

DIVISION 1. - POLICE RETIREMENT SYSTEM

Subdivision 1. - Declaration of trust

Sec. 16-126. - 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 and meets the requirements of section 185.06(5), F.S., as amended.
- (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) *Division 2*. The term "division 2" as used herein shall mean the share account assets for the participants which are created by section 16-169 et seq. of the City Code and which were combined for administration and investment purposes with the assets of division 1 effective July 1, 2013.
- (h) *Declaration of trust*. The term "declaration of trust" as used herein shall mean subdivision 1 of this division including all amendments and modifications as may from time to time be made.
- (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 subdivision 2 of this

division.

- (l) *Police officer.* The term "police officer" shall mean any person employed by the city who satisfies the definition of police officer in section 185.02(11), F.S.
- (m) *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.
- (n) *Trust fund.* "Trust", "trust fund" and "fund" as used herein shall mean the entire trust estate of Lake Worth Police 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. 97-5, § 1, 2-18-97; Ord. No. 2000-5, § 1, 3-21-00; Ord. No. 2013-31, § 1, 6-18-13)

Sec. 16-127. - 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 Chapter 185, F.S., as amended, for participants and their beneficiaries and in accordance with the provisions set forth herein and in the pension plan which specifically amend said Chapter of the Florida Statutes, as contained herein.

Effective July 1, 2013, the assets of division 1 and division 2 of the Lake Worth Police Relief and Pension Fund were combined. Effective that date, the division 2 assets became an integral part of the division 1 assets for both administrative and investment purposes. This merger is intended to be nothing more than a combining of assets and there is no intent to modify any of the benefits provided, or obligations imposed, in the Lake Worth Police Relief and Pension Fund divisions 1 and 2.

(Ord. No. 97-5, § 1, 2-18-97; Ord. No. 2000-5, § 2, 3-21-00; Ord. No. 2013-31, § 2, 6-18-13)

Sec. 16-128. - 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 police officers employed on or after that date. Police officers, employees, participants and beneficiaries who terminated employment as a police officer with the city or began receiving benefits prior to the effective date shall be governed by the provisions of chapter 16, article IV, division 1 of the Lake Worth Code as it was in effect prior to the effective date.

(Ord. No. 97-5, § 1, 2-18-97)

Sec. 16-129. - Board of trustees.

(a) *Number, appointment, term:*

(1) The plan shall be administered by five (5) trustees.

- a. Two (2) trustees who are participants of the retirement system employed by the Palm Beach County Sheriff's Office, or deputy sheriffs who are in the DROP, elected by a majority of the deputy sheriffs who are participants of the retirement system or a retired participant when active participant membership falls below ten (10), elected by a majority of the deputy sheriffs, active or retired who are participants of the system. If there are no active or retired participants remaining in the plan or capable of serving, the remaining trustees may elect an individual to serve as an elected trustee. Upon receipt of such person's name, the city commission shall, as a ministerial duty, appoint such person to the board of trustees;
- b. The mayor of the city;
- c. A member of senior management staff appointed by city commission; and
- d. One trustee shall be appointed by the city commission.
- e. The trustee appointed by the city commission must, at all times while serving as a trustee, be a resident of the City of Lake Worth.

(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 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 chairperson, a vice-chairperson, and a secretary for a term of one year, or until their successors have been elected. The secretary shall maintain minutes and records of all meetings, proceedings and acts of the trustees in compliance with section 185.06(3), F.S., as amended, and shall, with reasonable promptness, send copies of such minutes and records to all trustees and legal counsel. The secretary shall maintain a record of all persons receiving retirement payments under the provisions of this article, which shall note the date such payments began and will cease, and shall maintain a list of all police officers employed by the city, including name, address, date of employment and termination of employment with the city. The chairperson, or in his or her absence the vice-chairperson, 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 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) *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.

(k) *Attendance of board members.* If any resident member of the board shall fail to be present at three (3) consecutive regularly scheduled meetings or at twenty (20) percent of the regularly scheduled meetings of the board held within any 12-month period, the city clerk shall declare the member's office vacant, and the city commission shall promptly fill such vacancy.

(Ord. No. 97-5, § 1, 2-18-97; Ord. No. 99-1, § 1, 3-2-99; Ord. No. 2000-5, § 3, 3-21-00; Ord. No. 2003-44, § 5, 11-18-03; Ord. No. 2005-61, § 2, 12-20-05; Ord. No. 2008-14, § 4, 7-1-08; Ord. No. 2010-20, § 2, 9-29-10)

Sec. 16-130. - 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 division 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.

(e) Effective July 1, 2013, the board should take steps to ensure the collection, investment and division of the Chapter 185 state premium tax dollars as provided for in division 2 of this article.

(Ord. No. 97-5, § 1, 2-18-97; Ord. No. 2013-31, § 3, 6-18-13)

Sec. 16-131. - 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 Police 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.
- (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 or her 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 in accordance with the provisions and limitations of section 185.06, F.S., as amended. The board shall identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in Florida Statutes, Section 215.473, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in such company beginning January 1, 2010 and shall thereafter be prohibited from purchasing or holding such securities. The divestiture of any such security must be completed by September 30, 2010. In accordance with Ch. 2009-97, Laws of Florida, no person may bring any civil, criminal, or administrative action against the board or any employee, officer, director, or advisor of such board based upon the divestiture of any security pursuant to this paragraph.

(2) *Delegation and allocation of investment functions.*

- a. The trustees shall have the power and authority in accordance with section 185.06(5)(b), F.S., to appoint one or more investment managers, or any other professional advisors they deem necessary, 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 (d), the trustees shall, from time to time, adopt appropriate investment policies or guidelines that shall comply with section 185.06, F.S.
 - c. The trustees shall, at least once every three (3) years, retain a professionally qualified independent consultant, as defined in ch. 158, F.S., who shall evaluate the performance of existing professional money manager(s) and make recommendations to the trustees regarding the selection of money managers in any future selection process.
- (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), Florida Statutes, 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.
- (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;
 - (6) To administer, construe and interpret the provisions of chapter 16, article IV Division 1 of the Lake Worth Code, this declaration of trust and the plan;
 - (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; and
 - (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.

