

ARTICLE II. EMPLOYEES' RETIREMENT SYSTEM¹

DIVISION 1. DECLARATION OF TRUST

Sec. 16-15. Definitions.

- (a) *Administrator.* The term "administrator" as used herein shall mean the board of trustees.
- (b) *Beneficiary.* The term "beneficiary" shall mean a person designated by a participant or by the terms of the pension plan created pursuant to this declaration of trust, who is or may become entitled to a benefit, thereunder.
- (c) *City.* The term "city" as used herein shall mean the City of Lake Worth, a Florida municipal corporation.
- (d) *Contributions.* The term "contributions" shall mean the payments required of the City of Lake Worth or payments made by or on behalf of participants or their beneficiaries.
- (e) *Consultant.* The term "consultant" as used herein shall mean any person or entity who, for compensation, advises, represents, or provides other assistance to the trustees concerning the establishment, or operation of the plan.

¹Editor's note(s)—Ord. No. 97-4, § 1, adopted Feb. 18, 1997, amended and restated Ch. 16, Art. II to read as herein set out. Prior to this amendment, Art. II contained similar provisions and was derived from Code 1956, §§ 25-3—25-20, 25-22—25-27.1, and 25-28—25-37 and from the following ordinances:

Ord. No.	Sec.	Date	Ord. No.	Sec.	Date
77-29	1, 4, 6	12- 5-77	90-18	1	5-21-90
78-14	1	6-19-78	90-19	1	7-16-90
78-36	3—11	12-18-78	90-31	1	8- 7-90
79-7	1	4- 2-79	90-47	1	12-17-90
79-26	1—8	10- 1-79	91-17	1	8-19-91
80-1	1	1-21-80	91-18	1	8-19-91
80-9	15	6-16-80	92-1	1	3- 2-92
80-23	1, 2	11- 3-80	92-8	1	4- 6-92
82-31	1	11-15-82	92-11	3	5- 4-92
84-1	1	4-16-84	92-24	1	11- 4-92
85-9	1	11-18-85	92-26	1	11-15-94
87-27	1	10- 5-87	93-7	3	6- 1-93
88-22	1	10- 3-88	93-8	1	5- 4-93
88-36	1	11- 7-88	93-11	1	6- 1-93
88-45	1	1-17-88	93-28	1	10-19-93
89-13	1	6-19-89	94-24	1	11-15-94
90-02	1	2-19-90			

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- (f) *Custodian*. The term "custodian" as used herein shall mean the firm which is officially entrusted with guarding and safekeeping the assets of this trust fund.
- (g) *Declaration of trust*. The term "declaration of trust" as used herein shall mean division 1 of this ordinance including all amendments and modifications as may from time to time be made.
- (h) *Employee*. The term "employee" shall mean all full-time employees of the city, except:
- (1) Firefighters;
 - (2) Police officers;
 - (3) Persons compensated on a fee or contractual basis;
 - (4) The city manager, unless participation in this retirement system is so provided in the city manager's contract or compensation resolution, and the assistant city manager(s);
 - (5) The city attorney, his or her deputies and assistants, unless participation in this retirement system is so provided in the person's contract or compensation resolution;
 - (6) City commissioners and the mayor;
 - (7) Elected officials;
 - (8) Temporary or emergency employees, unless participation in this retirement system is so provided in the person's contract or compensation resolution, unless the person was formerly a participant in this retirement system and participation in this retirement system is so provided in the contract;
 - (9) Part-time employees;
 - (10) Persons whose city compensation in a period of three (3) consecutive years' averages less than four hundred dollars (\$400.00) per year;
 - (11) Non-interim and non-acting department directors and assistant directors;
 - (12) The city clerk and the deputy city clerk; and
 - (13) The internal auditor.
- (i) *Named fiduciary*. The term "named fiduciary" as used herein shall mean the board of trustees, the city finance director, the investment managers, custodians and investment monitors of the retirement system's assets.
- (j) *Participant*. The term "participant" shall mean any pensioner receiving or entitled to receive benefits, any person with vested benefits, and any employee who accrues or retains vesting credits, in accordance with the provisions of the plan established pursuant to this declaration of trust.
- (k) *Pension plan*. The term "pension plan" or "plan" shall mean the plan, program, method, rules, and procedures for the payment of benefits from the trust fund which is division 2 of this ordinance.
- (l) *Trustees*. The term "trustees" as used herein shall mean the trustees designated in this declaration of trust, together with their successors, designated and appointed in accordance with the terms of this declaration of trust.
- (m) *Trust fund*. "Trust", "trust fund" and "fund" as used herein shall mean the entire trust estate of Lake Worth Employees' Retirement System as it may, from time to time be constituted, including, but not limited to, all funds received in the form of contributions, together with all contracts (including dividends, interest, refunds, and other sums payable to the trustees on account of such contracts), all investments made and held by the trustees, all income, increments, earnings and profits therefrom, and any and all other property or funds received and held by the trustees by reason of their acceptance of this declaration of trust.

(Ord. No. 97-4, § 1, 2-18-97; Ord. No. 2017-07, § 2, 4-4-17)

Sec. 16-16. Creation and purpose.

The trust fund is created, established and maintained, and the trustees agree to receive, hold and administer the plan, for the purpose of providing such benefits as now are, or hereafter may be authorized or permitted by law for participants and their beneficiaries and in accordance with the provisions set forth herein and in the pension plan.

(Ord. No. 97-4, § 1, 2-18-97)

Sec. 16-17. Effective date.

This ordinance and declaration of trust shall be in full force and effect as of October 1, 1996, and shall apply to all employees employed on or after that date. Employees, participants and beneficiaries who terminated employment with the city or began receiving benefits prior to the effective date shall be governed by the provisions of chapter 16, article II of the Lake Worth Code as it was in effect prior to the effective date.

(Ord. No. 97-4, § 1, 2-18-97)

Sec. 16-18. Board of trustees.

(a) *Number, appointment, term:*

- (1) The plan shall be administered by five (5) trustees.
 - a. The mayor of the city;
 - b. A member of senior management staff appointed by city commission;
 - c. One trustee shall be appointed by the city commission, who shall at all times while serving, be a resident of the City of Lake Worth; and
 - d. Two (2) trustees who are employees of the city who participate in the plan (excluding DROP participants) shall be elected by the employees of the city who participate in the plan (excluding DROP participants), provided that not more than one (1) employee member of the board shall be from any one city department.
- (2) The appointed trustee and elected trustees shall serve for a term of three (3) years.
- (3) The trustees in office on the effective date hereof shall serve the remainder of the three-year terms to which they were last elected or appointed prior to the effective date.
- (4) A vacancy shall occur whenever a trustee resigns, is no longer eligible or qualified to serve as a trustee, dies or becomes incapacitated. The vacancy shall be filled in the same manner as was utilized to select the original trustee. Successors to elected trustees and the appointed trustee shall serve out the unexpired term of the prior trustee.

- (b) *Resignation.* An elected or appointed trustee may resign and become and remain fully discharged from all further duty or responsibility hereunder upon giving thirty (30) days' notice in writing to the remaining trustees and to the city clerk or such shorter notice as the remaining trustees may accept as sufficient. In the notice there shall be stated a date on which such resignation shall take effect; and such resignation shall take effect on the date specified in the notice unless a successor trustee shall have been appointed or elected at

an earlier date, in which event such resignation shall take effect immediately upon the appointment or election of such successor trustee.

- (c) *Successor trustees, assumption of office.* Any successor trustee shall immediately upon appointment or election and acceptance of the trusteeship, become vested with all the property, rights, powers and duties of a trustee hereunder with like effect as if originally named a trustee, without the necessity of any formal conveyance or other instrument of title.
- (d) *Acceptance of the trust oath of office by trustees.* A trustee shall execute a written acceptance and oath of office in a form satisfactory to the trustees. By executing such written acceptance, a trustee shall be deemed to have accepted the trust created and established by this declaration and to have consented to act as trustee and to have agreed to administer the trust fund as provided herein. Such written acceptance shall be filed with the secretary.
- (e) *Limitation of liability of trustees.* No successor trustee shall in any way be liable or responsible for anything done or committed in the administration of the trust prior to the date of becoming a trustee. No trustee shall be liable for the acts or omissions of another trustee to whom certain responsibilities, obligations or duties have been delegated pursuant to this trust declaration, nor shall any trustee be liable for the acts or omissions of any investment manager, attorney, agent, or assistant employed by them pursuant to this agreement, if such person's performance was periodically reviewed by the trustees who found such performance to be satisfactory.
- (f) *Office of the fund.* The principal offices of the trust fund shall be located and maintained in Palm Beach County, at Lake Worth City Hall, or at such other locations in the City of Lake Worth as the trustees may determine.
- (g) *Officers.* The trustees shall elect from among themselves a chairman and a vice-chairman for a term of one (1) year, or until their successors have been elected. The city clerk or a deputy city clerk shall serve as secretary and shall keep minutes and records of all meetings, proceedings and acts of the trustees and shall, with reasonable promptness, send copies of such minutes and records to all trustees, and legal counsel. The city finance director shall be the treasurer of the retirement system. The chairman, and in his absence the vice-chairman, shall preside at all meetings of the trustees and shall be entitled to one vote on all matters.
- (h) *Power to act in case of vacancy.* In case of death, resignation or refusal or inability to act of any one (1) or more of the trustees, the remaining trustees shall have all the powers, rights, estates and interests of this trust and shall be charged with its duties, provided that, in such cases there shall be no change in the quorum or voting requirements established herein.
- (i) *Meetings; notices.* The trustees shall meet at least once quarterly and at such other times as they deem it necessary to transact their business. The chairman of the board of trustees may, and upon the written request of any two (2) trustees shall, call a meeting of the trustees at any time by giving at least five (5) days' notice in writing, of the time and place thereof to the remaining trustees. Notice of such meetings shall be posted or advertised to the public.
- (j) *Attendance at meetings; minutes:*
 - (1) Any elected or appointed trustee who does not attend three (3) successive regular meetings or at twenty (20) percent of the regular meetings of the board held within any 12-month period shall automatically forfeit his or her position as trustee. A trustee so forfeiting his or her position shall be replaced in the same manner as the trustee was chosen for the balance of the forfeiting trustee's term.
 - (2) Written minutes (a copy of which shall be furnished with reasonable promptness to each trustee and legal counsel) shall be kept of all business transacted and of all matters upon which voting shall have occurred and the vote shall be recorded. Such minutes shall bear the signature of the secretary and shall be approved at the succeeding meeting.

(k) *Quorum; voting; action without meeting:*

- (1) A quorum of the board of trustees shall be at least three (3) trustees.
- (2) Any action taken by the trustees, except as herein otherwise provided, shall be by affirmative vote of at least three (3) votes. The trustees must cast their votes personally.

(l) *Removal of trustees.* The board of trustees shall initiate action to cause the removal of any fellow trustee who is not qualified to serve as a trustee under this agreement or state law.

(Ord. No. 97-4, § 1, 2-18-97; Ord. No. 2003-44, § 3, 11-18-03; Ord. No. 2005-61, § 1, 12-20-05; Ord. No. 2008-14, § 4, 7-1-08; Ord. No. 2010-19, § 2, 9-24-10)

Sec. 16-19. Contributions and collections.

- (a) The city and participants shall make prompt contributions or payments to the trust fund in such amounts and under the terms as are provided for in this ordinance and as required by law. Such contributions or payments are absolute obligations to the trust fund, and such obligations shall not be subject to (by way of illustration and not limitation,) set-off or counterclaim which the city or any participant may have for any other liability of any employee, the city, the trustees, or any other person.
- (b) Contributions to the fund shall be paid to the trust fund or to such depository as the trustees shall designate, only by check, bank draft, bank wire, or money order, or its equivalent.
- (c) *Receipt of payment and other property of trust.* The trustees or such other person or entity designated or appointed by the trustees are hereby designated as the persons to receive the payments heretofore or hereafter made to the trust fund by the city and participants. The trustees are hereby vested with all right, title and interest in and to such monies and all interest which may be accrued thereon, and are authorized to receive and be paid the same.
- (d) *Collection and enforcement of payments.* The trustees, or such committee of the trustees as the board of trustees shall appoint, and when directed by such committee or by the board of trustees, shall have the power to demand, collect and receive city and participant payments and all other money and property to which the trustees may be entitled, and shall hold the same until applied to the purposes provided in this trust agreement. They shall take such steps, including the institution and prosecution of, or the intervention in, such legal or administrative proceedings as the trustees in their sole discretion determine to be in the best interest of the trust fund for the purpose of collecting such payments, money and property.

(Ord. No. 97-4, § 1, 2-18-97)

Sec. 16-20. Powers and duties of trustees.

- (a) *Conduct of trust business.* The trustees shall have general, sole and exclusive supervision of the operation of this trust fund and shall conduct the business and activities of the trust fund in accordance with this trust agreement and applicable law. The trustees shall hold, manage and protect the trust fund and collect the income therefrom and contributions thereto. The trustees may in the course of conducting the business of the trust, execute all instruments in the name of the Lake Worth Employees' Retirement System.
- (b) *Use of fund for expenses.* The trustees shall have the power and authority to use and apply the trust fund to pay or provide for the payment of all reasonable and necessary expenses of administering the affairs of this trust, including the employment of such administrative, legal, expert and clerical assistance, the purchase or lease of such materials, supplies and equipment and the performance of such other acts, as the trustees, in their discretion, find necessary or appropriate in the performance of their duties.

