

ORDINANCE NO. 887

AN ORDINANCE OF THE CITY OF OKEECHOBEE AMENDING THE CITY OF OKEECHOBEE AND OKEECHOBEE UTILITY AUTHORITY EMPLOYEES' RETIREMENT SYSTEM, ADOPTED PURSUANT TO ORDINANCE NO. 828; AMENDING SECTION 1, DEFINITIONS, BY AMENDING THE DEFINITION OF "RETIREMENT"; AMENDING SECTION 3, BOARD OF TRUSTEES; AMENDING SECTION 8, DISABILITY; AMENDING SECTION 10, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 17, REPEAL OR TERMINATION OF SYSTEM; AMENDING SECTION 18, EXEMPTION FROM EXECUTION, NON-ASSIGNABILITY; AMENDING SECTION 23, MILITARY SERVICE PRIOR TO EMPLOYMENT; AMENDING SECTION 25, REEMPLOYMENT AFTER RETIREMENT; AMENDING SECTION 27, PRIOR GOVERNMENT SERVICE; ADDING SECTION 28, DEFERRED RETIREMENT OPTION PLAN; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED before the City Council for the City of Okeechobee, Florida; presented at a duly advertised public meeting; and passed by majority vote of the City Council; and properly executed by the Mayor or designee, as Chief Presiding Officer for the City:

SECTION 1: That the City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, adopted pursuant to Ordinance No. 828, is hereby amended by amending Section 1, Definitions, by amending the definition of "Retirement", to read as follows:

Retirement means a Member's separation from City employment with eligibility for immediate receipt of benefits under the System or entry into the Deferred Retirement Option Plan.

SECTION 2: That the City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, adopted pursuant to Ordinance No. 828, is hereby amended by amending Section 3, Board of Trustees, subsection 1 and subsection 3, as follows:

1. The sole and exclusive administration of and responsibility for the proper operation of the System and for making effective the provisions of this ordinance are hereby vested in a Board of Trustees. The Board is hereby designated as the plan administrator. The Board shall consist of five (5) Trustees, one of whom, shall be a legal resident of the City, who shall be appointed by the Okeechobee City Council, one of who shall be appointed by the Okeechobee Utility Authority Board, one of whom shall be a full-time General Employee Member employed by the City of Okeechobee, and one of whom shall be a full-time General Employee Member employed by Okeechobee Utility Authority. The fifth Trustee shall be chosen by a majority of the previous four Trustees as provided for herein, and such person's name shall be submitted to the Okeechobee City Council. Upon receipt of the fifth person's name, the Okeechobee City Council shall, as a ministerial duty, appoint such person to the Board of Trustees as its fifth Trustee. The fifth Trustee shall have the same rights as each of the other four Trustees appointed or elected as herein provided and shall serve a two (2) year term unless he sooner vacates the office. Each resident Trustee appointed by the City of Okeechobee or by the Okeechobee Utility Authority shall serve as Trustee for a period of two (2) years, unless he sooner vacates the office or is sooner replaced by the appointing authority at whose pleasure he shall serve. Each Member Trustee shall serve as Trustee for a period of two (2)

years, unless he sooner leaves the employment of the City of Okeechobee or Okeechobee Utility Authority as a General Employee or otherwise vacates his office as Trustee, whereupon a successor shall be chosen in the same manner as the departing Trustee. Each Trustee may succeed himself in office. DROP participants can be elected as and vote for elected Trustees. The Board shall establish and administer the nominating and election procedures for each election. The Board shall meet at least quarterly each year. 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.

3. Each Trustee shall be entitled to one vote on the Board. Three (3) affirmative votes shall be necessary for any decision by the Trustees at any meeting of the Board. A Trustee shall ~~have the right to abstain from voting as the result of a conflict of interest provided that Trustee complies and shall~~ comply with the provisions of Section 112.3143, Florida Statutes.

SECTION 3: That the City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, adopted pursuant to Ordinance No. 828, is hereby amended by amending Section 8, Disability, subsection 3, Physical Examination Requirement, to read as follows:

3. Physical Examination Requirement.
A Member shall not become eligible for disability benefits until and unless he undergoes a physical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the Board for that purpose. The Board shall not select the Member's treating physician or surgeon for this purpose except in an unusual case where the Board determines that it would be reasonable and prudent to do so.