(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 in accordance with section 112.061, F.S., including expenses for attendance at meetings and other functions of the board of trustees, and 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;
 - 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 ch. 185, F.S., 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; and
- 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 laws, 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.

(w) *Division 2.* In addition, the board shall have the powers and duties as set forth in division 2 of this plan.

(Ord. No. 97-5, § 1, 2-18-97; Ord. No. 99-1, § 2, 3-2-99; Ord. No. 2000-5, § 4, 3-21-00; Ord. No. 2010-20, § 3, 9-29-10; Ord. No. 2013-31, § 4, 6-18-13)

Sec. 16-132. - 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. 97-5, § 1, 2-18-97)

Sec. 16-133. - Beneficial rights.

- (a) *No right, title or interest of the city.* The city, 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. 97-5, § 1, 2-18-97)

Sec. 16-134. - 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; and
 - (4) Determine the date of distribution and the asset value required to fund all of the nonforfeitable benefits. The board shall inform the city, or then current fund sponsor, if additional assets are required, in which event, the city, or then current fund sponsor, shall continue to financially support the retirement plan until all nonforfeitable benefits have been fully funded. At such time, the funds shall be appropriated and distributed in accordance with the provisions of Florida Statutes, chapter 185.

(Ord. No. 97-5, § 1, 2-18-97; Ord. No. 2010-20, § 4, 9-29-10)

Sec. 16-135. - 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. 97-5, § 1, 2-18-97)

Subdivision 2. - Pension Plan

Sec. 16-136. - 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 16-151(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 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 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.* "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) years of service contained within his or her 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.
- (d) *Board of trustees.* The term "board of trustees" shall mean the trustees designated in this division, and any successor trustees selected as provided therein, acting in a group 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 a police officer 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:
 - (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:
 - a. The pregnancy of the participant;
 - b. The birth of a child of the participant;
 - 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 16-139(a) 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 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) *Police officer*. The term "police officer" shall mean any person employed full-time by the city who satisfies the definition of police officer in F.S. section 185.02(11).
- (p) *Retirement*. The term "retirement" or "retired" shall mean the complete withdrawal of a participant from any further employment as a full-time sworn employee of the police department of the city.
- (q) *Service*:
- (1) *Covered employment*. The term "service" means years and completed months of continuous employment as a full-time sworn police officer 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 police officer on leave of absence; provided that the police officer must have re-entered the city's police service within the period of time provided in the Uniformed Services Employment and Reemployment Rights Act (USERRA) or ch. 185, F.S., whichever is greater, following release from military 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 police officer prior to employment with the city; provided that the police officer contributes to the fund the full actuarial cost of all such service, and complies with section 16-138(e) herein.
 - f. The term "service" shall also mean service as a police officer for any employer by the police officer prior to employment by the city; provided that the police officer contributes to the fund the full actuarial cost of all such service, and complies with section 16-138(g)

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.
- (r) *Vested.* The term "vested" shall mean a nonforfeitable right to a pension benefit under this pension plan.

(Ord. No. 97-5, § 1, 2-18-97; Ord. No. 99-9, § 1, 4-6-99; Ord. No. 2000-5, § 5, 3-21-00; Ord. No. 2002-22, § 1, 8-6-02; Ord. No. 2003-23, § 1, 7-15-03; Ord. No. 2004-31, § 1, 10-5-04; Ord. No. 2010-20, § 5, 9-29-10; Ord. No. 2010-31, § 2, 12-7-10; Ord. No. 2011-08, § 2, 5-3-11; Ord. No. 2014-19, § 2, 7-1-14)

Sec. 16-137. - Participation in the pension plan.

- (a) A police officer 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 provided that the chief of police shall have the option not to participate 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; or
 - (3) The person dies.

(Ord. No. 97-5, § 1, 2-18-97; Ord. No. 2000-5, § 6, 3-21-00)

Sec. 16-138. - Vesting credits.

- (a) *Vesting credits.* A participant shall earn one vesting credit for each year of service. A participant may lose vesting credits as provided in section 16-139 (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 subsection 16-144(b) hereof.
 - (2) *Normal retirement benefit.* A participant 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).
- (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 the 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 for 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 the full actuarial cost of all service credits purchased.
 - (4) 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.
 - (5) 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 as provided in USERRA or ch. 185, F.S.
 - (6)

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) above 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) *Prior service credit.* A participant may purchase vesting credit for service as a police officer for any employer prior to employment by the city, by depositing into the trust fund the full actuarial costs of such vesting credit that would have occurred had the member been employed by the city as a police officer for the period of vesting credit purchased. Payment for said vesting credit may be made as a lump sum or by payroll deductions, not to extend beyond three (3) years, according to a schedule approved by the board of trustees. Payroll deduction payments shall require interest at the actuarial rate of return for the years purchased. Such purchase of vesting credit shall take effect upon vesting in the pension plan. If a participant terminates service prior to attaining vested status and receives a refund of member contributions, the amount paid for such prior vesting credit shall also be refunded, subject to the following:
 - (1) Prior service vesting credit shall not be granted for service where the participant is receiving or is entitled to receive a benefit from another governmental pension system;
 - (2) Prior service vesting credit under this section shall only be provided for service as a police officer, as defined in F.S. ch. 185, with any law enforcement agency including the city;
 - (3) Prior service vesting credit for prior police officer service and United States Armed Forces and Merchant Marine service, including reserve service, shall not exceed five (5) years. Actual prior service credit purchased shall be added to the years of service with the city.
 - (4) Election to purchase vesting credit, for prior service with the city, prior service with any other law enforcement agency or prior service in the United States Armed Forces or Merchant Marine including reserve service, shall be made in writing to the board of trustees. The cost of credited service purchased for such prior service shall be the full actuarial cost of all credited service purchased hereunder computed as a lump sum payment into the plan. Actual payment may, at the member's option, be extended over a period of time not to exceed three (3) years and shall be subject to interest at the actuarial rate of return for the years purchased. Such payment may be by direct in-service transfer from a participant's deferred compensation account (457 account) pursuant to section 457(e)(17) of the Internal Revenue Code or any other qualified plan. Full payment of such purchased vesting credit must be completed prior to the member's actual retirement.

