

ARTICLE IV. - POLICE OFFICERS RETIREMENT

Sec. 34-70. - Creation of pension trust fund.

There is hereby created and established a trust fund for benefit of the police officers of the City of West Melbourne to be known as the City of West Melbourne Police Officers Retirement Plan.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010)

Sec. 34-71. - Definitions.

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

Accumulated contributions. A member's own contributions with interest at a rate to be determined from time to time by the board, but not greater than five percent per year.

Actuarial equivalent. A benefit or amount of equal value, based upon the RP 2000 Mortality Table with a blending of 80 percent male rates and 20 percent female rates, and an interest rate of seven percent per year.

Average final compensation. One-twelfth of the average salary of the five best years of the last ten years of credited service prior to retirement, termination or death, or the career average as a full-time police officer, whichever is greater.

In computing average final compensation for a member who has returned to the active service of the city following a leave of absence created by the city during which he did not receive regular compensation from the city, or following a period of disability retirement or termination of service with a vested benefit, the period during which he was on a leave of absence, or during which he was on disability retirement, or during which his service was terminated, shall be ignored, or excluded, in determining the ten years preceding retirement.

Beneficiary. The person or persons entitled to receive benefits hereunder at the death of a member who has or have been designated in writing by the member and filed with the board. If no such designation is in effect or if no person so designated is living at the time of death of the member, the beneficiary shall be the estate of the member.

Board. The board of trustees which shall administer and manage the system herein provided and serve as trustees of the fund.

City. The City of West Melbourne, Florida.

Code. The Internal Revenue Code of 1986, as amended from time to time.

Credited service. The total number of years and fractional parts of years of service as police officer, omitting intervening years or fractional parts of years when such police officer was not employed by the city and after leaving the employ of the city pending the possibility of being re-employed as a police officer without losing credit for the time that he was a member of the system. If the member who left the employ of the city should not be re-employed as a police officer within five years, then the accumulated contributions will be returned upon his written request.

The years or fractional parts of years that a member serves in the military service of the Armed Forces of the United States or the United States Merchant Marine, voluntarily or involuntarily, for the purpose of going on active duty, shall be added to his years of credited service for all purposes, including vesting, pursuant to conditions that are required or permitted under state and federal law, as amended from time to time, provided that the police officer must return to his employment as a police officer within one year from the date of his military discharge or release from active service under honorable conditions, except that members who die or become disabled while serving on active duty military service 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 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 nonduty death while employed or became disabled from a nonduty disability. No contribution shall be required to purchase intervening military service. In the case of nonintervening service, the member must make a payment to the system in the amount that he or she would have contributed had he or she not entered the military. This section is intended to meet or exceed the minimum requirements of the Uniformed Services Employment and Re-employment Rights Act (USERRA), (P.L. 1032-353). To the extent that this section does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

Effective date. Means October 1, 1979, with a complete restatement of the plan effective upon adoption of this article.

Fund. The trust fund established herein as part of the system.

Member. An actively employed police officer who fulfills the prescribed membership requirements except that the police chief may opt out of participation. Any benefit improvements which might be made in the future shall apply prospectively and shall not apply to members who terminate employment or who retire prior to the effective date of any ordinance adopting such benefit improvements, unless such ordinance specifically provides to the contrary.

Police officer. An actively employed full-time person employed by the city, including his initial probationary employment period, who is certified as a police officer as a condition of employment in accordance with the provisions of F.S. § 943.1395, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of the State of Florida. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in F.S. §§ 943.10(6) and 943.10(8) respectively.

Salary. The fixed amount of pay for services rendered to the city including amounts paid as overtime payments, up to 300 hours per officer per calendar year, incentive pay, and amounts paid as differential wages while a member is deployed from employment to active duty, but not including bonus, commission, overtime, lump sum payments of used sick or vacation leave at time of retirement or other special compensation. Effective on and after July 1, 2011, pension benefits shall not be calculated using any amounts paid to a member to buy back unused sick leave and vacation leave which amounts were paid after July 1, 2011. However, any and all amounts paid to a member to buy back unused sick leave and vacation leave which were paid before July 1, 2011, may be included in the pension benefit calculation.

The member's compensation or salary contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code shall be deemed to be the compensation or salary the member should receive if he or she were not participating in such program and shall be treated as compensation for retirement purposes under this chapter. Compensation in excess of limitations set forth in section 401(a)(17) of the code shall be disregarded.

This plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes, but in no event shall overtime limit the less than 300 hours per officers, per calendar year.

Effective for payments made after December 31, 2008, as provided for by Internal Revenue Code § 414(u)(7), this definition of compensation shall include any differential wage payment from the employer to a member as a result of the member's absence from employment while serving in qualified military service.

Spouse. The lawful wife or husband of a member at the time of pre-retirement death or retirement.

System. The City of West Melbourne Police Officers Retirement Plan as contained herein and all amendments thereto.

- (b) *Masculine gender.* The masculine gender, where used herein, unless the context specifically requires otherwise, shall include both the feminine and masculine genders.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2009-36, § 1, 6-16-2009; Ord. No. 2010-03, § 1, 2-16-2010; Ord. No. 2012-07, § 1, 2-7-2012)

Sec. 34-72. - Membership.

(a) *Conditions of eligibility.*

- (1) Each police officer who is a member of the system as of October 1, 1997, shall continue as a member without interruption.
- (2) Each police officer in full-time employment with the city on October 1, 1997, who is not a member shall have the option of making an irrevocable election to become a member of the system. Each such person who elects not to become a member shall forever be barred from becoming a member.
- (3) Each police officer hired after October 1, 1997, shall become a member of this system as a condition of employment on his date of full-time employment.
- (4) The police chief has the option to opt out of participation in the plan.

(b) *Membership.* Each police officer shall complete a form prescribed by the board providing the following information:

- (1) Designation of a beneficiary for beneficiaries;
- (2) Authorization of payroll deduction;
- (3) A sworn statement as to prior medical history; and
- (4) Any other information deemed necessary or appropriate by the board.

(c) *Change in designation of beneficiary.*

- (1) A member may from time to time change his designated beneficiary by written notice to the board upon forms provided by the board. Upon such change, the rights of all previously designated beneficiaries to receive any benefits under the system shall cease.
- (2) If a retired 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 retired 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 retired member's current benefit and there is no impact to the plan. Retired members who are changing their beneficiary shall receive one benefit calculation paid by the plan. Any costs associated with any such second benefit calculation shall be borne by the retired member.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010)

Sec. 34-73. - Board of trustees.

- (a) The sole and exclusive administrative of and responsibility for the proper operation of the system and for making effective the provisions of this article are hereby vested in a board of trustees. The board of trustees is hereby designated as the plan administrator. The board of trustees shall consist of five trustees, two of whom, unless otherwise prohibited by law, shall be legal residents of the municipality who shall be appointed by the city council, two of whom shall be full-time police officer members of the system who shall be elected by a majority of the police officers who are members of the system. 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 city council. Upon receipt of the fifth person's name, the 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 four-year term unless he sooner vacates the office. Each resident trustee shall serve as trustee for a period of four years, unless he sooner vacates the office or is sooner replaced by the city council at whose pleasure he shall serve. Each police officer trustee shall serve as trustee for a period of four years, unless he sooner leaves the employment of the city as a police officer 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. The board shall establish and administer the nominating and election procedures for each election. The board of trustees shall meet at least quarterly each year. The board of trustees 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.
- (b) The trustees shall, by a majority vote, elect a chairman and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceeding, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by the law.
- (c) Each trustee shall be entitled to one vote on the board. A majority of the board 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 with the provisions of F.S. § 112.3143.

- (d) The duties and responsibilities of the board shall include, but not necessarily be limited to, the following:
- (1) To construe the provisions of the system and determine all questions arising thereunder.
 - (2) To determine all questions relating to eligibility and membership.
 - (3) To determine and certify the amount of all retirement allowances or other benefits hereunder.
 - (4) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system.
 - (5) To distribute to members, from time to time, information concerning the system.
 - (6) To receive and process all applications for benefits.
 - (7) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approval benefit payments and other expenditures arising through operation of the system and fund.
 - (8) To have performed actuarial studies and valuations at least as often as required by law, and make recommendations regarding any and all changes in the provisions of the system.
 - (9) To retain the services of an administrator to assist the board in the administration of the system.
 - (10) To perform such other duties as are necessary or appropriate prudently to administer the system.
 - (11) To invest and reinvest the assets of the pension system.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010)

Sec. 34-74. - Finances and fund management; establishment and operation of the fund.

