

DIVISION 2. - POLICE RELIEF AND PENSION FUND^[4]*Footnotes:**--- (4) ---*

Editor's note— Ord. No. O-18-05, § 1, adopted Nov. 14, 2005, amended Div. 2 in its entirety to read as herein set out. Former Div. 2, §§ 14-76—14-95, pertained to similar subject matter, and derived from Ord. No. O-6-87, § 1, adopted June 22, 1987; Ord. No. O-18-88, § 1, adopted Nov. 28, 1988; Ord. No. O-7-90, §§ 1—6, adopted June 11, 1990; Ord. No. O-4-91, §§ 1—8, adopted Sept. 9, 1991; Ord. No. O-5-92, §§ 1, 2, adopted Sept. 14, 1992; Ord. No. O-1-94, §§ 1—4, adopted May 23, 1994; Ord. No. O-7-95, §§ 1—4, adopted Sept. 25, 1995; Ord. No. O-6-96, §§ 1—4, adopted Apr. 22, 1996; Ord. No. O-10-96, §§ 1—3 adopted Oct. 28, 1996; Ord. No. O-04-00, §§ 1, 2, adopted June 26, 2000; Ord. No. O-17-00, § 1, adopted Oct. 9, 2000; Ord. No. O-01-01, §§ 1—7, adopted Jan. 22, 2001; and Ord. No. O-01-04, §§ 1, 2, adopted Apr. 26, 2004.

Cross reference— Police reserve officers, Ch. 15.

Sec. 14-76. - Creation and maintenance of fund.

- (a) There is hereby created, reconfirmed and ratified as a special pension fund for the police officers of the town to be known as the Lantana Police Relief and Pension Fund. All assets of every description previously held in the defined benefit portion of the police relief and pension fund shall continue to be held as a defined benefit pension plan and shall be administered as set forth hereinbelow. This police relief and pension fund shall consist of a defined benefit plan for the benefit of all town police officers.
- (b) The fund shall be maintained in the following manner:
 - (1) By payment to the fund of the net proceeds of the 0.85 percent excise or other similar tax, which may be imposed by the town upon certain casualty insurance companies on their gross receipts of premiums from holders of policies, which policies cover property within corporate limits of the town as authorized by Ch. 185, F.S., as amended. One hundred (100) percent of this tax money shall be allocated to this defined benefit plan each year upon receipt of the funds.
 - (2) The payment to the fund of 7.00 percent of the compensation of each police officer who is employed by the town, which 7.00 percent shall be deducted by the town and paid over to the board of trustees of the police relief and pension fund effective retroactively to October 1, 2012. Effective January 1, 2001, the contributions made by each participant shall be designated as employer contributions pursuant to Section 414(h) of the Internal Revenue Code. Such designation is contingent upon the contributions being excluded from the participant's gross income for federal income tax purposes. For all other purposes of this division and other applicable laws, such contributions shall be considered participant contributions.
 - (3)

By the payment of all fines and forfeitures imposed and collected from any police officer because of the violation of any rule and/or regulation promulgated by the board of trustees.

- (4) By mandatory payment annually by the town of a sum, which together with the contributions from the police officers and the premium tax provided in Florida Statutes, § 185.08, and other income sources as authorized by law, will be sufficient to meet the normal cost and the amount required to fund over a period of forty (40) years or on a forty-year basis, any actuarial deficiency shown on a triennial actuarial valuation.
- (5) By all gifts, bequests and devises when donated to the fund.
- (6) By all accretions to the fund by way of interest or dividends on bank deposits, or otherwise.
- (7) Under no circumstances may the town reduce the participant contributions to less than one-half percent of the compensation.

(Ord. No. O-18-05, § 1, 11-14-05; Ord. No. O-10-2013, § 1, 8-12-13)

Sec. 14-77. - Definitions.

The following words or phrases, as used in this division, shall have the following meanings:

Accumulated contributions: A participant's own contributions plus interest credited thereto, if any, by the board.

Actuarial equivalence or actuarially equivalent: Any benefit payable under the terms of this plan in a form other than the normal form of benefit shall have the same actuarial present value on the date payment commences as the normal form of benefit. For purposes of establishing the actuarial present value of any form of payment, all future payments shall be discounted for interest and mortality by using seven (7) percent interest and the RP-2000 Combined Healthy Participant Mortality Tables for males and females, with ages set ahead five (5) years in the case of disability retirees.

Average final compensation: Means one-twelfth ($1/12$) of the average compensation of the five (5) best years out of the last ten (10) years of credited service prior to termination, retirement, or death.

Beneficiary: The person or persons entitled to receive benefits hereunder at the death of a participant who has or have been designated in writing by the participant and filed with the board. If no such designation is in effect at the time of death of the participant, or if no person so designated is living at that time, then the benefit will be paid in accordance with section 14-78(b) of this chapter.

Board: The board of trustees of the Lantana Police Relief and Pension Fund, as provided for herein, which board shall administer and manage the fund and serve as trustee of the fund.

Compensation: The total cash remuneration paid by the town to a police officer for services rendered. However, compensation shall not include overtime pay, lump sum payments for unused sick and vacation time, bonuses, awards, payments made by the employer for any form of group insurance or public or private employee welfare benefits, nor employer contributions made under the plan.

For plan years beginning on and after January 1, 2001, compensation shall include elective amounts that are not includible in the gross income of the employee under Section 125, 132(f)(4), 402(e)(3), 402(h), or 403(b).

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

- (1) No police officer will receive credit for years or fractional parts of years of service of any police officer, omitting intervening years and fractional parts of years of service if he or she has withdrawn his or her contributions to the fund for those years or fractional parts of years of service, unless the police officer repays into the fund the amount he or she has withdrawn, plus interest as determined by the board, but such interest rate shall not be less than five (5) percent. Effective October 1, 2000, the participant shall have at least ninety (90) days after his or her re-employment to make repayment.
- (2) A police officer may voluntarily leave his or her contributions in the fund for a period of five (5) years after leaving the employ of the department, pending the possibility of his or her being rehired by the department, without losing credit for the time he or she has participated actively as a police officer. If he or she is not re-employed as a police officer with the department within five (5) years, his or her contributions shall be returned to him or her without interest.