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- (c) *Use of fund to provide benefits.* The trustees shall have the power and authority to use and apply the trust fund to pay or provide for the payment of retirement and related benefits to eligible participants and beneficiaries in accordance with the terms, provisions and conditions of the pension plan.
- (d) *Investments.*
- (1) *[Power and authority of trustees.]* The trustees shall have the power and authority, in their sole discretion, to invest and reinvest such funds as are not necessary for current expenditures or liquid reserves, as they may from time to time determine. The trustees may sell, exchange or otherwise dispose of such investments at any time. The trustees shall have the authority, in respect to any stocks, bonds or other property, real or personal, held by them as trustees, to exercise all such rights, powers and privileges as might be lawfully exercised by any person owning similar stocks, bonds or other property in his own right. The trustees are authorized to invest in those stocks, bonds and other securities permitted by the investment policies or guidelines adopted by the trustees.
- (2) *Delegation and allocation of investment functions:*
- a. The trustees shall have the power and authority to appoint one (1) or more investment managers who shall be responsible for the management, acquisition, disposition, investing and reinvesting of such of the assets of the trust fund as the trustees shall specify. Any such appointment may be terminated by the trustees upon written notice. The fees of such investment manager shall be paid out of the trust fund. The trustees shall require that the investment manager acknowledge in writing that it is a named fiduciary with respect to the plan.
- b. In connection with any allocation or delegation of investment functions under paragraph (1) of this subsection (b), the trustees shall, from time to time, adopt appropriate investment policies or guidelines.
- (e) *Deposits and disbursements.* All funds and securities of the trust shall be deposited by the trustees in such depository or depositories as defined in section 280.02(12), Fl. St., as the trustees shall, from time to time, select, and any such deposit or deposits, or disbursement therefrom, shall be made in the name of the trust in the manner designated and authorized by the trustees or by the investment manager.
- (f) *Allocation and delegation of noninvestment responsibilities.* The trustees may, by resolution or bylaw or by provisions of this trust agreement, allocate fiduciary responsibilities and various administrative duties to committees or subcommittees of the board of trustees. In addition, the trustees may delegate such responsibilities and duties to other individuals as they may deem appropriate or necessary in their sole discretion and consistent with state law, provided, however, that such action shall have been approved by a majority vote of the trustees. Such delegations or allocations of responsibilities shall not relieve the board of trustees of its responsibility for the sole and exclusive administration of the trust fund.
- (g) *Committee of the board of trustees.* Each committee or subcommittee shall consist of at least two (2) trustees. A quorum of a committee shall be at least two (2) trustees.
- (h) *Bylaws, procedures, rules and regulations:*
- (1) The trustees are hereby empowered and authorized to adopt bylaws and to promulgate any and all necessary procedures, rules and regulations which they deem necessary or desirable to facilitate the proper administration of the trust fund, provided the same are not inconsistent with the terms of this trust agreement. All bylaws, procedures, rules and regulations adopted by action of the trustees shall be binding upon all parties hereto, all parties dealing with the trust fund and all persons claiming any benefits hereunder.
- (2) No bylaw, regulation, rule, procedure, action or determination made or adopted by the trustees, shall in any manner, conflict or be inconsistent with any provision of this declaration, or with any applicable federal, state or local law.

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- (i) *Additional authority.* The trustees are hereby empowered in addition to such other powers as are set forth herein or conferred by law:
- (1) To enter into any and all contracts and agreements for carrying out the terms of this declaration and for the administration of the trust fund, and to do all acts as they, in their discretion, may deem necessary or advisable and such contracts and agreements and acts shall be binding and conclusive on the parties hereto and on the participants involved;
 - (2) To keep property and securities registered in the name of the trustees or of the fund;
 - (3) To establish and accumulate as part of the trust fund such reasonable reserve funds as the trustees, in their sole discretion, deem necessary or desirable to carry out the purposes of such trust fund;
 - (4) To pay out of the trust fund all real and personal property taxes, income taxes, and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the trust fund, or any money, property, or securities forming a part thereof;
 - (5) To do all acts, whether or not expressly authorized herein, which the trustees may deem necessary or proper for the protection of the property held hereunder, and
 - (6) To administer, construe and interpret the provisions of chapter 16, article II of the Lake Worth Code, this declaration of trust and the plan; and
 - (7) To sell, exchange, lease, convey, or dispose of any property, whether real or personal, forming a part of the trust fund upon such terms as they may deem proper and to execute and deliver at any time, any and all instruments of conveyance, lease, mortgage and transfer in connection therewith.
 - (8) To determine any fact, including, but without being limited to, disability and dependency, the board shall have the authority to make such factual determination and for such purposes shall have the power to hold hearings, receive testimony under oath to be administered by the chairman of the board or a notary public, and issue subpoenas in the name of the board signed by the chairman, for the appearance of persons or the production of records before such board. Such subpoenas shall be effective throughout the city of Lake Worth, Florida, and may be served by any person authorized by law, and obedience thereto may be compelled by the order of the Circuit Court in and for Palm Beach County, Florida.
- (j) *Bonds.* The trustees may obtain from an authorized surety company such bonds as may be required by law or desired by the trustees covering such persons and in such amounts (but not less than required by law) as the trustees, in their discretion, may determine. The cost of premiums for such bonds shall be paid out of the trust fund.
- (k) *Insurance.* The trustees may in their discretion obtain and maintain policies of insurance, to the extent permitted by law, to insure themselves, the trust fund as such, as well as employees or agents of the trustees and of the trust fund, while engaged in business and related activities for and on behalf of the trust fund,
- (1) With respect to liability to others as a result of acts, errors or omissions of such trustee or trustees, employees or agents, respectively; and
 - (2) With respect to injuries received or property damage suffered by them.
- The cost of the premiums for such policies of insurance shall be paid out of the trust fund.
- (l) *Information to participants and beneficiaries.* The trustees shall provide participants and beneficiaries such information as may be required by law.
- (m) *Accountants and actuaries.* The trustees shall engage one or more independent qualified public accountants and one or more enrolled actuaries to perform all services as may be required by applicable law and such other services as the trustees may deem necessary.

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- (n) *Trustee reimbursement.* The trustees shall be entitled to reimbursement for the expenses properly and actually incurred in the performance of their duties with the trust fund and to per diem allowance in amounts established by the board of trustees, including, without limitation, for attendance at meetings and other functions of the board of trustees, attendance at institutes, seminars, conferences or workshops for or on behalf of the trust fund.
- (o) *Reports.* The board of trustees shall make reports to and file such information with appropriate public authorities as may be required by applicable law.
- (p) *Records of trustees' transactions.* The trustees shall keep true and accurate books of account and a record of all of their transactions and meetings (including actions taken at such meetings and by informal action of the trustees), which records and books shall be audited at least annually by a certified public accountant. A copy of each audit report shall be available for inspection by interested persons at Lake Worth City Hall at reasonable times and after reasonable notice.
- (q) *Construction and determination by trustees.* Subject to the stated purposes of the fund and the provisions of this declaration, the trustees shall have full and exclusive authority to determine all questions of coverage and eligibility, methods of providing or arranging for benefits and all other related matters. They shall have full power to construe the provisions of this declaration, the terms used herein and the bylaws and regulations issued thereunder. Any such determination and any such construction adopted by the trustees in good faith shall be binding upon all of the parties hereto and the beneficiaries hereof. No questions or disputes arising under this declaration shall be subject to the grievance or arbitration procedure established in any collective bargaining agreement between the city and any labor organization, provided, however, that this clause shall not affect the rights and liabilities of any of the parties under any of such collective bargaining agreements.
- (r) *Liability.* The trustees, to the extent permitted by applicable law, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, telegram or other paper or document believed by them to be genuine, to contain a true statement of facts, and to be signed by the proper person.
- (s) *Reliance on written instruments:*
- (1) *By trustees.* Any trustee, to the extent permitted by her or his fiduciary responsibility and by applicable law, may rely upon any instrument in writing purporting to have been approved by a majority vote of the trustees as conclusive evidence of the fact that a majority of the trustees have taken the action stated to have been taken in such instrument. In any controversy, claim, demand, suit at law or other proceeding between any participant or any other person and the trustees, the trustees shall be entitled to rely upon any facts appearing in the records of the trustees, any instruments on file with the trustees, or with the city, and any facts certified to the trustees, by the city, any facts which are of public record and any other evidence pertinent to the issue involved.
- (2) *By others:*
- a. No party dealing with the trustees shall be obligated.
1. To see the application to the stated trust purposes of any funds or property of the trust fund; or
2. To see that the terms of this declaration have been complied with; or
3. To inquire into the necessity or expediency of any act of the trustees.
- b. Every instrument executed by the trustees shall be conclusive evidence in favor of every person relying thereon.
1. That at the time of execution of said instrument the trust was in full force and effect,

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2. That the instrument was executed in accordance with the terms and conditions of this declaration, and
 3. That the signing trustees were duly authorized and empowered to execute the instrument.
- (3) *Reliance on counsel's opinion.* The trustees may consult with legal counsel concerning any question which may arise with reference to the duties and powers or with reference to any other matter pertaining to this declaration or the trust hereby established. The opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the trustees hereunder in good faith in accordance with the opinion of such counsel. The trustees shall not be liable therefore to the extent permitted by applicable law.
- (4) The provisions of this section shall not relieve the trustees of any responsibilities or obligations imposed by chapters 112 or 286 of the Florida Statutes or other applicable laws.
- (t) *Discharge of liability.* The receipt by the trustees of any money or property or checks (after such checks are honored at the bank and paid to the trust fund) shall discharge the person or persons paying or transferring the same to the extent of such payment or transfer.
- (u) *Establishment of plan:*
- (1) The Lake Worth City Commission shall adopt a written pension plan wherein the trustees, as named fiduciaries, shall have the authority to control and manage the operation and administration of the plan. Such plan shall provide for the payment of such retirement pension benefits, permanent disability pension benefits, death benefits, and related benefits, as are required by law or feasible by way of illustration and not limitation:
 - a. Conditions of eligibility for participants and beneficiaries;
 - b. Standards for vesting of benefits;
 - c. A schedule of the type and amount of benefits to be paid;
 - d. A procedure for the payment of benefits in the form of a qualified joint and survivor annuity;
 - e. Procedures for claiming benefits and for the distribution of benefits;
 - f. A procedure for the separate accounting for the portion of each employee's accrued benefit, if any, derived from employee contributions;
 - g. The establishment and maintenance of a funding standard policy;
 - h. A procedure for establishing and carrying out a funding policy;
 - i. Any procedures for the allocation of authority for the operation and administration of the plan;
 - j. The basis on which payments are made from the plan.Such pension plan shall at all times comply with all applicable laws.
 - (2) The trustees shall, by at least three (3) affirmative votes of their total number, recommend amendments to the plan which shall then be submitted to the Lake Worth City Commission for enactment as an ordinance. This plan and any amendments thereto shall qualify under applicable provisions of the Internal Revenue Code.
- (v) *Amendment of plan.* The pension plan may be amended by the trustees recommending amendments to the city commission, provided that such amendments comply with the applicable sections of the then-applicable Internal Revenue Code, all other applicable law, and the purposes as set forth in this declaration and are enacted by the Lake Worth City Commission. Additionally, and not by way of limitation, the trustees may recommend that the city commission amend the pension plan, in future, or retroactively where they deem it

necessary, to maintain the continuation of the trust fund's tax exempt status or to preserve compliance with the then-applicable Internal Revenue Code and all other applicable law. A copy of each amendment of the pension plan shall be made available to the participants and their beneficiaries requesting such. No amendment may reduce the accrued benefit of any participant.

(Ord. No. 97-4, § 1, 2-18-97)

Sec. 16-21. Controversies and disputes.

- (a) *Submission to trustees.* All questions or controversies of whatever character, arising in any manner or between any persons or entities in connection with the trust fund or the operation thereof, which are related to any claim for any benefit by any participant or any other person, shall, pursuant to rules and regulations adopted by the trustees, be submitted to the trustees, and the decision of the trustees shall be final and binding upon all persons dealing with the trust fund or plan or claiming benefits thereunder.
- (b) *Settling disputes.* The trustees may in their sole discretion compromise or settle any claim or controversy in such manner as they think best, and any majority decision made by the trustees in compromise or settlement of a claim or controversy, or any compromise or settlement entered into by the trustees, shall be conclusive and binding on all parties involved in this trust, provided that all such settlements are in accordance with the pension plan and applicable state law.

(Ord. No. 97-4, § 1, 2-18-97)

Sec. 16-22. Beneficial rights.

- (a) *No right, title or interest of the City of Lake Worth.* The City of Lake Worth, any participant or beneficiary shall not have any right, title or interest in or to the trust fund or any part thereof other than vesting under the pension plan and other than a pension or other benefit for which a participant or beneficiary is entitled under the terms and conditions set forth in the pension plan. There shall be no prorata or other distribution of any of the assets of the trust fund as a result of any group of employees or participants and their beneficiaries, ceasing their participation in this trust fund for any purpose or reason, except as required by law.
- (b) *Limitation upon beneficial rights of employees.* All benefits shall be free from the interference and control of any creditor, and no benefits shall be subject to any assignment or other anticipation, nor to seizure or to sale under any legal, equitable or any other process.

(Ord. No. 97-4, § 1, 2-18-97)

Sec. 16-23. Termination of trust.

