

## ARTICLE III. - POLICE OFFICERS' RETIREMENT TRUST FUND

*Footnotes:*

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**Cross reference**— *Investment policy for funds, § 2-311; casualty insurance premium tax, § 66-111 et seq.***State Law reference**— *Police officers municipal retirement fund, F.S. ch. 185.*

## DIVISION 1. - GENERALLY

## Sec. 50-61. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Aggregate number of years of service* means the total number of years, and fractional parts of years, of service of any police officer, omitting intervening years and fractional parts of years, when such police officer may not be employed by the municipality. However, no police officer will receive credit for years or fractional parts of years of service for which he has withdrawn his contributions to the fund for those years or fractional parts of years. A police officer may voluntarily leave his contributions in the fund for a period of five years after leaving the employ of the police department, pending the possibility of his being rehired by the same department, without losing credit for the time he has participated actively as a police officer. Should he not be reemployed as a police officer, with the same department, within five years, his contribution shall be returned to him without interest.

*Average monthly earnings* means a police officer's monthly salary or wage paid or accrued as reported by the city to the Internal Revenue Service for income tax purposes plus all tax deferred or tax exempt items of income averaged over the last five years of employment within the city.

*Beneficiary* means any person who is entitled to receive a pension benefit payable from the Palm Beach Gardens Police Officers' Pension Fund upon the death of a member or participant.

*Credited service* means the number of full years (and fraction thereof) of continuous service from date of employment to date of termination. Continuous service with the employer shall not be broken in the event of:

- (1) Absence on an approved leave of absence. A police officer on an approved leave of absence shall not receive credited service but shall retain all credited service previously accrued. Upon returning to work, the police officer will again accrue credited service.
- (2) Absence from work because of occupational injury or disease incurred in employment for which a police officer is entitled to Workers' Compensation payments. A police officer on an approved leave of absence as a result of occupational injury or disease shall continue to accrue credited service and shall retain all credited service previously accrued.
- (3) Absence due to service in the armed forces of the United States, provided the officer shall reenter employment with the city within one year of discharge. A police officer shall not receive credited service while absent due to military service but shall retain all credited service previously accrued. Upon returning to work, the police officer will again accrue credited service and will be credited with service for time spent on active duty for up to five years if:

- a. The police officer is in the active employ of the municipality prior to such service and leaves a position, other temporary position, for the purpose of voluntary or involuntary service in the Armed Forces of the United States.
- b. The police officer is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act. Effective January 1, 2007, members who die or become disabled while on active duty military service, during a break in the member's employment, shall be entitled to the rights of this section even though such member was not re-employed by the city. Members who die or become disabled while on active duty military service shall be treated as though they were 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 related death while employed or became disabled from a non-duty related disability.

*Fund or police officers' pension fund* means the Palm Beach Gardens Police Officers' Pension Fund.

*Group annuity contract* means a contract issued by an insurance company providing for the payment of retirement benefits to police officers who become entitled to such benefits in accordance with the provisions of this fund.

*Insurance company* means a legal reserve life insurance company organized or incorporated under the laws of any state of the United States of America and duly licensed in the state.

*Police officer* means any person who is elected, appointed, or employed full-time by any municipality, who is certified or required to be certified as a law enforcement officer in compliance with state law, who is vested with the authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in Sections 943.10(6) and (8), [Florida Statutes], respectively.

*Retirement or retired* means a police officer's withdrawal from city employment with a pension payable from the fund.

*Retiree* means a person who has entered into retirement from the city.

*Salary* means the average monthly earnings reported to the Internal Revenue Service for income tax purposes, plus deferred compensation. Beginning with salary after December 31, 2008, and pursuant to Internal Revenue Code Section 414(u)(7), the definition of salary includes amounts paid by the city as differential wages to members who are absent from employment while in qualified military service. Notwithstanding the preceding two (2) sentences, effective September 13, 2012, salary will henceforth mean base pay, excluding all other compensation; provided that the salary of any member employed on September 13, 2012, shall include payment for unused accrued sick and annual leave up to the dollar amount of unused sick and annual leave that the member has accrued as of September 13, 2012. However, in no event, will the salary of any member who is employed on September 13, 2012, be less than the member's salary on September 12, 2012, as determined in accordance with the definition of salary in effect on September 12, 2012.

(Code 1987, § 33.35(E); Ord. No. 3-1996, § 1, 4-18-96; Ord. No. 6-1997, § 1, 3-6-97; Ord. No. 2, 2010, § 1, 2-18-10; Ord. No. 24, 2012, § 2, 9-13-12; Ord. No. 5, 2016, § 2, 7-7-16)

**Cross reference**— Definitions generally, § 1-2.

Sec. 50-62. - Establishment and maintenance of retirement system.

- (a) There is hereby created a special pension fund for the police officers of the city to be known as the Palm Beach Gardens Police Officers' Pension Fund. All assets of every description held in the name of the retirement trust fund shall continue to be held, but such fund shall now be known as the fund and shall be administered as set forth in this section.
  - (1) It is the intention of the City of Palm Beach Gardens and of the board of trustees that the plan remain at all times a qualified plan, as that term is defined under the internal revenue code as well as corresponding Treasury Regulations applicable to a governmental defined benefit retirement plan.
- (b) Any change in the investment vehicle shall be approved by the city council. All investments of the fund shall be in compliance with those sections of Chapter 185, Florida Statutes, which are applicable to local law plans.
- (c) The fund shall be maintained in the following manner:
  - (1) By payment to the fund of the new proceeds of the 0.85 percent excise tax which may be imposed by the city upon certain casualty insurance companies on their gross receipts of premiums from holders of policies, which policies cover property within the corporate limits of the city as authorized in F.S. ch. 185, as amended. One-half of the accumulated excess Chapter 185 premium tax revenues (\$154,256.00) on October 1, 2016, shall be used to pay down the unfunded liability of the fund, and the other half of such accumulated excess shall be allocated to the police share plan as provided in section 50-153. Thereafter, all annual revenues received pursuant to F.S. ch. 185, up to \$475,215.00 (the amount received in August 2013), and one-half of the annual Chapter 185 premium tax revenues received in excess of \$475,215.00, shall be used to offset the city's contributions to the fund. The other half of the annual Chapter 185 premium tax revenues received in excess of \$475,215.00 shall be allocated to the police share plan as provided in section 50-153.
  - (2) By payment to the fund of eight and sixty one hundredths (8.60) percent of the salary of each full-time police officer duly appointed and enrolled as a member of the city police department; which eight and sixty one hundredths (8.60) percent shall be deducted by the city from the compensation due to the police officer and paid over to the board of trustees of the pension fund immediately.
  - (3) By all fines and forfeitures imposed and collected from any police officer because of the violation of any rule and regulation promulgated by the board of trustees.
  - (4) By mandatory payment annually by the city and other sources of a sum equal to the normal costs and amount required to fund over a 30-year basis any actuarial deficiency shown by a triennial actuarial valuation. The first such actuarial valuation shall be conducted for the year ending September 30, 1986.
  - (5) By all gifts, bequests, and devises when donated to the fund.
  - (6) By all accretions to the fund by way of interest or dividends on bank deposits, or otherwise.
  - (7) By all other sources or income now or hereafter authorized by law for the augmentation of the pension fund.
- (d) Under no circumstances may the city reduce the member contribution to less than one-half of one percent of salary.

