

ARTICLE II. POLICE AND FIREMAN PENSION PLAN

Sec. 35-50. Establishment of plan.

There is established a pension plan for police officers and regular full-time firemen.

(Ord. 595-76, passed 12-13-76)

Sec. 35-51. Definitions.

For purposes of §§ 35-50--35-59, the following words and phrases shall have the following meanings ascribed to them respectively.

- (A) *Accumulated contributions.* A member's own contributions plus interest.
- (B) *Agreement.* This written instrument setting forth the provisions of the retirement system.
- (C) *Average monthly earnings.* The average of earnings for the three-consecutive-year period of continuous service which produces the highest average.
- (D) *Beneficiary.* The spouse or children where so provided hereunder, or where the spouse or children are not otherwise specifically designated under §§ 35-50--35-59, the person or persons entitled to receive benefits hereunder at the death of a member who has or have been designated in writing by the member and filed with the board. If no designation is in effect at the time of death of the member, or if no person so designated is living at that time, the beneficiary shall be the estate of the member.
- (E) *Board.* The Board of Trustees, which shall administer and manage the system herein provided, and serve as trustee of the fund.
- (F) *Continuous service.*
 - (1) For each member, uninterrupted service (expressed as years and completed months), from the date he last entered employment as an employee, including the initial period of probationary employment, until the date his employment shall be terminated by death, disability, retirement, resignation, or discharge; provided the continuous service of any member shall not be deemed to be interrupted by:
 - (a) Any authorized leave of absence or vacation, provided all members similarly situated in similar circumstances shall be treated alike pursuant to uniform, nondiscriminatory rules.
 - (b) Any service, voluntary or involuntary, in the armed forces of the United States, provided the member is legally entitled to reemployment under the provisions of the universal training and service act, and any amendments thereto, or any law applicable to such reemployment, and provided further, that the member shall apply for reemployment within three months following termination of service.
 - (2) However, no credit for benefit eligibility or computation purposes

under the system shall be allowed for any leave of absence. In the event a member who, while employed by the City, entered or enters the armed forces of the United States during any period of compulsory military service, and reenters the employ of the City, the armed service rendered by him, not to exceed a total of five years, shall be credited him as continuous service; provided:

(a) His reemployment by the City occurs within three months from and after termination of the armed service required of him; and

(b) He pays into the system the amount he may have withdrawn therefrom, together with interest at a rate to be determined by the board.

(3) During the period of armed service, and until his return to City employment, his contributions to the system shall be suspended.

(4) For any person who becomes a member of the system on or after October 1, 1978, such armed service shall not be credited if he is receiving or will receive in the future a retirement benefit from the federal government based in whole or in part on such armed service.

(G) *Earnings.* All regular, periodic compensation received from the City with the exception of:

(1) Overtime;

(2) Lump sum payments at retirement for unused sick leave;

(3) Lump sum payments at retirement for unused vacation pay;

(4) Any other lump sum payments at retirement.

(H) *Employee.* All actively employed employees of the City classified as full-time sworn police officers, as defined on the effective date in F.S.A. § 185.02, or regular full-time firemen as defined on the effective date in F.S.A. § 175.032, and shall exclude all civilian members of the police and fire departments.

(I) *Fund.* The trust fund established herein as part of the system.

(J) *Member.* An employee who fulfills the prescribed participation requirements.

(K) *Qualified actuary.* Actuarial valuations shall be made by or under the direction of a person who is a member of the American Academy of Actuaries.

(L) *Spouse.* The lawful wife or husband of a member at time of pre-retirement death or retirement.

(M) *System.* The City of Miami Springs Police and Firefighters Retirement System as contained herein and all amendments thereto.

(Ord. 595-76, passed 12-13-76; amend. Ord. 630-79, passed 5-29-79)

Sec. 35-52. Membership.

(A) *Conditions of eligibility.*

(1) All employees as of the effective date, and all future new employees, shall become members of this system immediately upon and as a condition of employment.

(2) All employees as of the effective date who were covered under the City's system immediately preceding the effective date shall continue their membership and coverage hereunder on an uninterrupted basis.

(B) *Application for membership.* Each eligible employee shall complete an application form covering the following points, as well as such other points or items as may be prescribed by the board:

- (1) Acceptance of the terms and conditions of the retirement system, and,
- (2) Designation of a beneficiary or beneficiaries, and
- (3) Contribution authorization of a payroll deduction from earnings payable to the system pursuant to § 35-55.

(C) *Change in designation of beneficiary.* A member 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 benefit under the system shall cease.

(Ord. 595-76, passed 12-13-76)

Sec. 35-53. Benefit amounts and eligibility.