- (h) *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. 97-5, § 1, 2-18-97; Ord. No. 2000-5, § 7, 3-21-00; Ord. No. 2002-21, § 2, 8-6-02; Ord. No. 2003-23, § 2, 7-15-03; Ord. No. 2004-10, § 2, 2-3-04; Ord. No. 2004-25, § 1, 8-17-04; Ord. No. 2010-20, § 6, 9-29-10; Ord. No. 2010-31, § 3, 12-7-10; Ord. No. 2011-08, § 3, 5-3-11; Ord. No. 2012-23, § 2, 6-19-12)

Sec. 16-139. - 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 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 a sworn police officer 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 subsection 16-139(c).

- (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 earns any vesting credits under the pension plan may repay to the pension plan the accumulated contributions previously received, plus interest on that amount at the actuarially assumed interest rate, compounded annually.
- (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. 97-5, § 1, 2-18-97)

Sec. 16-140. - 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.* The normal retirement age shall be the first day of the month on which or after the participant attains:

- (1) Twenty (20) vesting credits; or
- (2) Vesting credits and years of age totaling seventy-five (75) or more; provided the participant has at least ten (10) vesting credits.
- (3) Vesting credits and years of age totaling fifty-five (55) or more; provided the participant has at least ten (10) vesting credits.

A participant who became a Palm Beach County Sheriff's Office ("PBSO") employee pursuant to the 2008 interlocal agreement between the city and PBSO and elected to continue participating in this division 1 plan shall be eligible to retire and begin receiving benefits upon attaining the normal retirement age specified above, regardless of the participant's employment status with PBSO.

(c) *Normal retirement benefit.* The normal retirement benefit shall be the benefit level provided in section 16-146 (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 section 112.3173, Florida Statutes, or
- (2)

For conviction, as defined in F.S. section 112.3173(2)(a), of a felony, following the forfeiture determination procedures set forth in F.S. section 112.3173(5) unless the person remains in the city's employ after the conviction.

- (e) *Contributions refund guarantee.* If any benefit paid under this division 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.
- (f) *Early retirement age.* The early retirement age shall be the first day of the month on which or after the participant attains:
 - (1) Ten (10) vesting credits; and
 - (2) Fifty (50) years of age.
 - (3) The early retirement benefit shall be actuarially reduced taking into account the participant's age and earlier commencement of retirement income payments. However, in no event shall the early retirement reduction exceed three (3) percent for each year by which the participant's age at retirement preceded the participant's normal retirement age.
- (g) *Early retirement program.* 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 retire on or after January 1, 2003, but no later than March 31, 2003, on a date approved by the city manager, and upon retirement shall receive an increase in the participant's multiplier to permit the participant to retire immediately with the same benefit as if the member had attained twenty (20) vesting credits or a total of vesting credits and age of nine hundred (900) months.

A participant electing to participate in this early retirement program shall pay the full actuarial cost of the employee's contributions for such increased benefit rate no later than January 2, 2003. Such payment shall be by lump sum. Notwithstanding the above paragraphs participants that have attained the age of forty-seven (47) prior to April 1, 2005 and were hired prior to July 1, 1986 shall be afforded the option to retire on or after April 1, 2005 but not later than January 1, 2006, and upon retirement shall receive an increase in the participant's multiplier to permit the participant to retire with the same benefit as if the participant had attained normal retirement date. A participant electing to participate in this early retirement program shall pay the full actuarial cost for such increased benefit rate no later than January 15, 2006. Such payment shall be by lump sum.

(Ord. No. 97-5, § 1, 2-18-97; Ord. No. 2000-5, § 8, 3-21-00; Ord. No. 2002-22, § 2, 8-6-02; Ord. No. 2002-45, § 6, 12-17-02; Ord. No. 2003-3, §§ 1, 2, 1-21-03; Ord. No. 2003-34, § 1, 10-7-03; Ord. No. 2005-57, § 1, 12-20-05; Ord. No. 2010-20, § 7, 9-29-10; Ord. No. 2010-31, § 4, 12-7-10; Ord. No. 2011-08, § 4, 5-3-11)

Sec. 16-141. - Forms of benefit payments.

- (a) *Forms of benefit payments.* A participant who has a right to receive a pension benefit as provided in section 16-140(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 for one hundred twenty (120) months and until the participant's death thereafter.
- (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) percent, seventy-five (75) percent 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) *Life annuity.* This form of benefit shall provide a monthly benefit payable until the participant's death. The pension amount shall be adjusted so as to be actuarially equivalent to the standard benefit.
 - (3) *[Other benefit.]* Any other actuarially equivalent benefit approved by the board or provided by section 185.161, Florida Statutes.
- (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 and filed with the board of trustees.
 - (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 16-141(d) (Election of Optional Benefits) and sections 185.161 and 185.341, F.S., as amended.
 - (3)

After benefits have commenced, a retired participant may change her or his designation of joint annuitant or beneficiary twice in the manner prescribed in section 185.341, Florida Statutes. A retired member may change his or her designated survivor up to two (2) times without the approval of the board or the current designated survivor. The retiree member need not provide proof of the good health of the designated survivor being removed, and the designated survivor being removed need not be living.

(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. 97-5, § 1, 2-18-97; Ord. No. 2000-5, § 9, 3-21-00; Ord. No. 2002-22, § 3, 8-6-02; Ord. No. 2004-25, § 8-17-04; Ord. No. 2010-20, § 8, 9-29-10)

Sec. 16-142. - 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 suffered an injury, illness, disease, or disability as the natural and proximate result of the actual performance of duty as a city police officer which totally incapacitates the participant, either mentally or physically, from rendering useful and efficient service as a police officer and is likely to remain so disabled continuously and permanently, and
 - b. Has filed a claim for disability benefits, and
 - c. Has filed a claim for social security and workers compensation disability benefits.
- (2) *Presumption.* Any permanent disability, as described in section (a)(1), above, which is the result of or caused by tuberculosis, hepatitis, meningococcal meningitis, hypertension, heart disease or hardening of the arteries shall be presumed to have been incurred in the line of duty so as to be service-connected unless a physical examination of the participant conducted upon initial hiring by the city revealed that such condition existed at that time, and provided that a participant claiming disability due to tuberculosis or meningococcal meningitis provides the affidavit required by section 112.181(2), Florida Statutes.
- (3) *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 wholly prevented from rendering useful and efficient service as a police officer 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, diseases, 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-connected disability.

c. Has filed a claim for disability benefits, and

d. Has filed a claim for social security and worker's compensation disability benefits.