- (a) *Procedure in event of termination.* In the event of termination, the trustees shall:
 - (1) Make provision out of the trust fund for the payment of any and all obligations of the trust, including expenses incurred up to the date of termination of the trust and the expenses incidental to such termination;
 - (2) Arrange for a final audit and report of their transactions and accounts, for the purpose of termination of their trusteeship;
 - (3) File all notices or reports in connection therewith as may be required by applicable law;

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- (4) Distribute the remaining assets in accordance with the relevant provisions of Florida Statutes, the Code of Ordinances of the City of Lake Worth, and other applicable law.

(Ord. No. 97-4, § 1, 2-18-97)

Sec. 16-24. Miscellaneous.

- (a) *Law applicable.* This trust is created and accepted in the State of Florida and all questions pertaining to the validity or construction of this trust agreement and of the acts and transactions of the parties hereto shall be determined in accordance with the laws of the State of Florida; except as to matters governed by federal law.
- (b) *Saving clause.* Should any provision of this agreement and declaration of trust be held to be unlawful, or unlawful as to any person or instance, such fact shall not adversely affect the other provisions herein contained or the application of said provisions to any other person or instance, unless such illegality shall make impossible the functioning of this fund.
- (c) *Judicial settlements.* The trustees shall be entitled, at any time, to have a judicial settlement of their accounts and to seek judicial protection by any action or proceeding they determine necessary and, further, to obtain a judicial determination or declaratory judgment as to any question of construction of this trust agreement or for instructions as to any action thereunder, and, further, as to any questions relating to the discharge of their duties and obligations under, or in connection with the administration of, this trust and as to the distribution of assets belonging to the trust. Any such determination, decision, or judgment shall be binding upon all parties to, or claiming under, this trust agreement.
- (d) *Withholding payment.* In the event any questions or dispute shall arise as to the proper person or persons to whom any payments shall be made hereunder, the trustees may withhold such payment until there shall have been made an adjudication of such question or dispute which, in the trustees' sole judgment, is satisfactory to them or until the trustees shall have been fully protected against loss by means of such indemnification agreement or bond as they, in their sole judgment, determine to be adequate.
- (e) *Qualification of trust personnel.* No person shall serve as a trustee, administrative manager, custodian, investment manager, or consultant to the trust fund or plan or serve in any other capacity thereof whether as an agent, officer, or employee, unless such person is eligible for service in accordance with applicable law.
- (f) *Vesting of rights.* No participant, beneficiary or employee or other person shall have vested interest or right in the trust fund except as provided by the pension plan and Florida law.
- (g) *Gender and number.* Whenever any words are used in this trust agreement in the masculine gender, they shall also be construed to include the feminine or neuter gender in all situations where they would so apply; and whenever any words are used in the singular, they shall also be construed to include the plural in all situations where they would so apply and wherever any words are used in the plural, they shall also be construed to include the singular.
- (h) *Amendment to declaration.* The provisions of this declaration may be amended at any time by an amendment recommended by a majority vote of the trustees and enacted as an ordinance by the Lake Worth City Commission; provided, however, in no event shall the trust fund be used for any purpose other than the purposes set forth in this declaration and for the purposes of paying the necessary expenses incurred in the administration of this trust.

(Ord. No. 97-4, § 1, 2-18-97)

DIVISION 2. PENSION PLAN

Sec. 16-25. Definitions.

- (a) *Accumulated contributions.* The term "accumulated contributions" shall mean the total of all amounts deducted from the compensation of a participant as required in section 16-40(b).
- (b) *Actuarial equivalence or actuarially equivalent.* "Actuarial equivalence" or "actuarially equivalent" shall mean 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, other than a lump sum distribution, all future payments shall be discounted for interest and mortality by using seven (7) percent interest and the 1983 Group Annuity Mortality Table for Males, with ages set ahead five (5) years in case 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: (a) ninety (90) days prior to the participant's date of termination if distribution is made within six (6) months of such date of termination, or (b) ninety (90) days prior to the distribution date if distribution is made later than six (6) months after the participant's date of termination.
- (c) *Average final compensation.* For purposes of service accruals earned prior to October 1, 2010, "average final compensation" shall mean one-twelfth (1/12) of the average of the highest annual pay received by a participant during a period of two (2) consecutive years of service contained within his ten (10) years of service immediately preceding September 30, 2010. For purposes of service accruals earned subsequent to September 30, 2010, "average final compensation" shall mean one-twelfth (1/12) of the average of the highest annual pay received by a participant during a period of five (5) consecutive years of service contained within his ten (10) years of service immediately preceding retirement. For persons who first become participants of the retirement system on or after October 1, 1979, average final compensation shall exclude payments for all accumulated leave, compensatory time and overtime.

Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for an employee who was a participant of this fund on or before October 1, 1996, shall not be less than the amount which was allowed to be taken into account under this division as in effect on July 1, 1993.
- (d) *Board of trustees.* The term "board of trustees" shall mean the trustees designated in this ordinance, and any successor trustees selected as provided therein, acting in a group as the administrator of this pension plan.
- (e) *City.* The term "city" means the City of Lake Worth, Florida, a municipal corporation.
- (f) *Compensation.* The term "compensation" shall mean all salary paid to an employee within the meaning of IRC Section 415(c)(3). For persons who first became participants of the retirement system on or after October 1, 1979, "compensation" shall exclude payments for all accumulated leave, compensatory time and overtime.
- (g) *Covered employment.* The term "covered employment" shall mean service for which an employee is obligated to pay contributions to this pension plan.
- (h) *Employee.* The term "employee" shall mean all full-time employees of the city, except:
 - (1) Firefighters;
 - (2) Police officers;
 - (3) Persons compensated on a fee or contractual basis;
 - (4) The city manager, unless participation in this retirement system is so provided in the city manager's contract or compensation resolution, and the assistant city manager(s);

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- (5) The city attorney, his or her deputies and assistants, unless participation in this retirement system is so provided in the person's contract or compensation resolution;
 - (6) City commissioners and the mayor;
 - (7) Elected officials;
 - (8) Temporary or emergency employees, unless participation in this retirement system is so provided in the person's contract or compensation resolution, unless the person was formerly a participant in this retirement system and participation in this retirement system is so provided in the contract;
 - (9) Part-time employees;
 - (10) Persons whose city compensation in a period of three (3) consecutive years' averages less than four hundred dollars (\$400.00) per year;
 - (11) Non-interim and non-acting department directors and assistant directors;
 - (12) The city clerk and the deputy city clerk; and
 - (13) The internal auditor.
- (i) *Highly compensated employee.* The term "highly compensated employee" shall mean an employee described in IRC section 414(q) and the regulations thereunder and generally means an employee, whether or not employed during the "determination year", who received "415 Compensation" during the "look-back year" from the city in excess of eighty thousand dollars (\$80,000.00), and was in the "top paid group" of employees for such "look-back year."

The "determination year" shall be the plan year for which testing is being performed, and the "look-back year" shall be the immediately preceding twelve-month period.

"Top paid group" means the top twenty (20) percent of the employees who performed services for the city during the applicable year ranked according to the amount of "415 Compensation" received from the city during such year. For the purpose of determining the number of active employees in any year, the following employees shall be excluded; however, such employees shall still be considered for the purpose of identifying the particular employees in the "top paid group":

- (1) Employees with less than six (6) months of service;
- (2) Employees who normally work less than seventeen and one-half (17½) hours per week;
- (3) Employees who normally work less than six (6) months during a year; and
- (4) Employees who have not yet attained age twenty-one (21).

The foregoing exclusions set forth in this section shall be applied on a uniform and consistent basis for all purposes for which the IRC section 414(q) definition is applicable.

The foregoing shall not apply if section 415 of the Internal Revenue Code is made inapplicable to this plan either by statute or regulation.

(j) *Married:*

- (1) The term "married" means a participant who is married on the date of receipt of pension benefits; or
- (2) A participant shall also be considered "married" if the participant dies before receipt of such benefits, participant was married on the date of the participant's death.

(k) *Maternity or paternity leave:*

- (1) *[Reasons for leave.]* The term "maternity or paternity leave" means a participant's absence from work by reason of:

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- a. The pregnancy of the participant; or
 - b. The birth of a child of the participant; or
 - c. The placement of a child with the participant in connection with the adoption of such child by the participant; or
 - d. The caring for such child by the participant for a period beginning immediately following such birth or placement.
- (2) *Crediting hours of leave.* Solely for purposes of determining whether a break in service has occurred as provided in subsection 16-28(a) (breaks in service), and not for purposes of vesting or benefit accrual, a participant who is absent from work in covered employment due to maternity or paternity leave shall be credited with the hours of service which otherwise would normally have been credited to the participant but for such absence, not to exceed three (3) months per plan year.
- (3) *Crediting period.* The hours of service absent from work due to maternity or paternity leave shall be credited, solely for purposes of excusing a break in service:
- a. During the plan year in which the absence began if the crediting of those hours is necessary to prevent a break in service in that plan year, or, in all other cases;
 - b. In the next following plan year.
- (l) *Pension.* The term "pension" or "pension benefit" shall mean an early retirement benefit, a normal retirement benefit, a death benefit or a disability retirement benefit.
- (m) *Pension plan.* The term "pension plan" shall mean the City of Lake Worth Employees' Police Retirement System.
- (n) *Plan year or limitation year.* The terms "plan year" and "limitation year" shall mean the twelve-month period from October first to the following September thirtieth.
- (o) *Retirement.* The term "retirement" or "retired" shall mean the complete withdrawal of a participant from any further employment as an employee of the city.
- (p) *Service:*
- (1) The term "service" means years and completed months of continuous employment as an employee of the city, commencing on the date of hire, for which a person is paid, or entitled to payment, by the city:
- a. For the performance of duties; or
 - b. For reasons other than the performance of duties, including vacations, holidays, temporary disability, illness, jury duty, military duty, administrative leave, paid leave or approved paid leave of absence; or
 - c. As the result of backpay being awarded, or agreed to, by the city (irrespective of mitigation of damages), provided that participant contributions on such backpay amounts are received by the retirement system.
 - d. The term "service" shall also mean time spent in the military service of the United States or United States Merchant Marine by the employee on leave of absence; provided that the employee must have re-entered the city's employment within one (1) year of date of release from such service.
 - e. The term "service" shall also mean time spent in the military service of the United States or United States Merchant Marine by the employee prior to employment with the city; provided

that the employee contributes to the fund the full actuarial cost of all such service, and complies with section 16-27(e) herein.

- (2) *Noncovered employment.* A person who is paid, or entitled to payment, by the city shall also be credited with service for purposes of participation, benefit eligibility, and breaks in service (but not for benefit computation purposes) based upon service in noncovered full-time employment for the city, provided that the person worked for the city full-time in covered employment immediately before or immediately after the noncovered employment, and further provided that no quit, discharge or retirement occurred between the covered employment and the noncovered employment.
 - (3) *Determination of amount of service.* The amount of service shall be ascertained from the most accurate records available, including records of hours, work shifts, days or weeks for which payment is made or owing, as reported to the board of trustees. The board of trustees shall fix and determine how much service in any year is equivalent to one vesting credit; however, at least ten (10) days' service in a calendar month must constitute one (1) month's service and at least nine (9) months' service in a year shall constitute one year's service.
 - (4) *Crediting period.* Service shall be credited for each year for which duties were performed, or if no duties were performed, then during the year for which the payment relates.
 - (q) *Vested.* The term "vested" shall mean a non-forfeitable right to a pension benefit under this pension plan.
- (Ord. No. 97-4, § 1, 2-18-97; Ord. No. 99-8, § 1, 4-6-99; Ord. No. 2003-24, § 1, 7-15-03; Ord. No. 2007-1, § 1, 1-16-07; Ord. No. 2010-19, § 4, 9-24-10; Ord. No. 2014-20, § 2, 7-1-14; Ord. No. 2017-07, § 3, 4-4-17)

Sec. 16-26. Participation in the pension plan.

- (a) An employee shall become a participant on the first day of full-time service. Each full-time employee of the city shall be a participant in the plan, except those employees who were employed by the city on October 1, 1996, and were not participants in the plan at that time shall have the irrevocable option, to be exercised in writing before September 30, 1997, to continue not to participate in the plan and to permanently waive participation in the plan.
- (b) A person shall remain a participant until the earlier of:
 - (1) Terminating service prior to earning a vested benefit and prior to reaching normal retirement age;
 - (2) All benefits have been paid to the participant;
 - (3) The person dies; or
 - (4) The person holds or is appointed to a position enumerated in section 16-15(h)(4), 16-15(h)(5), 16-15(h)(11), 16-15(h)(12), or 16-15(h)(13) on April 4, 2017 or thereafter. Persons holding such positions on the date immediately preceding April 4, 2017, or who are appointed to such positions after that date, and who have been participants in the pension plan, shall have a onetime, irrevocable option either to cease participation in the pension plan or to maintain participation in the pension plan. Such onetime option must be exercised no later than within thirty (30) days of the date of appointment to such position or on or before 5:00 p.m., September 30, 2018. Any person who does not exercise the option within the allotted period shall remain in the pension plan.
- (c) A new benefit structure, the cash balance plan, is created effective October 1, 2018. All employees hired on or after October 1, 2018, and holding a position not identified in PERC certification No. 529, as amended or superseded, shall become participants in the cash balance plan on their first day of full-time service. Active employees hired on October 1, 2010, through September 30, 2018, and who are participants in the City of Lake Worth Employees Retirement System shall have the onetime irrevocable option, to be exercised by

submitting to the city a signed writing no later than 5:00 p.m. on September 30, 2018, to participate in the cash balance plan commencing October 1, 2018, and to immediately cease participation in the prior benefit structure. Employees who switch will become one hundred (100) percent vested in benefits accrued through September 30, 2018, and payable under the terms and conditions then in effect. Any such employee who fails to make an election shall not become a participant in the cash balance plan. No employee will be permitted to begin participation in the prior benefit structure after 11:59 p.m., September 30, 2018.