- (3) In determining the creditable service of any police officer, credit for up to five (5) years of the time spent in the military service of the Armed Forces of the United States shall be added to the years of actual service, if:
- a. The police officer is in the active employ of the department prior to such service and leaves a position, other than a temporary position, for the purpose of voluntary or involuntary service in the Armed Forces of the United States.
 - b. The police officer is entitled to re-employment under the provisions of the Uniformed Services Employment and Re-employment Rights Act.
 - c. The police officer returns to his or her employment as a police officer of the municipality within one (1) year from the date of his or her release from such active service, except that effective January 1, 2007, police officers who die while serving on active duty military service shall be entitled to the rights of this section even though such participant was not re-employed by the town as a police officer. Participants who die while on active duty military service shall be treated as though re-employed as a police officer the day before the member died, and then died a non-duty death while employed.

Deferred retirement date: The first day of the month that coincides with or next follows the date of actual retirement if a participant remains in the employment of the town after his or her normal retirement date.

Department: The Town of Lantana Police Department.

Direct rollover: A payment by the plan to the eligible retirement plan specified by the distributee.

Distributee: 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 entitled to payment under a domestic relations order determined to be qualified by Section 414(p)(2) of the Code and this fund are distributees with regard to the interest of the spouse or former spouse.

Eligible retirement plan: 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, or a qualified trust described in Section 401(a) of the Code, an eligible deferred compensation plan described in Section 457(b) which is maintained by an eligible employer described in Section 457(e)(1)(A) of the Code or an annuity contract

described in Section 403(b) of the Code that accepts the distributee's eligible rollover distribution and agrees to separately account for amounts contributed into such plan from this plan. (The term "Code" herein refers to the Internal Revenue Code; this definition applies to distributions made on or after January 1, 1993.)

Eligible rollover distribution: Any distribution of all or any portion of the balance to the credit of the distributee or an alternate payee under a court order that complies with IRC Section 414(p) (2), except that an eligible rollover distribution does not include: Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income, including hardship distributions. (The term "Code" herein refers to the Internal Revenue Code; this definition applies to distributions made on or after January 1, 1993.) For purposes of a direct rollover, 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 paid only to an individual retirement account or annuity described in Code 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.

Enrolled actuary: An actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.

Fund: The Town of Lantana Police Relief and Pension Fund, as provided herein.

Normal retirement date: The date the participant reaches his or her 50th birthday and has completed ten (10) years of service.

Participant: Each full-time police officer employed by the town.

Plan year: The twelve-month period beginning on October 1 and ending on September 30.

Police officer: Any person who is employed full time by the town, who is certified or required to be certified as a law enforcement officer in compliance with F.S. § 943.1395, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or 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 is defined in F.S. § 943.10(6) and (8) respectively.

Town: The Town of Lantana, Florida.

(Ord. No. O-18-05, § 1, 11-14-05; Ord. No. O-04-2010, § 1, 4-12-10; Ord. No. O-10-2013, § 2, 8-12-13; Ord. No. O-01-2014, § 1, 1-27-14; Ord. No. O-12-2014, § 1, 8-11-14; Ord. No. O-01-2015, § 1, 3-9-15)

Sec. 14-78. - Participant requirements.

- (a) *Conditions of eligibility.* All police officers, as of June 22, 1987, who were previously participants of the fund shall continue participation in the fund without interruption. Each person who becomes a police officer after June 22, 1987 shall become a participant of the fund as of the date he/she becomes a police officer as a condition of employment. Each police officer who was employed by the town on June 22, 1987 and who did become a participant of the fund is forever barred from participating in the fund.
- (b) *Change in designation of beneficiary.* Change in designation of beneficiary. A participant may, from time to time, change his designated beneficiary by written notice to the board upon forms provided by the board. Upon such change, the rights of all previously designated beneficiaries to receive any benefits under the plan shall cease. If a deceased police officer fails to designate a beneficiary, the death benefit, if any, shall be paid in full to the first class of the following relatives which has a member(s) (on a pro rata basis, if there is more than one (1) member):
 - 1. The spouse married to the member on date of death;
 - 2. Children of the member;
 - 3. The living parents of the member; or
 - 4. The estate of the member.

This payment operates as a complete discharge of all obligations of the fund under the plan and shall not be subject to review but shall be final, binding, and conclusive on all persons ever interested hereunder.

- (c) *Participant contributions*. Commencing with effective date of this division each participant shall be required to contribute 7.00 percent of his compensation to the fund through payroll deductions. Such contributions shall be deducted from each participant's compensation by the town and shall be paid to the fund on a monthly basis until he is no longer a police officer. Interest shall be credited to contributions of participants as of December 31 of each year at the rate or rates to be determined by the board.

(Ord. No. O-18-05, § 1, 11-14-05; Ord. No. O-10-2013, § 3, 8-12-13; Ord. No. O-01-2015, § 2, 3-9-15)

Sec. 14-79. - Board of trustees—Created.

There is hereby created a board of trustees for the fund which shall consist of the following:

- (1) Two (2) police officers, to be elected by a majority of the police officers who are participants of the pension plan. Elections shall be held under such rules and regulations as the board of trustees shall from time to time adopt. Each member shall serve as a trustee for a period of two (2) years unless he or she sooner ceases to be a police officer in the employ of the department, whereupon his or her successor shall be elected by a majority of the participants of the fund. Each police officer may succeed himself or herself in office; and
- (2) Two (2) legal residents of the town to be appointed by the town council. The resident members shall serve as trustees for a period of two (2) years and each may succeed himself or herself as a trustee; and
- (3) A fifth member shall be chosen by a majority of the other four (4) members. This fifth member(s name shall be submitted to the town council, who shall, as a ministerial duty, appoint such member to the board as a fifth member. The fifth member shall serve as a trustee for a period of two (2) years and may succeed himself or herself as a trustee.

(Ord. No. O-18-05, § 1, 11-14-05)

Sec. 14-80. - Same—Election procedures.

- (a)

Generally, organization; compensation of trustees. The board shall annually elect from its membership a chairman and a secretary. The chairman, when present, shall preside at all meetings. The secretary shall keep complete minutes of all proceedings of the board. All elections of the board shall be by a majority vote, a quorum of three (3) members being present. Trustees shall receive no compensation as such, but may be reimbursed for costs and expenses when performing necessary tasks for the board.