(A) *Normal retirement.* A member's normal retirement date shall be the first day of the month coincident with or next following the earlier of the attainment of his/her 55th birthday, and the completion of ten years of continuous service or completion of 20 years of continuous service regardless of age. Except as provided herein, a member may retire on his/her normal retirement date or on the first day of any month thereafter. Each member shall become 100 percent vested in his/her accrued benefit on his/her normal retirement date. A member's normal retirement benefit shall be as follows:

- (1) *Duration.* A member retiring hereunder on or after his/her normal retirement date shall receive a monthly benefit which shall commence on his/her retirement date, and be continued thereafter during his/her lifetime, ceasing upon death, but subject in any event to the provision of division (F). Other optional forms of payment providing death benefits shall also be available as specified herein.
- (2) *Amount.* The monthly retirement benefit shall be equal to 3.5 percent of average monthly earnings multiplied by the number of years and completed months of continued service.

(B) *Early retirement.* A member's early retirement date shall be the first day of the month coincident with or next following attainment of his 50th birthday and the completion of ten years of continuous service. Except as provided herein, a member may retire on his early retirement date or on the first day of any month thereafter. A member's early retirement benefit shall be as follows:

- (1) *Duration.* A member retiring hereunder on or after his early retirement date shall receive a monthly benefit which shall commence on his retirement date, and be continued thereafter during his lifetime, ceasing upon death, but subject in any event to the provisions of division (F). Other optional forms of payment providing death benefits shall also be available as specified herein.
- (2) *Amount.* The monthly retirement benefit shall be computed as described in division (A), taking into account the member's continuous service to his date of actual retirement and average monthly earnings as of such date, such amount of

retirement benefit to be actuarially reduced to take into account the member's younger age and the earlier commencement of retirement benefits. In no event shall the early retirement reduction exceed three percent for each year by which the member's age at retirement preceded the member's normal retirement date.

(C) *Disability.*

(1) Service-incurred. Any member who receives a service-connected injury, disease, or disability, which injury, disease, or disability permanently incapacitates him, physically or mentally from his regular and continuous duties as a firefighter or police officer, shall receive in equal monthly installments an amount equal to $66 \frac{2}{3}$ percent of his earnings in effect as of the date of disability. The benefit shall be paid until the recovery from disability as determined by the board, or death. An optional form of benefit, providing death benefits, may be elected.

(2) Nonservice-incurred. Any member with ten years of continuous service, who receives a nonservice-connected injury, disease, or disability, and which injury, disease, or disability permanently incapacitates him physically or mentally from gainful employment, shall receive in equal monthly installments an amount equal to his accrued retirement benefit based on his average monthly earnings, continuous service, and member contribution rate in effect on the date of disability. In no event shall the foregoing benefit be less than 25 percent of the member's average monthly earnings as of the date of disability.

(3) Determination of disability. All questions relating to eligibility for initial payment or continuance of disability benefits shall be determined by the Board of Trustees, taking into consideration the recommendations of the medical board, and based upon the methods and procedures established by the Board of Trustees.

(4) Benefit offsets. The City may not offset worker's compensation benefits against an employee's pension benefits, except to the extent that the total of the two exceeds the employee's average monthly wage.

(5) Exclusions. Disability benefits shall not be payable in cases where the disability arose as a result of the member's own willfully intended or self-inflicted injury, intoxication, or use of narcotics or other items considered to be dangerous drugs, or by reason of the commission of a criminal act.

(6) Recovery. In the event of recovery from disability as determined by the board, and immediate reemployment by the City as an employee, the period of time while disabled shall be included as continuous service. In the event of recovery, but without immediate reemployment as an employee, the member's future benefits shall be determined as though he initially terminated employment on his date of disability.

(7) Minimum benefit. Disability benefits shall be subject, in any event, to the provisions of division (F) below.

(D) *Pre-retirement death.*

(1) Service-incurred. A death benefit shall be payable on behalf of any member who dies as a direct result of an occurrence arising in the performance of service to the City, as follows:

(a) To the spouse, until the earlier of death or remarriage, a monthly benefit equal to 25 percent of the member's earnings in effect on his date of death, plus,

(b) For each unmarried child until he or she attains age 18 and for each

unmarried child from age 18 until age 22 who is a full-time student in a fully accredited high school, college, or university, there shall be paid in equal monthly installments an amount equal to seven and one-half percent of earnings subject to an overall limitation of a total of 40 percent of earnings for the spouse and children combined. The nonstudent child's pension shall terminate on the earlier of death, marriage, or the attainment of age 18. The pension of a child who is a student shall terminate on the earlier of death, marriage, or the attainment of age 22. Legally adopted children shall be as eligible as natural children.

(c) Anything herein to the contrary notwithstanding, the surviving spouse of any member killed in the line of duty shall not lose survivor retirement benefits if the spouse remarries.

