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ARTICLE V. - PENSIONS AND RETIREMENT SYSTEMS
DIVISION 4. - PENSION AND CERTAIN OTHER BENEFITS FOR FIRE AND POLICE EMPLOYEES

**DIVISION 4. - PENSION AND CERTAIN OTHER BENEFITS FOR FIRE AND POLICE
EMPLOYEES ^[15]**

⁽¹⁵⁾ **Editor's note**— Ordinance No. 9-82, enacted June 10, 1982, did not expressly amend the Code; hence, codification of §§ 1—11 as herein set out in §§ 2-159—2-169 was at the discretion of the editor.

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Sec. 2-159. - Creation of trust and definitions.

(a) *Creation of trust.* A pension and retirement system for full-time firefighters and police officers of the village is hereby established to provide retirement, survivor and disability benefits as provided by this division. The system shall be known as the Village of North Palm Beach Fire and Police Retirement Fund and is intended to be a tax qualified plan under Internal Revenue Code Section 401(a) and meet the requirements of a governmental plan as defined in Internal Revenue Code Section 414(d).

(b) *Definitions.* As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

Accrued benefit means the portion of a member's normal retirement benefit which is considered to have accrued as of any date. A member's accrued benefit as of any date shall be equal to the sum of two and one-half (2½) percent of his average monthly earnings multiplied by his credited service for the first twenty-four (24) years; zero (0) percent of his average monthly earnings multiplied by the member's credited service for each year after twenty-four (24) years up to thirty (30) years; and two (2) percent of his average monthly earnings multiplied by the member's credited service for each year in excess of thirty (30) years. For purposes of this calculation, average monthly earnings and credited service as of the date of determination shall be used. The accrued benefit is considered to be payable in the plan's normal form commencing on the member's normal retirement date, with such date determined as through the member remains in full-time employment with the employer.

Accumulated contributions means a member's own contributions plus interest credited thereto, if any, by the board.

Actuarial equivalence or actuarially equivalent means that any benefit payable under the terms of this

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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 1983 Group Annuity Mortality Table for Males, with ages set ahead five (5) years in the case of disability retirees.

Average monthly earnings means one-sixtieth of earnings of a member during the five (5) years of his employment within the last ten (10) years of employment, which is greater than the total during any other five (5) years during the ten-year period; provided that if a member shall have been employed for fewer than five (5) years, such average shall be taken over the period of his actual employment.

Beneficiary means 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 such 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.

Board means the board of trustees which shall administer and manage the plan herein provided and serve as trustee of the fund.

Credited service means the total number of years and fractional parts of years of service expressed as years and completed months, during which a person serves as an employee as defined below, omitting intervening years and fractional parts of years, when such person may not be employed by the employer; provided, however, such person may have, without interrupting his other years of credited service, up to one (1) year's leave of absence.

Notwithstanding the foregoing, no employee will receive credit for years or fractional parts of years of service for which he has withdrawn his contributions to the pension fund for those years or fractional parts of years of service unless he repays into the pension fund the contributions he has withdrawn, with interest, within ninety (90) days after his reemployment, as provided in section 2-160 below.

Further, an employee may voluntarily leave his contributions in the pension fund for a period of five (5) years after leaving the employ of the employer, pending the possibility of his being rehired, without losing credit for the time he has participated actively as an employee. Should he not be re-employed within five (5) years, his contributions shall be returned to him without interest.

It is provided further that credited service shall include any service, voluntary or involuntary, in the armed forces of the United States, provided the employee is legally entitled to re-employment under the provisions of the federal USERRA provisions or any similar law; and provided further that the employee shall apply for reemployment within the time and under the conditions prescribed by law. Effective January 1, 2007, members who die or become disabled while serving on active duty military service which intervenes the member's employment shall be entitled to the rights of this section even though such member was not re-employed by the village. Members who die or become disabled while on active duty military service shall be treated as though re-employed the day before the member became disabled or died, was credited with the service they would have been entitled to under this section, and then either died a non-duty death while employed or became disabled from a non-duty disability.

Early retirement date means for each member the first day of the month coincident with or next following the date on which he attains his fiftieth (50th) birthday.

Earnings means a member's gross salary, including overtime, public safety pay increment and special pay, but excluding bonuses, such as longevity, safety and attendance awards and any other

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non-regular payments such as unused sick leave or vacation time pay. Beginning with earnings after December 31, 2008 and pursuant to Internal Revenue Code Section 414(u)(7), the definition of earnings includes amounts paid by the village as differential wages to members who are absent from employment while serving in qualified military service.

Effective date means March 1, 1967, the date on which this plan initially became effective. The effective date of this restated plan is the date as of which the village council adopts the plan.

Employee means each actively employed full-time firefighter and police officer of the village.

Employer means the Village of North Palm Beach, Florida.