Any Retiree receiving disability benefits under provisions of this ordinance may be required by the Board to submit sworn statements of his condition accompanied by a physician's statement (provided at the Retiree's expense) to the Board annually and may be required by the Board to undergo additional periodic re-examinations by a qualified physician or physicians and/or surgeon or surgeons who shall be selected by the Board, to determine if such disability has ceased to exist. If the Board finds that the Retiree is no longer permanently and totally disabled to the extent that he is unable to render useful and efficient service as a General Employee, the Board shall recommend to the City that the Retiree be returned to performance of duty as a General Employee, and the Retiree so returned shall enjoy the same rights that he had at the time he was placed upon pension. In the event the Retiree so ordered to return shall refuse to comply with the order within thirty (30) days from the issuance thereof, he shall forfeit the right to his pension.

The cost of the physical examination and/or re-examination of the Member claiming or the Retiree receiving disability benefits shall be borne by the Fund. All other reasonable costs as determined by the Board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the Fund.

If the Retiree recovers from disability and reenters the service of the City as a General Employee, his service ~~shall~~ will be deemed to have been continuous, and ~~but the period beginning with the first month for which Retiree received a disability retirement income shall be Credited Service for purposes of the System. If the Retiree fails to reenter the service of the City as a General Employee within thirty (30) days from the date the Board determines that the Retiree is no longer permanently and totally disabled to the extent that he is unable to render useful and efficient service as a General Employee, the Member's future benefits shall be determined as though he initially terminated employment on the date the Board determined that he was permanently and totally disabled to the extent that he was unable to render useful and efficient service as a General Employee payment and ending with the date he reentered the service of the City will not be considered as Credited Service for the purposes of this System.~~

The Board shall have the power and authority to make the final decisions regarding all disability claims.

SECTION 4: That the City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, adopted pursuant to Ordinance No. 828, is hereby amended by amending Section 10, Optional Forms of Benefits, to add subsection 1.D., and to amend subsection 7, as follows:

1. D. For any Member who does not participate in the DROP pursuant to Section 28, a lump sum payment payable to the Retiree equal to twenty percent (20%) of the present value of the Retiree's accrued benefit at the date of retirement with the remaining eighty percent (80%) payable to the Retiree in a form selected by the Retiree and provided for in A or B above or in the normal form (10 year certain and life). A Retiree who is a participant in the Deferred Retirement Option Plan shall not be eligible to select this partial lump sum option.

7. Notwithstanding anything herein to the contrary, the Board in its discretion, may elect to make a lump sum payment to a Member or a Member's Beneficiary in the event that the monthly benefit amount is less than one hundred dollars (\$100.00) or the total commuted value of the remaining monthly income payments to be paid do not exceed five thousand dollars (\$5,000.00). Any such payment made to any person pursuant to the power and discretion conferred upon the Board by the preceding sentence shall operate as a complete discharge of all obligations under the System with regard to such Member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

SECTION 5: That the City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, adopted pursuant to Ordinance No. 828, is hereby amended by amending Section 17, Repeal or Termination of System, subsection 2, to read as follows:

2. If this ordinance shall be repealed, or if contributions to the System are discontinued or if there is a transfer, merger or consolidation of government units, services or functions as provided in Chapter 121, Florida Statutes, the Board shall continue to administer the System in accordance with the provisions of this ordinance, for the sole benefit of the then Members, any Beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this ordinance who are designated by any of said Members. In the event of repeal, ~~or if contributions to the System are discontinued~~ discontinuance of contributions, or transfer merger or consolidation of government units, services or functions, there shall be full vesting (100%) of benefits accrued to date of repeal and the assets of the System shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled in accordance with the provisions thereof.

SECTION 6: That the City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, adopted pursuant to Ordinance No. 828, is hereby amended by amending Section 18, Exemption from Execution, Non-Assignability, to read as follows:

SECTION 18. DOMESTIC RELATIONS ORDERS; RETIREE DIRECTED PAYMENTS; EXEMPTION FROM EXECUTION, NON-ASSIGNABILITY.

1. Domestic Relations Orders.

A. Prior to the entry of any domestic relations order which affects or purports to affect the System's responsibility in connection with the payment of benefits of a Retiree, the Member or Retiree shall submit the proposed order to the Board for review to determine whether the System may legally honor the order.

B. If a domestic relations order is not submitted to the Board for review prior to entry of the order, and the System is ordered to take action that it may not legally take, and the System expends administrative or legal fees in resolving the matter, the Member or Retiree who submits such an order will be required to reimburse the System for its expenses in connection with the order.