- (b) *Nominations and voting*. All elections of police officers to the board shall be by secret written ballot. Only participants in the fund shall be eligible for nomination and election to the board and only participants shall be eligible to vote in such elections.
- (c) *Notice of election to be posted*. Notice of each election shall be posted in the police station of the town at least two (2) weeks prior to the date upon which such elections shall be held.
- (d) *Meetings of board*. The board of trustees will hold regular meetings quarterly or more often as determined by the board. Special meetings may be called by the chairman and secretary or by any three (3) members of the board. Three (3) days' written notice of a special meeting shall be given in writing to all board members, which notice shall contain the purpose, date, time and place of the special meeting.

(Ord. No. O-18-05, § 1, 11-14-05)

Sec. 14-81. - Same—Powers and responsibilities.

The board shall have the powers, investment discretion and duties as set forth below. The following provisions shall also govern investment of the fund:

- (1) The authority for all investment decisions with respect to the assets of the fund shall be that of the board, which may retain one (1) or more investment managers to invest the assets of the fund, provided that said investment managers accept fiduciary liability for their actions and further provided that the ultimate responsibility for investing the assets of the fund shall remain with the board.
- (2) Investment decisions made by any investment manager shall be communicated to the board and shall be carried out forthwith by such investment manager.
- (3) The board, or investment manager appointed by the board, is authorized and empowered to:
 - a. The board shall have the power and authority to invest and reinvest the moneys of the 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 § 185.06(1)(b)4, Florida Statutes. The board members must discharge these duties with respect to the plan 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 plan;
 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;
 3. By diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.
- b. Issue drafts upon the fund pursuant to this division and rules and regulations prescribed by the board of trustees. All such drafts shall be consecutively numbered and shall be signed by the chairman and secretary of the board and shall state upon their faces the purpose for which the drafts are drawn. The finance director of the town acting as the treasurer shall retain such drafts when paid as permanent vouchers for disbursements made, and no money shall be otherwise drawn from the fund.
- c. Convert into cash any securities of the fund.
- d. Keep a complete record of all receipts and disbursements of the board's acts and proceedings.
- e. Notwithstanding anything else in this subsection and as provided in § 215.473, Florida Statutes, 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 § 215.473, Florida Statutes, as provided for in § 185.06(7), Florida Statutes, 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.
- (4) Any and all acts and decisions shall be effectuated by vote of a majority of the members of the board; however, no trustee shall take part in any action in connection with his or her own participation in the fund, and no unfair discrimination shall be shown to any individual employee participating in the fund.
 - (5) The secretary of the board of trustees or the designee shall keep a record of all persons receiving retirement payments under the provisions of this plan, in which shall be noted the time when the pension is allowed and when the pension shall cease to be paid. In this record, the secretary shall keep a list of all police officers employed by the department. The record shall show the name, address, and time of employment of such police officer and when he or she ceases to be employed by the department.
 - (6) The board shall have the sole and exclusive responsibility for the administration and proper operation of the fund and for making effective the provisions of this division provided, that nothing herein shall empower the board of trustees to amend the provisions of a retirement plan without the approval of the town council. The board of trustees shall keep in convenient form such data as shall be necessary for an actuarial valuation of the fund and for checking the actual experience of the fund.
 - (7) At least once every three (3) years, the board of trustees shall retain a professionally qualified independent consultant who shall evaluate the performance of the existing professional money manager and shall make recommendations to the board of trustees regarding the selection of money managers for the next investment term. These

recommendations shall be considered by the board of trustees at its next regularly scheduled meeting. The date, place, time and subject of this meeting shall be advertised in the same manner as for any meeting of the board.

- a. For the purpose of this subsection, the term (professionally qualified independent consultant (means a consultant who, based on education and experience, is professionally qualified to evaluate the performance of professional money managers, and who, at a minimum:
 1. Provides his or her services on a flat-fee basis.
 2. Is not associated in any manner with the money manager for the pension fund.
 3. Makes calculations according to the American Banking Institute method of calculating time-weighted rates of return. All calculations must be made net of fees.
 4. Has three (3) or more years of experience working in the public sector.
- (8) To assist the board in meeting its responsibilities under this chapter, the board, if it so elects, may:
- a. Employ independent legal counsel at the pension fund's expense.
 - b. Employ an independent enrolled actuary, at the pension fund's expense.
 - c. Employ such independent professional, technical, or other advisers as it deems necessary at the pension fund's expense.
- (9) The board's action on all claims for retirement under this division shall be final, provided, however, that the rules and regulations of the board have been complied with.
- (10) The board of trustees has the power to bring and defend lawsuits of every kind, nature, and description related to the board and pension fund.

(Ord. No. O-18-05, § 1, 11-14-05; Ord. No. O-1-07, § 1, 2-26-07; Ord. No. O-04-2010, § 2, 4-12-10)

Sec. 14-82. - Benefits.

All participants in this defined benefit plan shall be entitled to a defined benefit which shall be governed and administered as set forth hereinbelow:

- (1) *At normal retirement date* . Effective for retirements after October 1, 2000, the monthly rate of retirement benefit commencing on the normal retirement date to a participant will be equal to the number of the police officer's years of credited service multiplied by three (3) percent of his or her average final compensation.

- (2) *At deferred retirement date* . The annual rate of a participant's retirement benefit commencing on a deferred retirement date is the same as the retirement benefit that would have been computed for the participant in accordance with subsection (1) above on his normal retirement date increased by his additional years of service.
- (3) *Payment of benefits* . One-twelfth (1/12) of the participant's annual rate of retirement benefit will be payable monthly. The monthly retirement income payable in the event of a normal retirement will be payable on the first day of each month. The first payment will be made on the first day of the month coincident with or next following the actual retirement date and the last payment will be the payment due next preceding his death; except that in the event he dies after retirement but before receiving retirement benefits for ten (10) years, the same monthly benefit will be paid to the beneficiary as designated by him for the balance of such ten-year period. Any retirement benefit will be paid quarterly if amounting to less than ten dollars (\$10.00) per month or will be paid in full by an appropriate single payment determined in accordance with rules adopted by the board of trustees if the amount of the benefit is less than one thousand dollars (\$1,000.00).