Firefighter means any person employed in the fire department who is certified as a firefighter as a condition of employment in accordance with the provisions of F.S. § 633.35, and whose duty it is to extinguish fires, to protect life, and to protect property. The term firefighter includes all certified, supervisory, and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters but does not include part-time firefighters or auxiliary firefighters.

Fund means the trust fund established herein as part of the plan.

Member means an employee who fulfills the prescribed participation requirements.

Normal retirement date means for each member the first day of the month coincident with or next following the date on which the member attains age fifty-five (55) or the date on which the member attains age fifty-two (52) and has twenty-five (25) years of credited service. A member may retire on this normal retirement date or on the first day of any month thereafter.

Plan or system means the Village of North Palm Beach Fire and Police Retirement Fund as contained herein and all amendments thereto.

Plan year means each year commencing on October 1, and ending on September 30.

Police officer means any person employed in the police department who is certified as a law enforcement officer as a condition of employment in accordance with the provisions of F.S. § 943.14, and 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 in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in F.S. §§ 943.10(6) and 943.10(8), respectively. Any public safety officer who is responsible for performing both police and fire services and who is certified as a police officer or firefighter shall be considered a police officer.

Spouse shall mean the lawful wife or husband of a member at time of preretirement death or retirement.

(Ord. No. 9-82, § 1, 6-10-82; Ord. No. 1-92, § 1, 2-13-92; Ord. No. 30-95, §§ 1, 2, 10-12-95; Ord. No. 2008-18, § 2, 11-13-08; Ord. No. 2010-01, § 2, 1-14-10; Ord. No. 2011-22, § 2, 12-8-11)

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Sec. 2-160. - Membership.

(a) *Conditions of eligibility.* Each person who becomes an employee must become a member of the plan as a condition of his employment. Each such employee shall be considered a member immediately upon hire.

(b) *Application for membership.* Each eligible employee shall, within thirty (30) days of becoming eligible, 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 plan;
- (2) Designation of a beneficiary or beneficiaries;
- (3) Authorization of a payroll deduction payable to the plan as hereinafter provided;
- (4) Provision of acceptable evidence of his date of birth;
- (5) A certified statement as to prior medical history; and
- (6) A written release allowing distribution of all medical records to the board.

(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 plan shall cease.

(d) *Buy-back of previous service.* Each member of the plan who terminates his employment with the employer and who is subsequently reemployed by the employer shall be permitted to "buy-back" his previous credited service under the following conditions:

- (1) The length of time between the member's termination date and his subsequent reemployment date is not limited.
- (2) The member must pay into the fund an amount equal to the sum of the amount he withdrew from the fund when he terminated employment, plus interest thereon at the rate of seven (7) percent from the date of withdrawal to the date of repayment.
- (3) The board shall notify the employee of the total amount payable, as described above. Payment must be made within ninety (90) days of such notification.
- (4) Upon timely payment of the required amount, the employee shall immediately be reinstated as member of the plan and shall be given credit for his previous credited service.

(Ord. No. 9-82, § 2, 6-10-82; Ord. No. 1-92, § 2, 2-13-92; Ord. No. 2008-18, § 3, 11-13-08)

Sec. 2-161. - Benefit amounts.

(a) *Normal retirement benefit.*

- (1) *Amount.* Each member who retires on or after his normal retirement date shall be eligible to receive a normal retirement benefit commencing on his actual retirement date. The monthly normal retirement benefit shall be an amount equal to the sum of two and one half (2½) percent of his average monthly earnings multiplied by the member's credited service for the first twenty-four

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(24) years; zero (0) percent of his average monthly earnings multiplied by the member's credited service for each year after twenty-four (24) years up to thirty (30) years; and two (2) percent of his average monthly earnings multiplied by the member's credited service for each year in excess of thirty (30) years.

(2) *Form of benefit.* The normal retirement benefit shall commence on the member's actual retirement date and be payable on the first day of each month thereafter, with the last payment being the one next preceding the retiree's death, with one hundred twenty (120) monthly payments guaranteed (10 years). If the member should die before one hundred twenty (120) monthly payments are made, payments are then continued to the designated beneficiary until one hundred twenty (120) monthly payments in all have been made, at which time the benefits cease.

(3) *Optional forms of benefit.* In lieu of the form of benefit just described, a member may choose an optional form of benefit as provided in section 2-162 below.

(4) *One hundred (100) percent vesting.* Each member who attains normal retirement date or reaches ten (10) years of credited service shall be one hundred (100) percent vested in their accrued benefit.

(b) *Early retirement benefit.* A member retiring hereunder on or after his early retirement date may receive either a deferred or an immediate monthly retirement benefit as follows:

(1) A deferred monthly retirement benefit which shall commence on the normal retirement date and shall be continued on the first day of each month thereafter during his lifetime, guaranteed for one hundred twenty (120) monthly payments. The amount of the benefit shall be determined and paid in the same manner as for retirement at the member's normal retirement date except that average monthly earnings and credited service shall be determined as of his early retirement date; or

(2) An immediate monthly retirement benefit which shall commence on the member's early retirement date and shall be continued on the first day of each month thereafter during the member's lifetime and guaranteed for one hundred twenty (120) monthly payments. The benefit payable shall be as determined in subparagraph (1) above, reduced by three percent per year by which the starting date of the benefit precedes the normal retirement date.