- (a) As part of the system, there is hereby established the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the system.
- (b) The actual custody and supervision of the fund (and assets thereof) shall be vested in the board. Payment of benefits and disbursements from the fund shall be made by written authorization from the board.
- (c) All funds of the system may be deposited by the board with the finance director of the municipality, acting in a ministerial capacity only, who shall be liable in the same manner and to the extent as he is liable for the safekeeping of funds for the municipality. However, any funds so deposited with the finance director of the municipality shall be kept in a separate fund by the finance director or clearly identified as such funds of the system. In lieu thereof, the board shall deposit the funds of the system in a qualified public depository as defined in F.S. § 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of

F.S. ch. 280. In order to fulfill its investment responsibilities as set forth herein, the board may retain the services of a custodian bank, and investment advisor registered under the Investment Advisors Act of 1940, or otherwise exempt from such required registration, an insurance company licensed to do business in Florida, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.

- (d) All funds and securities of the system may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards to the following:
 - (1) Current amounts of accumulated contributions of members on both an individual and aggregate account basis;
 - (2) Receipts and disbursements;
 - (3) Benefit payments;
 - (4) Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city;
 - (5) All interest, dividends and gains (or losses) whatsoever; and
 - (6) Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.
- (e) An audit shall be performed annually by a certified public accountant for the most recent fiscal year of the city showing a detailed listing of assets and liabilities, and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete valuation of assets, as well as other items normally included in a certified audit.
- (f) The board shall have the following investment powers and authority:
 - (1) The board shall be vested with full legal title to said fund, subject, however, to the authority and power of the city council, by a vote of four members of the city council to amend or terminate this fund, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this system. No amendment, legislative act, or ordinance shall be adopted which shall have the effect of reducing the then-vested accrued benefits of the police officers, retirees, or their beneficiaries. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund.

(2)

All monies paid into or held in the fund shall be invested and reinvested by the board. The board shall, in acquiring, investing, reinvesting, exchanging, retaining, selling and maintaining property for the benefit of the system exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, the board is authorized to acquire and retain every kind of investment specifically including, but not by way of limitation; bonds, debentures and other corporate obligations, and stocks, preferred or common, which persons of prudence, discretion and intelligence acquire or retain for their own account and, within the limitations of the foregoing standard, the board may retain property acquired, without limitation as to time and without regard to its suitability for original purchase. Upon recommendation by the board's investment consultant, the board may make investments in group trusts meeting the requirements of Internal Revenue Service Revenue Ruling 81-100 and Revenue Ruling 2011-1 or successor rulings or guidance of similar import, and operated or maintained exclusively for the commingling and collective investment of monies, provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under Section 401(a) of the Code, individual retirement accounts that are exempt under Section 408(e) of the Code, eligible governmental plans that meet the requirements of Section 457(b) of the Code, and governmental plans under 401(a)(24) of the Code. For this purpose, a trust includes a custodial account that is treated as a trust under Section 401(f) or under Section 457(g)(3) of the Code. While any portion of the assets of the Fund are invested in such a group trust, such group trust is itself adopted as a part of the system or plan. Similarly, upon recommendation by the board's investment consultant, the board may make investments in other investment vehicles, and while any portion of the assets of the fund are invested in such other investment vehicles, the terms of such are adopted by the system or plan. The board may invest in foreign securities up to the limits allowed by F.S. § 185.06(1)(c). The intent of this provision is to remove any and all restrictions which are otherwise imposed by F.S. ch. 185, which may be removed.

- (3) No person or entity shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the fund, except that due to his or its own negligence, willful misconduct or lack of good faith.
- (4) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.
- (5) The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee

with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the fund which it may deem to be the best interest of the fund to exercise.

- (6) The board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of the court for the exercise of any power contained herein.
- (7) Where any action which the board is required to take or any duty or function which it is required to perform either under the terms herein or under the general law applicable to it as trustee under this article, can reasonably be taken or performed only after receipt by it from a member, the city, or any other entity, of specific information, certification, direction or instructions, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.
- (8) Any overpayments or underpayments from the fund to a member or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board in such a manner that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled to, shall be paid. Overpayments shall be charged against payments next succeeding the correction or collected in another manner if prudent. Underpayments shall be made up from the fund in a prudent manner.
- (9) The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits herein provided for. However, nothing herein is to be construed as relieving the board from its fiduciary liability to the fund.
- (10) In any application to or proceeding or action in the courts, only the board shall be a necessary party, and no member or other person having an interest in the fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.
- (11) Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to said fund shall always remain in the board.
- (12) Notwithstanding anything else in this subsection and as provided in F.S. § 215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company; as defined in that section. Beginning January 1, 2010, the board must proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have directly in that company. The divestiture of any such security must be completed by September 10, 2010. The board and its named officers or investment advisors may not be deemed to have

breached their fiduciary duty in any action taken to dispose of any such security, and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by F.S. § 215.473, as provided for 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. 2010-03, § 1, 2-16-2010; Ord. No. 2020-06, § 1, 9-9-2020)

Sec. 34-75. - Contributions.

(a) *Member contributions.*

(1) *Amount.* Beginning on October 1, 1997, each member of the system shall be required to make regular contributions to the fund in the amount of seven percent of his salary. Beginning October 1, 2004, each member of the system shall be required to make regular contributions to the fund in the amount of eight percent of his salary. Beginning the first full payroll period after adoption of this restatement, each member of the system shall be required to make regular contributions to the fund in the amount of 8.44 percent of his salary. Notwithstanding the preceding sentence, effective February 19, 2013, each member of the system hired prior to January 1, 2011 shall be required to make regular contributions to the fund in the amount of 8.54 percent of his or her salary. Member contributions withheld by the city on behalf of the member shall be deposited immediately with the board. The contributions made by each member to the fund shall be designated as employer contributions pursuant to section 414(h) of the code. Such designation is contingent upon the contributions being excluded from the members' gross income for federal income tax purposes. For all other purposes of the system, such contributions shall be considered to be member contributions.

(2) *Method.* Such contributions shall be made by payroll deduction.

(b) *State contributions.* Any monies received or receivable by reason of laws of the State of Florida, for the express purpose of funding and paying for retirement benefits for police officers of the city shall be deposited in the fund comprising part of this system immediately and under no circumstances more than five days after receipt by the city. By mutual agreement of the city and union representing city police officers, effective September 30, 2017 premium tax revenues received pursuant to F.S. ch. 185, shall be applied as follows:

(1)

Any premium tax revenues remaining in the excess state monies reserve after the one-time allocation is made to the share plan in accordance with subsection 34-98(9) shall be applied to reduce the unfunded liability of the plan.

(2) Any annual premium tax revenues received by the plan that are not used to fund an annual allocation to the share plan as provided in subsection 34-98(10) shall be applied to reduce the city's annual contribution to the plan.

(c) *City contributions.* So long as this system is in effect, the city shall make contributions to the fund in an amount equal to the total normal costs plus the additional amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in F.S. ch. 112, pt. VII.

(d) *Other.* Private donations, gifts and contributions shall be deposited to the fund, but such deposits must be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources shall be used to reduce member contributions.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010; Ord. No. 2013-15, § 1, 6-4-2013; Ord. No. 2017-10, § 1, 8-15-2017)

Sec. 34-76. - Benefit amounts and eligibility.

(a) *Normal retirement date.* A member's normal retirement date shall be the first day of the month coincident with or the next following the earlier of attainment of age 55 and the completion of ten years of credited service or the completion of 25 years of credited service regardless of age. A member may retire on his normal retirement date or on the first day of any month thereafter, and each member shall become 100 percent vested in his accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date.

(b) *Normal retirement benefit.* A member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on his retirement date and be continued thereafter during his lifetime, but at least 120 monthly payments. The monthly retirement benefit shall equal three percent of average final compensation multiplied by credited service.

(c) *Early retirement date.* A member may retire on his early retirement date which shall be the first day of any month coincident with or next following the later of the attainment of age 50 and the completion of ten years of credited service. Early retirement under the system is retirement from employment with the city on or after the early retirement date and prior to the normal retirement date.