(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 16-146(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 16-141(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 16-146(a), without any reduction for early retirement.
- (3) *Reserved.*
- (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 or her 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 reemployment 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 reemployed 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. 97-5, § 1, 2-18-97; Ord. No. 97-15, § 1, 8-5-97; Ord. No. 99-9, § 1, 4-6-99; Ord. No. 2000-5, § 10, 3-21-00)

Sec. 16-143. - 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 in this division.
- (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's 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 16-143(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 (1) of this subsection, a pension equal to one-fourth ($\frac{1}{4}$) the deceased plaintiffs [participant] 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. 97-5, § 1, 2-18-97; Ord. No. 2014-19, § 3, 7-1-14)

Sec. 16-144. - 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 normal retirement age. Until such time as the vesting credits and years of age for normal retirement change to fifty-five (55) and at least ten (10) vesting credits, 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
0—10	0
10	100

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 normal retirement age, 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 or her death.

(Ord. No. 97-5, § 1, 2-18-97; Ord. No. 2000-5, § 11, 3-21-00; Ord. No. 2001-37, § 1, 12-4-01; Ord. No. 2005-60, § 1, 12-20-05)

Sec. 16-145. - 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. Provided that in no event may a participant's retirement benefit be delayed beyond the latter of the April first following the calendar year in which the participant attains age seventy and one-half (70½) or April first of the year following the calendar year in which the participant retires. Distributions under this plan will be made in accordance with regulations under Internal Revenue Code section 401(a)(9). Provisions of Internal Revenue Code section 401(a)(9) shall override any distribution options in the plan that may be inconsistent with such section.
- (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. 97-5, § 1, 2-18-97; Ord. No. 2000-15, § 1, 6-20-00)

Sec. 16-146. - Benefit level.

- (a) *Calculation of benefit amount.* A participant's monthly benefit level is the product of the vesting credits earned multiplied by three (3) percent of 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 and the beneficiary thereof shall be increased by two dollars and fifty cents (\$2.50) for each full year from the participant's date of retirement until that October first.
- (c) *Annual cost of living adjustment.* 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 30-year period.

(Ord. No. 97-5, § 1, 2-18-97; Ord. No. 97-33, § 1, 11-18-97; Ord. No. 2000-22, § 1, 8-15-00; Ord. No. 2001-31, § 1, 10-16-01; Ord. No. 2003-38, § 1, 11-4-03; Ord. No. 2010-20, § 9, 9-29-10; Ord. No. 2010-31, § 5, 12-7-10; Ord. No. 2011-08, § 5, 5-3-11)

Sec. 16-147. - Employment after retirement.

(a) *Suspension of benefits:*

- (1) The payment of pension benefits shall be suspended for each month a participant works as a sworn police officer of the police department of the City of Lake Worth or if a disability benefit recipient resumes employment as a police officer for any employer.
- (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 Police Department 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 Police Department 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 police department 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. 97-5, § 1, 2-18-97)

Sec. 16-148. - Lump sum payments.

- (a) *Involuntary lump sum distributions.* If the monthly benefit payable to any participant is less than one hundred dollars (\$100.00) or if the present single-sum value of a benefit is less than two thousand five hundred dollars (\$2,500.00) 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.
- (b) *Interest rate calculation.* For purposes of computing the present value of a benefit payable under this section the interest to be used shall be as defined in section 16-136(b).

(Ord. No. 97-5, § 1, 2-18-97; Ord. No. 2000-5, § 12, 3-21-00; Ord. No. 2010-20, § 10, 9-29-10)

Sec. 16-149. - 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, this division, 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 required 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. 97-5, § 1, 2-18-97)

Sec. 16-150. - 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 Police 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
 - (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 16-150(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 16-150(c) (Denial of Benefits).

(Ord. No. 97-5, § 1, 2-18-97)

Sec. 16-151. - Funding

(a) *Funding.* The plan shall be funded by contributions from participants, contributions from the city and other income sources as authorized by law.

(b)

Participant contributions. All participants shall make regular contributions at the rate of six and six-tenths (6.6) percent of compensation for all service prior to October 1, 1997, and seven and six-hundredths (7.06) percent of compensation for all service thereafter which shall be deposited in the system each pay period. 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 members. This city "pick up" of contributions is the result of a five (5) percent reduction of each participant's base pay and of base pay levels which occurred on October 1, 1991 and is intended to comply with section 414(h) (2) of the Internal Revenue Code.

Notwithstanding the foregoing provisions of subsection (b), effective upon receipt of two hundred two thousand (\$202,000) dollars to be transferred from the Police Relief and Pension Fund during calendar year 2014 and beyond the participant contribution shall be held to seven and six-hundredths (7.06) percent of compensation using the two hundred two thousand (\$202,000) dollars to offset the cost of holding the contribution constant.

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 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. 97-5, § 1, 2-18-97; Ord. No. 97-33, § 1, 11-18-97; Ord. No. 2000-5, § 13, 3-21-00; Ord. No. 2011-08, § 6, 5-3-11; Ord. No. 2012-20, § 2, 5-1-12; Ord. No. 2014-21, § 2, 7-1-14)

Sec. 16-152. - 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, specifically ch. 185, F.S., as amended, 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. Further, the recipient of any monthly benefit may authorize the board of trustees, upon written request, to withhold from the monthly benefit those funds necessary to pay for accident, health, and long-term care insurance premiums for the recipient, the recipient's spouse and the recipient's dependents. The pension fund shall not incur any liability for participation in such permissive program if its action is taken in good faith.
- (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.
- (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. 97-5, § 1, 2-18-97; Ord. No. 2000-5, § 14, 3-21-00; Ord. No. 2004-29, § 2, 8-3-04; Ord. No. 2010-20, § 11, 9-29-10)

Sec. 16-153. - Compliance with the Internal Revenue Code.

- (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 (1) 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 percent 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 five percent (5.00) 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 twelve (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 (\$10,000.00) dollars 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.
- (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 16-153.

- (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 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) *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) Vesting of benefits upon normal retirement date. Any provision of this plan to the contrary notwithstanding, a member's accrued benefit shall become one hundred (100) percent vested upon the attainment of the normal retirement date.
- (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. 2010-20, § 12, 9-29-10; Ord. No. 2014-19, §§ 4—8, 7-1-14)

Secs. 16-154—16-168. - Reserved.