(c) *Benefit formula.* The benefit formula applicable in all cases of retirement shall be that in effect on each member's employment termination date.

(d) *Preretirement death.*

(1) If a participant who is no longer an employee of the village dies prior to the normal retirement date and has attained age fifty (50) and had ten (10) years of credited service, a pension benefit of fifty (50) percent of the amount the participant would have been entitled to, actuarially reduced for early retirement, shall be paid to the surviving beneficiary for as long as the beneficiary shall live. Such amount shall be based on the amount payable under the fifty (50) percent joint and survivor option, reduced actuarially to the age of the beneficiary.

(2) If a member dies prior to the normal retirement date and is then employed by the village and has ten (10) years of credited service, such member regardless of age shall receive pension benefits as set forth in subsection (3).

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(3) The members specified in subsection (2) above shall receive a benefit equal to the member's vested accrued pension as computed under section 2-161(d) and shall be payable to the designated beneficiary in equal, consecutive monthly installments over ten (10) years. The benefit payments specified herein shall commence upon death of the plan member and approval of the pension board.

(e) *Disability retirement.*

(1) A member may retire from the service of the village under the plan if, prior to his normal retirement date, he becomes disabled as defined in subsection (2) hereof. Such retirement shall herein be referred to as disability retirement. To be eligible for a non-duty disability benefit, a member shall have ten (10) or more years of credited service. There is no years of service requirement for eligibility for a duty disability benefit.

(2). *Non-duty disability.* A member will be considered for a non-duty disability benefit if in the opinion of the board, he is wholly prevented from rendering useful and efficient service as a police officer or firefighter, and such member is likely to remain so disabled continuously and permanently. Provided however the cause was not one of the exclusions listed in subsection (10).

b. *Duty disability.* A member will be considered for a duty disability benefit, if in the opinion of the board, he is wholly prevented from rendering useful and efficient service as a police officer or firefighter, and such member is likely to remain so disabled continuously and permanently and the board finds that his injury or illness arose out of and in the course of his employment with the village. Provided however the cause was not one of the exclusions listed in subsection (10).

(3) *Disability benefit.* A member retiring on a disability retirement from the village shall receive a benefit as follows:

a. *Non-duty disability benefit.* The amount of the benefit for the non-duty disability benefit is determined and paid in the same manner as for retirement at the normal retirement date except that average monthly earnings and credited service shall be determined as of the member's last date of employment with the village. In any event the non-duty disability benefit shall be at least twenty-five (25) percent of the disabled member's average monthly earnings.

b. *Duty disability benefit.* The amount of the benefit for the duty disability benefit is determined and paid in the same manner as for retirement at the normal retirement date except that average monthly earnings and credited service shall be determined as of the member's last date of employment with the village. In any event the duty disability benefit shall be at least forty-two (42) percent of the disabled member's average monthly earnings.

(4) No member shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, to be selected by the board for that purpose, and is found to be disabled in the degree and in the manner specified in this section. Any member retiring under this section shall be examined periodically by a duly qualified physician or surgeon or board of physicians or surgeons to be selected by the board for that purpose, to determine if such disability has ceased to exist.

(5) The normal form of benefit payable to a member who retires with a total and permanent disability as a result of a disability commencing prior to his normal retirement date is the monthly

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income payable for ten (10) years certain and life. The disability retiree may also choose any of the optional benefits available in section 2-162 of this plan.

(6). The monthly retirement income to which a member is entitled in the event of his disability retirement will be payable on the first day of each month. The first payment will be made on the first day of the month following the later to occur of:

1. The date on which the disability has existed for six (6) months, or
 2. The date the board approves the payment of such retirement income.
- b. The last payment will be:
1. If the member recovers from the disability prior to his normal retirement date, the payment due next preceding the date of such recovery; or
 2. If the member dies without recovering from his disability or attains his normal retirement date while still disabled, the payment due next preceding his death or the one hundred twentieth (120th) monthly payment, whichever is later.
- c. Any monthly retirement income payments due after the death of a disabled member shall be paid to the member's designated beneficiary.

(7) If the board finds that a member 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 shall direct that the disability retirement income be discontinued. Recovery from disability as used herein shall mean the ability of the member to render useful and efficient service as a police officer or firefighter.

(8) If the member recovers from the disability and reenters the service of the village as a police officer or firefighter, 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 village will not be considered as credited service for the purpose of the plan.