2. Retiree Directed Payments.

The Board may, upon written request by a Retiree or by a dependent, when authorized by a Retiree or the Retiree's Beneficiary, authorize the System to withhold from the monthly retirement payment those funds that are necessary to pay for the benefits being received through the City, to pay the certified bargaining agent of the City, and to make any payments for child support or alimony.

3. Exemption from Execution, Non-Assignability.
Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this ordinance and the Accumulated Contributions and the cash securities in the Fund created under this ordinance are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable.

SECTION 7: That the City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, adopted pursuant to Ordinance No. 828, is hereby amended by amending Section 23, Military Service Prior to Employment, subsection 1, to read as follows:

1. The Member contributes to the Fund the sum that he would have contributed, based on his Salary and the Member contribution rate in effect at the time that the Credited Service is requested, had he been a member of the System for the years or fractional parts of years for which he is requesting credit plus amounts 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.

SECTION 8: That the City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, adopted pursuant to Ordinance No. 828, is hereby amended by amending Section 25, Reemployment After Retirement, to read as follows:

SECTION 25. REEMPLOYMENT AFTER RETIREMENT

~~Any Retiree who is receiving a normal or early retirement benefit from the System and who is subsequently reemployed by either the City of Okeechobee or the Okeechobee Utility Authority shall elect to:~~

~~1. Unless otherwise prohibited by law, continue to receive his retirement benefit; but in such event he shall neither accrue additional Credited Service nor be eligible for any other benefit under the System, except for the retirement benefit he continues to receive, or;~~

~~2. Discontinue his retirement benefit and begin to accrue additional Credited Service and be eligible for all other benefits under the System:~~

1. Any Retiree who is retired under this System, except for disability retirement as previously provided for, may be reemployed by any public or private employer, except the City, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this System. Reemployment by the City shall be subject to the limitations set forth in this Section.

2. After Normal Retirement. Any Retiree who is retired under normal retirement pursuant to this System and who is reemployed as a General Employee after that Retirement and, by virtue of that reemployment, is eligible to participate in this System, shall upon being reemployed continue receipt of benefits. Upon reemployment, the Retiree shall be deemed to be fully vested and the additional Credited Service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final Retirement. Calculations of benefits upon Retirement shall be based upon the benefit accrual rate, Average Final Compensation, and Credited Service as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, Average Final Compensation (based only on the subsequent employment period and not including any period of DROP participation),

and Credited Service as of the date of subsequent retirement. The amount of any death or disability benefit received as a result of a subsequent period of employment shall be reduced by the amount of accrued benefit eligible to be paid for a prior period of employment. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the Member may select a different optional form and joint pensioner applicable to the subsequent retirement benefit.

3. Any Retiree who is retired under normal retirement pursuant to this System and who is reemployed by the City after that Retirement and, by virtue of that reemployment is ineligible to participate in this System, shall, during the period of such reemployment, continue to receive retirement benefits previously earned. Former DROP participants shall begin receipt of benefits under these circumstances.

4. After Early Retirement. Any Retiree who is retired under early retirement pursuant to this System and who subsequently becomes an employee of the City in any capacity, shall discontinue receipt of benefits from the System until the earlier of termination of employment or such time as the reemployed Retiree reaches the date that he would have been eligible for normal retirement under this System had he continued employment and not elected early retirement. "Normal retirement" as used in this subsection shall be the current normal retirement date provided for under this System. A Retiree who returns to work under the provisions of this Section shall not be eligible for membership in the System, and, therefore, shall not accumulate additional Credited Service for subsequent periods of employment described in this Section, shall not be required to make contributions to the System, nor shall he be eligible for any other benefit other than the Retiree's early retirement benefit when he again becomes eligible as provided herein. Retirement pursuant to an early retirement incentive program shall be deemed early retirement for purposes of this Section if the Member was permitted to retire prior to the customary retirement date provided for in the System at the time of retirement.

5. Reemployment of Terminated Vested Persons. Reemployed terminated vested persons shall not be subject to the provisions of this Section until such time as they begin to actually receive benefits. Upon receipt of benefits, terminated vested persons shall be treated as normal or early Retirees for purposes of applying the provisions of this Section and their status as an early or normal Retiree shall be determined by the date they elect to begin to receive their benefit.

6. DROP Participants. Members or retirees who are or were in the Deferred Retirement Option Plan shall, following termination of employment after DROP participation, have the options provided for in this section for reemployment.