Notwithstanding any other provision of this fund to the contrary, a form of retirement income payable from this fund after the effective date of this division, shall satisfy the following conditions:

- a. If the retirement income is payable before the participant's death:
1. It shall either be distributed or commence to the participant not later than April 1 of the calendar year following the later of the calendar year in which the participant attains age seventy and one-half (70½), or the calendar year in which participant retires; and
 2. The distribution shall commence not later than the calendar year defined above, and (1) shall be paid over the life of the participant or over the lifetimes of the participant and spouse, issue or dependent, or (2) shall be paid over the period extending not beyond the life expectancy of the participant and spouse, issue or dependent.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the participant dies before his entire interest in the fund has been distributed, the remaining portion of such interest in the fund shall be distributed no less rapidly than under the form of distribution in effect at the time of the participant's death.

- b. If the participant's death occurs before the distribution of his interest in the fund has commenced, participant's entire interest in the fund shall be distributed within five (5) years of participant's death, unless it is to be distributed in accordance with the following rules:
 - 1. The participant's remaining interest in the fund is payable to his spouse, issue or dependent;
 - 2. The remaining interest is to be distributed over the life of the spouse, issue or dependent, or over a period not extending beyond the life expectancy of the spouse, issue or dependent; and
 - 3. Such distribution begins within one (1) year of the participant's death unless the participant's spouse, issue or dependent shall receive the remaining interest, in which case the distribution need not begin before the date on which the participant would have attained age seventy and one-half (70½) and if the spouse, issue or dependent dies before the distribution to the spouse, issue or dependent begins, this section shall be applied as if the spouse, issue or dependent were the participant .
- (4) *Disability benefit*. Subsequent to the effective date of this section, a police officer having ten (10) or more years of credited service and having contributed to the town police relief and pension fund for ten (10) or more years may retire from the service of the town under the plan if he becomes totally and permanently disabled as defined in subsection a. below by reason of any cause other than a cause set out in subsection b. below Such retirement shall herein be referred to as disability retirement.
- a. A police officer will be considered totally disabled if, in the opinion of the board of trustees, he is wholly prevented from rendering useful and efficient service as a police officer; and a police officer will be considered permanently disabled if, in the opinion of the board of trustees, such police officer is likely to remain so disabled continuously and permanently from a cause other than as specified in subsection b. below.
 - 1. The trustees may select a physician or a medical board to examine the participant in order to determine disability. If a medical board is desired it shall be constituted as set forth below in subsection c. below.
 - 2. Presumption. Any condition or impairment of the health of a police officer caused by tuberculosis, hypertension or heart disease, or hardening of the arteries, shall be presumed to have been suffered in the line-of-duty unless the

contrary is shown by competent evidence, provided that such police officer shall have successfully passed a physical examination upon entering into employment with the department, which may include a cardiogram, which failed to reveal any evidence of such condition; and provided further, that such presumption shall not apply to benefits payable or granted in a policy of life insurance or disability insurance.

3. Additional presumption. F.S. § 112.181, as amended from time to time, is hereby adopted and incorporated by reference and is applicable to those conditions described therein that are diagnosed on or after January 1, 1996.
- b. A police officer will not be entitled to receive any disability retirement income if the disability is a result of:
1. Excessive and habitual use by the police officer of drugs, intoxicants or narcotics;
 2. Injury or disease sustained by the police officer while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime;
 3. Injury or disease sustained by the police officer while serving in the armed forces;
 4. Injury or disease sustained by the police officer after his employment has terminated; and
 5. Injury or disease sustained by the police officer while working for anyone other than the town and arising out of such employment
- c. *Medical board*. The board of trustees may designate a medical board to be composed of the three (3) physicians (one (1) selected by the participant affected, one (1) selected by the board, and the third selected by the other two (2) physicians, limited to either M.D.'s and/or D.O.'s or a combination of the two), who shall conduct all medical examinations required under the provisions of this division and shall report in writing to the board its opinion as to whether a participant is totally and permanently incapacitated for the performance of his duties as a result of a disability occurring while on duty. The payment of such services shall be determined by the board of trustees. No police officer shall be permitted to retire under the provisions of this section until he is examined by a medical board constituted in accordance with the provisions set forth in subsection a., above, of this section, and is found to be disabled in the degree and in the manner specified herein. Any police officer

retiring under this section shall be examined periodically by a medical board to be selected by the board of trustees, as set forth in subsection a. above, to determine if such disability has ceased to exist.

- d. The benefit payable to a police officer who retires from the service of the town with a total and permanent disability as a result of a disability commencing prior to his normal retirement date is two (2) percent of the sum of his or her average final compensation, payable until his death. The benefit shall not be less than twenty-five (25) percent of his or her average final compensation.
- e.
 - 1. This monthly retirement income to which a police officer is entitled in the event of his disability retirement shall be payable on the first day of the first month after the board of trustees determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determines such entitlement, and any portion due for a partial month shall be paid together with the first payment.
 - 2. The last payment will be:
 - i. If the police officer recovers from the disability prior to his normal retirement date, the payment due next preceding the date of such recovery; or
 - ii. If the police officer dies without recovering from his disability or attains his normal retirement date while still disabled, the payment due next preceding his death.
 - 3. Any monthly retirement income payments due after the death of a disabled police officer shall be paid to the police officer's designated beneficiary (or beneficiaries), in accordance with the option the participant chose pursuant to section 14-83.
- f. If the board of trustees finds that a police officer who is receiving a disability retirement income is, at any time prior to his normal retirement date, no longer disabled, as provided herein, the board of trustees shall direct that the disability retirement income be discontinued. Recovery from disability as used herein shall mean the ability of a police officer to render useful and efficient service as a police officer.
- g.

If the police officer recovers from disability and reenters the service of the town as a police officer, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service of the town will not be considered as credited service for the purposes of this plan.

(5) *Benefit limitations.*

- a. *Basic limitations.* Subject to the adjustments hereinafter set forth, the maximum amount of annual retirement income payable with respect to a participant under this plan shall not exceed the dollar amount as may be allowable for any calendar year pursuant to Section 415(b) of the Code, (one hundred seventy thousand dollars (\$170,000.00) in 2005).