(Ord. No. 97-4, § 1, 2-18-97; Ord. No. 97-17, § 1, 8-5-97; Ord. No. 2017-07, § 4, 4-4-17; Ord. No. 2017-28, § 2, 12-12-17; Ord. No. 2018-05, § 2, 2-20-18; Ord. No. 2018-11, § 1, 8-21-18)

Sec. 16-27. Vesting credits.

- (a) *Vesting credits.* A participant shall earn one (1) vesting credit for each year of service. A participant may lose vesting credits as provided in section 16-28 (loss of credits). The total number of vesting credits earned and retained shall determine whether a participant has a vested right to a pension benefit. Partial vesting credits shall be earned for full months of service.
- (b) *Vesting schedules:*
 - (1) *Adjusted retirement benefit.* A participant shall have a right to an adjusted retirement benefit upon earning ten (10) vesting credits, as set forth in section 16-33(b) hereof; provided, however, that employees hired before October 1, 2010, employed by the city as of September 30, 2018, and retiring on or after October 1, 2018, shall be one hundred (100) percent vested upon attaining ten (10) vesting credits, as set forth in section 16-33(b) hereof.
 - (2) *Normal retirement benefit for participants retiring prior to October 1, 2015.* A participant retiring prior to October 1, 2015 shall have a one hundred (100) percent vested right to a normal retirement benefit upon:
 - a. Earning twenty (20) vesting credits; or
 - b. His or her years service, when added to his or her age, equals or exceeds seventy-five (75); or
 - c. The termination or partial termination of this pension plan (to the extent funded as of such date).
 - (3) *Normal retirement benefit for participants retiring on or after October 1, 2015 and hired on or after October 1, 2010, through and including September 30, 2018, and who elected not to switch to the cash balance plan.* A participant retiring on or after October 1, 2015, and hired on or after October 1, 2010, through and including September 30, 2018, and who elected not to switch to the cash balance plan shall have a one hundred (100) percent vested right to a normal retirement benefit upon:
 - a. Attaining fifty-five (55) years of age and thirty (30) vesting credits; or
 - b. Attaining sixty-five (65) years of age and ten (10) vesting credits; or
 - c. The termination or partial termination of this pension plan (to the extent funded as of such date).
 - (4) *Normal retirement benefit for participants hired before October 1, 2010, and retiring on or after October 1, 2018.* Notwithstanding the provisions of section 16-27(b)(3), a participant holding a position not identified in PERC certification No. 529, as amended or superseded, and hired before October 1, 2010, and retiring on or after October 1, 2018, shall have a one hundred (100) percent vested right to a normal retirement benefit upon:
 - a. Attaining fifty-five (55) years of age and thirty (30) vesting credits; or
 - b. Attaining sixty-five (65) years of age and ten (10) vesting credits; or

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- c. The termination or partial termination of this pension plan (to the extent funded as of such date); or
 - d. Attaining the "rule of 80," which is attained when the sum of the participant's age and number of vesting credits is 80.
 - (c) *Limitation on changes in vesting schedules.* No amendment shall reduce a participant's vested right to a normal retirement benefit at the time such amendment is adopted, or, if later, at the time such amendment is effective.
 - (d) *Vesting of benefits.* No participant, beneficiary or other person shall have any vested right to a pension benefit unless the participant has met the requirements for vesting as provided in this title.
 - (e) *Purchase of credits for military service.* The years or fractional parts of years that a participant serves or has served full-time active duty in the military service of the Armed Forces of the United States, voluntarily or involuntarily, either during employment or prior to first or initial employment with the city shall be added to his or her years of credited service, provided that:
 - (1) The participant received an other than dishonorable discharge from the armed forces.
 - (2) The participant did not receive credited service for the time spent in the armed forces from any other governmental or military retirement or pension system.
 - (3) The participant contributes to the fund, for the years or fractional parts of years that the participant served as full-time active duty in the military service of the Armed Forces of the United States, voluntarily or involuntarily prior to employment with the city, the full actuarial cost of all service credits purchased.
 - (4) The years or fractional parts of years that a participant served as full-time active duty in the military service of the Armed Forces of the United States, voluntarily or involuntarily, during employment with the city shall be added to his or her years of credited service without participant contribution.
 - (5) The purchase of credited service under this section by a participant shall be paid in full prior to the participant's retirement date, and in accordance with all terms, rules, procedures or regulations established by the board of trustees. Such payment may be by direct in-service transfer from a participant's deferred compensation account (457 accounts) pursuant to section 457(e)(17) of the Internal Revenue Code or any other qualified plan.
 - (6) The maximum credit which may be purchased by a participant for any military service in the Armed Forces of the United States under this section shall be five (5) years.
 - (7) All credited service purchased pursuant to this section shall count toward vesting.
 - (f) *Purchase of credits for military reserve service.* The years or fractional parts of years that a participant serves or has served in reserve military service of the Armed Forces of the United States, prior to or while in the employ with the city shall be added to the participant's years of credited service, provided subsections (e)(1) through (e)(6) are met. Such credited service shall be calculated by dividing the total number of official military reserve points by three hundred sixty-five (365) to determine the equivalent years or fractional parts thereof to be so credited.
 - (g) *Service in other employment classifications.* Participants who served in more than one (1) of the city's employment classifications due to transfer to another classification, shall be credited for vesting purposes, with total service as an employee of the city. The benefit amount shall be calculated by multiplying the vesting credits earned in each employment classification by the benefit level for the original pre-transfer classification, and the employee's average final compensation in effect at the time of the participant's retirement, provided that service as a firefighter, police officer and general employee shall be accounted for

separately and benefits shall be paid accordingly from the appropriate plan. However, the total of all such benefit payments shall be subject to limitations established by F.S. § 112.65.

(Ord. No. 97-4, § 1, 2-18-97; Ord. No. 2002-21, § 1, 8-6-02; Ord. No. 2003-24, § 2, 7-15-03; Ord. No. 2004-10, § 1, 2-3-04; Ord. No. 2004-24, § 1, 8-17-04; Ord. No. 2005-18, § 1, 7-5-05; Ord. No. 2007-1, § 1, 1-16-07; Ord. No. 2010-19, § 5, 9-24-10; Ord. No. 2012-23, § 1, 6-19-12; Ord. No. 2018-11, § 2, 8-21-18)

Sec. 16-28. Loss of credits.

(a) *Breaks in service:*

- (1) A break in service shall occur when a participant is no longer employed by the city as a full-time employee.
- (2) A break in service shall not occur if the participant is not employed due to the participant:
 - a. Entering into the Armed Forces of the United States or the United States Merchant Marine on leave of absence, provided the person returns to full-time work for the city within one (1) year of discharge, or within one (1) year of discharge from a hospital, if the person was hospitalized at the time of separation from the Armed Forces; or
 - b. Becoming employed by the city in noncovered employment which noncovered employment shall not be used to compute benefits under this plan but may be regarded in determining eligibility for benefits hereunder; or
 - c. Being absent from work due to maternity or paternity leave due to unpaid leave of absence approved by the city, due to leave in accordance with the Family and Medical Leave Act of 1993; or
 - d. Becoming temporarily totally disabled or receiving a disability benefit from the plan; or
 - e. Terminating employment with the city and becoming re-employed by the city as an employee within five (5) years of termination, provided that the employee did not receive a refund of the employee's accumulated contributions or repaid such refund with interest as provided in section 16-28(c)(1).

(b) *Refund of contributions.* A participant who is not vested and suffers a break in service shall be entitled to a refund of the participant's accumulated contributions. A participant who is vested shall have the option of receiving a refund of the participant's accumulated contributions in lieu of any further benefits from the retirement system or such benefit to which the participant may be entitled as a result of the participant's service.

(c) *Re-entry into the pension plan:*

- (1) A person who has been paid a refund of accumulated contributions and within five (5) years after last terminating service becomes re-employed by the city may repay to the pension plan the accumulated contributions previously received, plus interest on that amount at the actuarially assumed interest rate, compounded annually. Such payment shall be made within thirty (30) days after receiving notice from the trust fund of the repayment amount.
- (2) Upon repayment of the refunded accumulated contribution, plus interest, the participant shall be credited with all vesting credits previously lost and there shall be no reduction in the value of any subsequent benefit by the value of the accumulated contributions previously refunded.

(Ord. No. 97-4, § 1, 2-18-97)

Sec. 16-29. Pension benefits.

- (a) *Right to pension benefits.* A pension benefit shall be payable if the participant:
- (1) Has a vested right to a pension benefit; and
 - (2) Has reached the applicable retirement age; and
 - (3) Has retired; and
 - (4) Has filed a claim for pension benefits.
- (b) *Normal retirement age.*
- (1) The normal retirement age for participants retiring before October 1, 2015, shall be the first day of the month on which or after the participant attains:
 - A. Twenty (20) vesting credits; or
 - B. Vesting credits and years of age totaling seventy-five (75) or more; provided the participant has at least ten (10) vesting credits.
 - (2) The normal retirement age for participants retiring on or after October 1, 2015, and hired on or after October 1, 2010, through and including September 30, 2018, shall be the first day of the month on which or after the participant attains:
 - A. Fifty-five (55) years of age and thirty (30) vesting credits; or
 - B. Age sixty-five (65) and ten (10) vesting credits.
 - (3) Notwithstanding the provisions of section 16-29(b)(2), the normal retirement age for a participant holding a position not identified in PERC certification No. 529, as amended or superseded, and hired before October 1, 2010, and retiring on or after October 1, 2018, shall be the first day of the month on which or after the participant attains:
 - a. Fifty-five (55) years of age and thirty (30) vesting credits; or
 - b. Sixty-five (65) years of age and ten (10) vesting credits; or
 - c. The "rule of 80," which is attained when the sum of the participant's age and number of vesting credits is 80.
 - (4) Notwithstanding any other provision of this plan to the contrary, a member's accrued benefits shall become one hundred (100) percent nonforfeitable upon the attainment of normal retirement age.
- (c) *Normal retirement benefit.* The normal retirement benefit shall be the benefit level provided in section 16-35 (benefit level).
- (d) *Forfeiture of benefits.* A participant's benefits under this division are subject to forfeiture:
- (1) For the reasons and in the manner set forth in F.S. § 112.3173; or
 - (2) For conviction, as defined in F.S. § 112.3173(2)(a), of a felony, following the forfeiture determination procedures set forth in F.S. § 112.3173(5), the person remains in the city's employ after the conviction.
- (e) *Contributions refund guarantee.* If any benefit paid hereunder shall cease before the retiree or his survivors or beneficiaries has received an amount equal to the participant's accumulated contributions, an amount equal to the difference thereof shall be paid to those persons designated in writing duly executed by the retiree and filed with the board. If there is no such designation, such amount shall be payable to the employee's estate.

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- (f) *Early retirement program.* Notwithstanding the provisions of this section a participant who, as of January 1, 2003, is within forty-eight (48) months of normal retirement and has ten (10) vesting credits shall be permitted to purchase up to forty-eight (48) months of additional service time and/or years of age. Purchase of such service time and/or years of age shall be conditioned upon the participant executing no later than close of business on November 15, 2002, an irrevocable agreement for participation and waiver in the early retirement program form which shall specify a date of retirement no earlier than January 1, 2003, and no later than March 31, 2003, as approved by the city manager.

A participant electing to participate in this early retirement program shall pay the full actuarial cost of the employee's contribution for such additional service time and/or years of age no later than January 2, 2003. The purchase price will be calculated based on the employee's retirement date, as approved by the city manager. Such payment shall be by lump sum.

- (g) *Voluntary separation incentive program.* Notwithstanding the provisions of this section, a participant who, as of September 15, 2009, is within twelve (12) months of normal retirement age shall be permitted to purchase up to twelve (12) months of additional service time. Purchase of such service time shall be conditioned upon the participant executing no later than close of business on September 15, 2009, an irrevocable agreement for participation and waiver on the voluntary separation incentive program form which shall specify a date of retirement no later than September 30, 2009, as approved by the city manager.

A participant electing to participate in this voluntary separation incentive program shall pay the full actuarial cost of such additional service time no later than September 30, 2009. The purchase price will be calculated based on the employee's retirement date, as approved by the city manager. Such payment shall be by lump sum.

(Ord. No. 97-4, § 1, 2-18-97; Ord. No. 2002-45, § 5, 12-17-02; Ord. No. 2007-1, § 1, 1-16-07; Ord. No. 2009-26, § 5, 9-23-09; Ord. No. 2010-19, § 6, 9-24-10; Ord. No. 2014-20, § 3, 7-1-14; Ord. No. 2018-11, § 3, 8-21-18)

Sec. 16-30. Forms of benefit payments.