(d) *Early retirement benefit.* A member retiring hereunder on his early retirement date may receive either a deferred or an immediate monthly retirement benefit payable in the same form as for normal retirement as follows:

(1)

A deferred monthly retirement benefit which shall commence on what would have been his normal retirement date had he continued employment as a police officer and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement on his normal retirement date except that credited service and average final compensation shall be determined as of his early retirement date; or

- (2) An immediate monthly retirement benefit which shall commence on his early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in subsection (d)(1) above, reduced by three percent for each year which his early retirement date precedes the date which would have been his normal retirement date had he continued employment as a police officer.
- (e) *Cost of living adjustment.* Effective October 1, 2004, the monthly benefit payable to a member or beneficiary of a member hired prior to January 1, 2011, based on credited service prior to February 19, 2013, shall be increased by a two percent cost of living adjustment provided the member has been in receipt of a pension for five years as of October 1. After February 1, 2013, the cost of living adjustment shall be calculated using only years of service earned before February 19, 2013; no cost of living adjustment is payable for service after that date. The cost of living adjustment shall be determined by multiplying two percent times the years of service earned before February 19, 2013, divided by the total years of service at retirement. However, notwithstanding the limitation on the years of service for the cost of living adjustment, the full monthly benefit payable to a member or beneficiary of a member hired prior to January 1, 2011 will in all cases be entitled to at least a one percent cost of living adjustment.
 - (1) This adjustment shall be made annually on October 1.
 - (2) The new monthly benefit as of October 1 of each year shall be the sum of the monthly benefit paid before October 1, plus two percent of that portion of the monthly benefit based on credited service prior to February 19, 2013, and no adjustment to that portion of the monthly benefit based on credited service on and after February 19, 2013; provided, in no event shall the adjustment as applied to all periods of credited service combined be less than one percent.
 - a. For example, if a police officer had completed 15 years of service as of February 19, 2013 and ultimately retired with 25 years of service, then their annual cost of living adjustment (COLA) would be 1.2 percent (2.0 percent times 15 years divided by 25 years). For another example, if a police officer had completed ten years of service as of February 19, 2013 and ultimately retired with 25 years of service, then their annual COLA would be 1.0 percent because the calculated COLA would be 0.8 percent (2.0 percent times ten years divided by 25 years), but the guaranteed minimum COLA of 1.0 percent would apply.
 - (3) Members hired on or after January 1, 2011, and the beneficiaries of such members, shall not

be eligible for the cost of living adjustment provided in this subsection (e).

(f) *Monthly supplemental benefit.*

- (1) Effective for any retirements after the adoption of this article, a retiree hired prior to January 1, 2011 who retires from city employment and begins receiving a pension shall be entitled to a monthly supplemental pension benefit equal to \$10.00 per year of service.
- (2) The monthly supplemental benefit is payable monthly for the life of the retiree only. This benefit is payable monthly to a surviving beneficiary of a retiree who retires after the adoption of this article 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.
- (3) The monthly supplemental benefit shall not be paid to any members who terminate employment with a vested benefit as provided for in section 34-79, nor shall the benefit be payable to any members who have entered the DROP or retired prior to the adoption of this article.
- (4) The monthly supplemental benefit is not subject to the cost of living adjustment provided for in subsection (e) of this section.
- (5) Members hired on or after January 1, 2011, and the beneficiaries of such members, shall not be eligible for the monthly supplemental benefit provided in this subsection (f).

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010; Ord. No. 2011-04, § 1, 2-1-2011; Ord. No. 2013-15, § 2, 6-4-2013)

Sec. 34-77. - Pre-retirement death.

- (a) *Benefit payable in the event of death prior to ten years of service.* If the service of a member is terminated by reason of his death prior to his tenth year of service in the plan, there shall be payable to the member's designated beneficiary the member's accumulated contributions.
- (b) *Benefit payable in event of death while in service on or after ten years of service.* If the service of a member is terminated by reason of his death on or after ten years of service, there shall be payable to the member's designated beneficiary the monthly retirement income, beginning on the first date of the month coincident with or next following the date of his death, equal to 50 percent of the retirement income to which the member would have been entitled had he retired immediately prior to the date of his death and chose a 50 percent joint and survivor annuity form of benefit. This benefit shall be reduced for early retirement in accordance with subsection 34-76(d) based on the member's age at time of death; however, the early retirement reduction shall in no event exceed 15 percent. This benefit shall be payable for the life of the beneficiary. In no event shall the benefit be less than the benefit provided for in F.S. § 185.21.

(c)

Death while performing USERRA-qualified active military service. In the case of a member who dies on or after January 1, 2007, while performing "qualified military service" under Title 38, United States Code, Chapter 43, Uniformed Services Employment and Reemployment Rights Act ("USERRA"), within the meaning of section 414(u) of the Internal Revenue Code, any "additional benefits" (as defined by section 401(a)(37) of the Internal Revenue Code) provided under the plan that are contingent upon a member's termination of employment due to death shall be determined as though the member had resumed employment immediately prior to his death. With respect to any such "additional benefits," for vesting purposes only, credit shall be given for the period of the member's absence from covered employment during "qualified military service".

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2007-21, § 1, 5-1-2007; Ord. No. 2010-03, § 1, 2-16-2010; Ord. No. 2015-22, § 1, 12-15-2015; Ord. No. 2017-10, § 2, 8-15-2017)

Sec. 34-78. - Disability.

- (a) *Disability benefits on-duty.* Each member who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a police officer, which disability was directly caused by the performance of his duty as a police officer, shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to the accrued pension benefit as of the date of disability. However, in no event shall the benefit be less than 42 percent of his or her average final compensation as of the police officer's disability retirement date.

Any condition or impairment of health of a member caused by tuberculosis, hypertension, heart disease or hardening of the arteries, resulting in total or partial disability or death, shall be presumed to be accidental and suffered in line of duty unless the contrary is 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 an electrocardiogram failed to reveal any evidence of such condition and, further that such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance.

- (b) *Disability benefits off-duty.* Each member with ten years or more credited service who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a police officer, which disability is not directly caused by the performance of his duties as a police officer, shall, upon establishing the same to the satisfaction of the board, be entitled to the accrued

pension benefit as of the date of disability. However, in no event shall the benefit be less than 25 percent of his or her average final compensation as of the police officer's disability retirement date.

(c) *Conditions disqualifying disability benefits.* Each member who is claiming disability benefits shall establish, to the satisfaction of the board that such disability was not occasioned primarily by:

- (1) Excessive or habitual use of any drugs, intoxicants or narcotics.
- (2) Injury or disease sustained while willfully and illegally participating in fights, riots and civil insurrections or while committing a crime.
- (3) Injury or disease sustained while serving in any branch of the 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 after his employment with the police department shall have terminated.
- (5) Injury or disease sustained while working for anyone other than the police department and arising out of such employment.

(d) *Physical examination requirement.*

- (1) 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.
- (2) Any person receiving disability benefits under provisions of this article may be periodically reexamined 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 police officer, the board shall recommend to the city that the retiree be returned to performance of duty as a police officer, 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 30 days from the issuance thereof, he shall forfeit the right to his pension. However, any such member who recovers from disability and whose retirement income is discontinued by the board and who, as of the date of termination of his service due to disability, had both attained the age of 50 years and completed at least ten years of credited service, shall, if he does not re-enter the service of the city, be entitled to the early retirement income or the benefit on termination of service as provided in sections 34-76 and 34-79 hereof, respectively, based on his average final compensation and credited service as of the date of termination of his

service due to disability and upon his attained age as of the date of his recovery from disability, and the amount of the retirement income upon early retirement will be reduced to take into account the member's younger age and earlier commencement of retirement income payments as provided in section 34-76 hereof.

- (3) The cost of the physical examination and/or reexamination of the retiree claiming and/or 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.
 - (4) If the retiree recovers from disability and reenters the service of the city as a police officer, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service of the city will not be considered as credited service for the purposes of the system.
 - (5) The board shall have the power and authority to make the final decisions regarding all disability claims.
- (e) *Disability payments.* The monthly benefit to which a member is entitled in the event of the member's disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be:
- (1) If the person recovers from the disability, the payment due next preceding the date of such recovery; or
 - (2) If the person dies without recovery from his disability, the last payment will be the payment due next preceding his death. In lieu of the benefit payment as provided in this subsection, a police officer may select the optional forms as provided in section 34-80.
- (f) *Worker's compensation.* When a member is receiving a disability pension and workers' compensation benefits pursuant to F.S. ch. 440 for the same disability, and the total monthly benefits received from both exceed 100 percent of the members' average final compensation, the disability pension benefit shall be reduced so that the total monthly amount received by the member does not exceed 100 percent of such average final compensation. The amount of any lump sum workers' compensation payment shall be converted to an equivalent monthly benefit payable for ten years certain by dividing the lump sum amount by 83.9692.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2007-21, § 2, 5-1-2007; Ord. No. 2009-36, § 2, 6-16-2009; Ord. No. 2010-03, § 1, 2-16-2010; Ord. No. 2019-11, § 1, 6-18-2019)

Sec. 34-79. - Vesting.