SECTION 9: That the City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, adopted pursuant to Ordinance No. 828, is hereby amended by amending Section 27, Prior Government Service, subsection 1, to read as follows:

1. The Member contributes to the Fund the sum that he would have contributed, based on his Salary and the Member contribution rate in effect at the time that the Credited Service is requested, had he been a member of the System for the years or fractional parts of years for which he is requesting credit plus amounts 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.

SECTION 10: That the City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, adopted pursuant to Ordinance No. 828, is hereby amended by adding Section 28, Deferred Retirement Option Plan, to read as follows:

SECTION 28. DEFERRED RETIREMENT OPTION PLAN.

1. Definitions.

As used in this Section 28, the following definitions apply:"

- A. "DROP" -- The City of Okeechobee General Employees' Deferred Retirement Option Plan.

- B. "DROP Account" -- The account established for each DROP participant under subsection 3.

2. Participation.

A. Eligibility to Participate.

In lieu of terminating his employment as a General Employee, any Member who is eligible for normal retirement under the System may elect to defer receipt of such service retirement pension and to participate in the DROP.

B. Election to Participate.

A Member's election to participate in the DROP must be made in writing in a time and manner determined by the Board and shall be effective on the first day of the first calendar month which is at least fifteen (15) business days after it is received by the Board.

C. Period of Participation.

A Member who elects to participate in the DROP under subsection 2.B., shall participate in the DROP for a period not to exceed sixty (60) months beginning at the time his election to participate in the DROP first becomes effective. An election to participate in the DROP shall constitute an irrevocable election to resign from the service of the City not later than the date provided for in the previous sentence. A Member may participate only once.

D. Termination of Participation.

- (1) A Member's participation in the DROP shall cease at the earlier of:
 - (a) the end of his permissible period of participation in the DROP as determined under subsection 2.C.; or
 - (b) termination of his employment as a General Employee.
- (2) Upon the Member's termination of participation in the DROP, pursuant to subsection (a) above, all amounts provided for in subsection 3.B., including monthly benefits and investment earnings and losses or interest, shall cease to be transferred from the System to his DROP Account. Any amounts remaining in his DROP Account shall be paid to him in accordance with the provisions of subsection 4, when he terminates his employment as a General Employee.
- (3) A Member who terminates his participation in the DROP under this subsection 2.D. shall not be permitted to again become a participant in the DROP.

E. Effect of DROP Participation on the System.

- (1) A Member's Credited Service and his accrued benefit under the System shall be determined on the date his election to participate in the DROP first becomes effective. The Member shall not accrue any additional Credited Service or any additional benefits under the System (except for any additional benefits provided under any cost-of-living adjustment for Retirees in the System) while he is a participant in the DROP. After a Member commences participation, he shall not be permitted to again contribute to the System nor shall he be eligible for disability or pre-retirement death benefits, except as provided for in Section 25, Reemployment After Retirement.
- (2) No amounts shall be paid to a Member from the System while the Member is a participant in the DROP. Unless otherwise specified in the System, if a Member's participation in the DROP is terminated other than by terminating his employment as a General Employee, no amounts shall be paid to him from the System until he terminates his employment as a General Employee. Unless otherwise specified in the System, amounts transferred from the System to the Member's DROP Account shall be paid directly to the Member only on the termination of his employment as a General Employee.

3. Funding.

A. Establishment of DROP Account.

A DROP Account shall be established for each Member participating in the DROP. A Member's DROP Account shall consist of amounts

transferred to the DROP under subsection 3.B., and earnings or interest on those amounts.

B. Transfers From Retirement System.

(1) As of the first day of each month of a Member's period of participation in the DROP, the monthly retirement benefit he would have received under the System had he terminated his employment as a General Employee and elected to receive monthly benefit payments thereunder shall be transferred to his DROP Account, except as otherwise provided for in subsection 2.D.(2). A Member's period of participation in the DROP shall be determined in accordance with the provisions of subsections 2.C. and 2.D., but in no event shall it continue past the date he terminates his employment as a General Employee.

(2) Except as otherwise provided in subsection 2.D.(2), a Member's DROP Account under this subsection 3.B. shall be debited or credited after each fiscal year quarter with either:

(a) Interest at an effective rate of six and one-half percent (6.5%) per annum compounded monthly on the prior month's ending balance; or

(b) Earnings, determined as follows:

The average daily balance in a Member's DROP Account shall be credited or debited at a rate equal to the net investment return realized by the System for that quarter. "Net investment return" for the purpose of this paragraph is the total return of the assets in which the Member's DROP Account is invested by the Board net of brokerage commissions, transaction costs and management fees.