(d) Upon death or remarriage of the spouse which results in termination of the survivor retirement benefits, the seven and one-half percent child allowance shall be increased to 15 percent for each child, not to exceed a combined total of 30 percent of the member's earnings. The trusteeship and method of disbursement of the pension to any child or children shall be determined by the Board of Trustees.

(2) Nonservice-incurred. If any member dies while in active service as an employee of the City, but from causes not attributable to active duty or service, a death benefit shall be payable as follows:

(a) If the member was eligible for normal retirement on his date of death, it shall be assumed that the deceased member had retired on his date of death, and a benefit shall be paid on a monthly basis, assuming election of an option as follows:

1. If the member was married on his date of death, a 100 percent joint and survivor annuity payable to the spouse, unless in lieu thereof, the ten-year certain and life thereafter option payable to the designated beneficiary had been elected in writing by the member prior to his death.

2. If the member was not married on his date of death, the 10-year certain and life thereafter option.

(b) If the member was not eligible for normal retirement on his date of death, the return of accumulated contributions.

(3) Minimum benefit. Pre-retirement death benefits shall be subject, in any event, to the provisions of division (F) below.

(E) *Vesting.*

(1) If a member terminates his/her employment with the police department, either voluntarily or by lawful discharge, and is not eligible for any other benefits under this system, he/she shall be entitled to the following:

(a) With less than five years of continuous service, refund of accumulated contributions.

(b) With five or more years of continuous service, either:

1. The pension benefit accrued to his date of termination, payable commencing at his otherwise earliest normal retirement date, provided he does not elect to withdraw his accumulated contributions, and survives to the normal retirement date; or

2. The refund of accumulated contributions.

(2) Any member of this system who, for whatever reason, has his employment with the City as a police officer or firefighter terminate, but who remains with or was previously employed by the City in some other capacity so that his total period of employment with the City is ten years or more, shall have all benefits accrued under this system preserved, provided he does not elect to withdraw his accumulated contributions. Accrued benefits shall be payable at his otherwise normal retirement date, in accordance with the provisions of this system. For purposes of determining normal retirement date under this vesting provision, continuous service shall include all continuous employment with the City as an employee as herein defined, as well as the period of time subsequent to termination as an actively employed and contributing member of this system; provided benefits shall not be payable under this system during any period of continued employment by the City.

(3) Forfeitures arising from terminations of employment shall serve only to reduce future required contributions.

(F) *Minimum benefits.* For each member who was also a member of the employee's retirement system immediately preceding the effective date of this system, and who had, immediately preceding the effective date of this system, a balance standing to his credit in either the firemen state contribution fund or the policemen state contribution fund, there shall be minimum benefits payable under this system. In no event shall the total of benefits payable from this system to a member, whether by reason of normal retirement, disability, or death, be less than the total of (1) plus (2) where:

(1) Equals the balance, including interest, credited to date immediately preceding the effective date of this system, in either the firemen state contribution fund or the policemen state contribution fund; and

(2) Equals the amount of his accumulated contribution on his date of retirement, disability, or death.

(G) *Termination of employment.* In the event a member leaves the employ of the City, for any reason, except his normal retirement, disability, or death, the balance standing to his credit in the state contribution fund shall be paid to the member as follows:

(1) Prior to completing three years of service, one-fourth of the amount credited to his account;

(2) Prior to completing six years of service, but after completing three years of service, one-half of the amount credited to his account;

(3) Prior to completing nine years of service, but after completing six years of service, three-fourths of the amount credited to his account;

(4) After completing nine years of service, the participant shall be entitled to the entire amount credited to his account.

(H) *Denial of benefits.* When the claim of any member or beneficiary for benefits has been denied by the board, the board shall submit to the member or beneficiary on a timely basis a written notice setting forth the specific reasons for the denial. When a denial has occurred, the member or beneficiary shall have the right to a rehearing and a full and fair review by the board regarding the facts, circumstances, and information pertaining to the claim and the reasons for its denial.

(I) *Limitation on benefits.*

(1) In no event may a member's annual benefit exceed the lesser of:

(a) Ninety thousand dollars (adjusted for cost of living in accordance with IRC section 415(d), but only for the year in which such adjustment is effective), or

(b) One hundred percent of the member's average annual compensation for the member's three highest paid consecutive years; however, benefits of up to \$10,000.00 a year can be paid without regard to the 100 percent limitation if the total retirement benefits payable to an employee under all defined benefit plans (as defined in IRC section 414(j)) maintained by the employer for the present and any prior year do not exceed \$10,000.00 and the employer has not at any time maintained a defined contribution plan (as defined in IRC section 414(i)) in which the employee was a participant.