DIVISION 2. - POLICE RELIEF AND PENSION FUND

Sec. 16-169. - Purpose.

The purpose of this division is to implement the provisions of chapter 28230, Acts of Florida 1953 being Florida Statutes, chapter 185, and to provide means whereby city police officers may receive benefits from the funds provided for that chapter by chapter 28230, Acts of Florida 1953; the fund hereby created being derived from moneys received from the State of Florida and not from a tax levied by the city taxpayers, shall be in addition to any other pension plans of the city and nothing herein shall be construed to in any way affect the operation of benefits of any other pension plan of the city that presently exists. Effective October 1, 2008, the City of Lake Worth entered into an interlocal agreement with Palm Beach County Sheriff's Office ("PBSO") providing for the provision of law enforcement services by PBSO to the city. Pursuant to the 2008 interlocal agreement, all police officers employed by the city became employees of PBSO on October 1, 2008. Each city police officer who became employed by PBSO pursuant to the 2008 interlocal agreement had the choice to remain a participant of this plan or become a member of the Florida Retirement System. Effective October 1, 2008, the Lake Worth police relief and pension fund, division 2, continued to cover those city police officers who became employed as PBSO deputies pursuant to the 2008 interlocal agreement and elected to continue participating in this division 2 plan.

Effective July 1, 2013, the assets of division 1 and division 2 of the Lake Worth Police Relief and Pension Fund were combined. Effective that date, the division 2 assets became an integral part of the division 1 assets for both administrative and investment purposes. This merger is intended to be nothing more than a combining of assets and there is no intent to modify any of the benefits provided, or obligations imposed, in the Lake Worth Police Relief and Pension Fund divisions 1 and 2.

(Code 1956, § 25-96.1; Ord. No. 90-26, § 3, 7-16-90; Ord. No. 2011-07, § 1, 5-3-11; Ord. No. 2013-31, § 5, 6-18-13)

Sec. 16-170. - Definitions.

The following words and phrases shall, for the purpose of this division, have the meanings hereinafter respectively ascribed to them. Other words and phrases shall have meanings as commonly understood with respect to the context; the singular shall include the plural, and the masculine the feminine.

- (a) *Active duty*: "Active duty" means actual service as a police officer with permanent status in the police division of the city, except for approved leaves of absence as set forth below under subsection (h) of this section. Effective October 1, 2008, this term means actual service as a deputy sheriff employed by the Palm Beach County Sheriff's Office ("PBSO") by a former city police officer who became a PBSO employee pursuant to the 2008 interlocal agreement between the city and PBSO and elected to continue participating in this division 2 plan.
- (b) *City*: "City" shall be understood to mean the City of Lake Worth, Florida, and the lands under the jurisdiction thereof from time to time, as determined by law.
- (c) *State*: "State" shall be understood to mean the State of Florida.
- (d) *Police officers*: All persons who are appointed or employed by the city, who are certified or required to be certified as law enforcement officers in compliance with section 943.1395, Florida Statutes, who are vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in sections 943.10(6) and (8), Florida Statutes, respectively. Effective October 1, 2008, this term means those former city police officers who became PBSO employees pursuant to the 2008 interlocal agreement between the city and PBSO and elected to continue participating in this division 2 plan.
- (e) *Fund*: "Fund" shall mean the Lake Worth police relief and pension fund as provided for herein.
- (f) *Participant*: Every police officer of the city, as defined herein, who is eligible to have monies credited to his individual account and to receive benefits therefrom under this division shall automatically become a participant. Effective October 1, 2008, this term means those former city police officers who became PBSO employees pursuant to the 2008 interlocal agreement between the city and PBSO and elected to continue participating in this division 2 plan.

- (g) *Permanent status*: "Permanent status" shall have the meaning ascribe to it from time to time by the rules and regulations of the civil service board.
- (h) *Service*: "Service" shall mean all time served as a police officer regularly appointed under the rules and regulations of the civil service board, for which regular compensation is paid by the city; and all time, not to exceed a period of five (5) years, during which a participant is absent on a military leave of absence provided that the participant is entitled to re-employment under the federal USERRA provisions. Effective January 1, 2007, participants who die or become disabled while serving on active duty military service which intervenes the participant's employment shall be entitled to the rights of this section even though such participant was not re-employed by the city. Participants who die or become disabled while on active duty military service shall be treated as though re-employed the day before the participant became disabled or died, was credited with the service they would have been entitled to under this section, and then either died a non-duty death while employed or became disabled from a non-duty disability. Effective October 1, 2008, this term shall include all time served as a PBSO deputy sheriff by a former city police officer who became a PBSO employee pursuant to the 2008 interlocal agreement between the city and PBSO and elected to continue participating in this division 2 plan. No participant who reaches normal retirement age and begins to collect a pension from the division 1 plan shall accrue any additional service under this division 2 plan, excluding DROP participants other than those DROP participants who have opted out of participation pursuant to subsection 16-180(a). Service shall also include all leaves of absence without pay for sickness, for such period of time as may be determined by the board, in excess of accumulated sick time for which compensation is received.
- (i) *Chapter 28230*: "Chapter 28230" shall mean and refer only to chapter 28230, Laws of Florida, Acts of 1953 presently coded in chapter 185, Florida Statutes.
- (j) *Vested deferred retirement*: A participant who leaves employ of department with ten (10) or more years of service and who is not eligible for any other retirement benefit from the city.
(Code 1956, § 25-96.2; Ord. No. 90-26, § 3, 7-16-90; Ord. No. 98-09, § 1, 2-17-98; Ord. No. 2010-21, § 1, 9-21-10; Ord. No. 2011-07, § 2, 5-3-11)

Sec. 16-171. - Fund created.

There is hereby created in the city a special fund to be known as the Lake Worth police relief and pension fund, into which shall be paid all moneys received by the city under the provisions of Chapter 28230, and all moneys which are hereafter paid to the city under the provisions of Chapter 28230.

In addition to the repayment of moneys received by the city prior to the year 1961, the city shall pay into said fund all moneys as and when received by it from the state pursuant to Chapter 28230.