(Code 1987, § 33.35(A)—(D); Ord. No. 01-2001, § 1, 3-1-01; Ord. No. 9, 2014, § 2, 7-10-14; Ord. No. 4, 2018, § 2, 3-1-18; Ord. No. 2, 2021, § 2, 2-4-21)

#### Sec. 50-63. - Responsibility of the city.

The city shall have no responsibility for the operation of the fund except as specified herein, and shall bear no expense in the operation of the fund except as required by state law and as specified herein.

(Code 1987, § 33.38(O))

Secs. 50-64—50-80. - Reserved.

## DIVISION 2. - BOARD OF TRUSTEES

### *Footnotes:*

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**Cross reference—** *Boards, committees, commissions, § 2-81 et seq.*

Sec. 50-81. - Created.

There is hereby created a board of trustees of the Palm Beach Gardens Police Officers' Pension Fund which shall be solely responsible for administering the pension fund. The board of trustees shall be a legal entity, with the power to bring and defend lawsuits of every kind, nature and description, and to the extent required to accomplish the intent, requirements and responsibilities provided for in this article.

(Code 1987, § 33.36(A))

Sec. 50-82. - Composition.

The board of trustees shall consist of members as follows:

- (a) Two legal residents of the city, who shall be appointed by the city council. Effective for terms beginning after March 1, 2010, each city trustee shall serve as a trustee for a period of four years, and such service shall be at the pleasure of the city council. Each city trustee may succeed himself as a trustee.
- (b) Two trustees of the fund shall be elected by a majority of the police officers of the city who are participants in the fund. Elections shall be held in accordance with such rules and regulations as the board of trustees shall from time to time adopt. Effective for terms beginning after March 1, 2010, each police officer trustee shall serve as a trustee for a period of four years, unless he ceases to be a police officer in the employ of the police department, whereupon their successors shall be elected by a majority of the participants of the fund. Each police officer trustee may succeed himself as a trustee.
- (c) A fifth trustee shall be chosen and appointed to the board by a majority of the other four trustees. This fifth trustee's name shall be submitted to the city council, which shall, as a ministerial duty, ratify the appointment of such person to the board as the fifth trustee. Effective for terms beginning after March 1, 2010, the fifth trustee shall serve as a trustee for a period of four years and may succeed himself as a trustee.

(Ord. No. 2, 2010, § 2, 2-18-10; Ord. No. 4, 2018, § 2, 3-1-18)

**Editor's note—** Ord. No. 2, 2010, § 2, adopted Feb. 18, 2010, repealed former § 50-82, and enacted a new § 50-82 as set out herein. Former § 50-82 pertained to similar subject matter. See the Code Comparative Table for complete derivation.

Sec. 50-83. - Vacancies.

- (a) If a trustee ceases to be a police officer in the employ of the city, he shall be considered to have resigned from the board of trustees. If a trustee shall resign, be removed, or become ineligible to serve as trustee, the board shall, by resolution, declare that office of trustee vacated as of the date of adoption of such resolution.

- (b) If a vacancy occurs in the office of trustee within 90 days of the next succeeding election for trustee, the vacancy shall be filled at the next regular election for the unexpired portion of the term; otherwise, the vacancy shall be filled for the unexpired portion of the term at a special election called by the board. If a trustee provided for herein shall resign, be removed or become ineligible to serve as trustee, the board shall, by resolution, declare that office of trustee vacant as of the date of adoption of the resolution.
- (c) The successor for the unexpired portion of the term shall be chosen in the same manner as an original appointment.

(Code 1987, § 33.37(A))

Sec. 50-84. - Meetings; quorum; procedures.

The board of trustees shall hold meetings regularly, at least once each quarter and shall designate the time and place thereof. At any meeting of the board, three trustees shall constitute a quorum. Each trustee shall be entitled to one vote on each question before the board and at least three concurring votes shall be required for a decision by the board at any of its meetings. The board shall adopt its own rules and procedures and shall keep a record of its proceedings. All meetings of the board shall be open to the public. No trustee shall take part in any action in connection with their own participation in the fund, and no unfair discrimination shall be shown to any individual police officer participating in the fund.

(Code 1987, § 33.37(B))

Sec. 50-85. - Officers.

- (a) *Chairman and vice chairman.* The board of trustees shall, by majority vote, elect from its members a chairman and a vice chairman.
- (b) *Secretary.* The board of trustees shall, by a majority vote, elect from its members a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings or hearings of the board.
- (c) *Treasurer.* The board of trustees may, by a majority vote, elect from its members a treasurer.

(Code 1987, § 33.37(B)(1), (2))

Sec. 50-86. - Compensation.

The trustees of the board of trustees shall not receive any compensation for their services as such, but may receive expenses and per diem when performing official duties in administering the fund.

(Code 1987, § 33.37(C))

Sec. 50-87. - Powers.

The board of trustees may exercise the following powers:

- (a) To invest and reinvest the assets of the retirement trust fund and to hold, purchase, sell, assign, transfer, and dispose of any securities and investments held in the fund, including the power and authority to employ counseling or investment management services. The aim of the investment policies shall be to preserve the integrity and security of the 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. Notwithstanding the foregoing, investments in foreign investments are limited in accordance with F.S. § 185.06(1)(b)4. The board members must discharge these duties with respect to the plan solely in the best interests 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.

- (b) At least once every three years, the board of trustees shall retain an independent consultant professionally qualified to evaluate the performance of the professional money managers. The independent consultant shall make recommendations to the board regarding the selection of money managers for the next investment term. The recommendations shall be considered by the board of trustees 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 city at least ten days prior to the date of the hearing.
- (c) Notwithstanding anything else in this subsection or 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 in F.S. § 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.

(Ord. No. 2, 2010, § 3, 2-18-10)

**Editor's note—** Ord. No. 2, 2010, § 3, adopted Feb. 18, 2010, repealed former § 50-87, and enacted a new § 50-87 as set out herein. Former § 50-87 pertained to similar subject matter. See the Code Comparative Table for complete derivation.

Sec. 50-88. - Staff.

- (a) The city attorney shall give advice to the board of trustees in all matters pertaining to its duties in the administration of the fund whenever requested; and he shall represent and defend the board as its attorney in all suits and actions at law or in equity that may be brought against it and bring all suits and actions in its behalf that may be required or determined upon by the board. However, if the board so elects, it may employ independent legal counsel at the fund's expense for the purposes contained in F.S. ch. 185.
- (b) The board shall appoint an accountant, who is not an employee of the city, together with such other persons who are deemed necessary by the board.

(Code 1987, § 33.40)

Sec. 50-89. - Liability insurance.

The board of trustees is authorized to provide public liability insurance for its members. Payment of expenses for such insurance, together with actuarial valuations of the pension plan shall be made from trust funds controlled by the board.

(Code 1987, § 33.41)

Sec. 50-90. - Audits and reports.

The board of trustees shall be required to meet all accounting requirements and the filing of reports required by F.S. ch. 185.

(Code 1987, § 33.42)

Sec. 50-91. - Amendment to or replacement of plan.