(9) Any condition or impairment of health of a member caused by tuberculosis, hypertension, heart disease, hardening of the arteries, hepatitis, or meningococcal meningitis resulting in total or partial disability or death, shall be presumed to be accidental and suffered in the line of duty unless the contrary be shown by competent evidence. Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the member, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty, provided that such member shall have successfully passed a physical examination upon entering such service, which physical examination including electrocardiogram failed to reveal any evidence of such condition. In order to be entitled to presumption in the case of hepatitis, meningococcal meningitis, or tuberculosis, the member must meet the requirements of F.S. § 112.181. The final decision whether a member meets the requirements for duty disability pension rests with the board and shall be based on substantial competent evidence on the record as a whole.

(10) A member will not be entitled to receive any disability retirement income if the disability is a

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result of:

- a. Excessive and habitual use by the member of drugs, intoxicants, or narcotics;
- b. Injury or disease sustained by the member while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime;
- c. Injury or disease sustained by the member while serving in any armed forces (this exclusion does not affect members who have become disabled as a result of intervening military service under the federal Heroes Earnings Assistance and Relief Tax Act of 2008 (H.R. 6081; P.L. 110-245);
- d. Injury or disease sustained by the member after employment has terminated;
- e. Injury or disease sustained by the member while working for anyone other than the village and arising out of such employment.

(f) *Termination benefits and vesting.*

(1) Each member who terminates employment with the employer and who is not eligible for any of the retirement, death, or disability benefits set forth herein shall receive from the fund within a reasonable time following his date of termination a refund of his accumulated contributions. Provided, however, that if at the time of his termination of employment the member has ten (10) or more years of credited service, he shall have the option of either receiving his accumulated contributions or his accrued benefit payable commencing at the date which would have been his normal retirement date had he remained in full-time employment with the employer. The member may direct that his accrued benefit, reduced as for early retirement, commence at age fifty (50) or any date thereafter provided his accumulated contributions are not withdrawn.

(2) A refund of accumulated contributions to a member or his beneficiary shall constitute a full and complete discharge of any and all rights to claims or benefits under the system by the member or his beneficiaries.

(g) *Cost of Living Adjustment.* The amount of pension benefit will be increased in accordance with the changes in the consumer index (CPI-W U.S.) published by the U.S. Bureau of Labor Statistics. Adjustments of pension payments will be made on October 1 of each year reflecting the change in the consumer price index over the twelve-month period ending April 1. The maximum increase in the pension benefit for any one (1) year is three (3) percent. Such adjustments shall apply to each retirement, survivor or disability benefit in pay status as of each October 1.

If there is a decrease in the CPI-W U.S. over the twelve-month period ending April 1, then the amount of the pension benefit will not increase again until there is an increase in that index beyond the prior high level of the CPI-W U.S. The prior high level of the CPI-W U.S. is the high water mark for purposes of future cost of living increases. After a decrease in the CPI-W U.S., there is no future cost of living increase until the index exceeds the most recent high water mark.

(h) *Limitations on benefits.* In no event may a member's annual benefit exceed the limitations of Internal Revenue Code Section 415 as such provisions apply to governmental pension plans. The provisions of Internal Revenue Code Section 415 that apply to governmental pension plans are hereby incorporated into this plan by reference. The maximum amount of the actual annual retirement income paid in any year with respect to a Participant under this Plan attributable to employer provided benefits

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shall not exceed the dollar amount allowable for any calendar year pursuant to Internal Revenue Code Section 415(b), as adjusted in such calendar year for increases in the cost of living in accordance with regulations issued by the Secretary of the Treasury under Internal Revenue Code Section 415(d). For purposes of applying the basic limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by Department of Treasury regulations, so that such benefits are the Actuarial Equivalent of a straight life annuity.

(1) For purposes of this subsection, the following benefits shall not be taken into account:

- a. Any ancillary benefit which is not directly related to retirement income benefits; and
- b. Any other benefit not required under Internal Revenue Code Section 415(b)(2) and Treasury Regulations issued thereunder to be taken into account for purposes of the limitation of Internal Revenue Code Section 415(b)(1).

(2) Cost-of-Living Adjustments. The limitations as stated herein shall be adjusted annually in accordance with any cost-of-living adjustments prescribed by the Secretary of the Treasury pursuant to Internal Revenue Code Section 415(d).

(3) For distributions after December 31, 2002, for purposes of Internal Revenue Code Section 415(b), the mortality table is the table used under Internal Revenue Code Section 417(e), as prescribed by the Secretary of the Treasury in Revenue Ruling 2001-62.

(4) For any person who first becomes a member in any Plan year beginning on or after January 1, 1996, compensation for any Plan year shall not include any amounts in excess of the Internal Revenue Code Section 401(a)(17) limitation (as amended by the Omnibus Budget Reconciliation Act of 1993), which limitation shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code Section 401(a)(17)(B). For any person who first became a member prior to the first Plan year beginning on or after January 1, 1996, the limitation on compensation shall be not less than the maximum compensation amount that was allowed to be taken into account under the Plan as in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code Section 401(a)(17).