If a member terminates his employment with the city, either voluntarily or by discharge, and is not eligible for any other benefits under this system, he shall be entitled to the following:

- (1) Any member upon termination of employment shall be entitled to a refund of his accumulated contributions or the member may leave it deposited with the fund for up to five years. If the member dies with less than six years of credited service and has not withdrawn his accumulated contributions, his designated beneficiary shall be entitled to a refund of the member's accumulated contributions.
- (2) Effective for terminations on or after October 1, 2011, if the member has six or more years of credited service upon termination, the member shall be entitled to a monthly retirement benefit that is equal to his vested accrued monthly benefit payable commencing at the member's normal retirement date and no earlier than age 55 and when the member would have had ten years if they had remained in service or the member's early retirement date and no earlier than age 50 and when the member would have had ten years if they had remained in service (with an actuarial reduction), provided he does not elect to withdraw his accumulated contributions. The vested portion of the accrued benefit shall be based on the table below. Should the member die before the benefits begin, the vested accrued monthly benefit shall be paid at the normal retirement date to the designated beneficiary in 120 monthly payments and shall cease after the 120th monthly payment.

Years of credited service	Vested interest [percent]
Under 6	0
6	20
7	40
8	60
9	80
10 or more	100

Any vested member of the system whose position is terminated, for whatever reason, but who remains employed by the city in some other capacity, shall have all retirement benefits accrued up to the date of such termination under this system preserved, provided he does not elect to withdraw his accumulated contributions from this system. Such accrued retirement benefits shall be payable at his otherwise early (reduced as for early retirement) or normal retirement date hereunder, or later, in accordance with the provisions of this system; provided, further, however, that benefits shall not be payable under this system during any period of continued employment by the city.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010; Ord. No. 2012-07, § 2, 2-7-2012; Ord. No. 2013-15, § 3, 6-4-2013)

Sec. 34-80. - Optional forms of benefits.

- (a) In lieu of the amount and form of retirement income payable in the event of normal or disability retirement as specified herein, a member, upon written request to the board, may elect to receive the actuarial equivalent payable in accordance with one of the following options:
 - (1) A retirement income of a lesser monthly amount, payable to the member for his lifetime but for at least 120 months in any event.
 - (2) A retirement income of a modified monthly amount, payable to the member during his lifetime and following his death, 100 percent, 75 percent, 66 2/3 percent or 50 percent of such monthly amount payable to a joint pensioner for his lifetime.
 - (3) If a member retires prior to the time at which Social Security benefits are payable, he may elect to receive an increased retirement benefit until such time as Social Security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of retirement. The amounts payable shall be as recommended by the actuaries for the system, based upon the Social Security law in effect at the time of the member's retirement.
- (b) The member, upon electing any option of this section, will designate the joint pensioner or beneficiary to receive the benefit, if any, payable under the system in the event of a member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or more primary beneficiaries where applicable. If a retired 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.
- (c)

The consent of a member's joint pensioner or beneficiary to any such change shall not be required. The rights of all previously-designated beneficiaries to receive benefits under the system shall thereupon cease.

- (d) Upon change of a member's beneficiary or joint pensioner in accordance with this section, the board shall adjust the member's monthly benefit by application of actuarial calculations to insure that the benefit paid is the actuarial equivalent of the member's then current benefit. Any such member shall pay the actuarial recalculation expenses after receiving the first calculation paid by the fund and shall make repayment of any overage of previously-paid pension benefits as a result of said recalculations. Each request for a change will be made in writing on a form prepared by the board and on completion will be filed with the board. In the event that no designated beneficiary survives the member, such benefits as are payable in the event of the death of the member subsequent to his retirement shall be paid as provided in section 34-81.
- (e) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:
 - (1) If a member dies prior to his normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under section 34-77.
 - (2) If the designated beneficiary or joint pensioner dies before the member's retirement under the system, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the member upon his retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the member prior to his retirement.
 - (3) If both the retired member and the beneficiary designated by a member die period certain and life thereafter, the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 34-81.
 - (4) If a member continues beyond his normal retirement date pursuant to the provisions of subsection 34-76(a) and dies prior to his actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary designated by the member in the amount or amounts computed as if the member had retired under the option on the date on which his death occurred.
- (f) A member may not change his retirement option after the date of cashing or depositing his or her first check.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010)

Sec. 34-81. - Beneficiaries.

- (a) Each member shall, on a form provided for that purpose, signed and filed with the board, designate a beneficiary to receive the benefit, if any, which may be payable in the event of his death, and each designation may be revoked by such member by signing and filing with the board a new designation-of-beneficiary form.
- (b) If a deceased member fails to name a beneficiary in the manner prescribed in subsection (a), if the beneficiary named by a deceased member predeceases the member, the death benefit, if any, which may be payable under the system with respect to such deceased member shall be paid to the estate of the member.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010)

Sec. 34-82. - Claims procedures.

The board shall adopt procedures to be followed in processing claims for benefits. There shall be timely adequate written notice given to any member or beneficiary whose claim for benefits has been denied, setting forth the specific reasons for such denial. The board shall provide a full and fair review in those cases when a member or beneficiary has had his or her claim for benefits denied.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010)

Sec. 34-83. - Reports to division of retirement.

Each year the board shall file a report with the division of retirement containing the information required by F.S. ch. 185.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010)

Sec. 34-84. - Roster of retirees.

The secretary of the board shall keep a record of all persons enjoying a pension under the provisions of this article in which it shall be noted the time when the pension is allowed and when the same shall cease to be paid. Additionally, the secretary shall keep a record of all members employed by the city in such a manner as to show the name, address, date of employment, and date of termination of employment. All information which is exempt under chapter 119 shall continue to be exempt from disclosure allowed by law.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010)

Sec. 34-85. - Board of advisors.

The board shall engage such actuarial, accounting, legal and other services as shall be necessary or advisable to transact the business of the system. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the system shall be paid from the fund at such rates and in such amounts as the board shall agree.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010)

Sec. 34-86. - Reserved.

Editor's note— Ord. No. 2015-22, § 2, adopted Dec. 15, 2015, repealed § 34-86, entitled "Maximum pension" which derived from: Ord. No. 2006-27, § 1, adopted July 18, 2006; and Ord. No. 2010-03, § 1, adopted Feb. 16, 2010.

Sec. 34-87. - Commencement of benefit.

- (a) Unless the member otherwise elects, with such election being in writing and delivered to the board and specifying the form of retirement income and date on which the retirement income is to commence, the payment benefits under the system to the member shall commence not later than the 60th day after the close of the plan year in which the latest of the following events occur:
 - (1) The attainment of the member of age 65;
 - (2) The tenth anniversary of the date on which the member commenced participation in the system; or
 - (3) The termination of the member's service with the city.
- (b) If the payment of a member's retirement income cannot begin on the date required under subsection (a) of this section because the board either cannot ascertain the amount of the member's retirement income or cannot locate the member after making reasonable efforts to do so, the payment of the member's benefit shall begin no later than 60 days after the date on which the amount can be ascertained or the member is located, whichever is applicable. Any such payment shall be made retroactive to a date which is not earlier than the date on which the payment of the member's benefit was scheduled to begin but which is not later than the date specified under subsection (a) of this section.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010)

Sec. 34-88. - Additional credited service.