- (a) *Forms of benefit payments.* A participant who has a right to receive a pension benefit as provided in section 16-29(a) (right to pension benefits) shall automatically be paid the standard form of benefit payment unless a timely election is made to receive an optional form of benefit payment.
- (b) *Standard benefits.* The standard pension benefit shall be a monthly benefit payable until the participant's death.
- (c) *Optional forms of benefits:*
- (1) *Joint and survivor annuity.* This form of benefit shall provide monthly payments of a smaller amount for the life of the participant, with monthly payments continuing thereafter for the life of the participant's designated beneficiary. The monthly benefit payable to the beneficiary shall be fifty (50) percent, sixty-six and two-thirds (66⅔) or one hundred (100) percent of the monthly benefit payable during the joint lives of the participant and the beneficiary, as elected by the participant. If payment of a pension is to be made in the form of a joint and survivor pension, the pension amount shall be adjusted so as to be actuarially equivalent to the standard benefit.
 - (2) *Ten years certain and life.* This form of benefit shall provide a reduced monthly benefit payable until the participant's death except that if the participant should die before he has received retirement benefits for ten (10) years, the same monthly benefit will be paid to the participant's designated beneficiary for the balance of such ten (10) years. The pension amount shall be adjusted so as to be actuarially equivalent to the standard benefit.
 - (3) Effective October 1, 2010, the deferred retirement option plan established by the board shall be closed to new participants, and thereafter the board shall have no authority to establish a deferred

retirement option plan or provide any other benefit not expressly provided by ordinance of the city commission.

(d) *Election of optional benefits:*

- (1) *Manner of electing optional benefits.* Optional forms of benefit payments shall only be payable if a timely election is made. Such election must be in writing, signed by the participant, on a form provided by the board of trustees.
- (2) *Time limits.* Any optional form of benefit payment must be elected prior to commencement of benefits from this pension plan.

(e) *Revocation or change of election:*

- (1) *Revocation by participant.* An election of a standard or optional form of benefit payment may be revoked at any time before cashing or depositing the first benefit check from this pension plan. Such a revocation must be in writing, signed by the participant.
- (2) If an election is revoked, then the standard form of benefit payment shall be paid unless another election of an optional benefit payment is timely made as provided in section 16-30(d) (Election of Optional Benefits).
- (3) After benefits have commenced, a retired participant may change her or his designation of joint annuitant or beneficiary.

(f) *Notice of forms of pension benefits:*

- (1) Written notice of the availability of all forms of pension benefits shall be provided to all vested participants prior to the commencement of benefits.
- (2) The notice shall contain a written explanation of:
 - a. The terms and conditions of the standard form of benefit; and
 - b. The right to elect, and to revoke an election of, any optional form of benefit payment.

(Ord. No. 97-4, § 1, 2-18-97; Ord. No. 2007-1, § 1, 1-16-07; Ord. No. 2010-19, § 7, 9-24-10; Ord. No. 2010-23, § 1, 9-21-10)

Sec. 16-31. Disability benefits.

(a) *Right to disability benefits.*

- (1) *Service-connected.* A service-connected disability benefit shall be payable if a participant is in the service of the city and:
 - a. Has become totally incapacitated for duty as the natural and proximate result of the actual performance of duty as an employee of the city, without willful negligence on his part, provided that after a medical examination, a written report is submitted by an independent medical examiner containing his opinion as to whether the employee is mentally or physically totally incapacitated for the further performance of duty in the service of the city. The board may arrange for not more than three (3) physicians to examine the employee and submit written reports.
 - b. Has filed a claim for disability benefits, and
 - c. Has filed a claim for social security and workers compensation disability benefits.

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- (2) *Nonservice-connected.* A nonservice-connected disability benefit shall be payable if a participant is in the service of the city; and
- a. Has ten (10) or more vesting credits;
 - b. Is totally and permanently incapacitated for duty as a result of causes occurring other than in the actual performance of duty for the city or as a result of a service incurred aggravation of an injury, disease, disability, impairment or condition which existed at the time of the participant's entry into the plan or of an injury, disease, disability, impairment or condition which itself was not service-incurred. It is the specific intent of this subsection that retirement due to a service-incurred aggravation of an injury, disease, disability, impairment or condition which existed at the time of a participant's entry into the plan or of an injury, disease, disability, impairment or condition which itself was not service-incurred, regardless of whether or not such injury, disease, disability, impairment or condition was known or was symptomatic prior to such service-incurred aggravation, be deemed retirement for nonservice-incurred disability.

(b) *Amount of disability benefits:*

- (1) *Service-connected.* The monthly service-connected disability benefit shall be equal to the percent of the participant's average final compensation as if the participant had attained twenty (20) years of credited service at the time of disability, or the benefit set forth in section 16-35(a), without any reduction for early retirement, either benefit commencing on the date of disability and continuing for life, or, an actuarially equivalent optional form of either benefit as set forth in section 16-30(c).
- (2) *Nonservice-connected.* The monthly nonservice-connected disability benefit for participants with at least ten (10) vesting credits shall be the benefit set forth in section 16-35(a), without any reduction for early retirement.
- (3) *Worker's compensation offset.* The disability benefits provided herein shall be offset by disability income benefits actually received by the participant from worker's compensation only to the extent by which the total of the worker's compensation benefit plus the disability benefit payable hereunder exceeds the employee's final compensation at the time of the disability.
- (4) *Earned income offset.* By February 28 of each year, each disability recipient below normal retirement age shall submit to the board a copy of any Internal Revenue Service W-2 or 1099 forms received by the participant showing earned income during the previous calendar year. In the event the participant's earned income plus disability benefits during said calendar year exceed the participant's final compensation as adjusted for pay changes subsequent to disability retirement, the participant's disability benefits shall be reduced by the board such that one-half of the excess over adjusted final compensation is recovered over a period of time determined by the board.

(c) *Determination of disability:*

- (1) *Initial determination.* The board may consider reports of physicians and Social Security, Worker's Compensation and Veterans Administration disability determinations in determining whether a participant is disabled; however, such reports and determinations shall not be binding upon the board. The board may also require the participant to be examined, at the system's expense, by physicians and other medical, vocational and rehabilitation professionals selected by the board whose reports may be considered by, but shall not be binding upon, the board in determining disability. The board shall determine eligibility for disability benefits within ninety (90) days after all required documentation and reports have been submitted to the board.
- (2) *Continuing review.* The board shall review the status of each disability benefit recipient periodically and may, in its sole discretion, require recipients, as a condition of continued payment of disability benefits, to submit physician's reports at their own expense or submit to examinations, at the plan's expense, by physicians or other medical, vocational or rehabilitation professionals. Failure of a recipient to submit

the reports or undergo the examinations required hereunder shall be sufficient cause for the trustees, after notice to the recipient, to suspend the recipient's benefits until the recipient submits the required reports or undergoes the required examinations.

(d) *Recovery from disability:*

- (1) *Recovery and re-employment by city.* If a disability benefit recipient recovers, is no longer disabled, is able to resume his former duties, and is offered re-employment by the city to a position of equal or greater pay than the participant was receiving when he or she became disabled, the participant's disability benefit shall be discontinued on the earlier of the thirtieth day after the city offers such re-employment or the day that the participant rejects or commences such employment.
- (2) *Credit during disability.* A recipient of a service-connected disability benefit who has recovered and returned to service for the city shall receive full vesting credit for all time during which the participant received a disability benefit. A recipient of a nonservice-connected disability benefit who has recovered and returned to service for the city shall not receive vesting credit for the time during which the participant received a disability benefit but shall not suffer a break in service for the period of disability; except that such a participant, within one year after re-employment, may purchase vesting credit for the period during which the participant received a nonservice-connected disability benefit, up to a maximum of four (4) vesting credits during the participant's career with the city. The purchase price for such vesting credit shall be the amount which would have been deducted from the participant's compensation had the participant been employed during the time during which the participant received such disability benefits. A disability benefit recipient whose benefit is discontinued and is not re-employed by the city shall not receive service credit for the period of disability and shall suffer a break in service commencing upon the date of disability.

(e) *Subrogation:*

- (1) The plan has a right of subrogation against any third-party tortfeasor or insurance carriers representing such third-party tortfeasor, to the extent that the plan becomes obligated to make any disability benefit payments to the participant as a result of injuries caused by the third-party tortfeasor.
- (2) A participant shall execute a subrogation agreement on a form provided by the board or such other documents which may be necessary to document the plan's subrogation rights. The participant shall notify the board of any claim or legal action asserted against any third-party or insurance carrier for such injuries and shall notify the board of the name and address of such party or insurer. The participant shall take no action inconsistent with the requirements of this section, nor settle any claim without obtaining the prior consent of the board.
- (3) The plan's subrogation rights shall not be subject to equitable distribution or to any reduction for costs or attorneys' fees incurred by the participant in pursuit of his/her claim against a third-party tortfeasor or any insurance carrier. Further, the plan's subrogation rights shall not be subject to reduction regardless of whether the participant recovers the full value of his/her claim against a third-party and/or any insurance carrier.
- (4) In the event that the participant fails to execute a subrogation agreement, or otherwise fails to comply with the terms of this section, then such failure shall be considered a breach of this plan and disability pension benefits may be denied and/or discontinued by the board upon a uniform and nondiscriminatory basis.

(Ord. No. 97-4, § 1, 2-18-97; Ord. No. 97-14, § 1, 8-5-97; Ord. No. 99-8, § 1, 4-6-99)

Sec. 16-32. Death benefits.

- (a) *Right to death in line of duty benefit.* If a participant is killed in the performance of duty to the city or dies as a result of illness contracted or injuries received while in the performance of duty to the city, the participant's survivors shall be entitled to the benefit set forth hereunder.
- (b) *Determination.* The board may consider reports of physicians, worker's compensation, the medical examiner, state and federal agencies, and the city departments in determining whether a participant's death was in the line of duty; however, such reports and determinations shall not be binding upon the board. The board may also require an autopsy of the participant remains, at the system's expense, by medical professionals selected by the board whose reports may be considered by, but shall not be binding upon, the board in considering causation.
- (c) *Types and amounts of death in line of duty benefits:*
 - (1) *Accumulated contributions.* The accumulated contributions standing to the participant's credit, at the time of his or her death, shall be paid to the participant's designated beneficiary.
 - (2) *Surviving spouse's benefits.* A pension of one-half ($\frac{1}{2}$) the deceased participant's final compensation shall be paid to the surviving spouse to continue for life, or, in lieu of this benefit and the children's benefit set forth below, the surviving spouse may elect to receive the death benefit set forth in section 16-32(d) below.
 - (3) *Children's benefit while surviving spouse is living.* If, in addition to a spouse, a child or children under age eighteen (18) years also survive the deceased participant, each child under age eighteen (18) years shall share equally in a pension equal to one fourth ($\frac{1}{4}$) the deceased participant's final compensation. If any child dies, marries or attains the age of eighteen (18) years, which age shall be extended to age twenty-three (23) as long as the child is a full-time student in an accredited college or vocational school, that child's benefit shall be discontinued and there shall be a redistribution of that child's benefit by the board equally to the surviving children under age eighteen (18) years, but in no event shall any child receive a pension greater than one-fourth ($\frac{1}{4}$) the deceased plaintiff's [participant's] final compensation.
 - (4) *Children's benefits if spouse dies.* If there be no surviving spouse, or if the spouse dies before the youngest surviving child of such deceased plaintiff [participant] reaches age eighteen (18) years, then any surviving children under age eighteen (18) years shall each receive in lieu of all other benefits, except as provided for in subsection (a) of this subsection, a pension equal to one-fourth ($\frac{1}{4}$) the deceased plaintiff's [participant's] final compensation, but in no event shall the total paid to all surviving children in any one year exceed fifty (50) percent of the deceased participant's final compensation. If there be more than two (2) children surviving under eighteen (18) years of age, each child shall receive an equal share of fifty (50) percent the deceased participant's final compensation. If any child dies, marries or attains eighteen (18) years of age, that child's benefit shall be discontinued and there shall be a redistribution of that child's benefit by the board equally to the surviving children under eighteen (18) years of age, but in no event shall any child receive more than one-fourth ($\frac{1}{4}$) the deceased participant's final compensation in any one year.
 - (5) *Dependent parent benefits.* If there is neither a surviving spouse, nor children under eighteen (18) years of age eligible to receive benefits under the provisions of this section, there shall be paid to the dependent father or dependent mother or both, as the board after investigation shall determine to have been financially dependent upon such deceased participant, a pension of one-sixth ($\frac{1}{6}$) the deceased participant's final compensation to each such dependent parent.
- (d) *Death not incurred in line of duty benefit.* If a participant with ten (10) or more vesting credits dies not in the line of duty, while employed by the city, the participant's surviving spouse shall be entitled to a monthly

pension, payable as of the date of the participant's death, which is actuarially equivalent to that which would have been paid had the participant retired on the date of death and selected a one hundred (100) percent joint and survivor annuity. The accumulated contributions of a participant who dies not in the line of duty while employed by the city, without regard to the number of vesting credits earned as of the date of the participant's death, shall be paid to the participant's designated beneficiary or, if none, to the participant's estate.

- (e) *Death while performing USERRA-qualified active military service.* In the case of a member who dies on or after January 1, 2007 while performing "qualified military service" under Title 38, United States Code, Chapter 43, Uniformed Services Employment and Reemployment Rights Act ("USERRA") within the meaning of section 414(u) of the Internal Revenue Code, any "additional benefits" (as defined by section 401(a)(37) of the Internal Revenue Code) provided under the plan that are contingent upon a member's termination of employment due to death shall be determined as though the member had resumed employment immediately prior to his death. With respect to any such "additional benefits," for vesting purposes only, credit shall be given for the period of the member's absence from covered employment during "qualified military service".