(i) *401(a)(9) Required Distributions.*

(1) Effective for distributions after December 31, 1996, in accordance with Internal Revenue Code Section 401(a)(9), all benefits under this Plan will be distributed, beginning not later than the required beginning date set forth below, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and a beneficiary.

(2) Any and all benefit payments shall begin by the later of:

- a. April 1 of the calendar year following the calendar year of the member's retirement date; or
- b. April 1 of the calendar year following the calendar year in which the member attains age seventy and one-half (70 ½).

(3) If an employee dies before his entire vested interest has been distributed to him, the remaining portion of such interest will be distributed at least as rapidly as provided for under this Plan and will comply with the incidental death benefit under Internal Revenue Code Section

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401(a)(9)(G).

(4) All distributions under this Plan will be made in accordance with this section, Internal Revenue Code Section 401(a)(9) and the regulations thereunder, notwithstanding any provisions of this Plan to the contrary, effective beginning January 1, 2003.

(Ord. No. 9-82, § 3, 6-10-82; Ord. No. 20-82, § 1, 11-18-82; Ord. No. 1-92, § 3, 2-13-92; Ord. No. 6-95, § 1, 3-9-95; Ord. No. 30-95, § 3, 10-12-95; Ord. No. 20-2000, §§ 1, 2, 8-10-00; Ord. No. 08-2001, § 1, 4-12-01; Ord. No. 13-2003, §§ 1—3, 5-8-03; Ord. No. 2008-18, § 4, 11-13-08; Ord. No. 2010-01, § 3, 1-14-10; Ord. No. 2011-03, § 2, 2-10-11; Ord. No. 2011-22, § 3, 12-8-11)

Sec. 2-162. - Optional forms of benefits.

Each member entitled to a normal, early, 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 or her benefit payable under any one (1) of the options hereinafter set forth in lieu of benefits provided herein, and to revoke any such 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 fifty (50) percent of the total present value of payments to the retiring member and his/her beneficiary. The member shall make such an election by written request to the board, such request being retained in the board's files. Notwithstanding any other provision of this section, a retired member may change his or her designation of joint annuitant or beneficiary up to two (2) times as provided in F.S. § 175.333 without the approval of the board of trustees or the current joint annuitant or beneficiary. The retiree is not required to provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living. Any retired member who desires to change his or her joint annuitant or beneficiary shall file with the board of trustees a notarized notice of such change. Upon receipt of a completed change of joint annuitant form or such other notice, the board of trustees shall adjust the member'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 member's current benefit and there is no impact to the plan. The beneficiary or joint annuitant being removed will be assumed deceased by the actuary in determining the actuarially equivalent amount of the revised monthly payment. No retiree's current benefits shall be increased as a result of the change of beneficiary.

(1) *Option 1—Joint and last survivor option.* The member may elect to receive a benefit, which has been adjusted to the actuarial equivalent of the normal form of benefit, during his/her lifetime and have such adjusted benefit (or a designated fraction thereof, for example one hundred (100) percent, seventy-five (75) percent, sixty-six and two-thirds ($66 \frac{2}{3}$) percent or fifty (50) percent) continued after his death to and during the lifetime of his beneficiary. The election of option 1 shall be null and void if the designated beneficiary dies before the member's benefit payments commence.

(2) *Option 2—Social security adjustment option.* If a member retires before being eligible for social security benefits, he may elect this option. A member may elect to receive a larger pension up to the date he begins receiving social security benefits. The member's pension benefits may be reduced or terminated after social security payments begin. The amount of reduction shall be actuarially determined.

(3) *Option 3—Other.* In lieu of the other optional forms enumerated in this section, benefits may

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be paid in any form approved by the board so long as actuarial equivalence with the benefits otherwise payable is maintained, provided, however, that the board shall not authorize any actuarially equivalent single or lump sum distributions.

(Ord. No. 9-82, § 4, 6-10-82; Ord. No. 1-92, § 4, 2-13-92; Ord. No. 20-2000, § 3, 8-10-00; Ord. No. 13-2003, § 4, 5-8-03; Ord. No. 2008-18, § 5, 11-13-08; Ord. No. 2010-01, § 4, 1-14-10)

Sec. 2-163. - Contributions.

(a) *Member contributions.*

(1) *Amount.* Members of the plan shall make regular contributions to the fund at a rate equal to two (2) percent of their respective earnings.