- (a) Prior police service. In addition to credited service actually earned as a police officer for the city, the full years that a member served as a full-time police officer for any other municipal, county, or state law enforcement department in the State of Florida, for which credited service is not

otherwise due shall be added to the member's years of credited service, provided that:

- (1) The member contributes to the plan a sum equal to:
 - a. The amount the member would have contributed, based on the member's salary and the member contribution rate in effect at the time that the request for purchase of prior credited service is filed with the board, had he been a member of the system for the full years for which the member is requesting credit, plus
 - b. The actuarial cost for such prior service credit as determined by the system's actuary such that the crediting of service under this section does not result in any additional cost to the plan. Such additional amount shall be determined by the board's actuary, using the actuarial assumptions and methodologies contained in the most recent board-adopted actuarial valuation, except that the actuary shall use the future investment earnings assumption contained in the most recent board-adopted actuarial valuation, or six percent, whichever is less, plus
 - c. The nonrefundable fee charged by the actuary for its services in calculating the actuarial cost that the member must contribute to the system to purchase the additional credited service as provided for under this section.
 - (2) Payment by the member of the required amount shall be made in either a lump sum payment or in five (5) equal annual installments, with interest accruing on the unpaid balance at the rate determined by the actuary in accordance with subsection (a)(1)b above. In no event will any prior police service be added to a member's years of credited service if the required payment for all service requested is not paid in full to the plan before the member's retirement date.
 - (3) In addition to service as a police officer in the State of Florida, credit may be purchased in the same manner as provided above for the full years that a member served as a full-time law enforcement officer for a federal, or other state, county or municipal agency, if such prior service is recognized by the Criminal Justice Standards and Training Commission with the department of law enforcement, as provided under F.S. ch. 943, or the member submits proof, and demonstrates to the satisfaction of the board that such service is equivalent to service required to meet the definition of police officer under subsection 34-71(a) of this plan.
- (b) Military service prior to employment. The full years that a member served on active duty in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily, and honorably or under honorable conditions discharged prior to initial employment with the city as a police officer, shall be added to the member's years of service provided that:
- (1) The member contributes to the plan a sum equal to:
 - a.

The amount the member would have contributed, based on the member's salary and the member contribution rate in effect at the time that the request for purchase of prior credited service is filed with the board, had he been a member of the system for the full years for which the member is requesting credit, plus

- b. The actuarial cost for such prior service credit as determined by the system's actuary, such that the crediting of service under this section does not result in any additional cost to the plan. Such additional amount shall be determined by the board's actuary, using the actuarial assumptions and methodologies contained in the most recent board-adopted actuarial valuation, except that the actuary shall use the future investment earnings assumption contained in the most recent board-adopted actuarial valuation, or six percent, whichever is less, plus
- c. The nonrefundable fee charged by the actuary for its services in calculating the actuarial cost that the member must contribute to the system to purchase the additional credited service as provided for under this section.

(2) Payment by the member of the required amount shall be made in either a lump sum payment or in five equal annual installments, with interest accruing on the unpaid balance at the rate determined by the actuary in accordance with subsection (b)(1)b above. In no event will any prior military service be added to a member's years of credited service if the required payment for all service requested is not paid in full to the plan before the member's retirement date.

- (c) Effective June 18, 2019, members may make a one-time election to purchase additional service credit pursuant to this section 34-88, during which the member must specify in writing, on a form provided by the board, the number of full years of prior service to be purchased and the method(s) of payment. A member may not make multiple requests to purchase additional credited service under this section. The one-time election to purchase additional credited service may be exercised by the member at any time prior to retirement.
- (d) Additional credited service may be purchased in full-year increments only. The total combined service credit purchased under this section 34-88 may not exceed five years, and such credit shall count for all plan purposes except vesting and eligibility for off-duty disability benefits.
- (e) Additional credited service purchased pursuant to this section 34-88 may be funded in whole or in part by direct transfer or rollover from an eligible retirement plan, as defined in subsection 34-97(d)(2)b.
- (f) In no event may additional credited service be purchased pursuant to this section 34-88 if such prior service forms or will form the basis of a retirement benefit or pension from another retirement system or plan.

(g)

Should a member terminate service and receive a refund of his member accumulated contributions, the amounts already paid for such prior credited service, if any, shall also be refunded accordingly consistent with subsection 34-79(1).

(Ord. No. 2019-11, § 2, 6-18-2019)

Sec. 34-89. - Miscellaneous provisions.

- (a) *Interest of members in system.* All assets of the fund shall be used exclusively for the benefit of members or their beneficiaries. At no time shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for the exclusive benefit of members and their beneficiaries.
- (b) No amendment or ordinance shall be adopted by the city council which shall have the effect of reducing the then accrued benefits of members or a member's beneficiaries.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010)

Sec. 34-90. - Repeal or termination of system.

- (a) This article establishing the system and fund, and subsequent ordinances pertaining to said system and fund, may be modified, terminated or amended, in whole or in part by amendment, legislative act of the city or ordinance with a vote of approval of 66 2/3 percent of the city council. If this or any subsequent ordinance shall be amended or repealed in its application to any person benefitting hereunder, the amount of benefits which at any time of any such alteration, amendment, or repeal shall have accrued to the member or beneficiary shall not be affected thereby.
- (b) Upon termination of the plan by the city for any reason, or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in chapter 121, or upon written notice to the board of trustees by the city that contributions under the plan are being permanently discontinued, the rights of all employees to benefits accrued to the date of such termination or discontinuance and the amounts credited to the employees' accounts are nonforfeitable. The fund shall be distributed in accordance with the following procedures:
 - (1) The board of trustees shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits, after taking into account the expenses of such distribution. The board shall inform the city if additional assets are required, in which event the city shall continue to financially support the plan until all nonforfeitable benefits have been funded.
 - (2) The board of trustees shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each police officer and firefighter

entitled to benefits under the plan, as specified in subsection (3) below.

- (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 return to the state of the state's contributions, 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. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010)

Sec. 34-91. - Exemption from execution, non-assignability.

- (a) Except as otherwise provided by law, the pensions, annuities or any other benefits accrued or accruing to any person under the provisions of this article and the accumulated contributions and the cash securities in the fund created under this article 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, however, the fund is subject to an income deduction order for alimony and child support.
- (b) Upon written request by the retiree, the board of trustees may authorize the plan administrator to withhold from the monthly retirement payment funds necessary to:
 - (1) Pay for benefits being received through the city;
 - (2) Pay the certified bargaining agent; or
 - (3) Pay for premiums for accident health and long-term care insurance for the retiree, the 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. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010)

Sec. 34-92. - Pension validity.

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

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010)

Sec. 34-93. - Forfeiture of pension.

- (a) Any member who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this system, except for the return of his accumulated contributions as of the date of termination. Specified offenses are as follows:
 - (1) The committing, aiding or abetting of an embezzlement of public funds;
 - (2) The committing, aiding or abetting of any theft by a public officer or employee from employer;
 - (3) Bribery in connection with the employment of a public officer or employee;
 - (4) Any felony specified in F.S. ch. 838;
 - (5) The committing of an impeachable offense;
 - (6) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he acts or in which he is employed, of the right to receive the faithful performance of his duty as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his public office or employment position.
 - (7) The committing on or after October 1, 2008, of any felony defined in section 800.04 against a victim younger than 16 years of age, or any felony defined in chapter 794 against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.
- (b) Conviction shall be defined as an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.
- (c)

Court shall be defined as any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the board shall hold a hearing on which notice shall be given to the member whose benefits are being considered for forfeiture. Said member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the member shall be afforded a full opportunity to present his case against forfeiture.

- (d) Any member who has received benefits from the system in excess of his accumulated contributions after member's rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his accumulated contributions. The board may institute all legal action necessary to recover such funds.
- (e) False or misleading statements made to obtain retirement benefits prohibited.
 - (1) It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement or withhold or conceal material information to obtain any benefit under this plan.
 - (2) A person who violates subsection (e)(1) commits a misdemeanor of the first degree, punishable as provided in F.S. §§ 775.083 or 775.082.
 - (3) In addition to any applicable penalty, upon conviction for a violation described in subsection (e)(1), 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 to under this plan. For purposes of this subsection (e)(1), "conviction" means a determination of guilt that is the result of a plea or a trial regardless of whether adjudication is withheld.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2009-36, § 3, 6-16-2009; Ord. No. 2010-03, § 1, 2-16-2010)

Sec. 34-94. - Indemnification.

- (a) To the extent not covered by insurance contracts in force from time to time, the city shall indemnify and hold harmless members of the board from all personal liability from damages and costs, including court costs and trial and appellate attorney's fees, arising out of claims, suits, litigation or threat of same, herein referred to as "claims", against these individuals because of acts or circumstances connected with or arising out of their official duty as members of the board. The city reserves the right, in its sole discretion, to settle the claim at any time, and to appeal or not appeal from any adverse judgment or ruling, and in either event will indemnify and hold harmless any members of the board from the judgment, execution or levy thereon.
- (b)

This section shall not apply nor shall the city be responsible in any manner to defend or pay for claims arising out of acts or omissions of members of the board which constitute felonies or gross malfeasance or gross misfeasance in office.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010)

Sec. 34-95. - Reserved.