- (a) The board of trustees shall not be empowered to amend or replace a retirement plan without the approval of the city council.
- (b) Upon termination of the plan by the city for any reason, including, but not limited to, a transfer, merger, or consolidation of governmental units, services, or functions as set forth in F.S. ch. 121, or upon written notice to the board of trustees by the city that contributions under the plan are being permanently discontinued, the rights of all employees to their accrued benefits up to the date of such termination or discontinuance, and the amounts credited to the employees' accounts shall be nonforfeitable. In such event, 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 board shall inform the city if additional assets are required, and if so, the city shall continue to financially support the plan until all nonforfeitable benefits have been fully 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 entitled to benefits under the plan, as set forth herein below 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 city, less any state contributions returned to the state, provided that, if the excess is less than the total contributions made by

the city and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the city 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. 2, 2010, § 4, 2-18-10)

**Editor's note—** Ord. No. 2, 2010, § 4, adopted Feb. 18, 2010, repealed former § 50-91, and enacted a new § 50-91 as set out herein. Former § 50-91 pertained to similar subject matter. See the Code Comparative Table for complete derivation.

#### Sec. 50-92. - Pension validity.

The board of trustees shall have the power to examine into the facts upon which any pension shall have been granted or obtained erroneously, fraudulently, or illegally for any reason. The board is empowered to purge the pension rolls of any person granted a pension under proper or existing law or granted under this article if the pension is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any pensioner who has under any prior or existing law or who shall hereafter under this article be erroneously, improperly, or illegally classified.

(Code 1987, § 33.38(L))

#### Secs. 50-93—50-110. - Reserved.

### DIVISION 3. - PLAN

#### Sec. 50-111. - Statutory compliance.

The city shall meet the minimum requirements of F.S. Chapter 185 in the administration of this article.

(Code 1987, § 33.44; Ord. No. 01-2001, § 2, 3-1-01)

#### Sec. 50-112. - Employer pick up.

Effective the first full payroll period of the first calendar month following April 7, 1994, the city shall pick up the member contribution required by state law and this Code. The employee contributions picked up by the city shall be treated as employer contributions as authorized by Section 414(h)(2) of the United States Internal Revenue Code. The city shall pick up the member contributions from funds established and available in the salaries account, which funds would have otherwise been designated as member contributions and paid to the pension fund. Member contributions picked up by the city pursuant to this section shall be treated for purposes of making a refund of member's contributions, and for all other purposes of this and other laws, in the same manner and to the same extent as member contributions made prior to April 7, 1994.

(Code 1987, § 33.45)

#### Sec. 50-113. - Membership.

- (a) All police officers who are participants in the fund as of April 7, 1994, shall be members of the retirement system. Each police officer will be eligible to be included in this plan on the first day of the month coincident with or next



following their date of employment. If any person who becomes a police officer in the city after April 7, 1994, but before October 1, 1995, does not desire to accept the provisions of this article, then that person shall notify the city of his decision within 12 months after first being employed as a police officer. Upon determination the trustees will refund the amount of contributions withheld from the officer's salary without interest to the officer and that officer will be forever barred from participating. Likewise an officer who continues to participate after one year of employment must remain a participant in the fund until retirement, termination of employment within the city, death, or disability.

- (b) Any police officer hired by the city on or after October 1, 1995 shall be required to participate in this plan until retirement, termination of employment with the department, death, or disability.
- (c) Notwithstanding the provisions of this section, the police chief may elect not to participate in the plan.

(Code 1987, § 33.38(B); Ord. No. 25-1995, § 1, 9-28-95; Ord. No. 9-2004, § 1, 4-15-04)

**Editor's note—** Section 7 of Ord. No. 9-2004 provided that the provisions of this ordinance shall apply retrospectively to Oct. 1, 2003.

#### Sec. 50-114. - Beneficiaries.

- (a) Each police officer may, on a form provided for that purpose which was signed and filed with the board of trustees, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of death; and each designation may be revoked by such police officer by signing and filing with the board of trustees a new designation of beneficiary form.
- (b) If a deceased police officer failed to name a beneficiary in the manner prescribed above in subsection (a) of this section, or if the beneficiary (or beneficiaries) named by the deceased police officer predeceases the police officer, the death benefit, if any, which may be payable under the plan with respect to such deceased police officer may be paid at the discretion of the board of trustees, either to:
  - (1) The spouse or dependent children of the police officer;
  - (2) The dependent living parents of the police officer;
  - (3) The deceased police officer's estate; or
  - (4) The trustees in their sole discretion, may apportion the remaining benefit among any two or more of subsections (1), (2), or (3) of this subsection.
- (c) If there is no designated beneficiary or the designated beneficiary dies prior to receiving the full benefit, the remaining amount of benefit shall be paid in a single lump sum.
- (d) Any payment made to any person pursuant to this section shall operate as a complete discharge of all obligations of the fund under the plan and shall not be subject to review but shall be final, binding and conclusive on all persons ever interested thereunder.
- (e) If a member has elected an option with a joint pensioner or beneficiary and his or her retirement income benefits have commenced, he or she may thereafter change the designated joint pensioner or beneficiary no more than two times in accordance with Section 185.341, Florida Statutes, 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. Any costs associated with the actuarial calculation of the benefit shall be borne by the member.

(Code 1987, § 33.38(C); Ord. No. 2, 2010, § 5, 2-18-10)

Sec. 50-115. - Benefit eligibility.

A police officer is eligible for a benefit at age 60.

(Code 1987, § 33.38(D))

Sec. 50-116. - Normal retirement.

(a) *Date*. A member's normal retirement date shall be:

- (1) For police officers who were employed and had ten (10) or more years of creditable service on September 13, 2012: upon the attainment of age fifty-two (52), provided the officer has at least ten (10) years of service, or upon completion of twenty (20) years of service, regardless of age. In the case of a retirement with twenty (20) years of service, Normal Retirement Age is the age a member has attained when retired at twenty (20) years of service.
- (2) For police officers who were employed on September 13, 2012, and had less than ten (10) years of creditable service on that date, and police officers hired on or after that date, who retire on or before September 30, 2019: upon the attainment of age fifty-five (55) with at least ten (10) years of creditable service, or twenty-five (25) years of creditable service regardless of age. In the case of a retirement with twenty-five (25) years of service, Normal Retirement Age is the age a member has attained when retired at twenty-five (25) years of service.
- (3) For police officers with less than ten (10) years of creditable service on September 13, 2012, and police officers hired on or after that date who retire on or after October 1, 2019: upon the attainment of age fifty-two (52) with at least ten (10) years of creditable service, or twenty (20) years of creditable service regardless of age. In the case of a retirement with twenty (20) years of service, Normal Retirement Age is the age a member has attained when retired at twenty (20) years of service.

(b) *Benefit*. The monthly amount of normal retirement benefit payable to a police officer who retires on the normal retirement date shall be an amount equal to three and one-half (3.5) percent multiplied by the number of years of credited service, up to a maximum of one hundred (100) percent, multiplied by average monthly earnings. Notwithstanding the preceding sentence, for police officers who are employed and have not attained the normal retirement date prior to September 13, 2012, the monthly amount of normal retirement benefit payable to a police officer who retires on or after the normal retirement date shall be an amount equal to three and one-half (3.5) percent multiplied by the number of years of credited service prior to September 13, 2012, plus two and seventy-five one hundredths (2.75) percent multiplied by the number of years of credited service on and after September 13, 2012, and before October 1, 2019, plus three (3) percent multiplied by the number of years of credited service on and after October 1, 2019, up to a maximum of seventy-five (75) percent, multiplied by the police officer's average monthly earnings; and for police officers hired on or after September 13, 2012, the monthly amount of normal retirement benefit payable to a police officer who retires on or after the normal retirement date shall be an amount equal to two and seventy-five one hundredths (2.75) percent multiplied by

the number of years of credited service on and after September 13, 2012, and before October 1, 2019, plus three (3) percent multiplied by the number of years of credited service on and after October 1, 2019, up to a maximum of seventy-five (75) percent, multiplied by the police officer's average monthly earnings. In no event will the benefit paid be less than two (2) percent per year of service.