(2) If the member has less than ten years of service with the employer (as defined in IRC section 415(b)(5) and as modified by IRC section 415(b)(6)(D)), the applicable limitation in division (a) or division (b) above shall be reduced by multiplying such limitation by a fraction. The numerator of such fraction shall be the number of years, or part thereof, of service with the employer; the denominator shall be ten years.

(3) For purposes of this division (I), the "annual benefit" means a benefit payable annually in the form of a straight life annuity with no ancillary or incidental benefits and with no employee or rollover contributions. To the extent that ancillary benefits are provided, the limits set forth in division (I) (1) (a) and (b) above will be reduced actuarially, using an interest rate assumption equal to the greater of five percent or the interest rate [rate] used in the most recent annual actuarial valuation, to reflect such ancillary benefits.

(4) If distribution of retirement benefits begins before age 62, the dollar limitation as described in division (I)(1)(a) shall be reduced actuarially using an interest rate assumption equal to the greater of five percent or the interest rate used in the most recent annual actuarial valuation; however, retirement benefits shall not be reduced below \$75,000.00 if payment of benefits begins at or after age 55 and not below the actuarial equivalent of \$75,000.00 if payment of benefits begins before age 55. If retirement benefits begin after age 65, the dollar limitation of division (I)(1)(a) shall be increased actuarially using an interest rate assumption equal to the lesser of five percent or the interest rate used in the most recent annual actuarial valuation.

(5) For this division (I) the "average annual compensation for a member's three highest paid consecutive years" shall mean the member's greatest aggregate compensation during the period of three consecutive years in which the individual was an active member of the system.

(J) *Maximum compensation.* In determining the pension benefit for an eligible employee, compensation in excess of limitations set forth in § 401(a)(17) of the Internal Revenue 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 July 1, 1993. As used in this section, *eligible employee* is an individual who was a member before the first plan year beginning after December 31, 1995.

(K) *Deferred retirement option plan ("DROP").*

(1) Eligibility to participate in the DROP.

(a) Any member who is eligible to receive a normal retirement benefit and who has either attained age 55 with ten years of continuous service,

or completed 25 years of continuous service, may participate in the DROP. Members shall elect to participate by applying to the board on a form provided for that purpose.

(b) Eligibility to participate shall be forfeited if not exercised within the first 29 years of continuous service. However, participation will be permitted for those members with more than 27 years of service as of January 1, 1998 as described in subparagraph (c)6.

(c) A member shall not participate in the DROP beyond the time of attaining 30 years of continuous service and the total years of participation in the DROP shall not exceed five years. For example:

1. Members with 25 years of continuous service at time of entry may participate for up to five years.
2. Members with 26 years of continuous service at time of entry may participate for up to four years.
3. Members with 27 years of continuous service at time of entry may participate for up to three years.
4. Members with 28 years of continuous service at time of entry may participate for up to 2 years.
5. Members with 29 years of continuous service at time of entry may participate for up to one year.
6. Members with more than 27 years of continuous service as of January 1, 1998 may participate for up to three years.

(d) Upon a member's election to participate in the DROP, he or she shall cease to be a member and shall be precluded from accruing any additional benefits under the pension plan. For all pension plan purposes, the DROP participant shall be considered to be retired. The amount of continuous service and average monthly earnings freeze as of the date of entry into the DROP.

(Ord. 595-76, passed 12-13-76; amend. Ord. 630-79, passed 5-29-79; amend. Ord. 651-81, passed 1-12-81; amend. Ord. 687-84, passed 12-12-83; amend. Ord. 775-91, passed 2-25-91; amend. Ord. 792-92, passed 5-27-92; amend. Ord. 818-94, passed 12-12-94; amend. Ord. 826-95, passed 9-11-95; amend. Ord. 837-97, passed 1-13-97; amend. Ord. 842-98, passed 2-9-98; amend. Ord. 859-99, passed 11-22-99; amend. Ord. 864-00, passed 8-14-00; amend. Ord. 868-00, passed 11-13-00; amend. Ord. 870-01, passed 2-12-01; amend. Ord. 881-02, passed 6-10-02; amend. Ord. 909-04, passed 3-8-04)

Sec. 35-54. Optional forms of benefits.

(A) Each member entitled to a normal, service-incurred disability, or vested retirement benefit shall have the right, at any time prior to the date on which benefit payments begin, to elect to have his benefit payable under any one of the options hereinafter set forth in lieu of the benefits otherwise provided herein, and to revoke any elections and make a new election at any time prior to the actual beginning of payments. The value of optional benefits shall be actuarially equivalent to the value of benefits otherwise payable, and the present value of payments to the retiring member must be at least equal to 50 percent of the total present value of payments to the retiring member and his beneficiary. The member shall make such an election by written request to the board, the request being retained in the board's files.