(Ord. No. 97-4, § 1, 2-18-97; Ord. No. 2014-20, § 4, 7-1-14)

Sec. 16-33. Severance benefits.

Upon termination of a participant's employment for reasons other than normal retirement, death or disability, the following benefits shall be payable.

- (a) *Termination prior to ten years of service.* If a participant terminates employment before attaining ten (10) vesting credits, the participant shall receive his or her accumulated contributions in a single lump sum payment.
- (b) *Termination after ten years of service.* If a participant terminates employment, after attaining ten (10) vesting credits, the participant may choose either a single lump sum payment of his or her accumulated contributions or an adjusted retirement pension commencing at age sixty-five (65). The adjusted retirement pension shall be the normal retirement benefit multiplied by the following percentages, according to the number of vesting credits attained by the participant at time of termination:

Vesting Credits	Percentage
10	50
11	55
12	60
13	65
14	70
15	75
16	80
17	85
18	90
19	95
20 or more	100

Provided however, that any participant who retires on or after attaining age sixty-five (65) and ten (10) vesting credits shall be one hundred (100) percent vested. The participant's pension shall be based upon the participant's vesting credits, average final compensation, and the benefit rate in effect at the time that the participant's employment was terminated. If the participant dies after termination of employment but before reaching age

sixty-five (65), the participant's accumulated contributions shall be paid in a lump sum to his or her designated beneficiary, or if none, to his or her estate. Alternatively, the participant's designated beneficiary may elect to receive a one hundred (100) percent joint and survivor pension, commencing as of the date that the participant would have reached normal retirement age and continuing for the life of the designated beneficiary in the amount which the participant would have received had the participant retired on the date of his/her death.

Further provided, however, that a participant holding a position not identified in PERC certification No. 529, as amended or superseded, and hired before October 1, 2010, employed by the city as of September 30, 2018, and retiring on or after October 1, 2018, shall be one hundred (100) percent vested upon attainment of 10 vesting credits.

(Ord. No. 97-4, § 1, 2-18-97; Ord. No. 2001-36, § 1, 12-4-01; Ord. No. 2010-19, § 8, 9-24-10; Ord. No. 2018-11, § 4, 8-21-18)

Sec. 16-34. Payment of benefits.

- (a) *Frequency of payments.* Pension benefits shall be paid monthly.
- (b) *First payment.* The first payment shall begin on the first day of the month on which or after the participant or beneficiary meets the requirements for a benefit. Such payment shall be pro-rated from the actual date the participant or beneficiary becomes eligible to receive a benefit.
- (c) *Last payment.* The last payment shall be the month coincident with the death of the participant (or survivor, if applicable) or later, depending on the form of benefit selected.

(Ord. No. 97-4, § 1, 2-18-97; Ord. No. 2000-15, § 1, 6-20-00; Ord. No. 2010-19, § 9, 9-24-10)

Sec. 16-35. Benefit level.

- (a) *Calculation of benefit amount.* The monthly benefit level applicable to vesting credits earned prior to October 1, 2010 is the product of the vesting credits earned multiplied by three (3) percent of average final compensation. The monthly benefit level applicable to vesting credits earned on or after October 1, 2010, is the product of the vesting credits multiplied by two (2) percent of average final compensation. Provided, however, that for a participant holding a position not identified in PERC certification No. 529, as amended or superseded, and hired before October 1, 2010, employed by the city as of September 30, 2018, and retiring on or after October 1, 2018, the monthly benefit level applicable to vesting credits earned on or after October 1, 2010, is the product of the vesting credits multiplied by two and one-quarter (2.25) percent of average final compensation.

The actual benefit amount is determined by making the adjustment, if any, for the form of benefit which the participant selects.

- (b) *Annual adjustment.* On October first of each year, the monthly benefits paid to each participant retiring prior to October 1, 2010 and any beneficiary thereof shall be increased by two dollars and fifty cents (\$2.50). Participants retiring on or after October 1, 2010 shall not be eligible for the annual adjustment under this paragraph.
- (c) *Reserved.*
- (d) *Annual cost of living adjustments.* The monthly retirement benefits payable to all participants who have been retired for three (3) consecutive years shall be adjusted, as of June 1 of each year, commencing on June 1, 2000, pursuant to procedures, methods, and actuarial assumptions established by the board of trustees. This adjustment shall be equal to one-half (½) of the actuarial gain realized for the prior fiscal year, ending as of September 30, that exceeds the assumed rate of return for the prior year as established by the board of

trustees. All retired participants qualifying for this adjustment shall receive equal annual percentage adjustments to their respective level of retirement benefits. Such cost of living adjustment, in no event, shall exceed the percentage increase set forth in the Bureau of Labor Statistics Consumer Price Index, Urban Consumers, All Cities (CPI-U) for the preceding calendar year. If there was no actuarial gain realized for the prior fiscal year, then there shall be no cost of living adjustment the following June 1. If there is an actuarial gain in excess of the stated CPI, it shall be carried forward to future years. Any cost liability created by the implementation of this adjustment shall be amortized over a thirty-year period.

(Ord. No. 97-4, § 1, 2-18-97; Ord. No. 98-07, § 1, 2-3-98; Ord. No. 2000-22, § 1, 8-15-00; Ord. No. 2001-31, § 1, 10-16-01; Ord. No. 2003-46, § 1, 11-18-03; Ord. No. 2010-19, § 10, 9-24-10; Ord. No. 2018-11, § 5, 8-21-18)

Sec. 16-36. Employment after retirement.

(a) *Suspension of benefits:*

- (1) The payment of pension benefits shall be suspended for each month a participant works as an employee of the City of Lake Worth.
- (2) The board of trustees may uniformly waive the provisions of this section for such periods of time as it deems appropriate.

(b) *Notice of re-employment and re-retirement:*

- (1) Retired participants must notify the board of trustees upon returning to any type of work for the City of Lake Worth within thirty (30) days after starting work.
- (2) A participant must notify the board of trustees upon re-retirement if the participant returns to work for the City of Lake Worth after having a claim filed for pension benefits. Pension benefits shall be suspended until notice of re-retirement is given.

(c) *Advance determination of prohibited work.* A participant may request, in writing and on a form provided by the board of trustees, an advance determination whether certain work for the city will cause a suspension of benefits. A written determination shall be given to the participant within sixty (60) days of the request, unless special circumstances (such as a hearing) require additional time, not to exceed one hundred twenty (120) days from receipt of the request.

(d) *Resumption of benefits:*

- (1) Benefit payments for pension recipients shall resume effective by the first day of the month after receipt of the notice of re-retirement, or verification of retirement, from the participant.
- (2) The board of trustees may deduct twenty-five (25) percent of each month's benefit payment for benefits previously made which should have been suspended, except the first three (3) months are subject to offset without this twenty-five (25) percent limitation. The board of trustees shall notify the participant of the amount subject to offset, the manner of offset, and the months of work involved.

(Ord. No. 97-4, § 1, 2-18-97)

Sec. 16-37. Lump sum payments.

- (a) *Involuntary lump sum distributions.* If the present value of a benefit is five thousand dollars (\$5,000.00) or less and the payment of such benefit has not begun, the board of trustees may, in its sole discretion, pay the actuarial equivalent of such benefit in a lump sum, or in monthly installments, without the consent of the participant or the participant's spouse or beneficiary.

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- (b) *Interest assumption.* For purposes of computing the present value of a benefit payable under this section the interest assumption to be used shall be the actuarially assumed interest rate adopted by the board of trustees.

(Ord. No. 97-4, § 1, 2-18-97; Ord. No. 2010-19, § 11, 9-24-10)

Sec. 16-38. Administration.

- (a) *Board of trustees.* The board of trustees shall administer and control the operation of this pension plan in accordance with the provisions of this pension plan, the declaration of trust, and other Florida law. The board of trustees may, from time to time, establish rules, policies and procedures for the interpretation, application and administration of the pension plan. In making any such determination or rule, the board of trustees shall pursue uniform policies and shall not unreasonably discriminate in favor of, or against, any person or group of persons.
- (b) *Claim for benefits:*
- (1) *Advance claim required.* In order to receive a benefit under this pension plan, a claim for benefits must be submitted, in writing, and shall be made on duly prescribed form containing the information required in this section. A claim for benefits must be filed before any benefits are payable.
 - (2) *Information required.* All participants and beneficiaries shall furnish such information as the board of trustees considers necessary or desirable for the purposes of administering the pension plan. This shall include the expected date of retirement of the participant, the marital status and proof of date of marriage of the participant, proof of age the participant and any designated beneficiaries, and date and proof of death if a claim is filed for a survivor annuity or a death benefit. If proof of age is not submitted as required, other information may be used as the board of trustees deems reliable. Any adjustment required by reason of lack of proof, or misstatement of age, shall be made in such a manner as the board of trustees deems equitable. Benefits provided under this pension plan are conditioned upon the furnishing of such true and complete information as may be needed. The board of trustees and any other persons involved in the administration of the pension plan shall be entitled to rely upon any certification, statement or representation made by a participant or beneficiary with respect to age, marital status, death of the participant, or other facts require to be determined under any of the provisions of the pension plan, and the board of trustees shall not be liable on account of the payment of any monies or the commission of any act or failure to act, in reliance thereon.
- (c) *Multiple claims prohibited.* Once a claim for benefits has been approved by the board of trustees, no further claims for a benefit shall be permitted, except claims for service-connected disability made within five (5) years of terminating employment.
- (d) *Notification of mailing address:*
- (1) All participants and beneficiaries shall file with the board of trustees, from time to time, in writing, their mailing address and each change of address. Failure to submit such mailing address may result in the payment of benefits being delayed.
 - (2) Any check or direct deposit representing payment hereunder, and any communication addressed to a participant, beneficiary depository designated by a participant or beneficiary, or other person, at the last address on the records of the board of trustees, shall be binding on such persons for all purposes of this pension plan.
 - (3) If the board of trustees is in doubt whether payments are being received by or on behalf of the person entitled thereto, it may notify such person, by certified mail at the last known address, that all

payments of benefits shall be withheld until the board of trustees is provided such information as it deems necessary.

(e) *Benefits payable to minors and incompetents:*

- (1) Whenever any person entitled to payments under this pension plan shall be a minor, under a legal disability, incarcerated, or, in the sole judgment of the board of trustees, be otherwise unable to care for their affairs in their own best interest and advantage (whether because of illness, accident, incapacity or other mental or physical condition), the board of trustees may direct that all or any portion of such payments be made in any of the following ways (unless a claim has been made by a legal guardian, tutor, conservator, committee or other duly appointed legal representative, in which event payment shall be made to such representative):
 - a. To the spouse, child, parent, or other blood relative, to be expended on behalf of the person (or on behalf of those dependents as to whom the person has the duty to support); or
 - b. To a recognized charity or governmental institution to be expended for the benefit of the beneficiary (or for the benefit of those dependents as to whom the person has the duty to support); or
 - c. To such other persons, organizations or institutions as the board of trustees deems appropriate to provide for the care and benefit of the person (or for the benefit of those dependents as to whom the person has the duty to support).
- (2) The decision of the board of trustees shall be final and binding upon all persons. After such decision, the board of trustees shall not be obliged to see to the proper application or expenditures of any payments so made.

(Ord. No. 97-4, § 1, 2-18-97)

Sec. 16-39. Claims, notices and inquiries.

- (a) *Claims, notices and inquiries.* All claims for benefits, elections for a specific form of benefit, notices of re-employment, notices of re-retirement, verifications of retirement, notices of mailing address, notices of appeal, and all other inquiries and matters concerning the pension plan shall be submitted to the board of trustees addressed as follows:

Secretary
Lake Worth Employee's Retirement System
7 North Dixie Highway
Lake Worth, Florida 33460
- (b) *Response to claims and inquiries.* All inquiries shall be answered promptly. The final decision for approval of benefits shall be made by the board of trustees.
- (c) *Denial of benefits.* If any claim for benefits is denied, suspended, or terminated, in whole or in part, then the claimant shall be furnished with a notice of denial, suspension or termination no later than thirty (30) days after the final decision has been made. The notice shall be provided in writing, by certified mail, and shall set forth:
 - (1) The specific reasons for the denial, suspension or termination of benefits; and
 - (2) The specific references to the pertinent provisions of the pension plan upon which the action is based and a copy of the pension plan provisions shall be furnished with this notice; and

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- (3) A description of any additional material or information necessary for the claimant to perfect the claim, along with an explanation of why such material or information is necessary; and
 - (4) An explanation of the claims review procedure.
- (d) *Claims review procedure:*
- (1) *Requests for review.* If a claim for benefits is denied, suspended or terminated, in whole or in part, then the claimant may appeal to the board of trustees for a full and fair review. In order to file an appeal, a written notice of appeal must be submitted within sixty (60) days after the notice of denial, suspension or termination is received by the claimant (or such later time as the board of trustees deems reasonable). The notice of appeal shall briefly describe the grounds upon which the appeal is based on shall be signed by the claimant. The claimant shall be allowed to review all pertinent documents during normal business hours, and shall be permitted to submit comments and a statement of issues for consideration by the board of trustees.
 - (2) *Representation.* A claimant may designate an attorney, or any other duly authorized person, to act as his or her representative at any stage of the claims review procedure. Any rights provided to the claimant during the claims review procedure shall automatically extend to the representative designated by the claimant. A designation of representative shall be signed by the claimant and the representative, and shall be submitted in writing.
 - (3) *Claims review board.* The board of trustees shall rule on all appeals brought under this subsection. A decision to grant or deny an appeal shall be based solely on the record before the board of trustees, unless the board of trustees determines, in its sole discretion, that a hearing is necessary for the proper resolution of the appeal. The board of trustees shall decide, by majority vote, to grant or deny an appeal, the final decision shall be made by the board of trustees, in writing, and shall be made no later than one hundred twenty (120) days after receipt of the notice of appeal, unless special circumstances (such as the need for a hearing) require an extension of time. If an appeal is denied, in whole or in part, then the decision shall set forth the specific reasons for the action, with specific references to those pension plan provisions upon which the decision is based. The claimant shall be promptly provided with a copy of this decision. The decision of the board of trustees shall be final and binding.
- (e) *Exhaustion of claims review procedure.* No action in law or in equity shall be brought to contest a denial, suspension or termination of benefits until the claimant has complied with the procedures provided in section 16-39(d) (Claims Review Procedure). In no case, however, shall any action be brought unless instituted within one year from the time the claimant received the notice of denial, suspension or termination provided in section 16-39(c) (Denial of Benefits).