- (c) *Payment.* A retired police officer's retirement benefit normally shall be payable in the form of a monthly life annuity with one hundred twenty (120) monthly payments guaranteed. This form of annuity provides for a retirement benefit payable monthly to the retired employee during their lifetimes with a guarantee that not less than one hundred twenty (120) monthly retirement benefits shall be paid, even if the retired employee dies prior to the receipt of one hundred twenty (120) payments.

(Code 1987, § 33.38(E); Ord. No. 3-1996, § 2, 4-18-96; Ord. No. 01-2001, § 3, 3-1-01; Ord. No. 8, 2006, § 1, 6-15-06; Ord. No. 24, 2012, § 3, 9-13-12; Ord. No. 9, 2014, § 3, 7-10-14; Ord. No. 5, 2016, § 3, 7-7-16; Ord. No. 17, 2019, § 2, 9-5-19)

#### Sec. 50-117. - Early retirement.

- (a) *Date.* An employee who has attained age 50 and completed at least ten years of credited service may elect to terminate employment and retire on an early retirement date which may be the first day of any month after ten years of service and attainment of age 50.
- (b) *Benefit.* The monthly amount of early retirement benefits payable to a police officer who retires on the early retirement date shall be determined based on credited service to the early retirement date reduced by three percent for each year by which the member's age at retirement preceded the member's normal retirement age to take into account the police officer's younger age and the earlier commencement of retirement income payments.

If the period between the early retirement date and normal retirement date is not an integral number of years, the percentage to be applied shall be the percentage for the next higher integral number of years, increased by a proportionate part of the difference between that percentage and the percentage for the next lower integral number of years.

(Code 1987, § 33.38(F); Ord. No. 9-2004, § 2, 4-15-04)

**Editor's note—** Section 7 of Ord. No. 9-2004 provided that the provisions of this ordinance shall apply retrospectively to Oct. 1, 2003.

#### Sec. 50-118. - Disability retirement.

- (a) *Line of duty disability.* A police officer may retire from the service of the city under the plan, if prior to normal retirement date, the officer becomes totally and permanently disabled in the line of duty by reason of any cause other than a cause set out in subsection (d) of this section, on or after the effective date of the plan. Such retirement shall herein be referred to as duty disability retirement.
- (b) *Nonline of duty disability.*
- (1) A police officer must have ten years of credited service in order to receive nonservice disability benefits. The officer must be totally and permanently disabled as defined below.
  - (2) The provisions for nonline of duty disability shall not apply to a member who has reached or passed normal retirement age.
- (c) *Determination of disability.* For purposes of this plan, a disability shall mean permanent and total disability as determined by the board of trustees in accordance with the following standards:

- (1) A police officer shall be deemed permanently and totally disabled only if he has been disabled by physical or mental injury or disease so as to be unable to perform as a police officer and if such disability shall have continued for six consecutive months. If the officer is ineligible to receive disability benefits under Title II of the Federal Social Security Act on account of a nonduty disability, the benefits payable shall be capped at 50 percent of the officers final average monthly earnings.
  - (2) The board of trustees shall have the right to require the employee to submit to a physical examination at intervals determined by the board.
  - (3) Any condition or impairment of health of a police officer caused by tuberculosis, hypertension, heart disease, hardening of the arteries, hepatitis or meningococcal meningitis resulting in a total or partial disability or death shall be presumed to be accidental and suffered in the line of duty, unless the contrary can 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 police officer, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty, provided that such police officer 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 the presumption in the case of hepatitis, meningococcal meningitis or tuberculosis, the police officer must meet the requirements of F.S. ch. 112.181. The final decision whether a police officer meets the requirements for duty disability pension rests with the board of trustees and shall be based on substantial competent evidence on the record as a whole.
- (d) *Exclusions.* A police officer shall not be entitled to receive any disability retirement income if the disability is the result of:
- (1) Excessive and habitual use by the police officer of drugs, intoxicants, or narcotics;
  - (2) Injury or disease sustained by the police officer while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime;
  - (3) Injury or disease sustained by the police officer while serving in 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);
  - (4) Injury or disease sustained by the police officer after employment has been terminated; or
  - (5) Injury or disease sustained by the police officer while working for anyone other than the city and arising out of such other employment.
- (e) *Medical review.* No police officer shall be permitted to retire under a disability retirement until examined by a duly qualified physician or surgeon to be selected by the board of trustees for that purpose and found to be disabled in the degree and manner specified herein. Any police officer receiving a disability retirement shall be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons to be selected by the board of trustees for that purpose to determine if such disability has ceased to exist.
- (f) *Disability benefit.*
- (1) *Generally.* For disability incurred during the line of duty, the disability benefit shall be 60 percent of the police officers' rate of pay at the time of disability or the accrued pension benefit, whichever is greater for. For non-duty disability, the disability benefit shall consist of 2.5 percent multiplied by the average monthly earnings

multiplied by the years of credited service, with the minimum benefit of 25 percent of salary or the accrued pension benefit, whichever is greater. In no event should the single sum value of such benefits as of the date of termination of service because of disability exceed:

- a. One hundred times the estimated normal monthly retirement income, based on the assumption that the present rate of compensation continues without changes to normal retirement date,
  - b. Twice the annual rate of compensation as of the date of termination of service, or
  - c. The single-sum value of the accrued deferred retirement income (beginning at normal retirement date) at date of termination of service, whichever is greatest.
- (2) *Offset.* A member who is receiving a disability benefit from the city and who is receiving benefits for the same disability under Social Security or worker's compensation, or who is receiving another retirement benefit from another plan of the city, shall have a deduction made from the monthly disability pension payment in an amount necessary to bring the total of all disability payments to no more than 100 percent of the average monthly earnings of the disabled person as of the time the disability retirement occurred.
- (g) *Payment procedures.* The monthly retirement income to which a police officer is entitled for disability retirement shall be payable on the first day of the first month after the board of trustees determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determines such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be, if the police officer recovers from the disability prior to his normal retirement date, the payment due next preceding the date of such recovery, or if the police officer dies without recovering from disability, the payment due next preceding death or the 120th monthly payment, whichever is later. Any monthly retirement income payments due after the death of a disabled police officer shall be paid to the police officer's designated beneficiary (or beneficiaries).

(Code 1987, § 33.38(G); Ord. No. 25-1995, §§ 3, 4, 9-28-95; Ord. No. 3-1996, § 3, 4-18-96; Ord. No. 01-2001, § 4, 3-1-01; Ord. No. 9-2004, §§ 3, 4, 4-15-04; Ord. No. 2, 2010, § 6, 2-18-10)

**Editor's note—** Section 7 of Ord. No. 9-2004 provided that the provisions of this ordinance shall apply retrospectively to Oct. 1, 2003.