(B) Option 1--Joint and last survivor option. The member may elect to receive a reduced benefit during his lifetime, and have such benefit (or a designated fraction thereof) continued after his death to and during the lifetime of his spouse or a relative other than his spouse. The election of option 1 shall be null and void if the designated beneficiary dies before the member's benefit payments commence.

(C) Option 2--Ten years certain and life thereafter. The member may elect to receive a benefit with 120 monthly payments guaranteed. If, after payments commence, the member should die before the 120 monthly payments are made, payments are then continued to his designated beneficiary until 120 payments in all have been made, at which time benefits cease. After expiration of the 120 monthly payments guaranteed, should the retired member be then alive, payments shall be continued during his remaining lifetime.

(D) Option 3--Other. In lieu of the other optional forms enumerated in this section benefits may be paid in any form approved by the board so long as actuarial equivalence with the benefits otherwise payable is maintained.

(Ord. 595-76, passed 12-13-76)

Sec. 35-55. Contributions.

(A) *Member contributions.*

(1) Amount. Members of the system shall make regular contributions to the fund equal to nine percent of their respective earnings. The contribution rate shall be subject to division (C) below. The City agrees to assume and pay member contributions in lieu of direct contributions by the members, such contributions shall accordingly be paid into the system in behalf of the members. No member subject to such agreement shall have the option of choosing to receive the contributed amounts directly instead of having them paid by the City directly to the system. All such contributions by the City shall be deemed and considered as member accumulated contributions and subject to all provisions of this system pertaining to accumulated contributions of members.

(2) Duration. Contributions shall be deducted from earnings before the same are paid, until the member terminates his employment, whether by reason of retirement, disability, death, or termination.

(3) Interest. Interest shall be credited to member contributions at the rate of four percent per annum, on an annual interest crediting date to be established by the board. As of each such date, the amount of interest to be credited shall equal four percent of each member's accumulated contributions, as of the most recent prior interest-crediting date.

(4) Guaranteed refund. All benefits payable under this system are in lieu of a refund of accumulated contributions. However, each member shall be guaranteed the payment of benefits on his behalf at least equal in total amount to his accumulated contributions, and as otherwise set forth under § 35-53(F) (minimum benefits).

(B) *State contributions.* Any moneys received or receivable by reason of laws of the State of Florida, for the express purpose of funding and paying for retirement benefits for City police and firemen shall be deposited in the trust fund comprising part of this system. The City shall not be liable to make up this funding in the event it is discontinued.

(C) *City contributions.*

(1) On behalf of bargaining unit members and nonbargaining unit managerial employees employed in that capacity after the adoption of this amended provision. So long as this system is in effect, the City shall make an annual contribution to the trust fund in an amount equal to the difference in each year as between the total of aggregate member contributions for the year plus state contributions for the year, and the total cost for the year as shown by the most recent actuarial valuation and report for the system. The total cost for any year shall be defined as the total of normal cost plus the additional amount sufficient to fund the unfunded accrued past service liability over a 40-year period, commencing with the fiscal year in which the effective date of this system occurs. However, should the combined cost of the City's and the employee's contributions in any one year exceed 18 percent of the total budgeted payroll for police officers for that year, the excess over 18 percent shall be rounded to the nearest 0.1 percent of budgeted payroll, and the resulting excess rate over 18 percent shall be divided in two with members paying half the excess and the City paying the other half for that fiscal year. Should the combined cost of the City's and the employees' contributions of the total cost in a given fiscal year be less than 14 percent of the total budgeted payroll for police officers for that year, the difference under 14 percent shall be rounded to the nearest 0.1 percent of budgeted payroll. The resulting amount shall be divided in two with members reducing their contribution rates by half the difference, and the City reducing its contribution by the remaining half for that fiscal year.

(2) On behalf of the grandfathered nonbargaining unit managerial employees.

(a) Non-bargaining unit managerial employees employed in that capacity as to the date of the adoption of this amendment to this division of the police retirement system on September 27, 1993, shall continue to be covered by the provisions of the prior division (included hereinafter) as if the same has not been amended. New nonbargaining unit managerial employees, becoming employed in that capacity after the adoption of this amendment to this division of the police retirement system on September 27, 1993 shall be governed and/or continue to be governed by the foregoing provision which shall also cover bargaining unit members.