Editor's note— Ord. No. 2015-22, § 2, adopted Dec. 15, 2015, repealed § 34-95, entitled "Direct transfers of eligible rollover distributions" which derived from: Ord. No. 2006-27, § 1, adopted July 18, 2006; Ord. No. 2009-36, § 4, adopted June 16, 2009; and Ord. No. 2010-03, § 1, adopted Feb. 16, 2010.

Sec. 34-96. - Deferred retirement option plan.

(a) *Definitions.* As used in this article, the following definitions apply:

(1) *DROP.* The City of West Melbourne Police Officers' Deferred Retirement Option Plan.

(2) *DROP account.* The account established for each DROP participant under subsection (e).

(b) *Participation.*

(1) *Eligibility to participate.* In lieu of terminating his employment as a police officer, 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.

(2) *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 15 business days after it is received by the board.

(3) *Period of participation.*

a. A member who elects to participate in the DROP under subsection (b)(2) may participate in the DROP for a period beginning at the time his election to participate in the DROP first becomes effective ("participation date") and ending not later than the earlier of:

1. Sixty months from his participation date; or

2. Completion of 31 years of employment with the city as a certified police officer.

b. Notwithstanding subsection (3)a.1. above, any current actively employed member who is eligible for normal retirement as of the effective date of the ordinance adopting the DROP, may elect to participate in the DROP within 12 months of the effective date of the ordinance adopting the DROP and may participate in the DROP for a period not to exceed 60 months from his participation date.

c. A member may participate only once.

(c) *Termination of participation.*

(1) A member participating in the DROP shall cease participating in the DROP by:

- a. Continuing to be employed as a police officer at the end of his period of participation in the DROP as determined under subsection (b)(2); or
 - b. Terminating his employment as a police officer.
 - (2) Upon the member's termination of participation in the DROP pursuant to subsection (c)(1)a. above, all amounts provided for in subsection (d)(2), 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 (f) when he terminates his employment as a police officer.
 - (3) A member who terminates his participation in the DROP under this subsection (c) shall not be permitted to again become a participant in the DROP.
- (d) *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 in the system or any other benefit improvements which are made specifically applicable to retirees or DROP participants) 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.
 - (2) No amounts shall be paid to a member of 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 police officer, no amounts shall be paid to him from the system until he terminates his employment as a police officer. 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 police officer.
- (e) *Funding.*
- (1) *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 (d)(2), and earnings or interest on those amounts.
 - (2) *Transfers from retirement system.*
 - a. 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 police officer and elected to receive monthly benefit payments thereunder shall be transferred to his DROP account, except as otherwise provided for in

subsection (c)(2). A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (b)(2) and (c), but in no event shall it continue past the date he terminates his employment as a police officer.

- b. Except as otherwise provided in subsection (c)(2), the DROP account of an eligible member who enters the DROP prior to February 19, 2013 under this subsection shall be debited or credited with earnings after each fiscal year quarter with interest at an effective rate of six percent per annum compounded monthly on the prior month's ending balance. Except as otherwise provided in subsection (c)(2), the DROP account of an eligible member who enters the DROP on or after February 19, 2013 under this subsection shall be debited or credited with earnings after each fiscal year quarter with interest at an effective rate of 2.0 percent per annum compounded monthly on the prior month's ending balance.
- c. 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 and after the member dies, retires or terminates his employment as a police officer. If a member is employed by the city police department as a police officer after participating in the DROP for five years, then beginning with the member's 61st month 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 nontransferred amounts shall be forfeited and continue to be forfeited while the member is employed as a police officer by the police department beyond the 60th month or 31 years of service. A member employed as a police officer by the police department after five years of DROP participation will still not be eligible for pre-retirement death or disability benefits, nor will be accrue additional credited service.

(f) *Distribution of DROP accounts on termination of employment.*

- (1) *Eligibility for benefits.* A member shall receive the balance in his DROP account in accordance with the provisions of this subsection upon termination of employment as a police officer.
- (2) Except as provided in subsection (f)(1), no amounts shall be paid to a member from the DROP prior to his termination of employment as a police officer.

(g) *Form of distribution.*

- (1) Unless the member elects otherwise, distribution of his DROP account shall be made in a cash lump sum, subject to the direct rollover provisions set forth in subsection 34-96(l). A member may, however, elect in such time and manner as the board shall prescribe, that his DROP distributions be used to purchase a nonforfeitable fixed annuity payable in such form as the member may elect. Elections under this subsection 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 50 percent survivor annuity with the member's spouse as beneficiary, the annuity payable to the member and thereafter to his beneficiary shall be subject to the incidental death benefit in accordance with the West Melbourne Police Pension Plan.

- (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.

(h) *Date of payment distribution.*

- (1) Except as otherwise provided in subsection (f), 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 subsection (h)(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 police officer; 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 (k) and (l).

- (i) *Age 70½ required distribution.* In no event shall the provisions of subsection (f) 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 police officer or he attains age 70½. In the event a member is required to receive payment while in service under the provisions of this subsection, 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 this DROP account shall be made in accordance with the provisions of subsection (g).

- (j) *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.

- (k) *Distribution limitation.* Notwithstanding any other provision of subsection (f) all distributions from the DROP shall conform to the provisions of the West Melbourne Police Pension Plan. Further, such provisions shall override any DROP provision that is inconsistent with the West Melbourne Police Pension Plan.

(l)

Direct rollover of certain distributions. This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the DROP to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly by the DROP to an eligible retirement plan specified by the distributee in a direct rollover as otherwise provided under the West Melbourne Police Pension Plan, herein incorporated by reference.

The benefits will be paid out over the lifetime of the individual participant in accordance with the Internal Revenue Code 401(a)(9).

(m) *Administration of DROP.*

- (1) *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 portions 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.
- (n) *Individual accounts, records and reports.* The board shall maintain, or cause to be maintained, 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, or cause to be kept, in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The board shall prepare or cause to be prepared and distributed to members participating in the DROP and other individuals or filed with the appropriate governmental agencies, as the case may be distributed or filed for the DROP pursuant to the ordinance, the applicable portions of the act and any other applicable laws.
- (o) *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. The board shall also oversee the investment of the DROP's assets.

(p) *General provisions.*

- (1) *Amendment of the 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 this provision 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.
- (2) *Facility of payment.* If the board shall find that 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 may direct that any benefit due him, unless claim shall have been made for the benefit by a duly appointed legal representative, be paid to his spouse, a child, a parent, or other blood relative, or to a person with whom he resides. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.
- (3) *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.
- (4) *Prevention of escheat.*
 - a. The board, upon the death of a member and if no beneficiary designation is made, shall pay the benefits in the member's DROP account to the personal representative of the estate of the deceased member or as otherwise directed by a court order.
 - b. 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 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 therefore within three months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the DROP, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the DROP. Upon such cancellation, the DROP shall have no further liability therefore except that, in the event such person or his beneficiary later notified the board of his whereabouts and request 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.

(q) *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 the time and 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 administration 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.
- (r) *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.
- (s) *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 article are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.
- (t) *Forfeiture or 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.

(Ord. No. 2006-27, § 1, 7-18-2006; Ord. No. 2010-03, § 1, 2-16-2010; Ord. No. 2011-04, § 2, 2-1-2011; Ord. No. 2013-15, § 4, 6-4-2013; Ord. No. 2017-10, § 3, 8-15-2017)

Sec. 34-97. - Internal Revenue Code compliance.

- (a) *Maximum amount of retirement income.*
 - (1) The limitations of this subsection (a) shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein, and are intended to comply with the requirements of the Pension Protection Act of 2006 and shall be construed in accordance with

said act and guidance issued thereunder. The provisions of this subsection (a) shall supersede any provision of the plan to the extent such provision is inconsistent with this subsection.

The annual pension as defined in paragraph (2) below otherwise payable to a member at any time shall not exceed the dollar limitation for the member multiplied by a fraction whose value cannot exceed one, the numerator of which is the member's number of years (or part thereof, but not less than one year) of service with the city and the denominator of which is ten. For this purpose, no more than one year of service may be credited for any plan year. If the benefit the member would otherwise accrue in a limitation year would produce an annual pension in excess of the dollar limitation, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the dollar limitation.