#### Sec. 50-119. - Death benefits.

- (a) *Line of duty death.* If a member dies and the board finds that the death is the natural and proximate result of a personal injury or disease arising out of and in the course of his or her actual performance of duties as a police officer in the employ of the city, the following pension shall be paid:
- (1) The surviving spouse shall receive a pension equal to 50 percent of the members final average monthly earnings, or the accrued benefit without early retirement reduction, which ever is greater. This benefit shall continue until the death of the surviving spouse.
  - (2) If the deceased member does not leave a surviving spouse, or if the surviving spouse dies, and the member leaves an unmarried child or children under age 18, or age 24 if a full-time student, each child shall receive equal shares of the surviving spouse pension calculated in paragraph (1). Upon any child's adoption, marriage, death or reaching age 18, or 24 if a full time student, the child's pension shall terminate and the monthly pension shall be reapportioned to the member's remaining eligible children under age 18, or 24 if a full time student. Any pension payable under this subsection shall be paid to the child's legal guardian.

- (3) If the deceased member does not leave a surviving spouse, child, or children eligible to receive a pension, then the benefit shall be paid to the estate of the deceased member.
- (4) In any of the cases mentioned in subsections (a)(1) through (3) of this subsection, the board may, in its sole discretion, direct that the actuarial value of the monthly payment be paid as a lump sum.
- (b) *Nonduty death.* For any deceased who was actively employed and eligible for normal or delayed retirement as of his date of death, the benefit payable shall be that monthly amount which would have been payable had the deceased employee retired on the date of death, with the resulting benefit being paid to the beneficiary for life. If a police officer dies prior to retirement, but has at least five years of contributing service, the beneficiaries are entitled to the benefits otherwise payable to the police officer at early or normal retirement age, whichever is applicable. If the police officer dies before being eligible to retire under the provisions of this plan, the heirs, legatees, beneficiaries, or personal representatives of such deceased police officer shall be entitled to a refund of 100 percent of the contribution, without interest, made to the fund by such deceased police officer.

(Code 1987, § 33.38(H); Ord. No. 25-1995, § 5, 9-28-95; Ord. No. 01-2001, § 5, 3-1-01)

Sec. 50-120. - Separation from service.

- (a) If an officer terminates employment with the police department either voluntarily or by discharge, and is not eligible for any other benefits under the fund, he shall be entitled to the retirement benefit accrued to the date of termination, payable for ten (10) years certain and life thereafter, commencing at early or normal retirement date, provided he has ten (10) or more years of credit service. Early retirement benefit will be actuarially reduced in accordance with this section.
- (b) If an officer terminates employment prior to the completion of ten (10) years credited service, such officer shall be entitled to a retirement benefit subject to the vested percentages below:

Years of Credit Service	Vested Percentages
5	25
6	40
<u>7</u>	55
<u>8</u>	<u>70</u>
<u>9</u>	85
10	100

A police officer may elect to receive the return of contributions without interest in lieu of all other benefits under this plan.

(c) A member who does not meet the requirements of subsection (a) or (b) of this section shall receive a refund of all contributions, including buy back contributions made in accordance with section 50-12Z, without interest.

(d) A member is one hundred (100) percent vested upon reaching the normal retirement date.

(Code 1987, § 33.38(l); Ord. No. 35-2002, § 2, 10-3-02; Ord. No. 5, 2016, § 4, 7-7-16)

Sec. 50-121. - Optional forms of benefits.

(a) Each member entitled to a normal, disability, or early retirement benefit shall have the right at any time prior to the date on which the benefit begins to elect to have the benefit payable under any of the options hereinafter set forth in lieu of the benefits provided above, and to revoke any such elections and make a new election at any time prior to the actual commencement of payment. A police officer may not make any change in retirement option after the date of cashing or depositing the first retirement check.

(b) The value of optional benefits shall be the actuarial equivalent of the value of benefits otherwise payable, and the present value of payments to the retiring member must be at least equal to 50 percent of the total present value of payments to the retiring member and his beneficiary. The member shall make an election by written request to the board, such request being retained in the board's files. The options available to the members of the fund are as follows:

(1) *Contingent annuitant (joint and survivor option)*. The member may elect to receive a benefit during his lifetime and have such a benefit (100 percent or 75 percent or 66⅔ percent or 50 percent of such monthly benefit) continued after his death to and during the lifetime of his spouse or relative other than his spouse. The election of option 1 shall be null and void if the designated beneficiary dies before the member's payments commence. If a member has elected an option with a joint pensioner or beneficiary and his or her retirement income benefits have commenced, he or she may thereafter change the designated joint pensioner or beneficiary up to twice in accordance with F.S. § 185.341, 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. Any costs associated with the actuarial calculation of the benefit shall be borne by the member.

(2) *Life annuity*. The member may elect to receive a benefit payable for the police officer's life only.

(3) *Other*. In lieu of the other optional forms enumerated in this section, benefits may be paid in any form approved by the board so long as it is the actuarial equivalent of the benefits otherwise payable.

(Code 1987, § 33.38(j); Ord. No. 23-2000, § 1, 8-3-00; Ord. No. 2, 2010, § 7, 2-18-10)

Sec. 50-122. - Discharged members.

Members entitled to a pension shall not forfeit the same upon dismissal from the department, but shall be retired as herein described.

(Code 1987, § 33.38(K))

Sec. 50-123. - Incompetence.

If any member or beneficiary is a minor or is, in the judgment of the board of trustees, otherwise incapable of personally receiving and giving a valid receipt for any payment due them from the fund, the board may, unless and until claims 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, parent or other person deemed by the board to have incurred expenses or assumed responsibility for the expenses of such person. Any payments so made shall be a complete discharge of any liability under the system for such payment.

(Code 1987, § 33.38(M))

Sec. 50-124. - Rights and benefits not subject to legal process.

The rights and benefits provided for in this article are vested rights of participants in the fund and shall not be subject to attachment, garnishment, execution or any other legal process. However, the board shall honor an income deduction order for alimony or child support in accordance with rules and procedures adopted by the board.

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 city;
- (b) Pay the certified bargaining agent; or
- (c) Pay for premiums for accident health and long-term care insurance for the retiree, retiree's spouse, and dependents. 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. § 185.05(6).

(Ord. No. 2, 2010, § 8, 2-18-10)

**Editor's note—** Ord. No. 2, 2010, § 8, adopted Feb. 18, 2010, repealed former § 50-124, and enacted a new § 50-124 as set out herein. Former § 50-124 pertained to similar subject matter. See the Code Comparative Table for complete derivation.

Sec. 50-125. - Previous participants.

The rights of all police officers previously employed by the city and eligible to receive benefits from those funds previously received by this fund shall be governed by, and calculated pursuant to this article and any applicable resolutions or amendments.

(Code 1987, § 33.38(P))

Sec. 50-126. - Lump sum payment of small retirement income.

Notwithstanding any provision of the fund to the contrary, if the monthly retirement income payable to any person entitled to benefits hereunder is less than \$30.00 or if the single sum value of the accrued retirement income is less than \$5,000.00 as of the date of retirement or termination of service, whichever is applicable, the board of trustees, in the exercise of its discretion, may specify that the actuarial equivalent of such retirement income be paid in lump sum.

(Code 1987, § 33.38(Q); Ord. No. 01-2001, § 6, 3-1-01)



Sec. 50-127. - Prior police officer service.

Unless otherwise prohibited by law, the years or fractional parts of years that a police officer previously served in the United States Military Service, or the years or fractional parts of years that a police officer previously served as a police officer with the city 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 police officer served as a police officer with any other municipal, county, state or federal law enforcement agency shall be added to the years of credited service provided that:

- (a) The police officer contributes to the fund the sum that would have been contributed, based on the police officer's salary and the employee contribution rate in effect at the time that the credited service is requested, had the police officer 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.
- (b) Payment by the police officer of the required amount may be made within six months of the request for credit and in one lump sum payment, or the police officer 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 police officer 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.
- (c) The credit purchased under this section shall count for all purposes, except vesting.
- (d) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal, county, or state police department, if such prior service forms or will form a basis of a retirement benefit or pension from another retirement system or plan. This subsection does not apply to military service.