(Ord. No. 97-4, § 1, 2-18-97)

Sec. 16-40. Funding.

- (a) *Funding.* The plan shall be funded by contributions from participants, contributions from the City of Lake Worth and other income sources as authorized by law.
- (b) *Participant contributions.* All participants shall make regular contributions at the rate of seven (7) percent of compensation for all service prior to October 1, 1997, and seven and eight-tenths (7.8) percent of compensation for all service thereafter which shall be deposited in the system at least monthly. For persons who first became participants of the retirement system on or after October 1, 1979, "compensation" shall exclude payments for all accumulated leave, compensatory time and overtime. The City of Lake Worth shall assume and pay participant contributions in lieu of payroll deductions from participants' earnings. No participant shall have the option of choosing to receive the contributed amounts directly instead of having them paid by the city directly to the plan. All such contributions by the city shall be deemed and considered

as a part of the participant's accumulated contributions and subject to all provisions of this plan pertaining to accumulated contributions of participants. This city "pick up" of contributions is intended to comply with section 414(h)(2) of the Internal Revenue Code.

If a participant has not made contributions for any period of covered service, the participant must pay retroactive contributions for that period in order to receive vesting credit for that period. Such retroactive contributions shall be made over a period of time equal to the period of time for which contributions were not made unless the participant selects a shorter period. Any retroactive contributions due must be paid in full prior to retirement.

- (c) *City contributions.* The City of Lake Worth shall contribute to the plan on at least a quarterly basis an amount which, together with the contributions derived from participants and other income sources as authorized by law, will be sufficient to meet the normal cost of the plan and to fund the actuarial deficiency over a period of not more than thirty (30) years.
- (d) *Basis of payments from the pension plan.* All benefits and expenses shall be paid in accordance with the provisions of this pension plan and the trust agreement and consistent with Florida Statutes and the Internal Revenue Code.

(Ord. No. 97-4, § 1, 2-18-97; Ord. No. 98-07, § 1, 2-3-98)

Sec. 16-41. Miscellaneous.

- (a) *Construction.* The terms and conditions of this pension plan shall be construed subject to the purposes and provisions of the ordinance and declaration of trust establishing the plan, and subject to state law, the Internal Revenue Code and all other applicable laws.
- (b) *Standards of proof.* The board of trustees shall be the sole judge of the standards of proof required in any case. In the application and interpretation of this pension plan, the decisions of the board of trustees shall be final and binding on the participants and beneficiaries, the city and all other persons.
- (c) *Benefits not assignable.* The right of any person to any payment under this pension plan shall not be subject to assignment, alienation or voluntary or involuntary transfer, and to the fullest extent permitted by law, shall not be subject to attachment, execution, garnishment, sequestration or other legal or equitable process, 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 city, to pay the certified bargaining agent of the city, and to make any payments for child support or alimony. In the event any person attempts to assign, transfer or dispose of such right, or if an attempt is made to subject said right to such process, such assignment, transfer or disposition shall be null and void.
- (d) *Forfeitures.* Forfeitures and dividends shall not be used to increase the benefits that any participant would otherwise receive under the pension plan at any time prior to the termination of the pension plan or the complete discontinuance of contributions to the pension plan, but shall be anticipated in determining the costs under the pension plan.
- (e) *Transfer of prior service.* Whenever a person who is a participant in a retirement system of the city is transferred in his or her employment so that he or she can no longer participate in the retirement system of which he or she had been a participant, then the retirement board of such system is authorized to transfer, and the new retirement board to establish in the new retirement system for such person, his or her prior service, if any, his or her membership service, and his or her accumulated contributions, and to do all things necessary to properly affect such transfer of personnel, and such funds as such person may be entitled to have placed to his or her credit.

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- (f) *Merger.* This pension plan shall not merge or consolidate with any other pension plan, nor transfer any assets or liabilities to any other pension plan, unless each participant in this pension plan will receive a benefit immediately after such merger, consolidation or transfer (if the pension plan then terminated) which is at least equal to the benefit the participant was entitled to immediately before such merger, consolidation or transfer (if the pension plan had terminated).
- (g) *Incorporation by reference.* This pension plan is maintained for the exclusive purpose of providing benefits to participants and beneficiaries, and is intended to satisfy all the requirements of Florida Statutes and the Internal Revenue Code. In the event any requirements of such laws have been omitted, they shall be deemed to be incorporated herein by reference.

(Ord. No. 97-4, § 1, 2-18-97; Ord. No. 2007-33, § 2, 7-3-07)

Sec. 16-42. Internal Revenue Code compliance.

- (a) *Maximum amount of retirement income.*

- (1) The limitations of this subsection (a) 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 (a) shall supersede any provision of the plan to the extent such provision is inconsistent with this subsection.

The annual pension as defined in paragraph (2) below 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 (1), the numerator of which is the member's number of years (or part thereof, but not less than one year) of service with the city and the denominator of which is ten (10). For this purpose, no more than one (1) 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) "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 (5) percent interest rate and the mortality basis prescribed in 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 (5) percent interest rate and the mortality basis prescribed in 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, preretirement incidental death benefits, and postretirement 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 §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 § 415(d) of the 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) "Dollar limitation" means, effective for the first limitation year beginning after January 1, 2001, one hundred sixty thousand (\$160,000), automatically adjusted under 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 sixty-five (65)

- (i) If the plan does not have an immediately commencing straight life annuity payable at both age sixty-five (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 (5) percent interest rate assumption and the mortality basis prescribed in 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 sixty-five (65) and the age of benefit commencement.

The dollar limitation at the member's annuity starting date is the lesser of (aa) 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 sixty-five (65), both determined without applying the limitations of this subsection (a), and (bb) the limitation determined under subclause (3)a.1.(i) of this subsection(a). 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 sixty-five (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 sixty-five (65) is the annual amount of such annuity that would be payable under the plan to a hypothetical member who is age sixty-five (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 Code, for benefits (except survivor and disability benefits as defined in

section 415(b)(2)(I) of the Code), if the annuity starting date for the member's benefit is before age sixty-two (62).

- (i) If the plan does not have an immediately commencing straight life annuity payable at both age sixty-two (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 equivalence computed using a five (5) percent interest rate assumption and the mortality basis prescribed in 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 sixty-two (62) and the age of benefit commencement.

The dollar limitation at the member's annuity starting date is the lesser of (aa) 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 sixty-two (62), both determined without applying the limitations of this subsection (a), and (bb) the limitation determined under subclause (3)a.2.(i) of this subsection (a).

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

Age as of Annuity Starting Date:	Adjustment of Dollar Limitation:
Over 65	The smaller of: (a) the actuarial equivalent of the limitation for age sixty-five (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 sixty-five (65), computed using a 5.00% interest rate and the mortality basis prescribed in 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 sixty-five (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 sixty-two (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 sixty-two (62), computed using a 5.00 percent interest rate and the mortality basis prescribed in 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 Code.

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- (4) With respect to subclause (3)a.1.(i), subclause (3)a.2.(i) and subparagraph (3)(B) above, 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 sixty-two (62), or between age sixty-five (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 preretirement survivor annuity, as defined in Code section 417(c), upon the member's death.
 - (5) The term "limitation year" is the 12-month period which is used for application of the limitations under 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 ten thousand dollars (\$10,000.00) provided the member has never participated in a defined contribution plan maintained by the city.
 - (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 subsection 415(d) of the Code.
 - (8) In the case of a member who has fewer than ten (10) years of participation in the plan, the dollar limitation set forth in paragraph (3) of this subsection (a) shall be multiplied by a fraction - (i) the numerator of which is the number of years (or part thereof) of participation in the plan, and (ii) the denominator of which is ten (10).
 - (9) Any portion of a member's benefit that is attributable to mandatory member contributions (unless picked-up by the city) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under section 415 of the Code.
 - (10) Should any member participate in more than one (1) defined benefit plan maintained by the city, 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 (1) 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 § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.
 - (12) The determination of the annual pension under paragraph (A)(1) of this subsection (a) shall take into account (in the manner prescribed by the regulations under section 415 of the Code) social security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 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 Code, as amended, so that the maximum benefits provided by plans of the city shall be exactly equal to the maximum amounts allowed under section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this subsection (a) and the provisions of section 415 of the 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 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.

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- (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) two and one-half (2½) months after severance from employment with the employer, and (b) the end of the limitation year that includes the date of severance.
- (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:
- April 1 of the calendar year that next follows the calendar year in which the participant attains or will attain the age of seventy and one-half (70½) years; or
- 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 member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date as defined in subsection (b) of this section 16-42.
- (2) *Death of member before distributions begin.*
- a. If the member dies before distributions begin, the member's entire interest will be distributed, or begin to be distributed, no later than as follows:
1. If the member's surviving spouse is the member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained age seventy and one-half (70½), if later.
 2. If the member's surviving spouse is not the member's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died.
 3. If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.
- b. The member's entire interest shall be distributed as follows:
1. *Member survived by designated beneficiary.* If the member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the member's entire interest will be distributed, beginning no later than the time described in subparagraph 2)a. above, 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

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- beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member'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 member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.
- c. Death of surviving spouse before distributions to surviving spouse begin. In any case in which: (i) the member dies before the date distribution of his or her interest begins; (ii) the member's surviving spouse is the member's sole designated beneficiary; and (iii) the surviving spouse dies before distributions to the surviving spouse begin, subparagraphs (2)a. and 2)b. above shall apply as though the surviving spouse were the member.
- (3) *Requirements for annuity distributions that commence during member's lifetime.*
- a. *Joint life annuities where the beneficiary is not the member's spouse.* If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspousal beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member'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 member 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 member and a nonspousal 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 member'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 member's lifetime may not exceed the applicable distribution period for the member 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 member reaches age seventy (70), the applicable distribution period for the member is the distribution period for age seventy (70) under the uniform lifetime table set forth in section 1.401(a)(9)-9 of the Treasury regulations plus the excess of seventy (70) over the age of the member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member'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 member's applicable distribution period, as determined under this subparagraph (3)b., or the joint life and last survivor expectancy of the member and the member'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 member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.
- (4) *Form of distribution.* Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subparagraphs (4)a., (4)b. and (4)c. below. If the member's interest is distributed in the form of an annuity purchased from an

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

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

1. The annuity distributions will be paid in periodic payments made at intervals not longer than one (1) 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 paragraphs (2) or (3) above, whichever is applicable, of this subsection (c);
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 member'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 member's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p) of the Code;
 - (iii) To provide cash refunds of employee contributions upon the member'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 member's required beginning date (or, if the member dies before distributions begin, the date distributions are required to begin under clauses (2)a.1. or (2)a.2., whichever is applicable) is the payment that is required for one (1) payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.

c. *Additional accruals after first distribution calendar year.* Any additional benefits accruing to the member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

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

(6) *Definitions.*

- a. *Designated beneficiary.* The individual who is designated as the beneficiary under the plan and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-4 the Treasury regulations.
- b. *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to paragraph (2) of this subsection (c).
- c. *Life expectancy.* 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:
 - a. Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
 - 1. Any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more;
 - 2. Any distribution to the extent such distribution is required under section 401(a)(9) of the 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 Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.
- (3) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, an annuity contract described in section 403(b) of the Code, a qualified trust described in section 401 (a) of the Code, an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state 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 Code section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.

- (4) **Distributee:** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the 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 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 Code or an individual retirement annuity described in section 408(b) of the Code shall be considered a distributee.
- (5) **Direct rollover:** A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.
- (e) Notwithstanding any other provision of this plan, the maximum amount of any mandatory distribution, as defined in section 401(a)(31) of the Code, payable under the plan shall be one thousand dollars (\$1,000.00).
- (f) *Compensation limitations under 401(a)(17):* 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 EGTRRA annual compensation limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is two hundred thousand dollars (\$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 Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding twelve (12) months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than twelve (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 of which is 12.

Any reference in the plan to the limitation under Section 401(a)(17) of the Code shall mean the EGTRRA annual compensation limit set forth in this provision.
- (g) 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) *Uniformed Services Employment and Reemployment Rights Act.* The plan shall at all times be administered in accordance with the provisions of the Uniformed Services Employment and Reemployment Rights Act, which Act is hereby incorporated by reference.
- (i) *Benefits nonforfeitable upon termination of the plan.* Notwithstanding any other provision of this plan to the contrary, all accrued benefits shall become one hundred (100) percent nonforfeitable upon the date of termination of this plan.