(2) *Duration.* The village shall pick-up, rather than deduct from each member's pay, beginning with the date of employment, two (2) percent of the member's basic compensation. The monies so picked-up shall be deposited in the fund on a monthly basis. An account record shall be maintained continuously for each member. Pick-up contributions shall continue until death, disability or termination of service, whichever shall occur first. Contributions shall remain in the fund unless withdrawn as provided in the plan. No member shall have the option to choose to receive the contributed amounts directly instead of having them paid by the village directly to the plan. All such pick-up contributions by the village shall be deemed and be considered as part of the member's accumulated contributions and subject to all provisions of the plan pertaining to accumulated contributions of members. The intent of this provision is to comply with Section 414(h)(2) of the Internal Revenue Code. For paying Social Security taxes, and for such other purposes except as specified in this plan, the amount of employee contributions "picked-up" or paid by the village will be added to the amount distributed on a current basis in order to determine total wages, salary, pay or compensation. In the event that the employer agrees to assume and pay member contributions in lieu of direct contributions by the member, such contributions shall accordingly be paid into the plan on 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 employer directly to the plan. All such contributions by the employer shall be deemed and considered as part of the member's accumulated contributions and subject to all provisions of this plan pertaining to accumulated contributions of members. The intent of this language is to comply with section 414(h)(2) of the Internal Revenue Code.

(3) *Interest.* Interest shall be credited to member contributions as of September 30 of each year at a rate equal to the change in the consumer price index, published by the U.S. Bureau of Labor Statistics, over the twelve-month period ending on the previous June 30. The maximum rate for any year shall be seven (7) percent and the minimum rate shall be zero (0) percent.

(4) *Guaranteed refund.* All benefits payable under this plan are in lieu of a refund of accumulated contributions. In any event, however, each member shall be guaranteed the payment of benefits on his behalf at least equal in total amount to his accumulated contributions.

(b) *State contributions.* Any monies received or receivable by reason of the laws of the State of Florida for the express purpose of funding and paying for the benefits of police officers or firefighters shall be deposited in the fund within the time prescribed by law. Such monies shall be for the sole and exclusive use of members or may be used to pay extra benefits for members.

(c) *Employer contributions.* So long as this plan is in effect, the employer shall make contributions to

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the fund in an amount at least equal to the difference in each year as between the aggregate member and state contributions for the year and the total cost for the year as shown by the most recent actuarial valuation 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 amortize the unfunded actuarial liability in accordance with applicable laws of the State of Florida. The employer's contribution shall be deposited on at least a quarterly basis.

(d) *Forfeitures.* Any forfeitures arising shall be applied to reduce future contributions to the plan. No forfeited amount shall be applied to change benefit amounts for members.

(Ord. No. 9-82, § 5, 6-10-82; Ord. No. 23-86, § 1, 12-11-86; Ord. No. 1-92, § 5, 2-13-92; Ord. No. 30-95, § 4, 10-12-95; Ord. No. 29-96, § 1, 7-25-96)

Sec. 2-164. - Board of trustees—Generally.

(a) *Composition.* The board of trustees shall consist of five (5) members: four (4) of whom shall be elected by a majority of the members of the plan. Two (2) of the elected members shall be certified firefighters of the village, and two (2) shall be certified police officers of the village. The fifth member of the board shall be a legal resident of the village and shall be appointed by the village council. Each of the elected board members shall be appointed for a period of four (4) years, unless he sooner leaves the employment of the village or forfeits membership on the board, whereupon a successor shall be elected by a majority of the members of the plan. Each of the elected board members may succeed himself in office. The resident member shall be a trustee for a term of four (4) years unless he forfeits membership on the board and he may succeed himself in office. The resident member shall be appointed by the village council for a term commencing October 1, 1998, and expiring April 30, 1999. The resident member shall be appointed by the village council for a two-year term commencing May 1, 1999, and on the first day of May of each second year thereafter. The resident member shall hold office at the pleasure of the village council. The fifth member shall have the same rights as each of the other four (4) members appointed or elected as herein provided. The trustees shall by majority vote elect from its members a chairman and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.

(b) *Report and records.* The secretary of the board shall keep, or cause to be kept in convenient form, such data as shall be necessary for an actuarial valuation of the assets and liabilities of the system. The fiscal year for the keeping of records and rendering reports shall be from October 1 through September 30.

(c) *Board meetings.* The board shall meet at least quarterly each year. All board meetings shall be held at village hall. At any meeting of the board, three (3) trustees shall constitute a quorum. Any and all acts and decisions shall be by at least three (3) members of the board; however, no trustee shall take part in any action in connection with his or her own participation in the plan, and no unfair discrimination shall be shown to any individual participating in the plan.

(d) *Power to bring and defend lawsuits.* The board shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature and description. The board shall be independent of the village to the extent required to accomplish the intent, requirements, and responsibilities provided for in this article and applicable law.

(Ord. No. 9-82, § 6, 6-10-82; Ord. No. 14-87, § 1, 9-10-87; Ord. No. 1-92, § 6, 2-13-92; Ord. No. 22-98, § 1, 9-24-98; Ord. No. 06-2002, § 3, 2-28-02; Ord. No. 2006-04, § 1, 3-23-06; Ord. No. 2006-07, § 2, 3,

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5-25-06; Ord. No. 2010-01, § 5, 1-14-10)

Sec. 2-165. - Prior service.