(Ord. No. 2, 2010, § 9, 2-18-10)

**Editor's note—** Ord. No. 2, 2010, § 9, adopted Feb. 18, 2010, repealed former § 50-127, and enacted a new § 50-127 as set out herein. Former § 50-127 pertained to similar subject matter. See the Code Comparative Table for complete derivation.

Sec. 50-128. - Conflicts with statutes.

- (a) All members of the fund shall receive such retirement and disability benefits currently in force and effect that meet or exceed the requirements of F.S. ch. 185.
- (b) If any provisions relative to retirement benefits under the fund of the city should contravene any provisions of F.S. ch. 185 that are not mandatory, then the provisions of the city's retirement plan shall govern.

(Code 1987, § 33.43)

Sec. 50-129. - Review procedures.

- (a) The applicant for benefits under this article may, within 20 days after being informed of the denial of a request for pension benefits, appeal the denial by filing a reply to the proposed order with the pension fund's administrator. If no appeal is filed within this time period, then the proposed order shall be final.
- (b) The board of trustees shall hold a hearing within 45 days of the receipt of the appeal. Written notice of the

hearing shall be sent by certified mail to the applicant at the address listed on the notice of appeal ten days prior to the hearing.

(c) The procedures at the hearing shall be as follows:

- (1) All parties shall have an opportunity to respond, to present physical and testimonial evidence and argument on all issues involved, to conduct cross-examination, submit rebuttal evidence and to be represented by counsel. Medical reports and depositions may be accepted in lieu of live testimony, at the board's discretion.
- (2) All witnesses shall be sworn.
- (3) The applicant and the board of trustees shall have an opportunity to question all witnesses.
- (4) Formal rules of evidence and formal rules of civil procedure shall not apply. The proceedings shall comply with the essential requirements of due process and law.
- (5) The record in a case governed by this subsection shall consist only of:
  - a. A tape recording of the hearing, to be taped and maintained as part of the official files of the board of trustees by the pension's secretary.
  - b. Evidence received or considered.
  - c. All notices, pleadings, motions and intermediate rulings.
  - d. Any decisions, opinions, proposed or recommended orders or reports by the board of trustees.

(d) Within five days after the hearing, the board of trustees shall take one of the following actions:

- (1) Grant the pension benefits by overturning the proposed order by majority vote.
- (2) Deny the benefits and approve the proposed order as a final order after making any changes in the order that the board of trustees feels is necessary.

(e) Findings of fact by the board of trustees shall be based on competent, substantial evidence on the record.

(f) Within 20 calendar days after rendering its order, the board of trustees shall send by certified mail a copy of the order to the applicant.

(g) The applicant may seek review of the order of the board of trustees by filing a petition for writ of certiorari with the circuit court within 30 days.

(Ord. No. 3-1996, § 5, 4-18-96)

#### Sec. 50-130. - Rollover distributions.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Direct rollover* means a payment by the plan to the eligible retirement plan specified by the distributee.

*Distributee* means and includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and employee's or former employee's spouse or former spouse who is entitled to payment for alimony and child support under a domestic relations order determined to be qualified by this fund are distributees with regard to the interest of the spouse or former spouse.

*Eligible retirement plan* means an individual retirement account described in section 408(a) of the United States Internal Revenue Code, an individual retirement annuity described in section 408(b) of the United States Internal Revenue Code, an annuity plan described in section 403(a) of the United States Internal Revenue Code, or a qualified trust described in section

401(a) of the United States Internal Revenue 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.

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

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

(Ord. No. 3-1996, § 6, 4-18-96)

#### Sec. 50-131. - Internal Revenue Code limits.

- (a) In no event may a member's annual benefit exceed \$120,000.00 (adjusted for cost of living in accordance with Internal Revenue Code (IRC) section 415(d), but only for the year in which such adjustment is effective).
- (b) If a member has less than ten years of service with the city, the applicable limitation in subsection (a) of this section shall be reduced by multiplying such limitation by a fraction, not to exceed one. The numerator of such fraction shall be the number of years, or part thereof, of service with the city; the denominator shall be ten years.
- (c) For purposes of this section, "annual benefit" means a benefit payable annually in the form of a straight life annuity with no ancillary or incidental benefits and with no member or rollover contributions. To the extent that ancillary benefits are provided, the limits set forth in subsection (a) will be reduced actuarially, using an interest rate assumption equal to the greater of five percent or the rate being used for actuarial equivalence, to reflect such ancillary benefits.
- (d) If the distribution of retirement benefits begins before age 62, the dollar limitation as described in subsection (a) shall be reduced using an interest rate assumption equal to the greater of five percent or the interest rate used for actuarial equivalence; however, retirement benefits shall not be reduced below \$75,000.00 if payment of benefits begins at or after age 55 and not below the actuarial equivalent of \$75,000.00 if payment of benefits begins before age 55. For a member with 15 or more years of service with the city, the reductions described above shall not reduce such member's benefit below \$50,000.00 (adjusted for cost of living in accordance with IRC Chapter 415(d), but only for the year in which such adjustment is effective). If retirement benefits begin after age 65, the dollar limitation of subsection (a) shall be increased actuarially by using an interest assumption equal to the lesser of five percent or the rate used for actuarial equivalence.
- (e) Compensation in excess of limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for an "eligible employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. "Eligible employee" is an individual who was a member before the first plan year beginning after December 31, 1995.

(Ord. No. 6-1997, § 2, 3-6-97)

Sec. 50-132. - Required distributions.

- (a) In accordance with IRC 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 police officer and a beneficiary designed in accordance with subsection (5)(h).
- (b) Any and all benefit payments shall begin by the later of:
  - (1) April 1 of the calendar year following the calendar year of the member's retirement date; or
  - (2) For members who attain age seventy and one-half (70½) before January 1, 2020, April 1 of the calendar year following the calendar year in which the member attains age seventy and one-half (70½); and for members who attain age seventy and one-half (70½) on or after January 1, 2020, April 1 of the calendar year following the calendar year in which the member attains age seventy-two (72).
- (c) 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 subsection (7).

(Ord. No. 6-1997, § 3, 3-6-97; Ord. No. 2, 2021, § 3, 2-4-21)

Sec. 50-133. - False or misleading statements made to obtain retirement benefits prohibited.

- (a) 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.
- (b) A person who violates subparagraph (a) commits a misdemeanor of the first degree, punishable as provided in Section 775.082 or 775.083, Florida Statutes.
  - (1) In addition to any applicable criminal penalty, upon conviction for a violation described in subparagraph (a), a 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 subparagraph "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(Ord. No. No. 23-2000, § 2, 8-3-00)

Sec. 50-134. - Reserved.

Sec. 50-135. - Annual adjustments.