(b) Those police retirement system members grandfathered pursuant to subdivision (a) above shall be governed by the following language as to City contributions:

So long as this system is in effect, the City shall make an annual contribution to the trust fund in an amount equal to the difference in each year as between the total of aggregate member contributions for the year plus state contributions for the year, and the total cost for the year as shown by the most recent actuarial valuation and report for the system. The total cost for any year shall be defined as the total of normal cost plus the additional amount sufficient to fund the unfunded accrued past service liability over a 40-year period, commencing with the fiscal year in which the effective date of this system occurs. However, should the City's portion of the total cost for grandfathered members in a given fiscal year exceed 23 percent of the total budgeted payroll for police officers for that year, the excess over 23 percent shall be rounded to the nearest 0.1 percent of budgeted payroll, and the resulting excess rate over 23 percent shall be divided in two with grandfathered members paying half the excess and the City paying the other half for that fiscal year. Should the City's portion of the total cost in a given fiscal year be less than 23

percent of the total budgeted payroll for grandfathered police officers for that year, the difference under 23 percent shall be rounded to the nearest 0.1 percent of budgeted payroll. The resulting amount shall be divided in two with the grandfathered members reducing their contribution rates by half the difference, and the City reducing its contribution by the remaining half for that fiscal year.

(D) *Other.* Private donations, gifts, and contributions may be deposited to the fund, but deposits must be accounted for separately, and kept on a segregated bookkeeping basis. Funds arising from these sources may be used only for additional benefits for members, as determined by the board, and may not be used to reduce what would otherwise have been required City contributions.

(Ord. 595-76, passed 12-13-76; amend. Ord. 630-79, passed 5-29-79; amend. Ord. 687-84, passed 1-9-84; amend. Ord. 792-92, passed 5-27-92; Am. Ord. 805-93, passed 9-27-93)

Sec. 35-56. Administration.

(A) The general administration and responsibility for the proper operation of the retirement system, and for making effective the provisions of §§ 35-50--35-59 are vested in a Board of Trustees consisting of five persons as follows:

- (1) Two employee members of the police department who shall be police officers as defined in F.S.A. § 185.02(1) to be elected as hereinafter provided; and
- (2) Two members who shall be legal residents of the municipality to be appointed by the City Council; and
- (3) One member to be appointed by the previous four members, whose appointment shall be confirmed, as a ministerial duty, by the City Council.

(B) The term of office of each elected employee member trustee shall be two years unless he or she sooner leaves the employment of the municipality as a police officer. The term of office of each resident member appointed by the City Council shall be two years, unless sooner replaced by the City Council at whose pleasure they shall serve, and the term of the fifth member shall be two years. All members may succeed themselves in office.

(C) The elective employee trustees shall be elected in the following manner: by majority vote of all police officers who are members of the plan who come within the purview of §§ 35-50--35-59. All qualified members entitled to vote shall be notified in person or by written notice ten days in advance of the meeting. The candidate receiving the highest number of votes for each office shall be declared elected, and shall take office immediately upon commencement of the term of office for which elected, or as soon thereafter as he or she shall qualify therefor. An election shall be held not more than 30 and not less than ten days prior to the commencement of the terms for which the trustees are to be elected. The board shall establish and administer the election procedure for each election. The Board of Trustees shall meet, organize, and elect one of their members as chairman, and one member as secretary, within ten days after the new employee trustees are elected and duly qualified.

(D) If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(E) The trustees shall serve without compensation, but they may be reimbursed from the fund for all necessary expenses which they may actually expend through service on the board, provided the expenditures are approved by the board.

(F) Each trustee shall, within ten days after his appointment or election, take an oath of office before the City Clerk that he will diligently and honestly administer the affairs of the board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system. The oath shall be subscribed to by the members making it and certified by the clerk, and filed in the office of the City Clerk.

(G) Each trustee shall be entitled to one vote on the board. Three affirmative votes shall be necessary for a decision by the trustees at any meeting of the board. The chairman shall have the right to one vote only.

(H) Subject to the limitations of §§ 35-50--35-59, the Board of Trustees shall from time to time establish uniform rules and regulations for the administration of funds created herein, and for transactions of its business, including provisions for expulsion due to nonattendance of its members which could result in a vacancy.

(I) The Board of Trustees shall engage such actuarial and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by the Board of Trustees and all other expenses of the board necessary for the operation of the retirement system shall be paid at such rates and in such amounts as the Board of Trustees shall agree. Funds may be disbursed by the City finance department or other disbursing agent as determined by the board, but only upon written authorization by the Board of Trustees.

(J) Any elected trustee who neglects the duties of his office, as determined by the board, may be removed by four concurring votes among the Board of Trustees.

(K) The duties and responsibilities of the Board of Trustees shall include, but not necessarily be limited by, the following:

- (1) To construe the provisions of the system, and determine all questions arising thereunder.
- (2) To determine all questions relating to eligibility and participation.
- (3) To determine and certify amount of all retirement allowances or other benefits hereunder.
- (4) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system.
- (5) To distribute at regular intervals to employees, information concerning the system.
- (6) To receive and process all applications for participation and benefits.
- (7) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund.
- (8) To have performed actuarial studies and actuarial valuations, and make recommendations regarding any and all changes in the provisions of the system.
- (9) To perform other duties as are specified in §§ 35-50--35-59.

(L) Members of the board shall discharge their duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use under similar circumstances.

