the court in order to ensure its compliance with the provisions of this plan. The board shall provide technical assistance to members in dissolution of marriage proceedings for the preparation of the proper form or an order distributing the member's interest in accordance with the terms of this plan. In the event that a member fails to seek the technical advice of the board and it becomes necessary for the board to expend funds in the correction or modification of any dissolution of marriage or property distribution order, the member consents to repay the board's expenses, including attorney's fees, in correction of that order. Any sums owed pursuant to this section shall become a lien against the member's account notwithstanding any other provision of this article.

(Code 1992, § 15-279.3; Ord. No. 9-95, § 7, 3-21-1995; Ord. No. 83-04, § 3, 12-21-2004)

Sec. 15-390. - Deferred retirement option plan (DROP).

There is hereby created a deferred retirement option program. Any member who is otherwise eligible for normal retirement may participate in the DROP. Election to participate in the DROP shall be in accordance with administrative rules adopted by the board and consistent with the terms of this section. Participation in the DROP may not exceed eight years. While in the DROP, a member shall receive credit for the monthly benefit which would have been paid had the member retired on the date of entry into the DROP plan. Distribution of the DROP account shall be pursuant to a procedure adopted by administrative rule of the board. Upon entry into the DROP, the member's benefit levels and calculations shall be frozen. In the event that a member becomes disabled during the DROP period, the member shall not be eligible for a disability retirement, but shall be deemed to have begun a normal retirement on the date of disability. In the event that a member dies during the time he is participating in the DROP program, the member shall be deemed to have retired on a normal retirement effective on the day prior to the date of the death of the member. In the event of the member's death, the DROP account shall be distributed to the member's designated beneficiary, or if no such beneficiary shall have been designated on a form prescribed by the board or if the designated beneficiary has pre-deceased the member, the member's estate shall be deemed the designated beneficiary.

- (1) During participation in the DROP, employees shall continue to contribute to the fund at the contribution rate in effect on the date of entry into the DROP for the first four years of participation. One-third of the contribution shall be placed in the member's DROP account and the remaining two-thirds shall remain in the plan. Commencing with the first day of the month coincident with or next following the date of entry into the DROP, the member's normal retirement benefit, calculated in accordance with the terms of the fund as if the member had retired and separated from service, shall be credited to the DROP participant's account. DROP accounts shall remain an integral part of the fund and no distribution may be made from the DROP until the member has separated from service. DROP accounts shall be credited with interest at the rate of a minimum of two percent per year or a maximum one percent below the assumed rate of return on fund assets.
- (2) Members who retire on or after the effective date of the ordinance from which this section is derived may leave their DROP accounts in the fund until the minimum required distribution date as provided in the Internal Revenue Code. DROP accounts, post-retirement, shall be credited with interest with a minimum of two percent per year with a maximum one percent below the

assumed rate of return on fund assets; provided, however, that in any year that the fund has a rate of return of less than zero percent, credited earnings shall be reduced to zero percent until the fund earnings below two percent have been offset by positive earnings. For the year beginning October 1, 2011, the actuarial valuation shall track the earnings, both positive and negative, for the purpose of determining the DROP account rate of earnings credit.

- (3) Section 415 limitations. All benefit payments and accruals under the DROP shall be, to the extent applicable, in accordance with section 415(c) of the Internal Revenue Code and all regulations thereunder, which subsections and regulations are incorporated herein by reference.

(Code 1992, § 15-279.4; Ord. No. 9-95, § 8, 3-21-1995; Ord. No. 69-00, § 4, 2-20-2001; Ord. No. 46-11, § 6, 3-6-2012; Ord. No. 19-14, § 5, 4-22-2014)

Sec. 15-391. - Exemption from execution.

The pensions, annuities and 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 funds created under this article are hereby exempted from any state, county or municipal tax of the state and shall not be subject to execution or attachment or to any legal process whatsoever, except that the recipient of any monthly benefit may authorize the board of trustees, in writing, to withhold from the monthly benefit those funds necessary to pay for benefits being received through the town, the certified bargaining agent, alimony, child support or medical payments to a former spouse or minor child. The retiree may also authorize the fund administrator to withhold from the retirement payment those funds necessary to pay for the premiums for accident, health, and long-term care insurance for the retiree and the retiree's spouse and dependents. The retirement fund shall not incur any liability for participation in this permissive program if its actions are taken in good faith.

(Code 1992, § 15-279.5; Ord. No. 43-10, § 6, 8-17-2010)

Sec. 15-392. - Qualified military service.

Notwithstanding any provision of this fund to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with the Internal Revenue Code, section 414(u).

(Code 1992, § 15-280; Ord. No. 49-03, § 2, 8-19-2003)

Secs. 15-393—15-412. - Reserved.

DIVISION 4. - FUND PROVISIONS FOR MEMBERS HIRED ON OR AFTER MARCH 6, 2012

Sec. 15-413. - Fund provisions for members hired on or after March 6, 2012.

For police officers eligible for membership in this fund hired on or after the effective date of the ordinance from which this division is derived (March 6, 2012), all provisions of divisions 1 through 3 of this article shall apply, except as set forth below:

- (1) The employee contribution rate shall be not less than ten percent of salary for each year of service, including all years of DROP participation. During DROP participation, one-quarter of the employee contribution shall be deposited in each member's DROP account and the remaining three-quarters shall remain in the fund as an employee contribution.
- (2) Normal retirement eligibility shall be based on the combination of attained age and credited service equaling 70 points with 25 years of credited service; provided, however, a member may enter the DROP following the completion of 22 years of credited service with no penalty for early retirement.
- (3) Persons wishing to separate on early retirement and not enter the DROP, shall have the retirement benefit reduced by three percent for every two points below 70 points. Normal retirement shall also be permitted upon the attainment of age 55 with ten years of credited service, but no person may enter the DROP with less than 22 years of credited service.
- (4) There shall be a maximum of 30 years of service, including DROP participation, provided that each member shall be permitted a minimum of five years of DROP participation from the date of attainment of normal retirement eligibility.
- (5) The normal retirement benefit shall be computed by multiplying the average of the five highest years of consecutive service of the last ten years of service by 2.75 percent, multiplied by the number of years of credited service.
- (6)

There shall be a maximum benefit accrual of 68.75 percent, provided the normal retirement benefit shall reflect a minimum accrual rate of two percent.

(Code 1992, § 15-281; Ord. No. 46-11, § 7, 3-6-2012; Ord. No. 30-14, § 4, 7-1-2014)