Effective July 1, 2013, the assets of this division 2 shall be combined with division 1 for administrative and investment purposes.

(Code 1956, § 25-96.3; Ord. No. 2013-31, § 6, 6-18-13)

Sec. 16-172. - Tax on casualty insurance premiums.

- (a) *Imposed.* There is hereby assessed, imposed and levied on every insurance company, corporation or other insurer now engaging in or carrying on, or which shall hereafter engaged in or carry on the business of insuring with respect to casualty risks, as shown by the records of the Insurance Commissioner of the State of Florida, an excise or license tax in addition to any license tax or excise tax now levied by the city which tax shall be in the amount of eighty-five hundredths (0.85) percent of the gross amount of receipts of premiums from policy holders on all premiums collected on casualty insurance policies, covering property within the corporate limits of the city.
- (b) *Cancellation endorsement.* Such policy shall contain an endorsement placed on the same, requiring thirty (30) days' written notice, by certified mail, to the finance director if it becomes necessary for the issuing company to cancel the policy for any reason.
- (c) *When due and payable.* The license or excise tax herein levied shall be due and payable annually on the first day of November of each year thereafter.

(Code 1956, §§ 32-5, 32-6; Ord. No. 80-10, § 14, 7-21-80; Ord. No. 2013-31, § 7, 6-18-13)

State Law reference— Tax on casualty insurance premiums for policemen's retirement fund, F.S. § 185.08.

Sec. 16-173. - Board of trustees created; officers; terms; duties; quorum; compensation.

Effective July 1, 2013, the board of trustees shall be the board of trustees as provided for in section 16-129 of the City Code, the division 1 board of trustees. The board shall be seated as provided in that section and as required by F.S. § 185.05.

(Code 1956, § 25-96.5; Ord. No. 90-26, § 3, 7-16-90; Ord. No. 2010-21, § 1, 9-21-10; Ord. No. 2013-31, § 8, 6-18-13)

Secs. 16-174—16-176. - Reserved.

Editor's note— Ord. No. 2013-31, §§ 9—11, adopted June 18, 2013, repealed the former sections 16-174—16-176 in their entirety, which pertained to board elections, board meetings, and replacement of board members, respectively, and derived from the Code of 1956, §§ 25-96.6—25-96.8; Ord. No. 90-26, § 3, adopted July 16, 1990, and Ord. No. 90-32, § 1, adopted August 20, 1990.

Sec. 16-177. - Powers of board.

In addition to the powers granted to the board in section 16-131 of the division 1 fund, the board shall be the administrator of the division 2 fund and, as such, it shall control and manage the administration and operation of the fund. The board shall have the power and authority as follows:

- (a) To invest and reinvest the assets of the retirement trust fund and to hold, purchase, sell, assign, transfer, and dispose of any securities and investments held in the fund, including the power and authority to employ counseling or investment management services. The aim of the investment policies shall be to preserve the integrity and security of fund principal, to maintain a balanced investment portfolio, to maintain and enhance the value of the fund principal, and to secure the maximum total return on investments that is consonant with safety of principal, provided that such investments and reinvestments shall be limited only by the investments permitted by the investment policy guidelines adopted by the board in accordance with Florida law. Notwithstanding the foregoing, investments in foreign investments are limited in accordance with section 185.06(1)(b)4., Florida Statutes. The board members must discharge these duties with respect to the fund solely in the interest of the participants and beneficiaries and:
 - (1) For the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the fund;
 - (2) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
 - (3) By diversifying the investments of the fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.
 - (4) Notwithstanding anything else in this subsection and as provided in Florida Statutes § 215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company; as defined in that section. Beginning January 1, 2010, the board must proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have directly in that company. The divestiture of any such security must be completed by September 10, 2010. The board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by Florida Statutes § 215.473, as provided for in Florida Statutes 185.06(7) and the manner of the disposition, if any, is reasonable as to the means chosen. For purposes of determining which companies are scrutinized companies, the board may utilize the list of scrutinized companies as developed by the

Florida State Board of Administration. No person may bring any civil, criminal, or administrative action against the board of trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this subsection.

- (b) To approve disbursements, pay claims, and authorize payments from the fund by warrants signed by the chairman and the secretary of the board.
- (c) To interpret the provisions of this division where the meaning is not clear or ambiguity exists; and to promulgate necessary rules respecting the operation of the fund, or elections of trustees, not in conflict with the wording or clear intent of this division.
- (d) To authorize expenditures in connection with preliminary research, technical services, legal services and accounting services; to contract for employees necessary to the general administration of the fund and to employ legal counsel and auditors necessary to the proper administration of the fund.

(Code 1956, § 25-96.9; Ord. No. 96-15, § 1, 6-18-96; Ord. No. 2000-28, § 1, 10-3-00; Ord. No. 2004-22, § 1, 5-18-04; Ord. No. 2006-21, § 1, 6-6-06; Ord. No. 2010-21, § 1, 9-21-10; Ord. No. 2013-31, § 12, 6-18-13)

Sec. 16-178. - Custody of assets.

- 1. The custody of all securities and cash of the fund shall be with the board.
- 2. The assets of the division 2 fund shall be accounted for separately but may be commingled for investment purposes.

(Code 1956, § 25-96.10; Ord. No. 2013-31, § 13, 6-18-13)

Sec. 16-179. - Reserved.

Editor's note— Section 3 of Ord. No. 90-26, adopted July 16, 1990, deleted former § 16-179, which pertained to bonding of personnel and derived from Code 1956, § 25-96.11.

Sec. 16-180. - Credits to individual accounts.

- (a) An individual account shall be established for each police officer of permanent status on March 2, 1961, and for each police officer who was in the employ of the city at any time after the enactment of Chapter 28230, and for each police officer who attains permanent status subsequent to February 20, 1961. Participants who are in the division 1 DROP plan may opt out of this division 2 fund for purposes of future receipt of § 185 money. Effective October 1, 2008, an individual account shall also be maintained for those former city police officers who became Palm Beach County Sheriff's Office ("PBSO") employees pursuant to the 2008 interlocal agreement between the city and PBSO and elected to continue participating in this division 2 plan.
- (b)

Effective July 1, 2013, the division 2 assets will bear the expense of the administrative charges assessed by the fund administrator for the additional duties associated with the operation of the division 2 share account and as reflected in a written contract between the board and the administrator. To account for the remaining expenses, the participant's average daily balance shall be debited or credited after each fiscal year quarter at a rate equal to the net investment return realized by the plan for that quarter as determined by the investment consultant retained by the board. "Net investment return" for the purpose of this paragraph is the total return of the assets in which the member's account is invested by the board net of any fees for custody or management of assets.