Unless otherwise prohibited by law, the years or fractional parts of years that a member previously served as a firefighter, police officer or public safety officer with the village during a period of employment and for which accumulated contributions were withdrawn from the fund, or the years and fractional parts of years that a member served as a firefighter, police officer or public safety officer for this or any other municipal, county, state or federal fire, police or public safety department, or any time served in the military service of the armed forces of the United States, shall be added to the years of credited service provided that:

(1) The member contributes to the fund the sum that would have been contributed, based on the member's salary and the employee contribution rate in effect at the time that the credited service is requested, had the member been a member of this system for the years or fractional parts of years for which the credit is requested plus amount actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.

(2) Payment by the member of the required amount may be made within six (6) months of the request for credit and in one lump sum payment, or the member can buy back this time over a period equal to the length of time being purchased or five years, whichever is greater, at an interest rate which is equal to the fund's actuarial assumption. A member may request to purchase some or all years of service. No credit shall be given for any service until all years of service which are to be repurchased, have been repurchased.

(3) The credit purchased under this section shall count for all purposes, except vesting.

(4) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal, county or state fire, police or public safety department, if such prior service forms or will form the basis of a retirement benefit or pension from another retirement system or plan.

(5) If a member who has either completed the purchase of service or is in the process of purchasing service terminates service for any reason, including death or disability, before vesting, the member's contributions will be refunded, including the buyback contributions.

(6) A request to purchase service may be made at any time during the course of employment. However, the buyback is a one time opportunity.

(Ord. No. 2-2003, § 1, 1-23-03; Ord. No. 2010-01, § 6, 1-14-10)

Editor's note— Prior to amendment section 7 of Ord. No. 1-92, adopted Feb. 13, 1992, repealed former § 2-165, relative to additional rules and regulations, which derived from Ord. No. 9-82, § 7, adopted June 10, 1982.

Sec. 2-166. - Board of trustees—Power and authority.

The board shall be the administrator of the system and, as such, it shall be solely responsible for administering the pension fund. The board shall have the power and authority:

(1) To invest and reinvest the monies 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

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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 re-investments shall be limited only by the investments permitted by the investment policy guidelines adopted by the board in accordance with Florida law. Further, notwithstanding the foregoing, investments in foreign investments are limited in accordance with F.S. §§ 175.071(1) and 185.06(1)(b)4. The board must discharge these duties with respect to the plan solely in the interest of the participants and beneficiaries and (i) for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan; (ii) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and (iii) 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.

Notwithstanding anything else in this subsection and as provided in F.S. § 215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section. 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 F.S. § 215.473, as provided for by F.S. §§ 175.071(8) and 185.06(7) and the manner of the disposition, if any, is reasonable as to the means chosen. For purposes of determining which companies are scrutinized companies, the board may utilize the list of scrutinized companies as developed by the Florida State Board of Administration. No person may bring any civil, criminal, or administrative action against the board of trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this subsection.

(2) To issue drafts upon the pension fund pursuant to this article and rules and regulations prescribed by the board. All such drafts shall be consecutively numbered, be signed by the chairman and secretary or their designee, and state upon their faces the purpose for which the drafts are drawn. The village finance director or other depository of the village shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money shall be otherwise drawn from the pension fund.

(3) To finally decide all claims to relief under this article and under the board's rules and regulations.

(4) To convert into cash any securities of the pension fund.

(5) To keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

(6) To recommend an increase or decrease in the benefits payable hereunder, through the

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adaption of an amendment to this article, but provided such action is based on an actuarial review by an enrolled actuary who is a member of the Society of Actuaries.

(7) To retain, at least once every three (3) years, an independent consultant professionally qualified to evaluate the performance of professional money managers. The independent consultant shall make recommendations to the board regarding the selection of money managers for the next investment term. These recommendations shall be considered by the board at its next regularly scheduled meeting. The date, time, place and subject of this meeting shall be advertised in a newspaper of general circulation in the municipality at least ten (10) days prior to the date of the hearing.

(Ord. No. 9-82, § 8, 6-10-82; Ord. No. 12-85, §§ 1, 2, 7-11-85; Ord. No. 1-92, § 8, 2-13-92; Ord. No. 08-2001, § 2, 4-12-01; Ord. No. 2007-17, § 2, 10-25-07; Ord. No. 2010-01, § 7, 1-14-10)

Sec. 2-167. - Tax on insurers.

(a) There is hereby levied and imposed an excise tax upon every insurance company, corporation or other insurer insuring loss against fire, tornado or windstorm or engaged in the business of casualty insurance. Such excise tax shall be in an amount equal to the rate specified in Chapter 175, Florida Statutes, multiplied by the gross receipts of premiums from holders of insurance policies of fire and windstorm insurance, and the rate specified in Chapter 185, Florida Statutes, multiplied by the gross receipts of premiums from holders of insurance policies of casualty insurance. All such policies shall be upon property within the corporate limits of the village. Such excise tax shall be in addition to any and all excise taxes or license now levied or required by the village.