(2) *Annual pension* means the sum of all annual benefits, payable in the form of a straight life annuity. Benefits payable in any other form shall be adjusted to the larger of:

a. For limitation years beginning on or after July 1, 2007:

1. The straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit; or
2. The actuarially equivalent straight life annuity commencing at the same annuity starting date, computed using a five percent interest rate and the mortality basis prescribed in section 415(b)(2)(E)(v) of the code.

b. For limitation years beginning before July 1, 2007:

1. The actuarially equivalent straight life annuity commencing at the same annuity starting date, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan for the particular form of payment; or
2. The actuarially equivalent straight life annuity commencing at the same annuity starting date, computed using a five percent interest rate and the mortality basis prescribed in section 415(b)(2)(E)(v) of the code.

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to § 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this subsection (a), and the amount payable under the form of benefit in any limitation year shall not exceed the limits of this subsection (a) applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(3) *Dollar limitation* means, effective for the first limitation year beginning after January 1, 2015, \$160,000.00, automatically adjusted under section 415(d) of the code, effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a member's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The dollar limitation shall be further adjusted based on the age of the member when the benefit begins as follows:

a. For annuity starting dates in limitation years beginning on or after July 1, 2007:

1. If the annuity starting date for the member's benefit is after age 65:

i. If the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the dollar limitation at the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation with actuarial equivalence computed using a five percent interest rate assumption and the mortality basis prescribed in section 415(b)(2)(E)(v) of the code for that annuity starting date (and expressing the member's age based on completed calendar months as of the annuity starting date).

ii. If the plan does have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the dollar limitation at the member's annuity starting date is the lesser of: (aa) the dollar limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of this subsection (a); and (bb) the limitation determined under subclause (3)a.1.i. of this subsection (a). For this purpose, the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date is the annual amount of such annuity payable to the member, computed disregarding the member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the plan at age 65 is the annual amount of such annuity that would be payable under the plan to a hypothetical member who is age 65 and has the same accrued benefit as the member.

2. Except with respect to a member who is a "qualified member" as defined in section 415(b)(2)(H) of the code, for benefits (except survivor and disability benefits as defined in section 415(b)(2)(I) of the code), if the annuity starting date for the member's benefit

is before age 62:

- i. If the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the dollar limitation at the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation with actuarial equivalence computed using a five percent interest rate assumption and the mortality basis prescribed in section 415(b)(2)(E)(v) of the code for that annuity starting date (and expressing the member's age based on completed calendar months as of the annuity starting date).
- ii. If the plan does have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the dollar limitation at the member's annuity starting date is the lesser of: (aa) the dollar limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of this subsection (a); and (bb) the limitation determined under subclause (3)a.2.i. of this subsection (a).

b. For annuity starting dates in limitation years beginning before July 1, 2007:

Age as of Annuity	Adjustment of Dollar Limitation:
Starting Date:	

Over 65	<p>The smaller of:</p> <p>(a) The actuarial equivalent of the limitation for age 65, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan; or</p> <p>(b) The actuarial equivalent of the limitation for age 65, computed using a five percent interest rate and the mortality basis prescribed in section 415(b)(2)(E)(v) of the code.</p> <p>Any increase in the dollar limitation determined in accordance with this paragraph shall not reflect a mortality decrement between age 65 and the age at which benefits commence if benefits are not forfeited upon the death of the member. If any benefits are forfeited upon death, the full mortality decrement is taken into account.</p>
62 to 65	No adjustment.
Less than 62	<p>The smaller of:</p> <p>(a) The actuarial equivalent of the limitation for age 62, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan; or</p> <p>(b) The actuarial equivalent of the limitation for age 62, computed using a five percent interest rate and the mortality basis prescribed in section 415(b)(2)(E)(v) of the code.</p> <p>This adjustment shall not apply to any "Qualified Member" as defined in section 415(b)(2)(H), nor to survivor and disability benefits as defined in section 415(b)(2)(I) of the code.</p>

- (4) With respect to subclause (3)a.1.i., subclause (3)a.2.i. and paragraph (3)b. above, no adjustment shall be made to the dollar limitation to reflect the probability of a member's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the member prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the member's death if the plan does not charge members for providing a qualified preretirement survivor annuity, as defined in section 417(c) of the code, upon the member's death.
- (5) The term "limitation year" is the 12-month period which is used for application of the limitations under section 415 of the code and shall be the calendar year.
- (6) The limitations set forth in this subsection (a) shall not apply if the annual pension does not exceed \$10,000.00 provided the member has never participated in a defined contribution plan maintained by the city.
- (7) Cost-of-living adjustments in the dollar limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under subsection 415(d) of the code.
- (8) In the case of a member who has fewer than ten years of participation in the plan, the dollar limitation set forth in paragraph (3) of this subsection (a) shall be multiplied by a fraction: (i) the numerator of which is the number of years (or part thereof) of participation in the plan; and (ii) the denominator of which is ten.
- (9) Any portion of a member's benefit that is attributable to mandatory member contributions (unless picked up by the city) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under section 415 of the code.
- (10) Should any member participate in more than one defined benefit plan maintained by the city, in any case in which the member's benefits under all such defined benefit plans (determined as of the same age) would exceed the dollar limitation applicable at that age, the accrual of the member's benefit under this plan shall be reduced so that the member's combined benefits will equal the dollar limitation.
- (11) For a member who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to §§ 1.415(b)1(b)(1)(iii)(B) and (C) of the income tax regulations.

- (12) The determination of the annual pension under paragraph (a)(1) of this subsection (a) shall take into account (in the manner prescribed by the regulations under section 415 of the code) Social Security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c) of the income tax regulations.
- (13) The above limitations are intended to comply with the provisions of section 415 of the code, as amended, so that the maximum benefits provided by plans of the city shall be exactly equal to the maximum amounts allowed under section 415 of the code and regulations thereunder. If there is any discrepancy between the provisions of this subsection (a) and the provisions of section 415 of the code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of section 415 of the code. The value of any benefits forfeited as a result of the application of this subsection (a) shall be used to decrease future employer contributions.
- (14) For the purpose of applying the limitations set forth in sections 401(a)(17) and 415 of the Internal Revenue Code, compensation shall include any elective deferral (as defined in section 402(g)(3) of the code), and any amount which is contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of sections 125 or 457 of the code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in this subsection (a), compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the member by reason of section 132(f)(4) of the code. For limitation years on or after July 1, 2007, compensation shall include payments that otherwise qualify as compensation and that are made by the later of: (a) two and one-half (2½ months after severance from employment with the employer; and (b) the end of the limitation year that includes the date of severance.
- (b) *Required beginning date.* Notwithstanding any other provision of the plan, payment of a participant's retirement benefits under the plan shall commence not later than the participant's required beginning date, which is defined as:
- (1) With regard to distributions required to be made to a participant who reaches age 70½ before January 1, 2020: April 1 of the calendar year that next follows the calendar year in which the participant attains or will attain the age of 70½ years; or April 1 of the calendar year that next follows the calendar year in which the participant retires, whichever is later.
- (2) With regard to distributions required to be made on or after January 1, 2020 to a participant who reaches the age of 70½ on or after said date: April 1 of the calendar year that next follows the calendar year in which the participant attains or will attain the age of 72 years, or April 1 of the calendar year that next follows the calendar year in which the participant retires, whichever is later.

(c) *Required minimum distributions.*

(1) *Required beginning date.* The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date as defined in subsection (b) of this section 34-97.

(2) *Death of participant before distributions begin.*

a. If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

1. If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.
2. If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.
3. If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

b. The participant's entire interest shall be distributed as follows:

1. *Participant survived by designated beneficiary.* If the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in subparagraph (2)a. above, over the life of the designated beneficiary or over a period certain not exceeding:
 - i. Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or
 - ii. If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

2.

No designated beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

- c. *Death of surviving spouse before distributions to surviving spouse begin.* In any case in which: (i) the participant dies before the date distribution of his or her interest begins, (ii) the participant's surviving spouse is the participant's sole designated beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, subparagraphs (2)a. and (2)b. above shall apply as though the surviving spouse were the participant.