- (c) (1) Effective for the Chapter 185 money received in calendar years 2011, and 2012, and 2013, and all years thereafter, two hundred two thousand dollars (\$202,000.00) will be transferred to the division 1 fund each year to hold the employee contributions to seven and six-hundredths (7.06) percent.
- (2) After all active members of division 2 have retired and are no longer eligible for the share plan monies all chapter 185 monies received from the state will be applied to the division 1 plan in order to fund any remaining unfunded liabilities of the plan.
- (d) Then, the balance of such monies shall be credited to the several individual participants in amounts directly proportionate to the total number of months of duty performed by the several police officers in the calendar year preceding the date the monies were received from the state. The length of time of service during the calendar year preceding the date upon which payment is received from the state is the only criterion upon which the amount due each participant out of the state monies received annually is to be calculated. No credit is to be given on account of seniority, rank or amount of compensation which the participants receive. Twenty (20) or more days worked in a calendar month shall be counted as a full month.
- (e) The amount of earnings from investments credited/debited to the account of the participant shall bear the same ratio to the total amount of annual earnings as the invested funds belonging to the participant in the fund bear to the total monies invested on behalf of the fund at a rate equal to the net investment return realized by the plan for that quarter as determined by the investment consultant retained by the board. "Net investment return" for the purpose of this paragraph is the total return of the assets in which the member's account is invested by the board net of any fees for custody or management of assets.
- (f) In addition to the monies received from the state and as earnings on investments, there shall be prorated and credited to the accounts of the individual participants all forfeitures from police officers as provided for in subsection 16-181(c). Such sums shall be prorated to their individual accounts in the same manner as monies received from the state.

(g)

Subsequent to March 2, 1961, after a police officer has retired and ceased to be a member on active duty, as defined in subsection 16-170(a) hereof, no credits for monies received from state shall be made to his account. However, if a participant is on vested deferred retirement or has elected to defer receipt of the account balance, then investment earnings less administrative costs shall be credited to the individual account. Police officers who have retired or have been pensioned from the city after the enactment of Chapter 28230 and prior to March 2, 1961, shall be entitled to participate in the monies they could have participated in had this chapter been in effect on the date that the levying ordinance was passed as enabled by Chapter 28230 to the date of their retirement and/or pension, but they shall not participate in any other monies. Monies credited to a participant's account shall be payable only upon filing of an application with the board. The application shall be on a form prescribed by the board and shall be sworn to by the applicant or his surviving wife or child, or if the child is a minor, by the guardian of the child, or by any other person legally qualified to apply for such monies under the laws of the state.

- (h) Effective October 1, 2008, those participants who reach normal retirement age and are eligible to receive benefits from the division 1 fund are eligible to receive benefits from this division 2 fund.

(Code 1956, § 25-96.13; Ord. No. 90-26, § 3, 7-16-90; Ord. No. 98-09, § 1, 2-17-98; Ord. No. 99-18, § 1, 6-1-99; Ord. No. 2010-21, § 1, 9-21-10; Ord. No. 2011-07, § 3, 5-3-11; Ord. No. 2012-19, § 1, 5-1-12; Ord. No. 2013-31, § 14, 6-18-13; Ord. No. 2014-21, § 2, 7-1-14)

Sec. 16-181. - Benefits; forfeitures.

No participant shall receive benefits from the fund in excess of the amount credited to his account.

Subject to this provision, a participant shall receive benefits as follows:

- (a) Subsequent to February 20, 1961, if a participant shall be found by the board of trustees to be totally and permanently incapacitated for the performance of his duties as a result of an accident occurring while on duty at a definite time and place, shall receive the entire amount credited to his account if separated from the city by pension or retirement as a result of the injuries afore described.
- (b) Subsequent to February 20, 1961, if a participant shall be found by the board to be totally and permanently incapacitated for the performance of his duties as a result of illness, accident or sickness not occurring in the line of duty or as a result of an accident as provided in subsection (a) above, excepting from death, and shall separate from the service of the department prior to completing nine (9) years of service with the department, he shall be entitled to severance benefits as follows:
 - (1) Prior to completing three (3) years of service, one-fourth ($\frac{1}{4}$) of the amount credited to his account as of the date of severance;
 - (2) Prior to completing six (6) years of service, but after completing three (3) years of service, one-half ($\frac{1}{2}$) of the amount credited to his account as of the date of severance;

- (3) Prior to completing nine (9) years of service, but after completing six (6) years of service, three-fourths ($\frac{3}{4}$) of the amount credited to his account as of the date of severance;
- (4) After completing nine (9) years of service, the participant shall be entitled to the entire amount credited to his account upon his separation from the city.
- (c) Any participant who has less than ten (10) years of credited service and who is not eligible for payment of any benefits from any plan of the city after termination of employment with the city shall forfeit his or her individual member account. Forfeited benefits shall be redistributed in the same manner as monies received from the state.
- (d) If a participant shall die, for any reason, while a member of the police department, the entire amount of his credit as of the date of his death shall be paid to his designated beneficiary primarily for the purpose of defraying final illness and burial expenses. This designation shall be made in writing to the board on a form provided by said board, and the said designated beneficiary may be changed during the lifetime of the participant upon duly executed forms filed by said participant as provided by the board of trustees. If the person designated to act for a participant shall pre-decease him or cannot be located by reasonable effort, or shall refuse to act, or if the deceased participant has failed to designate anyone, the board shall have the right to name a person to carry out the purposes of this subsection. In carrying out the purpose of this subsection, the board shall endeavor to distribute any excess monies after payment of last illness and burial expenses in the same manner in which they would have been distributed in an intestate administration proceeding.
- (e) A participant who terminates employment with the city after ten (10) years of employment shall be vested in one hundred (100) percent of the value of his or her individual member account as of the date of the termination of employment as a vested deferred retirement. The value of the account, however, shall not be paid out until the participant is otherwise eligible for a benefit from another plan of the city. However, no credits for monies received from state shall be made to his account if a participant is on vested deferred retirement or has elected to defer receipt of the account balance, then investment earnings less administrative costs shall be credited to the individual account. He or she may elect to take such amount in a lump sum, rollover, or to take it in annual payments over a period not to exceed five (5) years. A written notice of election to receive payments other than lump sum must be filed with the board upon a form prescribed by the board therefor, and must be sworn to by the person entitled to receive such monies. When the distribution of the participant's entire interest is not made in a lump sum then the payments shall be made over a five-year period not extending beyond the life expectancy of the participant.