(M) Members of the board shall be free from all liability, joint or several, for their acts, omissions, and conduct in the administration of the system, except to the extent that

their acts, omissions, and conduct result from their own willful misconduct or gross negligence. In any legal suit brought against members of the board, with respect to their actions as board members, the City shall provide legal counsel for the members. The fees and expenses of legal counsel in those circumstances shall be paid from the fund or by the City, as determined by the board, with the approval of the City Council.

(Ord. 595-76, passed 12-13-76; amend. Ord. 644-80, passed 5-12-80; amend. Ord. 715-86, passed 10-27-86)

Sec. 35-57. Finances and fund management.

Establishment and operation of fund.

(A) As part of the system, there is established the fund, into which shall be deposited all of the contributions and assets, whatsoever attributable to the system, including the assets, of the "City of Miami Springs Employees Retirement System," as of September 30, 1976, which are attributable and allocable to policemen and firemen members of the system immediately preceding the effective date of this system.

(B) The actual custody and supervision of the fund (and assets thereof) shall be vested in the Board of Trustees. Payment of benefits and disbursements from the fund shall be made by the disbursing agent on authorization from the board.

(C) The board shall be required to appoint a national or state bank with trust powers for the purpose of serving as custodian of the fund, and all assets of the fund shall be promptly and continually deposited therewith. In order to fulfill its investment responsibilities as set forth herein, the board shall be required to retain the services of the Custodian Bank, an investment adviser registered under the Investment Advisors Act of 1940, an insurance company, or a combination of these, for purposes of investment decisions and management. The investment manager shall have full discretion, within any broad guidelines prescribed by the board, in the investment of all fund assets.

(D) All funds and securities of the system may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:

- (1) Current amounts of accumulated contributions of members on both an individual and aggregate account basis, and
- (2) Receipts and disbursements, and
- (3) Benefit payments, and
- (4) Current amounts clearly reflecting all moneys, funds and assets whatsoever attributable to contributions and deposits from the City, and
- (5) All interest, dividends, and gains (or losses) whatsoever, and
- (6) Other entries as may be properly required so as to reflect a clear and complete financial report of the fund.
- (7) An annual certified audit and report shall be performed by an accounting firm chosen by the board. The report shall reflect a complete valuation of assets on both a cost and market basis, as well as other items normally included in a certified audit.

(E) The Board of Trustees shall have the following investment powers and

authority:

- (1) The Board of Trustees shall be vested with full legal title to the fund, subject, however, to the authority and power of the City Council to amend or terminate this trust, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this system. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund, and the board shall not be required to segregate or invest separately any portion of the fund.
- (2) The fund may be invested and reinvested in securities or property, real or personal, wherever situated and of whatever kind, as shall be approved by the Board of Trustees, including but not limited to stocks, common or preferred, and bonds, and other evidences of indebtedness or ownership.
- (3) The Board of Trustees may retain in cash, and keep unproductive of income an amount of the fund as it may deem advisable, having regard for the cash requirements of the system.
- (4) No person or entity shall be liable for the making, retention, or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the fund, except that due to his or its own willful misconduct or gross negligence.
- (5) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee, or into the name of the nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the trust fund.
- (6) The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust, and to give general or specific proxies or powers of attorney, with or without power of substitution, to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to the securities; to deposit the stock or other securities in any voting trust or any depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally, to exercise any of the powers of an owner with respect to stocks, bonds, or other investments, comprising the fund which it may deem to be to the best interest of the fund to exercise.
- (7) The board shall not be required to make any inventory or appraisal or report to any court, not to secure any order of court for the exercise of any power herein contained.
- (8) Where any action which the board is required to take, or any duty or function which it is required to perform either under the terms herein or under the general law applicable to it as trustee herein, can reasonably be taken or performed only after receipt by it from a member, the City or any other entity of specific information, certification, direction, or instructions, the board shall be free of liability in failing to take action or perform such duty or function until the information, certification, direction, or instruction has been received by it.
- (9) Any overpayments or underpayments from the fund to a member or

beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum of four percent. Overpayments shall be charged against payments next succeeding the correction. Underpayments shall be made up from the trust fund.

(10) The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits herein provided for.

(11) In any application to or proceeding or action in the courts, only the City and the board shall be necessary parties, and no member or other person having an interest in the fund shall be entitled to any notice of service or process. Any judgement entered in a proceeding or action shall be conclusive upon all persons.

(F) Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintain continuous supervision over the acts of any agent; provided further, that legal title to the fund shall always remain in the Board of Trustees.

(Ord. 595-76, passed 12-13-76)

Sec. 35-58. Repeal or termination of system.