Upon electing participation in the DROP, the Member shall elect to receive either interest or earnings on his account to be determined as provided above. The Member may, in writing, elect to change his election only once during his DROP participation. An election to change must be made prior to the end of a quarter and shall be effective beginning the following quarter.

(3) A Member's DROP Account shall only be credited or debited with earnings or interest and monthly benefits while the Member is a participant in the DROP. A Member's final DROP account value for distribution to the Member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation plus any monthly periodic additions made to the DROP account subsequent to the end of the previous quarter and prior to distribution. If a Member fails to terminate employment after participating in the DROP for the permissible period of DROP participation, then beginning with the Member's 1st month of employment following the last month of the permissible period of DROP participation, the Member's DROP Account will no longer be credited or debited with earnings or interest, nor will monthly benefits be transferred to the DROP account. All such non-transferred amounts shall be forfeited and continue to be forfeited while the Member is employed by the City, and no cost-of-living adjustments shall be applied to the Member's credit during such period of continued employment. A Member employed by the City after the permissible period of DROP participation will be eligible for pre-retirement death and disability benefits, and will accrue additional Credited Service, only as provided for in Section 25.

4. Distribution of DROP Accounts on Termination of Employment.

A. Eligibility for Benefits.

A Member shall receive the balance in his DROP Account in accordance with the provisions of this subsection 4. upon his termination of employment as a General Employee. Except as provided in subsection 4.D., no amounts shall be paid to a Member from the DROP prior to his termination of employment as a General Employee.

B. Form of Distribution.

- (1) Unless the Member elects otherwise, distribution of his DROP Account shall be made in a lump sum, subject to the direct rollover provisions set forth in subsection 4.G. A Member may, however, elect, in such time and manner as the Board shall prescribe, that his DROP distribution be used to purchase a nonforfeitable fixed annuity payable in such form as the Member may elect. Elections under this paragraph shall be in writing and shall be made in such time or manner as the Board shall determine. If the annuity form selected is not a qualified joint and fifty percent (50%) survivor annuity with the Member's Spouse as the Beneficiary, the annuity payable to the Member and thereafter to his Beneficiary shall be subject to the incidental death benefit rule as described in Section 401(a)(9)(G) of the Code and its applicable regulations.
- (2) If a Member dies before his benefit is paid, his DROP Account shall be paid to his Beneficiary in such optional form as his Beneficiary may select. If no Beneficiary designation is made, the DROP Account shall be distributed to the Member's estate.

C. Date of Payment of Distribution.

- (1) Except as otherwise provided in this subsection 4., distribution of a Member's DROP Account shall be made as soon as administratively practicable following the Member's termination of employment.
- (2) In lieu of a distribution as described in paragraph (1) above, a Member may, in accordance with such procedures as the Board shall prescribe, elect to have the distribution of his DROP Account made as of the first day of any month coincident with or following his termination of employment as a General Employee; provided, however, payments shall be made before the distribution date elected by the Member to the extent necessary to comply with the provisions of subsections 4.D. and 4.F.

D. Age Seventy and One-Half (70-1/2) Required Distribution.

In no event shall the provisions of subsection 4. operate so as to allow the distribution of a Member's DROP Account to be later than the April 1 following the later of the calendar year in which he terminates his employment as a General Employee or he attains age seventy and one-half (70-1/2). In the event a Member is required to receive payment while in service under the provisions of this subsection D., he shall receive one lump sum payment on or before his required beginning date equal to his entire DROP Account balance and annual lump sum payments thereafter of amounts credited to his DROP Account during each calendar year. Upon the Member's subsequent termination of employment, payment of his DROP Account shall be made in accordance with the provisions of subsection 4.B.

E. Proof of Death and Right of Beneficiary or Other Person.

The Board may require and rely upon such proof of death and such evidence of the right of any Beneficiary or other person to receive the value of a deceased Member's DROP Account as the Board may deem proper and its determination of the right of that Beneficiary or other person to receive payment shall be conclusive.