(b) The proceeds of monies received under this excise tax shall be received annually from the State of Florida by the village and shall be deposited to the pension fund no more than five (5) days after receipt.

(Ord. No. 1-92, §§ 9, 10, 2-13-92)

Editor's note— Section 9 of Ord. No. 1-92, adopted Feb. 13, 1992, repealed former § 2-167, and § 10 of the ordinance enacted a new § 2-167 in lieu thereof. The repealed provisions pertained to oaths of office, meetings and quorums of the board, and derived from Ord. No. 9-82, § 9, adopted June 10, 1982.

Sec. 2-168. - Repeal or termination of plan.

(a) This plan and subsequent amendments pertaining to said plan, may be modified, terminated, or amended, in whole or in part by the employer; provided that if this plan shall be amended or repealed in its application to any person benefitting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the member or beneficiary shall not be affected thereby.

(b) Upon termination of the plan by the village for any reason, or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in chapter 121, or upon written notice to the board of trustees by the village that contributions under the plan are being permanently discontinued, the rights of all employees to benefits accrued to the date of such termination or discontinuance and the amounts credited to the employees' accounts are nonforfeitable. The fund shall be distributed in accordance with the following procedures:

(1) The board of trustees shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits, after taking into account the expenses of such distribution. The

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board shall inform the village if additional assets are required, in which event the village shall continue to financially support the plan until all nonforfeitable benefits have been funded.

(2) The board of trustees shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each police officer and firefighter entitled to benefits under the plan, as specified in subsection (3).

(3) The board of trustees shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.

(4) If there is asset value remaining after the full distribution specified in subsection (3), and after payment of any expenses incurred with such distribution, such excess shall be returned to the village, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the village and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the village and the state.

(5) The board of trustees shall distribute, in accordance with the manner of distribution determined under subsection (2), the amounts determined under subsection (3).

(Ord. No. 9-82, § 10, 6-10-82; Ord. No. 20-82, § 2, 11-18-82; Ord. No. 1-92, § 11, 2-13-92; Ord. No. 2010-01, § 8, 1-14-10)

Sec. 2-169. - Miscellaneous.

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

(b) *Non-assignability.* No benefit provided for herein shall be pledgable, assignable or subject to garnishment for debt or for other legal process, provided, however:

(1) 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 of trustees; or

(2) 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:

- a. Pay for benefits being received through the village;
- b. Pay the certified bargaining agent; or
- c. To pay for premiums for accident health and long-term care insurance for 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 F.S. §§ 175.061(7) and 185.05(6).

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(c) *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 roll of any person theretofore granted a pension under prior or existing law or hereafter granted under this plan 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 this plan be erroneously, improperly or illegally classified.

(d) *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 plan, the board may, unless and until claims shall have been made by a duly appointed guardian or committee of such person, make such payment or any part thereof to such person's spouse, children, trust or other person deemed by the board to have incurred expenses or assumed responsibility for the expenses of such person. Any payment so made shall be a complete discharge of any liability under the plan for such payment.

(e) *Number and gender.* When appropriate the singular in this plan shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.

(f) *False or misleading statements made to obtain retirement benefits prohibited.*

(1) 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 under this plan.

(2). A person who violates subsection (f)(1) of this section commits a misdemeanor of the first degree, punishable as provided in F.S. section 775.082 or 775.083.

b. In addition to any applicable criminal penalty, upon conviction for a violation described in subsection (f)(2)a. of this section participant or beneficiary of this plan may, in the discretion of the board of trustees, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled under this plan. For purposes of this subsection (f)(2)b., "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(Ord. No. 9-82, § 11, 6-10-82; Ord. No. 1-92, § 12, 2-13-92; Ord. No. 20-2000, § 4, 8-10-00; Ord. No. 2010-01, § 9, 1-14-10)

Sec. 2-170. - Direct transfers of eligible rollover distribution.

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

(2) *Definitions.*

(A) The term "Code" as used herein refers to the Internal Revenue Code of the United States.

(B) *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

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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 excluding hardship distributions; and the portion of any distribution that is not includable in gross income. 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 Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in 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.

(C) *Eligible retirement plan:* An eligible retirement plan is: an individual retirement account described in Section 408(a) of the Code; an individual retirement annuity described in Section 408(b) of the Code; a qualified trust; an annuity plan described in Section 403(a) of the Code; an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by 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; 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.

(D) *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.

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

(3) *Mandatory distributions.* In the event of a mandatory distribution greater than one thousand dollars (\$1,000.00) under this Plan, if the participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive such distribution directly, then the Board will pay the distribution in a direct rollover to an individual retirement plan designated by the Board. This section is effective for mandatory distributions after October 1, 2006.

(Ord. No. 15-95, § 1, 5-11-95; Ord. No. 2011-22, § 4, 12-8-11)

⁽¹⁵⁾ **Cross reference—** Fire division, § 12-29 et seq.; police, Ch. 23. (Back)