- (a) Subject to the conditions set forth in this section, the board of trustees shall annually authorize an annual adjustment, the amount of which shall be determined as of each September 30. The amount of the annual adjustment shall be equal to the actuarial present value of future pension payments to current pensioners multiplied by the positive difference, if any, between the rate of investment return and 8.5 percent. The actuary shall determine whether there may be an annual adjustment based on the following factors:
  - (1) The actuary for the pension fund shall determine the rate of investment return on the pension fund assets during the 12-month period ending each September 30. The rate determined shall be the rate reported in the most recent actuarial report submitted pursuant to Chapter 112, Part VII, Florida Statutes.
  - (2) The actuary for the pension fund shall, as of September 30, determine the actuarial present value of future pension payments to current pensioners. The actuarial present values shall be calculated using an interest

rate of 8.5 percent a year compounded annually, and a mortality table approved by the board of trustees and as used in the most recent actuarial report submitted pursuant to Chapter 112, Part VII, Florida Statutes. This will be the pool of funds available to fund the annual adjustment.

- (3) If the actuary determines there may be an annual adjustment, the board of trustees shall authorize such an adjustment unless the administrative expenses of distribution exceed the amount available for the distribution.
- (b) Annual adjustments shall be made to all pensioners who have been retired for at least one year on the distribution date. Annual adjustments will be paid to beneficiaries who are receiving monthly benefits, provided the retiree (or the retiree and the beneficiary combined) was in receipt of a pension benefit for at least one (1) year on the distribution date.
- (c) The annual adjustment will be made as a percentage of the benefit and the percentage will be the same for all recipients. The amount of the percentage increase will be determined by the fund's actuary in accordance with the above procedure. The percentage increase will be equal to the amount that can be fully funded by the pool of funds available but not to exceed four (4) percent in any year and determined by that procedure. If the pool of funds available is greater than four (4) percent in any given year, then the remainder will be placed in an annual adjustment reserve designated for future annual adjustment distributions.
- (d) The annual adjustments shall be made as of July 1 and each July 1 thereafter, provided a person was retired for at least one year on July 1.
- (e) Notwithstanding the provisions in paragraphs (a)—(d), for police officers who are employed and have not reached the normal retirement date prior to September 13, 2012, there shall be no cost of living adjustment applied to benefits earned based on creditable service on and after that date; and for any police officers hired on or after September 13, 2012, there shall be no cost of living adjustment.

(Ord. No. 01-2001, § 8, 3-1-01; Ord. No. 8, 2006, § 2, 6-15-06; Ord. No. 24, 2012, § 4, 9-13-12)

#### Sec. 50-136. - Monthly supplemental benefits.

Beginning October 1, 2004, all retirees in payment status are entitled to a monthly supplemental pension benefit equal to twelve dollars and fifty cents (\$12.50) per year of service. This benefit is payable monthly for the life of the retiree. This benefit is payable to a surviving beneficiary of a retiree on a monthly basis for the period of time that the surviving beneficiary is in receipt of a pension in accordance with the form of benefit chosen at the time that benefits begin.

(Ord. No. 9-2004, § 5, 4-15-04; Ord. No. 8, 2006, § 3, 6-15-06)

#### Sec. 50-137. - Reemployment after retirement.

- (a) Any retiree who is retired under this fund, except for disability retirement, 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 fund. Reemployment of a retiree by the city on or after January 1, 2016, shall be subject to the limitations set forth in this section.
- (b) Reemployment in a position other than as a police officer. Notwithstanding any other provision of this plan, a retiree who is retired from the fund on a normal retirement at normal retirement age and who is subsequently reemployed by the city in a position other than as a police officer shall, upon being reemployed, continue receipt

of benefits from this fund. The benefit paid from this fund shall not be changed in any way by such reemployment.

- (c) Reemployment as a police officer. In the event a retiree who is retired from the fund is subsequently reemployed by the city as a police officer or into a position that supervises police officers, the benefit payable to the retiree from this fund shall be suspended for the period of such reemployment, until the retiree terminates employment with the city. Notwithstanding the preceding sentence, a retiree who is retired from the fund on a normal retirement at normal retirement age may be reemployed by the city as part of the city's reserve police force under policy and procedure 3.2.9 and continue to receive benefits from the fund.
- (d) Notwithstanding any provision of subsection (a), (b), or (c) above, a retiree who has retired on an early retirement or a disability retirement may not be reemployed by the city and continue to receive a benefit from this fund.

(Ord. No. 5, 2016, § 5, 7-7-16)

Secs. 50-138—50-150. - Reserved.

#### DIVISION 4. - DEFERRED RETIREMENT OPTION PLAN

Sec. 50-151. - Eligibility to participate.

- (a) Any member who is eligible to receive a normal retirement pension may enter into the (DROP) for no more than five (5) years. Members shall elect to participate by applying to the board of trustees on a form provided for that purpose.
- (b) Election to participate shall be forfeited if not exercised within the first twenty-five (25) years of credited service. Notwithstanding the preceding sentence, effective July 1, 2016, a member who becomes eligible to participate in the DROP may delay the election to participate in the DROP until such time as the member has accrued the maximum benefit percentage of seventy-five (75) percent. For members who delay the election to participate in the DROP in accordance with the preceding sentence, the election to participate in the DROP shall be forfeited if not exercised within thirty (30) days following the date on which the member has accrued the maximum benefit percentage of seventy-five (75) percent.
- (c) A member shall not participate in the DROP beyond the time of attaining thirty (30) years of service. Notwithstanding the preceding sentence, effective July 1, 2016, a member who delays the election to participate in the DROP until such time as the member has accrued the maximum benefit percentage of seventy-five (75) percent may participate in the DROP for a maximum of five (5) years from the date of entry into the DROP.
- (d) Upon a member's election to participate in the DROP, he shall cease to be a member, and is precluded from accruing any additional benefit under the pension fund. For all fund purposes, the member becomes a retirant. The amount of credited service and final average monthly earnings freeze as of the date of entry into the DROP.

(Ord. No. 25-1995, § 7(33.46(A)), 9-28-95; Ord. No. 01-2001, § 8, 3-1-01; Ord. No. 9, 2014, § 3, 7-10-14)

Sec. 50-152. - Amounts payable upon election to participate in DROP.

- (a) Monthly retirement benefits that would have been payable had the member terminated employment with the department and elected to receive monthly pension payments will be paid into the deferred retirement option plan (DROP) and credited to the retirant. Payments into the DROP will be made monthly over the period the

retirant participates in the DROP, up to a maximum of 60 months.

(b) An employee's account in the DROP program shall earn interest in one of two ways. The selection of the earnings program shall be irrevocable and shall be made prior to the first deposit in the DROP account. The options are as follows:

- (1) A guaranteed rate of six and one-half (6 ½) percent; or
  - (2) Gains or losses at the same rate of return earned by pension fund assets.
    - a. The rate of return applied will be determined by the investment consultant using the Modified Dietz formula and will be credited or debited to the member's DROP balance on a quarterly basis.
1. The quarterly rate of return is calculated in a two-step process. Step 1 is to calculate each month's rate of return using the Modified Dietz formula. Step 2 is to link the monthly returns together.

Step 1 (Calculate the monthly returns using the Modified Dietz Formula)

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

Where:

*EMV* is the ending market value

*BMV* is the beginning market value

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

$$\sum_{i=1}^n W_i \times F_i =$$

The sum of each flow  $F_i$  multiplied by its weight  $W_i$ . The weight  $W_i$  is the proportion of the time period between the point in time when the flow  $F_i$  occurs and the end of the period.  $W_i$  can be calculated as

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

Where  $CD$  is the number of calendar days during the return period being calculated, which equals end date minus start date plus 1.  $D_i$  is the number of days from the start of the return period until the day on which the flow  $F_i$  occurred. This assumes that the flow happens at the end of the day.