For purposes of applying the above limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by treasury regulations, so that such benefits are the actuarial equivalent of a straight life annuity. Notwithstanding any other plan provisions to the contrary, the applicable mortality table used for purposes of adjusting any benefit or limitation under Section 415(b)(2)(B), (C), or (D) of the Internal Revenue Code as set forth in this section of the plan and the applicable mortality table used for purposes of satisfying the requirements of Section 417(e) of the Internal Revenue Code is the table prescribed in Rev. Rul. 2001-62. For purposes of this article, the following benefits shall not be taken into account:

1. Any ancillary benefit which is not directly related to retirement income benefits;
 2. Any other benefit not required under Section 415(b)(2) of the Code and treasury regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Code.
- b. *Participation in other defined benefit plans.* The limitation of this section with respect to any participant who at any time has been a participant in any other defined benefit plan (as defined in Section 414(j) of the Code) maintained by the town shall apply as if the total benefits payable under all defined benefit plans in which the participant has been a participant were payable from one (1) plan.
 - c. *Adjustments and limitations.* In the event the participant's retirement benefits become payable before age sixty-two (62), the maximum amount of annual retirement income limitation prescribed by this section shall be reduced in accordance with the regulations issued by the secretary of the treasury pursuant to

the provisions of Section 415(b) of the Code, so that such limitation (as reduced) equals an annual benefit (beginning when such retirement income begins) which is equivalent to the Code Section 415(b) maximum amount of annual retirement income beginning at age sixty-two (62).

1. In the event the participant's benefit is based on at least fifteen (15) years of credited service, the adjustments provided for in subsection a. above shall not apply.
2. The reductions provided for in subsection a. above shall not be applicable to disability benefits or pre-retirement death benefits.
3. In the event the participant's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the limitation set forth in subsection (6) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). The adjustment shall be made in accordance with regulations promulgated by the secretary of the treasury or his delegate.
4. Less than ten (10) years of service. The maximum retirement benefits payable under this section to any participant who has completed less than ten (10) years of credited service with the department shall be the amount determined under subsection 1. of this section multiplied by a fraction, the numerator of which is the number of the participant's years of credited service and the denominator of which is ten (10). The reduction provided for in this subsection shall not be applicable to disability benefits or pre-retirement death benefits.
5. Ten thousand dollar (\$10,000.00) limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a participant shall be deemed not to exceed the limitations set forth in this section if the benefits payable, with respect to such participant under this plan and under all other qualified defined benefit pension plans to which the town contributes, do not exceed ten thousand dollars (\$10,000.00) for the applicable plan year and for any prior plan year and the town has not at any time maintained a qualified defined contributions plan in which the participant participated.
6. Reduction of benefits. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the participant's benefit under any defined benefit plans in which the participant participated, such reduction to be made first with respect to the plan in which participant most

recently accrued benefits and thereafter in such priority as shall be established by the board and the plan administrator for such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the participant participated such reduction to be made first with respect to the plan in which the participant most recently accrued benefits and thereafter in such priority as shall be established by the board and the plan administrator for such other plans, provided, however, that necessary reductions made in different manner and priority pursuant to the agreement of the board and the plan administrator of all other plans covering such participant.

7. Cost of living adjustments. The limitations as stated herein shall be adjusted to the time payment of a benefit begins in accordance with any cost-of-living adjustments prescribed by the secretary of the treasury pursuant to 415(d) of the Code.
8. Additional limitation on pension benefits. Notwithstanding anything herein to the contrary:
 - i. The normal retirement benefit or pension payable to a retiree who becomes a participant of the plan on or after January 1, 1980, and who has not previously participated in such plan, shall not exceed one hundred (100) percent of his average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living adjustments.
 - ii. No participant of the Plan shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the participant is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement plan. This restriction does not apply to social security benefits, military benefits or federal benefits under Chapter 67, Title 10, U.S. Code.
9. Compensation in excess of limitations set forth in Section 401(a)(17) of the Code shall be disregarded. The limitation on compensation for an eligible employee shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. "Eligible employee" is an individual who was a participant of this plan before October 1996.

(6)

Eligible rollover distributions. For any distribution made on or after January 1, 1993, notwithstanding any provision of the police pension fund and retirement plan to the contrary that would otherwise limit a distributee's election, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. The terms "direct rollover," "distributee," "eligible retirement plan" and "eligible rollover distribution" have been included in the definitions section.

(7) *Miscellaneous provisions.*

- a. At no time prior to the satisfaction of all liabilities under the system with respect to retirees and participants and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.
- b. Forfeitures arising from termination of service of participants shall serve only to reduce future town contributions.

(Ord. No. O-18-05, § 1, 11-14-05; Ord. No. O-1-07, § 2, 2-26-07; Ord. No. O-01-2014, § 2, 1-27-14)

Sec. 14-83. - Defined benefit plan—Options.

- (a) Optional forms of retirement income. In lieu of the amount and form of retirement income payable in the event of normal, deferred or disability retirement, a participant, upon written request to the board of trustees, and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one (1) of the following options:
 - (1) *Contingent annuitant option*. A retirement income of a modified monthly amount, payable to the police officer during the joint lifetime of the police officer and a joint pensioner designated by the police officer, and following the death of the police officer, one hundred (100) percent, seventy-five (75) percent, sixty-six (66) percent, or fifty (50) percent of such monthly amount payable to the joint pensioner for life.
 - (2) *Life annuity*. The police officer may elect to receive an increased benefit payable for his life only. No benefit is ever paid to a beneficiary
- (b) The police officer upon electing any option of this section will designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the plan in the event of the police officer's death, and will have the power to change such designation from

time to time but any such change shall be deemed a new election and will be subject to approval by the board of trustees. Such designation will name a joint pensioner or one (1) or more primary beneficiaries where applicable. If a police officer has elected an option with a joint pensioner or beneficiary and his or her retirement income benefits have commenced, he or she may thereafter change the designated joint pensioner or beneficiary but only if the board consents to such change and if the joint pensioner last previously designated by the police officer is alive when he or she files with the board of trustees a request for such change. The consent of a police officer's joint pensioner or beneficiary to any such change shall not be required. Each such designation will be made in writing on a form prepared by the board of trustees, and on completion will be filed with the board of trustees. Upon receipt of a completed change of joint annuitant form or such other notice, the board of trustees shall adjust the police officer's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the police officer's current benefit and there is no impact to the plan. Any costs associated with these benefit calculations shall be borne by the police officer. No police officer's current benefit shall be increased as a result of a change of beneficiary. In the event that no designated beneficiary survives the police officer, such benefits as are payable in the event of the death of the police officer subsequent to his or her retirement shall be paid as provided in § 185.162, Florida Statutes.