F. Distribution Limitation.

Notwithstanding any other provision of subsection 4., all distributions from the DROP shall conform to the regulations issued under Section 401(a)(9) of the Code, including the incidental death benefit provisions of Section 401(a)(9)(G) of the Code. Further, such regulations shall override any DROP provision that is inconsistent with Section 401(a)(9) of the Code.

G. Direct Rollover of Certain Distributions.

This subsection applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the DROP to the contrary, a distributee may elect to have any portion of an eligible rollover distribution paid in a direct rollover as otherwise provided under the System in Section 24.

5. Administration of DROP.

A. Board Administers the DROP.

The general administration of the DROP, the responsibility for carrying out the provisions of the DROP and the responsibility of overseeing the investment of the DROP's assets shall be placed in the Board. The members of the Board may appoint from their number such subcommittees with such powers as they shall determine; may adopt such administrative procedures and regulations as they deem desirable for the conduct of their affairs; may authorize one or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical, accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP; and may allocate among themselves or delegate to other persons all or such portion of their duties under the DROP, other than those granted to them as Trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A Trustee shall not vote on any question relating exclusively to himself.

B. Individual Accounts, Records and Reports.

The Board shall maintain records showing the operation and condition of the DROP, including records showing the individual balances in each Member's DROP Account, and the Board shall keep in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The Board shall prepare and distribute to Members participating in the DROP and other individuals or file with the appropriate governmental agencies, as the case may be, all necessary descriptions, reports, information returns, and data required to be distributed or filed for the DROP pursuant to the Code and any other applicable laws.

C. Establishment of Rules.

Subject to the limitations of the DROP, the Board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The Board shall have discretionary authority to construe and interpret the DROP (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in the DROP). The determination of the Board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law.

D. Limitation of Liability.

(1) The Trustees shall not incur any liability individually or on behalf of any other individuals for any act or failure to act, made in good faith in relation to the DROP or the funds of the DROP.

(2) Neither the Board nor any Trustee of the Board shall be responsible for any reports furnished by any expert retained or employed by the Board, but they shall be entitled to rely thereon as well as on certificates furnished by an accountant or an actuary, and on all opinions of counsel. The Board shall be fully protected with respect to any action taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.

6. General Provisions.

A. Amendment of DROP.

The DROP may be amended by an ordinance of the City at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No

amendment shall be made which has the effect of decreasing the balance of the DROP Account of any Member.

B. Facility of Payment.

If a Member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or is a minor, the Board shall direct that any benefit due him shall be made only to a duly appointed legal representative. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.

C. Information.

Each Member, Beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the DROP, shall file with the Board the information that it shall require to establish his rights and benefits under the DROP.

D. Prevention of Escheat.

If the Board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the Board may, no earlier than three (3) years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the Board or the City. If such person has not made written claim therefor within three (3) months of the date of the mailing, the Board may, if it so elects and upon receiving advice from counsel to the System, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the System. Upon such cancellation, the System shall have no further liability therefor except that, in the event such person or his Beneficiary later notifies the Board of his whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.

E. Written Elections, Notification.

(1) Any elections, notifications or designations made by a Member pursuant to the provisions of the DROP shall be made in writing and filed with the Board in a time and manner determined by the Board under rules uniformly applicable to all employees similarly situated. The Board reserves the right to change from time to time the manner for making notifications, elections or designations by Members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.

(2) Each Member or Retiree who has a DROP Account shall be responsible for furnishing the Board with his current address and any subsequent changes in his address. Any notice required to be given to a Member or Retiree hereunder shall be deemed given if directed to him at the last such address given to the Board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the Member or Retiree notifies the Board of his address.

F. Benefits Not Guaranteed.

All benefits payable to a Member from the DROP shall be paid only from the assets of the Member's DROP Account and neither the City nor the Board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.

G. Construction.

(1) The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.

(2) The titles and headings of the subsections in this Section 28 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

H. Forfeiture of Retirement Benefits.

Nothing in this Section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the System. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.

I. Effect of DROP Participation on Employment.

Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

SECTION 2: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.


SECTION 4: That this Ordinance shall become effective upon adoption. Introduced on first reading and set for public hearing this 15th day of March, 2005.


James E. Kirk, Mayor

ATTEST:


Lane Gamiolea, CMC, City Clerk

PASSED on second and final reading this 5th day of April, 2005.


James E. Kirk, Mayor

ATTEST:


Lane Gamiolea, CMC, City Clerk

APPROVED FOR LEGAL SUFFICIENCY:


John R. Cook, City Attorney