A participant on vested deferred retirement or who has elected to receive monies due him or her in annual payments rather than in a lump sum as above shall not be an active participant under section 16-170(f) but shall be eligible to receive investment credits in accordance with

section 16-180(c).

- (f) Settlement as provided in subsection (a), (b) and (c) of this section shall be in full settlement of all claims of a participant against the fund, and he shall thereupon cease to be a participant, and he shall have no further interest in said fund and shall receive no further benefits.
- (g) As an alternative to the above benefits, in event that a court of competent jurisdiction should find and order that a participant is entitled to benefits under Chapter 28230 different from the benefits which that participant is entitled to receive under the terms of this division, and such participant does not waive the benefits decreed by the court and accept benefits as provided by this division, the trustees shall pay to such a participant benefits as required by the decree or order of the court. Such benefits shall be paid from the fund, and in the event that it is necessary to pay such participants a greater amount than he would have received had he accepted benefits under this division, such additional amount shall be deducted from the accounts of the other participants on a prorate basis as determined by the board of trustees. The fund shall indemnify the city against all claims of participants as aforesaid and shall pay all expenses including court costs and attorney's fees incurred in defending lawsuits brought by participants in asserting such claims.

(Code 1956, § 25-96.14; Ord. No. 95-5, § 1, 4-4-95; Ord. No. 98-09, § 1, 2-17-98)

Sec. 16-182. - Rights declared vested, inalienable.

The rights and benefits provided for herein are vested rights of the participants in the fund, and shall not be subject to garnishment, attachment, execution or any other legal process.

(Code 1956, § 25-96.15)

Sec. 16-183. - Limitation of city's responsibility.

The city shall have no responsibility for the operation of the fund except those specified herein and shall bear no expense in connection therewith. In accordance with subsection 16-180(b), the division 2 portion of the fund shall bear its expenses.

(Code 1956, § 25-96.16; Ord. No. 2013-31, § 15, 6-18-13)

Sec. 16-184. - Legal capacity of trustees to sue.

The board of trustees of this fund may sue or be sued in their respective capacity as such.

(Code 1956, § 25-96.17)

Sec. 16-185. - Required distributions.

In accordance with IRC section 401(a)(9)(C), any and all benefit payments shall begin by the later of:

- (a) April 1 of the calendar year following the calendar year of the member's retirement date; or
- (b) April 1 of the calendar year following the calendar year in which the employee attains age seventy and one-half (70½).

(Ord. No. 95-5, § 1, 4-4-95)

Sec. 16-186. - Repeal or termination of fund.

- (a) The section establishing the fund and subsequent sections pertaining to said fund may be modified, terminated or amended, in whole or in part; provided that if this or any subsequent section shall be amended or repealed in its application to any person benefitting hereunder, the amount of benefits which at the time of any such alteration, amendment or repeal shall have accrued to the participant or beneficiary shall not be affected thereby, except to the extent that the assets of the fund may be determined to be inadequate.
- (b) If this section shall be repealed, or if the contributions to the fund are discontinued, and board shall continue to administer the fund in accordance with the provisions of this section, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this section who are designated by any of said members. In the event of repeal, or if contributions to the system are discontinued there shall be full vesting (100%) of benefits accrued to date of repeal and the assets of the system shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled to benefits in accordance with the provisions thereof.
- (c) The following shall be the order of priority for purposes of allocating the assets of the system as of the date of repeal of this section, or if the contributions to the system are discontinued with the date of such discontinuance being determined by the board.
 - (1) Apportionment shall first be made in respect to each retired police officer receiving a retirement or disability benefit hereunder on such date, each person receiving a benefit on such date on account of a retired or disabled (but since deceased) police officer, and each police officer who has, by such date, become eligible for normal retirement but has not yet retired, an amount which is the actual account balance.
 - (2) If there be any asset value remaining after the apportionment under subparagraph (1), apportionment shall next be made in respect to each police officer in the service of the city on such date who has completed at least ten (10) years of credited service and who is not entitled to an apportionment under subparagraph 1, in the amount required to provide the

actual account balance, as described above, of the accrued normal retirement benefit, based on the credited service as of such date, and each vested former member then entitled to a deferred benefit who has not, by such date, begun receiving benefit payments, in the amount required to provide said actual account balances of the accrued normal retirement benefit.

- (3) If there be any asset value after the apportionments under subparagraphs (1) and (2) apportionment shall be made in respect of each police officer in the service of the city on such date who is not entitled to an apportionment under subparagraphs (1) and (2) in the amount of equal to his accumulated balance.
- (4) In the event that there be asset value remaining after the full apportionment specified in subparagraphs (1), (2) and (3), such excess shall be returned to the city, less return of the state's contribution provided that, if the excess is less than the total contributions made by the city and the state to the date of termination such excess shall be divided proportionately to the total contributions made by the city and the state.

The allocation to the fund provided for in this subsection may, as decided by the board be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this subsection. The fund may be distributed in one sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the board may direct. The trust may be continued in existence for purposes of subsequent distributions.

(Ord. No. 95-5, § 1, 4-4-95)

Sec. 16-187. - Transfers for purchase of permissive service credit.

A vested participant may transfer all or part of his or her account balance to the city police relief and pension fund, division 1 for the purpose of purchasing permissive service credit. The assets will be transferred directly from this plan to the division 1 plan via a trustee to trustee transfer. No amounts will be paid to the vested participant. The amount transferred will not exceed the amount necessary to fund the benefit attributable to the permissive service credit being purchased. Such transfers will only be made at the request of the vested participant and only after approval by the division 1 board of trustees.

(Ord. No. 2004-9, § 1, 1-20-04)

Secs. 16-188—16-195. - Reserved.