- (c) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:
 - (1) If a police officer dies prior to his or her normal retirement date, no benefit will be payable under the option to any person, but the benefits, if any, will be determined under section 14-84.
 - (2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the police officer(s) retirement under the plan, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the police officer upon his or her retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the police officer prior to his or her retirement and within ninety (90) days after the death of the beneficiary.
 - (3)

If both the retired police officer and the designated beneficiary (or beneficiaries) die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection (a)1.(b), the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 14-84.

- (4) If a police officer continues beyond his or her normal retirement date pursuant to the provisions of subsection 14-82(2) and dies prior to actual retirement and while an option made pursuant to the provisions of this section are in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the police officer in the amount or amounts computed as if the police officer had retired under the option on the date on which death occurred.
- (5) No police officer may make any change in his or her retirement option after the date of cashing or depositing his or her first retirement check.

(Ord. No. O-18-05, § 1, 11-14-05; Ord. No. O-1-07, § 3, 2-26-07; Ord. No. O-04-2010, § 3, 4-12-10)

Sec. 14-84. - Same—Change in status of participant.

(a) *Termination of employment.*

- (1) Should any police officer leave the service of the town before accumulating aggregate time of ten (10) years toward retirement and before being eligible to retire under the provisions of this plan, such police officer shall be entitled to a refund of all of his or her contributions made to the municipal police officers' retirement trust fund, less any benefits paid to him or her. A participant who has ceased to be employed by the department as a police officer may elect to voluntarily leave his or her contributions in the participant's deposit account for a period of up to five (5) years pending the possibility of being rehired by the department. If the participant is not re-employed as a police officer with the same department within five (5) years, his or her contributions shall be returned to him or her, without interest, less any benefits paid to him or her.
- (2) Should any police officer who has been in the service of the town for at least ten (10) years and has contributed to the fund for at least ten (10) years elect to leave his or her accrued contributions in the municipal police officers' retirement trust fund, such police officer upon attaining age fifty (50) years or more may retire at the actuarial equivalent of the amount of such retirement income otherwise payable to him or her.
- (3) Participants are one hundred (100) percent vested at ten (10) years of service.

- (b) *Death prior to retirement.* Should any police officer die before being eligible to retire under the provisions of this plan, the beneficiaries of such deceased police officer shall be entitled to a refund of one hundred (100) percent of the contributions, made to the municipal police officers' retirement trust fund by such deceased police officer. If any police officer dies prior to retirement but has at least ten (10) years of contributing service, his or her beneficiary is entitled to the benefits otherwise payable to the police officer at early or normal retirement age. However, the benefits as provided in F.S. § 112.19, shall not be included as death or retirement benefits under the provisions of this plan. If the police officer dies and there is not a valid designated beneficiary or the designated beneficiary is not alive, then the benefit will be paid in accordance with section 14-78(b) of this chapter.

(Ord. No. O-18-05, § 1, 11-14-05; Ord. No. O-01-2015, § 3, 3-9-15)

Sec. 14-85. - Termination of fund.

Termination of the fund for any reason shall be accomplished in accordance with F.S. § 185.37, as amended. Upon the termination or partial termination of the plan, each affected participant's accrued benefit shall become one hundred (100) percent vested.

(Ord. No. O-18-05, § 1, 11-14-05)

Sec. 14-86. - Rights and benefits not subject to legal process.

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

- (a) The board shall honor court income deduction orders for the payment of alimony or child support in accordance with rules and procedures adopted by the board; or
- (b) Upon written request by the retiree, the board of trustees may authorize the plan administrator to withhold from the monthly retirement payment funds necessary to:
 - (1) Pay for benefits being received through the town;
 - (2) Pay the certified bargaining agent; or
 - (3) To pay for premiums for accident health and long-term care insurance for the retiree, the retiree's spouse and dependants. A retirement plan does not incur liability for participation in this permissive program if its actions are taken in good faith pursuant to § 185.05(6), Florida Statutes.

- (4) However, any and all additional costs associated with processing and/or making the requested payments will be paid by the retiree and not the fund.

(Ord. No. O-04-2010, § 4, 4-12-10)

Editor's note— Ord. No. O-04-2010, § 4, adopted Apr. 12, 2010, repealed § 14-86, in its entirety and enacted new provisions to read as herein set out. Prior to amendment, § 14-86 pertained to similar subject matter. See Code Comparative Table for derivation.

Sec. 14-87. - Responsibility of town.

The town shall have no responsibility for the operation of the fund, except as specified herein, and shall bear no expense in the operation of the fund. However, the town shall be responsible to make contributions to the fund equal to the normal cost and the amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in part VII of Ch. 112.

(Ord. No. O-18-05, § 1, 11-14-05)

Sec. 14-88. - Previous participants.

The rights of all police officers previously employed by the town and eligible to receive benefits from those funds previously received by the fund shall be governed by, and calculated pursuant to, this division as in effect at the time of such police officers last date of employment.

(Ord. No. O-18-05, § 1, 11-14-05)

Sec. 14-89. - Monthly supplemental benefits.

Any retiree or beneficiary who begins receiving pension benefits after October 1, 2000 is entitled to a monthly supplemental pension benefit equal to thirty-five dollars (\$35.00) per year of service.

(Ord. No. O-18-05, § 1, 11-14-05)

Sec. 14-90. - Deferred retirement option plan (drop).

- (a) *Eligibility to participate in the DROP.*

(1)

Any participant who is eligible to receive a normal retirement pension may participate in the DROP. Participants shall elect to participate by applying to the board of trustees on a form provided for that purpose.

- (2) Election to participate shall be forfeited if not exercised within the first thirty-two (32) years of combined credited service.
- (3) A participant shall not participate in the DROP beyond the time of attaining thirty-five (35) years of service and the total years of participation in the DROP shall not exceed five (5) years. For example:
 - a. Participants with thirty (30) years of credited service at time of entry shall only participate for five (5) years.
 - b. Participants with thirty-one (31) years of credited service at time of entry shall only participate for four (4) years.
 - c. Participants with thirty-two (32) years of credited service at time of entry shall only participate for three (3) years.
- (4) Upon a participant's election to participate in the DROP, he or she shall cease to be a participant and shall no longer accrue any benefits under the pension fund. For all fund purposes, the participant becomes a retirant. The amount of credited service and final average salary freeze as of the date of entry into the DROP.
- (5) DROP participation shall end at the attainment of thirty-five (35) years of credited service or five (5) full years of DROP participation, which ever comes first.