(Ord. No. 2010-19, § 12, 9-24-10; Ord. No. 2014-20, §§ 5—9, 7-1-14)

Sec. 16-43. Deferred retirement option plan.

- (a) Effective October 1, 2010, a deferred retirement option plan ("DROP") is established for eligible participants, as provided in this section.
- (b) **Eligibility and participation.**
 - (1) A participant shall be eligible to participate in the DROP upon attaining the normal retirement age.

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- (2) A participant's election to participate in the DROP shall be irrevocable. A participant must submit an irrevocable written DROP election on a form provided by the city prior to entering the DROP. A participant who elects to enter the DROP must also submit a letter of resignation stating the anticipated employment termination date, not to exceed sixty (60) months from the participant's DROP entry date.
 - (3) An eligible participant may participate in the DROP for a maximum of sixty (60) months, or until the participant sooner dies, retires or terminates employment. An employee who elects to participate in the DROP may elect to terminate DROP participation and city employment sooner than the maximum DROP period, with thirty (30) days advance written notice to the city.
- (c) DROP plan features.
- (1) An eligible participant who elects to participate in the DROP will be considered to have retired for purposes of the pension plan. The participant's monthly retirement benefit, determined in accordance with section 16-29, will be paid into his or her DROP account every month during the DROP period. No participant contributions shall be required after a participant enters the DROP, and the participant will not accrue any additional vesting credits, service or additional benefits under the plan after entering the DROP, other than cost of living adjustments as provided in section 16-35, if applicable.
 - (2) A participant who elects to participate in the DROP shall not be eligible for disability or preretirement death benefits under the pension plan after entry into the DROP.
 - (3) During a participant's participation in the DROP, the participant's monthly retirement benefit will be paid into the DROP account. Effective January 1, 2011, a participant's DROP account will earn interest at the one-year LIBOR Rate plus one (1) percent as of September 30 each year, not to exceed the plan's annual assumed rate of investment return. Provided however, that should the plan's net investment return be negative, DROP accounts shall be credited with zero (0) return.
 - (4) A DROP participant who is employed in a position that is eligible for participation in the pension plan after participating in the DROP for sixty (60) months and does not retire or terminate employment will no longer be credited with earnings on his/her DROP account while the participant is so employed. Such participant's monthly retirement benefit shall continue to be paid into his/her DROP account for as long as he/she is employed in a position that is eligible for participation in the pension plan after participating in the DROP for sixty (60) months; however, such member shall not be eligible for disability or preretirement death benefits under the pension plan.
 - (5) Within thirty (30) days following a DROP participant's termination of city employment or death, the participant, or in the event of the participant's death the participant's designated beneficiary, may submit a written election on a form approved by the board, to receive the participant's entire DROP account balance, which shall be distributed to the participant (or in the event of the participant's death to the participant's designated beneficiary or estate in accordance with subsection (c)(6) below), in a cash lump sum, unless the participant elects to have all or any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover. Any such direct rollover shall be accomplished in accordance with subsection 16-42(d) of this division 2, "Pension plan." In the event a participant or designated beneficiary does not submit a written election to receive a distribution of the participant's DROP account balance within thirty (30) days following the participant's termination of city employment or death, the DROP account shall be maintained but shall not earn interest.
 - (6) If a DROP participant dies before his or her DROP account is distributed, the participant's designated beneficiary shall have the same rights as the participant with respect to the distribution of the DROP account. If the participant has not designated a beneficiary, the DROP account balance shall be paid to the participant's estate.

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

(Ord. No. 2012-18, § 1, 5-1-12; Ord. No. 2014-20, § 10, 7-1-14)

Sec. 16-44. Cash balance plan created.

Effective October 1, 2018, there is hereby added a cash balance plan feature ("cash balance plan") to the City of Lake Worth Employees Retirement System, set forth in sections 16-44 through 16-50. All employees who are hired on or after October 1, 2018, and all employees hired before that date and after September 30, 2010, who elect to participate in the cash balance plan pursuant to section 16-26(c), shall be subject to the provisions of the cash balance plan. The cash balance plan is intended to meet the applicable requirements of Internal Revenue Code Section 401(a), hereinafter referred to as "Code Section". The plan is a "governmental plan" within the meaning of Code Section 414(d), and as such, is exempt from the Employee Retirement Income Security Act of 1974, as amended. Except as otherwise provided below, the terms of the City of Lake Worth Employees Retirement System shall apply to the cash balance plan.

(Ord. No. 2018-11, § 6, 8-21-18)

Sec. 16-45. Contributions, benefit.

- (a) Employees shall contribute five (5) percent of their compensation to the cash balance plan.
- (b) The city shall contribute such amounts as are actuarially required to fund plan benefits. The cash balance normal retirement benefit for each employee shall be equal to a hypothetical account at such employee's normal retirement date. The hypothetical account shall be credited with an allocation of ten (10) percent of each employee's compensation, plus a hypothetical interest credit of five (5) percent per year. Interest will be credited quarterly at an effective quarterly rate of 1.2273 percent per quarter.
- (c) Employees shall not have the option to receive the employer contribution as cash.
- (d) In addition to the contributions outlined above, the city shall contribute such sums as are necessary to pay the administrative costs of the cash balance plan.

(Ord. No. 2018-11, § 6, 8-21-18)

Sec. 16-46. Eligibility.

Any employee holding a position not identified in PERC certification No. 529, as amended or superseded, and hired on or after October 1, 2018, shall automatically become a participant in the cash balance plan as a mandatory condition of their employment, in addition to those employees electing to participate in the cash balance plan pursuant to section 16-26(c).

(Ord. No. 2018-11, § 6, 8-21-18)

Sec. 16-47. Management of cash balance plan assets; plan administration.

The assets of the cash balance plan and the existing defined benefit plan may be commingled for investment and liability accounting purposes such that both plans together are considered to be one (1) plan for the purposes of satisfying any accounting disclosure requirements.

(Ord. No. 2018-11, § 6, 8-21-18)

Sec. 16-48. Vesting.

Employees shall immediately be one hundred (100) percent vested in the cash balance plan.

(Ord. No. 2018-11, § 6, 8-21-18)

Sec. 16-49. Retirement eligibility and benefits.

- (a) Upon a participant's attainment of normal retirement age, termination of employment, retirement, death, or disability, and upon submission of an application for commencement of distribution, such participant shall be entitled to a benefit equal to such participant's hypothetical account, and such benefit shall be paid as set forth in this section.
- (b) The hypothetical account of the employee shall, at the election of the employee:
 - (1) Be converted to an annuity utilizing the interest rate and mortality table used below; or
 - (2) In lieu of an annuity, an employee may receive a lump sum payment of the present value of the hypothetical account.
- (c) For purposes of establishing the actuarial present value of any form of payment, other than a lump sum distribution, all future payments shall be discounted for interest and mortality by using seven (7) percent interest and the "Applicable Mortality Table" within the meaning of Code Section 417(e)(3)(B) as initially described in Revenue Ruling 2007-67.
- (d) The annuity payment shall be guaranteed for the life of the employee and any survivor, should the employee choose a survivorship option through the actuarial reduction of the expected annuity for the employee. The survivorship amount may be fifty (50) percent, sixty-six and two-thirds (66⅔) percent or one hundred (100) percent of the employee's monthly annuity payment.
- (e) The normal form of payment shall be a single life annuity, which shall be paid for the lifetime of the employee. In no event shall the sum of the annuity payments be less than the sum of the contributions made by the employee.
- (f) The optional selection may not be altered after retirement. In the case of an employee whose beneficiary is a spouse, the consent of the spouse, in writing, shall be required for selection of a method of distribution that does not provide for a spousal survivorship benefit.

(Ord. No. 2018-11, § 6, 8-21-18)

Sec. 16-50. Disability, death, termination of service.

- (a) In the event that an employee shall become permanently and totally disabled prior to eligibility for normal retirement, the employee shall be eligible for normal retirement benefits as specified in section 16-49.
- (b) In the event that an employee shall die prior to eligibility for normal retirement, the employee's designated beneficiary shall be eligible for normal retirement benefits as specified in section 16-49.
- (c) If the employee separates from service (whether due to retirement or otherwise) prior to eligibility for normal retirement, the employee shall be eligible for normal retirement benefits as specified in section 16-49.

(Ord. No. 2018-11, § 6, 8-21-18)

PART II - CODE OF ORDINANCES
Chapter 16 - PENSIONS AND RETIREMENT
ARTICLE II. - EMPLOYEES' RETIREMENT SYSTEM
DIVISION 3. GENERAL EMPLOYEES EXCESS BENEFIT PLAN

DIVISION 3. GENERAL EMPLOYEES EXCESS BENEFIT PLAN²

Sec. 16-51. Excess benefit plan.

- (a) *Establishment of plan.* There is hereby created a separate, unfunded, nonqualified excess benefit plan containing the terms and provisions set forth in this subpart and intended to be a qualified governmental excess benefit arrangement as defined in section 415(m)(3) of the Internal Revenue Code.
- (b) *Definitions.*
 - (1) All definitions prescribed in this chapter are applicable to the plan created pursuant to this subpart unless a different definition is set forth in this subpart, or the context in which a term is used in this subpart indicates a different meaning than that prescribed elsewhere in this Code or the Internal Revenue Code.
 - (2) *Board* shall mean the board of trustees of the City of Lake Worth General Employees Retirement System.
 - (3) *Code* shall mean the Internal Revenue Code as it may be amended by Congress from time to time.
 - (4) *Excess benefit participant* shall mean any member whose retirement benefit is determined on the basis of all qualified plans maintained by the city without regard to the limitations set forth in the pension plan and comparable provisions of other qualified plans of the city, that exceed the maximum benefit under section 415 of the Internal Revenue Code.
 - (5) *Excess benefit plan* shall mean the unfunded, nonqualified plan created by the city to provide benefits to members which would be provided under the pension plan, but for the limitations imposed by section 415 of the Internal Revenue Code.
 - (6) *Maximum benefit* shall mean the retirement benefit a member is entitled to receive from the benefit plan set forth in this Code in any month after giving effect to any provision of a qualified plan designed to conform to section 415 of the Code.
 - (7) *Pension plan* shall mean the city general employees retirement system.
 - (8) *Unrestricted benefit* shall mean the monthly retirement benefit a member, or the spouse, child, or other beneficiary of a member, would have received under the terms of all qualified plans of the city, except for the restrictions contained in the pension plan and any similar provisions of any other qualified plans designed to conform to section 415 of the Internal Revenue Code.
- (c) *Benefit provided.*
 - (1) An excess benefit participant who is receiving benefits from the pension plan is entitled to a monthly benefit, including cost of living adjustments, under this excess benefit plan in an amount equal to the lesser of:

²Editor's note(s)—Ord. No. 2003-12, § 4, adopted March 3, 2003 amended the Code with the addition of a new section 14-33. The editor has determined that said ordinance pertains to retirement, and has therefore included said ordinance as division 3, section 16-51.

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- a. The member's unrestricted benefit under the qualified defined benefit plan, less the maximum benefit permitted for qualified defined benefit plans for government employees under section 415, Internal Revenue Code; or
 - b. The amount which the member's monthly benefit from the pension plan has been reduced due to limitations imposed by the Internal Revenue Code.
- (2) A retirement benefit payable under this excess benefit plan shall be paid in the form and at the time it would have been paid as a monthly pension under the pension plan, except for the limitations set forth in the pension plan and section 415 of the Code. Each optional benefit form permitted under this excess benefit plan shall be the actuarial equivalent of each other permitted benefit form.
 - (3) This excess benefit plan shall be administered by the board. Except as provided to the contrary in this subsection, the rights, duties and responsibilities of the board shall be the same for this excess benefit plan as for any other qualified plan under its direction.
 - (4) The actuary employed by the board is responsible for determining the amount of benefits that may not be provided under the pension plan solely by reason of the limitations set forth in this section and section 415 of the Internal Revenue Code and shall also determine the amount of contributions that will be made to the excess benefit plan rather than to the pension plan.
 - (5) The actuaries and legal advisors for the board shall also provide advice to the board for this excess benefit plan.
- (d) *Contributions.* Contributions may not be accumulated under this excess benefit plan to pay future retirement benefits. Each payment of contributions by the employer that would otherwise have been made to the retirement system shall be reduced by the amount determined by the board as necessary to meet the requirements for retirement benefits under this excess benefit plan until the next payment of contributions is expected to be made to the pension plan by the city. The city shall then pay to this excess benefit plan, out of the contributions that would otherwise have been made to the pension plan, on at least a quarterly basis, as set forth in the grantor trust agreement creating the excess benefit plan, an amount necessary to satisfy the obligation to pay monthly retirement benefits under this excess benefit plan. The board shall satisfy the obligation of this excess benefit plan to pay retirement benefits out of city contributions so transferred. The city contributions otherwise required to the pension plan established under the retirement system and under other qualified plans shall be divided into those contributions required to pay retirement benefits pursuant to this section and those contributions paid into and accumulated to pay the maximum benefits required under the qualified plans. City contributions made to provide retirement benefits pursuant to this part shall not be commingled with monies of the pension plan or any other qualified plan, nor shall this excess benefit plan ever receive a transfer of assets from the pension plan. Any actuarial gains realized as a result of the limitation of benefits shall be a direct credit to the city.

(Ord. No. 2003-12, § 4, 3-3-03)

Secs. 16-52—16-62. Reserved.