(A) Sections 35-50--35-59 which establish the system and fund, and subsequent ordinances pertaining to the system and fund, may be modified, terminated, or amended, in whole or in part; provided that if §§ 35-50--35-59 or any subsequent ordinance shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any alteration, amendment, or repeal shall have accrued to the member or beneficiary shall not be affected thereby, except to the extent that the assets of the fund may be determined to be inadequate.

(B) If §§ 35-50--35-59 are repealed, or if contributions to the system are discontinued, the board shall continue to administer the system in accordance with the provisions of §§ 35-50--35-59, 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 in §§ 35-50--35-59 who are designated by any of the members. In the event of repeal, or if contributions to the system are discontinued, there shall be full vesting (100 percent) of benefits accrued to the 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 hereof, with prior preference being directed towards the return of accumulated contributions.

(C) (1) The following shall be the order of priority for purposes of allocating the assets of the system upon repeal of §§ 35-50--35-59, or if contributions to the system are discontinued:

(a) The accumulated contributions of the members, less any benefits received, in proportion to and to the extent of the then amount of accumulated member contributions. If any funds remain, then

(b) Members already retired under the normal retirement provisions of the system, and those eligible for normal retirement, but not actually retired, and their beneficiaries, in proportion to and to the extent of the then actuarially determined present value of the benefits payable less amounts received according to division

(a) above. If any funds remain, then

(c) Members retired under the disability provisions of this system and their beneficiaries in the same manner as in division (b) above. If any funds remain, then

(d) All other members and their beneficiaries in the same manner as in division (b), but based upon continuous service and average monthly earnings as of the date of termination of the system, and with any benefits vested given precedence.

(2) The allocation of the fund provided for in this division 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 division. The fund may be distributed in one sum to the persons entitled to the 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.

(3) If, at any time during the first ten years after the effective date of the system as respects the City, the system shall be terminated, or the full current costs of the system (consisting of the normal costs and interest on any accrued liability) shall not have been met, anything in the system to the contrary notwithstanding, City contributions which may be used for the benefit of any one of the 25 highest paid employees of the City on the effective date, whose anticipated annual retirement allowances provided by the City's contributions at his normal retirement date would exceed \$1,500.00, shall not exceed the greater of either \$20,000.00 or an amount computed by multiplying the smaller of \$10,000.00 or 20 percent of the employee's average annual earnings during his last five years of service by the number of years of service since the effective date. In the event that it shall hereafter be determined by statute, court decision, ruling by the Commissioner of Internal Revenue, or otherwise, that the provisions of this division are not then necessary to qualify the system under the Internal Revenue Code, this division shall be ineffective without the necessity of further amendment of §§ 35-50--35-59.

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

(Ord. 595-76, passed 12-13-76)

Sec. 35-59. Miscellaneous.

(A) *Medical board.* The Board of Trustees shall designate a medical board to be composed of three physicians, but limited to either M.D.'s or D.O.'s, who shall arrange for and pass upon all medical examinations required under the provisions of §§ 35-50--35-59, shall investigate all essential statements or certificates made by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the Board of Trustees its conclusions and recommendations upon all matters referred to it. The payment for their services shall be determined by the Board of Trustees.

(B) *Discharged members.* Members entitled to a pension shall not forfeit the same upon dismissal from the department, but shall be retired as herein described.

(C) *Nonassignability.* No benefit provided for herein shall be assignable or subject to

garnishment for debt or for other legal process.

(D) *Pension validity.* The Board of Trustees 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 of any person heretofore granted a pension under prior or existing law or hereafter granted under §§ 35-50--35-59, if the same is found to be erroneous, fraudulent, or illegal for any reason; and to reclassify any pensioner who has heretofore under any prior or existing law, or who shall hereafter under §§ 35-50--35-59 be erroneously, improperly, or illegally classified.

(E) *Incompetents.* If any member or beneficiary is a minor or is, in the judgment of the board, otherwise incapable of personally receiving and giving a valid receipt for any payment due him under the system, the board may, unless and until claims shall have been made by a duly appointed guardian or committee or such other person, make the payment or any part thereof to the person's spouse, children, or other person deemed by the board to have incurred expenses or assumed responsibility for the expenses of the person. Any payment so made shall be a complete discharge of any liability under the system for payment.

(F) *Direct transfers of eligible rollover distributions.*

(1) *General.* This division applies to distributions made on or after January 1, 1993. Notwithstanding any provisions of the system to the contrary that would otherwise limit a distributee's election under this division, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) *Definitions.*

(a) *Eligible rollover distribution.* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; but the portion of any distribution that is not includable in gross income.

(b) *Eligible retirement plan.* An eligible retirement plan is an individual retirement account described in section 408(a) 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, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(c) *Distributee.* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse.

(d) *Direct rollover.* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(Ord. 595-76, passed 12-13-76; amend. Ord. 816-94, passed 12-12-94)