(b) *Amounts payable upon election to participate in DROP.*

- (1) Monthly retirement benefits that would have been payable had the participant terminated employment with the Department and elected to receive monthly pension payments will be paid into the DROP and credited to the retirant. Payments into the DROP will be made monthly over the period the retirant participates in the DROP, up to a maximum of sixty (60) months.
- (2) Payments to the DROP earn interest at the same percentage as interest is earned (or lost) by the fund as a whole, unless the board dedicates a separate investment portfolio for DROP payments, in which case the investment earnings (or losses) shall be measured by the investment earnings (or losses) of the separate investment portfolio. Costs, fees, and other expenses of administration shall be debited from the individual retirant accounts on a proportionate basis taking the cost, fees and expenses of administration of the fund as a whole, multiplied by a fraction, the numerator of which is the total assets in all individual retirant accounts and the denominator of which is the total assets of the

fund. The proportionate share of costs, fees and expenses of administration shall be debited to each retirant DROP account on a pro-rata basis. If a police officer does not terminate employment at the end of participation in the DROP, interest credits shall cease on the current balance and there shall be no future DROP deposits.

- a. Interest shall be credited or debited to the member's average daily DROP balance on a quarterly basis at the net rate determined by the investment consultant quarterly and reported annually to the state. A participant's quarterly rate of return is calculated in a two (2) step process. Step 1 is to calculate each month's rate of return using the Modified Dietz formula. Step 2 is to link the monthly returns together.

Step One (calculate the monthly returns using the modified Dietz Formula):

$$R_{MDietz} = \frac{Gain}{AverageCapital} = \frac{EMV - BMV - F}{BMV + \sum_{i=1}^n W_i \times F_i}$$

Where:

EMV is the ending market value.

BMV is the beginning market value.

F is the net external inflow for the period (contributions to a portfolio are entered as positive flows while withdrawals are entered as negative flows). The investment manager fee is not included in this calculation (net of fees). Other expenses including, but not limited to investment consultant, custodial, actuarial, administrative and legal fees are included.

$$\sum_{i=1}^n W_i \times F_i = \underline{\underline{\hspace{2cm}}}$$

The sum of each flow F_i multiplied by its weight W_i .

Where:

Weight — W_i is the proportion of the time period between the point in time when the flow F_i occurs and the end of the period.

W_i can be calculated as:

$$W_i = \frac{CD - D_i}{CD}$$

Where CD is the number of calendar days during the return period being calculated, which equals end date minus start date plus 1. D_i is the number of days from the start of the return period until the day on which the flow F_i occurred. This assumes that the flow happens at the end of the day. The investment manager fee is not included in this calculation (net of fees). Other expenses including, but not limited to investment consultant, custodial, actuarial, administrative and legal fees are included.

Step Two (link the monthly returns) link the returns geometrically in the following fashion:

$$[(1+R_1) \times (1+R_2) \times (1+R_3)] - 1 = \text{Quarterly rate of return}$$

Where:

R1 = Return of month 1.

R2 = Return of month 2.

R3 = Return of month 3.

- b. The rate is net of the investment manager fees are paid. The amount of the investment fees are reported monthly by the custodian and are reported annually by the auditor. Investment management fees are generally paid quarterly in arrears and are accounted for on a cash, not accrual basis.
 - c. Statements are effective December 31st, March 31st, June 30th, and September 30th.
- (3) No payments will be made from DROP until the participant terminates employment with the department.
- (4) Upon termination of employment, participants in the DROP will receive the balance of the DROP account in accordance with the following rules:
- a. Participants may elect to begin to receive payment upon termination of employment or defer payment of DROP until the latest day under subsection c. below.
 - b. Payments shall be made in either:
 - 1. Lump sum. The entire account balance will be paid to the retirant upon approval of the board of trustees.

2. Installments. The account balance will be paid out to the retirant in three (3) equal payments paid over three (3) years, the first payment to be made upon approval of the board of trustees.
3. Annuity. The account balance will be used to purchase an annuity to be paid monthly, the first payment to be made upon approval by the board of trustees.
- c. Any form of payment selected by a police officer must comply with the minimum distribution requirements of the IRC 401(A)(9), and are subject to the minimum distribution requirements of the Code [e.g., payments must commence by age seventy and one-half (70½)].
- d. The beneficiary of the DROP participant who dies before payments from DROP begin shall have the same right as the participant in accordance with section 14-87.

(Ord. No. O-18-05, § 1, 11-14-05; Ord. No. O-10-2015, § 1, 10-12-15)

Sec. 14-91. - Cost of living adjustments.

- (a) Subject to the conditions set forth in this section, the board of trustees shall annually authorize a cost of living adjustment, the amount of which shall be determined as of each September 30. The amount of the cost of living adjustment shall be equal to the actuarial present value of future pension payments to current pensioners multiplied by the positive difference, if any, between the rate of investment return and eight (8) percent. The actuary shall determine whether there may be a cost of living adjustment based on the following factors:
 - (1) The actuary for the pension fund shall determine the rate of investment return on the pension fund assets during the twelve-month period ending each September 30. The rate determined shall be the rate reported in the most recent actuarial report submitted pursuant to F.S. Pt. VII, Ch. 112.
 - (2) The actuary for the pension fund shall, as of September 30, determine the actuarial present value of future pension payments to current pensioners. The actuarial present values shall be calculated using an interest rate of eight (8) percent a year compounded annually, and a mortality table approved by the board of trustees and as used in the most recent actuarial report submitted pursuant to F.S. Pt. VII, Ch. 112. This will be the pool of funds available to fund the cost of living adjustment.
 - (3)

If the actuary determines there may be a cost of living adjustment, the board of trustees shall authorize such an adjustment unless the administrative expenses of distribution exceed the amount available for the distribution.

- (b) Cost of living adjustments will be made to pensioners and beneficiaries.
- (c) The cost of living adjustment will be made as a percentage of the benefit and the percentage will be the same for all recipients. The amount of the percentage increase will be determined by the fund's actuary in accordance with the above procedure. The percentage increase will be equal to the amount that can be fully funded by the pool of funds available and determined by that procedure.
- (d) The cost of living adjustments shall be made as of July 1 and each July 1 thereafter, provided a person was retired for at least one (1) year on July 1.