Step Two (Link the Monthly Returns)

Link the returns geometrically in the following fashion:

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

Where:

$R_1$  = Return of Month 1

$R_2$  = Return of Month 2

$R_3$  = Return of Month 3

- b. The rate is net of the investment manager fees, the custodian fees, and the investment consulting fees. These amounts are reported monthly by the administrator and are reported annually by the auditor.
- c. Statements are effective December 31<sup>st</sup>, March 31<sup>st</sup>, June 30<sup>th</sup>, and September 30<sup>th</sup>.

However, if a police officer does not terminate employment at the end of participation in the DROP, interest credits shall cease on the DROP balance. An employee's DROP account shall be assessed an administrative fee that is based upon the ratio that the Employee's DROP account bears to the Fund as a whole.

- (c) No payments will be made from the DROP until the member terminates employment with the city.
- (d) Upon termination of employment, participants in the DROP will receive the balance of the DROP account in accordance with the following rules:
  - (1) Members may elect to begin to receive payment upon termination of employment or defer payment of the DROP until the latest day as provided under subsection (d)(3) of this section.
  - (2) Payments shall be made in either:
    - a. *Lump sum*. The entire account balance will be paid to the retirant upon approval of the board of trustees.
    - b. *Installments*. The account balance will be paid out to the retirant in three (3) equal payments paid over three years, the first payment to be made upon approval of the board of trustees.
    - c. *Annuity*. The account balance will be paid out in monthly installments until the entire balance is exhausted. At the direction of the participant, the account balance can be used to purchase an annuity to be paid monthly, the first payment to be made upon approval by the board of trustees. The annuity must be purchased from an insurer licensed to sell such annuities in the state.
  - (3) Any form of payment selected by a police officer must comply with the minimum distribution requirements of the IRC 401(A)(9), and is subject to the requirements of section 50-132, e.g. payments must commence by age seventy and one-half (70½) for members who attain age seventy and one-half (70½) before January 1, 2020; and age seventy-two (72) for members who attain age seventy and one-half (70½) on or after January 1, 2020.
  - (4) The beneficiary of the DROP participant who dies before payments from the DROP begin shall have the same right as the participant in accordance with subsection 17 of the IRC 401(A)(9).

(Ord. No. 25-1995, § 7(33.46(B)), 9-28-95; Ord. No. 35-2002, § 3, 10-3-02; Ord. No. 2, 2010, § 10, 2-18-10; Ord. No. 5, 2016, § 6, 7-7-16; Ord. No. 2, 2021, § 4, 2-4-21)

#### Sec. 50-153. - Police share plan.

A defined contribution plan component (share plan) is hereby established as part of the police officers' pension fund pursuant to F.S. § 185.35(6). The share plan shall be funded solely and entirely by Chapter 185 premium tax revenues allocated to the share plan, as provided herein. The share plan benefit is in addition to the benefits provided by the pension fund.

- (a) *Eligible members and share accounts*. Members with at least one (1) year of credited service who are contributing to and participating in the pension fund on or after July 27, 2017, and police officers who retire



on or after that date shall be eligible to participate in the share plan. Members who retired before July 27, 2017, members who are participating in the DROP on that date, former members who left city employment before July 27, 2017, and the beneficiary of any member shall not be eligible to participate in the share plan. The board shall create an individual member share account for each eligible member, and maintain appropriate books and records showing the respective interest of each eligible member. The maintenance of separate share accounts is for accounting purposes only, and a segregation of the assets of the trust fund to each account shall not be required.

(b) *Allocation of Chapter 185 premium tax revenues to the share plan.*

- (1) *Initial allocation.* One-half of the accumulated excess Chapter 185 premium tax revenues (\$154,256.00) on October 1, 2016, shall be allocated to the share plan as soon as administratively practical after the adoption of this ordinance.
- (2) *Annual allocation.* Each year, as soon as administratively practical after October 1, an annual allocation shall be made to the share plan in an amount equal to one-half of the Chapter 185 premium tax revenues received during the preceding plan year in excess of \$475,215.00 (the amount received in August 2013). For the plan year ending September 30, 2016, the amount to be allocated to the share plan is \$84,022.00 (one-half of \$168,044.00), and this allocation shall be made as soon as administratively practical after the adoption of this ordinance.

(c) *Share account funding.* The total amount of Chapter 185 premium tax revenues allocated to the share plan each year shall be divided equally among all eligible members as of September 30 of the year in which the allocation is made, with each eligible member receiving an equal share of the total; except that for the first allocation following the establishment of the share plan, the total amount of Chapter 185 premium tax revenues allocated to the share plan shall be divided equally among all eligible members as of July 27, 2017. Share plan monies credited to actively employed police officers shall be placed in the officer's share account. Share plan monies credited to retired members shall be paid directly to the member in a one-time payment each year that Chapter 185 premium tax revenues are allocated to the share plan.

(d) *Interest on share accounts.* As of September 30 each year, the share account balance of each actively employed member shall be credited with interest at the rate of six and one-half (6.5) percent per annum. Share plan payments to retired members shall not be credited with interest.

(e) *Allocation of costs, fees, and expenses.* As of September 30 each year, each individual share account shall be adjusted to allocate the costs, fees, and expenses of administration of the share plan. Costs, fees, and expenses of administration shall be allocated to each individual member share account on a proportionate basis taking the costs, fees, and expenses of administration of the fund as a whole multiplied by a fraction, the numerator of which is the total assets in each individual member share account and the denominator of which is the total assets of the fund as a whole. Payments to retired members shall not be adjusted to allocate the costs, fees and expenses of administration of the share plan.

(f) *Annual statements.* The board shall provide each eligible member with an annual statement setting forth their share account balance as of September 30 each year, and each retiree who receives a share plan payment shall receive a statement reflecting the payment.

(g) *No right to allocation.* The fact of allocation or credit of an allocation to a member's share account by the board shall not vest in any member, any right, title, or interest in the assets of the pension fund or in the Chapter 185 tax revenues except at the time or times, to the extent, and subject to the terms and conditions

provided in this section.

- (h) *Forfeitures; distribution of share account balance in the event of disability or death.* An eligible member who terminates city employment with less than five (5) years of credited service, other than for disability or death, shall forfeit his individual member share account. An eligible member who terminates city employment with more than five (5) but less than ten (10) years of credited service, other than for disability or death, shall forfeit the non-vested portion of his individual member share account, with the vested percentage determined in accordance with section 50-120. In the event an eligible member terminates city employment due to disability or death, the member or the member's designated beneficiary shall receive the member's share account balance as of the date of disability or death. A member's share account is also subject to forfeiture as provided in F.S. § 112.3173. Forfeited amounts shall be redistributed to the other individual member accounts, except as otherwise required by law.
- (i) *Payment of benefits.* If a member terminates employment and is eligible to receive retirement benefits under the pension fund, the member's share account balance shall be paid to the member, or in the event of the member's death to the member's designated beneficiary, within ninety (90) days following termination of employment.
- (j) *Benefits not guaranteed.* All benefits payable under this section shall be paid only from the Chapter 185 premium tax revenues allocated to individual member share accounts, plus interest, or paid directly to retirees as provided herein. Neither the city nor the board shall have any duty or liability to furnish any additional funds, securities, or other assets to fund share account benefits.

(Ord. No. 4, 2018, § 3, 3-1-18)