(Ord. No. O-18-05, § 1, 11-14-05)

Sec. 14-92. - Claims procedure.

- (a) The applicant for benefits under this plan may, within twenty (20) days after being informed of the denial of his or her request for pension benefits, appeal the denial by filing a reply to the proposed denial with the pension plan board of trustees. If no appeal is filed within the time period specified, then the denial is final.
- (b) The board shall hold a hearing within forty-five (45) days after receipt of the appeal. Written notice of the hearing shall be sent by certified mail to the applicant ten (10) days prior to the hearing, at the address listed on the application.
- (c) The board shall have the power to subpoena, require the attendance of witnesses, and the production of documents for discovery, prior to and at any proceedings provided for in the plan. The claimant may request in writing the issuance of subpoenas by the board. A reasonable fee may be charged for the issuance of any subpoenas, not to exceed the fees set forth in the Florida Statutes.
- (d) The procedures at the hearing shall be as follows:
 - (1) All parties shall have an opportunity to respond, to present physical and testimonial evidence and argument, on all issues involved, to conduct cross-examination, to submit rebuttal evidence, and to be represented by counsel. Medical depositions may be accepted in lieu of live testimony, at the board's discretion.
 - (2) All witnesses shall be sworn.
 - (3) The applicant and the board shall have an opportunity to question all witnesses.

- (4) The formal rules of evidence and the formal rules of civil procedures shall not apply. The proceedings shall comply with the essential requirements of due process of law.
- (5) The record in a case governed by this subsection shall consist only of:
 - a. A tape recording of the hearing, to be taped and maintained as part of the official files of the board of trustees by the pension's secretary.
 - b. Evidence received or considered.
 - c. All notices, pleadings, motions and intermediate rulings.
 - d. Any decisions, opinions, proposed or recommended orders or reports by the board of trustees.
- (6) Within ten (10) days after the hearing, the board shall take one (1) of the following actions:
 - a. Grant the pension benefits by overturning the denial by majority vote;
 - b. Deny the benefits and confirm the denial. The board's decision shall be in writing set forth as an order.
- (7) Findings of fact by the board shall be based on competent, substantial evidence on the record.
- (8) Upon rendering its order, the board shall send by certified mail a copy of the order to the applicant.
- (9) The applicant may seek review of the order of the board by filing a petition for writ of certiorari with the circuit court within thirty (30) days of the order being rendered.

(Ord. No. O-18-05, § 1, 11-14-05)

Sec. 14-93. - Forfeiture of pension: conviction and forfeiture.

Any participant who is convicted of the any of the following offenses committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this plan, except for the return of his accumulated contributions as of the date of termination.

- (1) Specified offenses are as follows:
 - a. The committing, aiding or abetting of an embezzlement of public funds.
 - b. The committing, aiding or abetting of any theft by a public officer or employee from the employer.
 - c. Bribery in connection with the employment of a public officer or employee.

- d. Any felony specified in F.S. Ch. 838.
 - e. The committing of an impeachable offense.
 - f. The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he acts or in which he is employed, of the right to receive the faithful performance of his duty as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his public office or employment position.
- (2) Conviction shall be defined as follows: An adjudication of guilt by a court of competent jurisdiction; a plea of guilty or a nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.
- (3) Court shall be defined as follows: Any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the board shall hold a hearing on which notice shall be given to the participant whose benefits are being considered for forfeiture. Said participant shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the participant shall be afforded a full opportunity to present his case against forfeiture.
- (4) Any participant who has received benefits from the plan in excess of his accumulated contributions after participant(s) rights were forfeited pursuant to this section shall be required to pay back to the fund the amount of the benefits received in excess of his accumulated contributions. The board may implement all legal action necessary to recover such funds.
- (5) It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement or withhold or conceal material information to obtain any benefit from the plan.
- (6) A person who violates subsection (5) above commits a misdemeanor of the first degree, punishable as provided in F.S. § 775.082 or § 775.083.
- (7) In addition to any applicable criminal penalty upon conviction for a violation described in paragraph (e), a participant or beneficiary of the plan may, in the discretion of the board, be required to forfeit the right to receive any or all benefits to which the person would

otherwise be entitled under the plan. For purposes of this subsection conviction means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(Ord. No. O-18-05, § 1, 11-14-05)

Sec. 14-94. - Pension validity.

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

(Ord. No. O-18-05, § 1, 11-14-05)

Sec. 14-95. - Beneficiaries.

- (a) Each police officer may, on a form, provided for that purpose, signed and filed with the board, designate a choice of one (1) or more persons named sequentially or jointly, as his or her beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of the police officer's death, and each designation may be revoked by such police officer by signing and filing with the board a new designation of beneficiary form.
- (b) If no beneficiary is named in the manner provided by subsection (a), or if no beneficiary designated by the participant survives him or her, the death benefit, if any, which may be payable under the plan with respect to such deceased police officer shall be paid by the board to the estate of such deceased police officer, provided that in any of such cases, the board, in its discretion, may direct that the commuted value of the remaining monthly income payments be paid in a lump sum. Any payment made to any person pursuant to this subsection shall operate as a complete discharge of all obligations under the plan with regard to such deceased police officer and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons ever interested hereunder.

(Ord. No. O-18-05, § 1, 11-14-05)

Sec. 14-96. - Early retirement incentive.

- (a) Effective _____ / _____ / _____ , an early retirement incentive shall be provided to employees in accordance with this section. The availability of early retirement in any calendar year shall be determined by the town.
- (b) Notwithstanding section 14-82(5)c.5 hereinabove, employees who have nine and one-half years (9½) years of service and who are more than fifty (50) years of age shall be eligible for the early retirement incentive. In any calendar year in which the town determines that the early retirement incentive will be offered, eligible employees shall be given at least fifteen (15) days advance notice of the town's intent to offer early retirement for that year. Eligible employees shall then be provided forty-five (45) days from the date the early retirement is offered to decide whether they wish to receive the early retirement incentive and retire from town employment.
- (c) Eligible employees who elect to receive the early retirement incentive shall receive a member benefit equal to thirty (30) percent of that employee's average final compensation.

(Ord. No. O-06-2010, § 1, 6-14-10)

Secs. 14-97—14-100. - Reserved.