(3) *Requirements for annuity distributions that commence during participant's lifetime.*

- a. *Joint life annuities where the beneficiary is not the participant's spouse.* If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6 of the Treasury Regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.
- b. *Period certain annuities.* Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury Regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury Regulations plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this subparagraph (3)b., or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in

section 1.401(a)(9)-9 of the Treasury Regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

(4) *Form of distribution.* Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subparagraphs (4)a., (4)b. and (4)c. below. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the code and the Treasury Regulations. Any part of the participant's interest which is in the form of an individual account described in section 414(k) of the code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the code and the Treasury Regulations that apply to individual accounts.

a. *General annuity requirements.* If the participant's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:

1. The annuity distributions will be paid in periodic payments made at intervals not longer than one year;
2. The distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in paragraphs 2 or 3 above, whichever is applicable, of this subsection (c);
3. Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
4. Payments will either be non-increasing or increase only as follows:
 - i. By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
 - ii. To the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p) of the code;
 - iii. To provide cash refunds of employee contributions upon the participant's death; or
 - iv. To pay increased benefits that result from a plan amendment.

b.

Amount required to be distributed by required beginning date. The amount that must be distributed on or before the participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under subparagraphs (2)a.1. or (2)a.2., whichever is applicable) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received (e.g., bi-monthly, monthly, semi-annually, or annually). All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.

c. *Additional accruals after first distribution calendar year.* Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(5) For purposes of this subsection c., distributions are considered to begin on the participant's required beginning date. If annuity payments irrevocably commence to the participant (or to the participant's surviving spouse) before the participant's required beginning date (or, if to the participant's surviving spouse, before the date distributions are required to begin in accordance with subparagraph (2)a. above), the date distributions are considered to begin is the date distributions actually commence.

(6) Definitions.

a. *Designated beneficiary.* The individual who is designated as the beneficiary under the plan and is the designated beneficiary under section 401(a)(9) of the code and section 1.401(a)(9)-4 of the Treasury Regulations.

b. *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to paragraph (2) of this subsection c.

c. *Life expectancy.* Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury Regulations.

(d) (1) 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 administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) Definitions. The following definitions apply to this section:

- a. *Eligible rollover distribution.* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
1. 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;
 2. Any distribution to the extent such distribution is required under section 401(a)(9) of the code;
 3. The portion of any distribution which is made upon hardship of the member; and
 4. The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in sections 408(a) or (b) of the code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.
- b. *Eligible retirement plan.* An eligible retirement plan is an individual retirement account described in section 408(a) of the code, an individual retirement annuity described in section 408(b) of the code, an annuity plan described in section 403(a) of the code, an annuity contract described in section 403(b) of the code, a qualified trust described in section 401(a) of the code, an eligible plan under section 457(b) of the code which is maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of section 408A(c)(3) of the code) that accepts the distributee's eligible rollover distribution.
- c. *Distributee.* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the code, are distributees with regard to the interest of the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated beneficiary as defined in section 401(a)(9)(E) of the code who

is not the surviving spouse and who elects a direct rollover to an individual retirement account described in section 408(a) of the code or an individual retirement annuity described in section 408(b) of the code shall be considered a distributee.

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

(e) Notwithstanding any other provision of this plan, the maximum amount of any mandatory distribution, as defined in section 401(a)(31) of the code, payable under the plan shall be \$1,000.00.

(f) *Compensation limitations under 401(a)(17).*

In addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the plan to the contrary, the annual compensation of each participant taken into account under the plan shall not exceed the EGTRRA annual compensation limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is \$200,000.00, as adjusted by the commissioner for increases in the cost of living in accordance with section 401(a)(17)(B) of the code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Any reference in the plan to the limitation under section 401 (a)(17) of the code shall mean the EGTRRA annual compensation limit set forth in this provision.

(g) At no time prior to the satisfaction of all liabilities under the plan with respect to members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

(Ord. No. 2015-22, § 3, 12-15-2015; Ord. No. 2020-06, § 2, 9-9-2020)

Sec. 34-98. - Special benefits.

Establishment of share plan. Pursuant to F.S. § 185.35, a defined contribution plan component ("share plan") is hereby established as a component of this plan, but will not be activated until October 1, 2017 as provided below. Notwithstanding the establishment of the share plan, nothing herein shall be construed to require funding of, or guarantee any benefit under this section. Effective October 1, 2015, a share plan shall be established within this plan as follows:

(1) For accounting purposes, an individual share account shall be established for each active member (including DROP participants) of the pension plan. The plan shall account for each member's share account balance as provided herein.

- (2) Each active plan member who has at least one full year of credited service on the last day of any fiscal year in which premium tax revenues are allocated towards the share plan (available funds) shall receive an equal share of the available funds, less administrative expenses, deposited into his/her share account.
- (3) On January 1 each year, if there are available funds, share accounts shall be credited with interest at an annual rate equal to the market rate of return on pension fund investments for the preceding plan year, with a maximum of three percent and a minimum of zero percent.
- (4) Available funds and share account balances shall be commingled with pension fund assets for investment purposes, and invested by the board of trustees with other pension fund assets.
- (5) If there are available funds, the plan administrator shall provide an annual statement to the board of trustees and each share plan member on or before April 1 each year, showing each member's individual share account balance and the interest credited to the member's account that year.
- (6) The expense of administering the share plan for the preceding plan year shall be determined by the board of trustees and charged against the available funds received for that year, before allocations are made to member share accounts.
- (7) A member's share account shall be distributed to the member within 60 days following retirement. A member's share account distribution may be paid directly to the custodian of an eligible retirement plan as defined in section 402(c)(8)(B) of the code. If a member dies before retirement, the member's share account balance on the date of death shall be distributed to the member's designated beneficiary or beneficiaries. In the case of an eligible rollover distribution to the surviving spouse of a deceased participant, an eligible retirement plan is an individual retirement account or an individual retirement annuity as described in section 402(c)(9) of the code.
- (8) If a share plan member separates from employment prior to attaining vested status or separates from employment after attaining vested status but elects to receive a refund of member contributions in lieu of any benefit from the plan, the member shall forfeit his/her share account balance, and the account balance shall be added to the available funds for that year, and reallocated to other share plan member accounts as provided herein.
- (9) *One-time allocation.* Effective September 30, 2017, the individual share account of each active member who has accrued at least one complete year of credited service under the plan and who is not participating in the DROP, shall be credited with a one-time allocation based on the number of completed years of credited service as a member of the plan, in an amount determined as follows:

Completed Years of Credited Service as of September 30, 2017	Amount Credited to Share Account
One	\$1,200.00
Two	\$1,600.00
Three	\$2,000.00
Four	\$2,400.00
Five	\$2,800.00
Six	\$3,200.00
Seven	\$3,600.00
Eight	\$4,000.00
Nine	\$4,400.00
Ten	\$4,800.00
Eleven or more	\$5,200.00

This one-time allocation shall be funded entirely with F.S. ch. 185 premium tax revenues in the excess state monies reserve, as reported in the most recent actuarial valuation. Any F.S. ch. 185 premium tax revenues remaining in the excess state monies reserve after the one-time allocation is made to all eligible members in accordance with this subsection shall be applied to reduce the unfunded liability of the plan. A member shall be vested in the one-time allocation upon completion of six years of credited service and retirement immediately following separation from city employment. A member whose individual share account is credited with the one-time allocation who does not complete six years of credited service, or separates from city employment prior to retirement, shall forfeit the one-time allocation and

all interest thereon. However, a member who dies while employed as a police officer with the city or who dies while performing qualified military service, regardless of years of service and regardless of whether or not such death was in the line of duty, shall be considered vested for the purposes of the share plan. For the purposes of the share plan, neither pre-retirement death pursuant to section 34-77 hereof, nor disability retirement as provided in section 34-78 hereof, nor participation in the DROP as provided in section 34-96 hereof, shall constitute separation from city employment prior to retirement. All funds forfeited under this subsection shall be reallocated in equal amounts to the accounts of remaining share plan members who have at least one complete year of credited service under the plan on September 30 of the plan year in which the forfeited funds are reallocated, or as otherwise required by the Internal Revenue Code.

- (10) *Annual allocation.* Effective September 30, 2017 and each September 30 thereafter, the sum of \$600.00 shall be allocated to the individual share account of each member hired on or after January 1, 2011 who has at least one complete year of credited service under the plan on the date of allocation; provided, the annual allocation shall be funded entirely by F.S. ch. 185 premium tax revenues, and shall be made only if the amount of premium tax revenues received by the plan during the year of the allocation is sufficient to fund the entire allocation. Any premium tax revenues received by the plan during the year of the allocation that are not used to fund the annual allocation provided in this subsection shall be applied to reduce the city's annual contribution to the plan. A member shall be vested in his individual share account balance upon completion of six years of credited service and retirement immediately following separation from city employment. A member whose individual share account is credited with an annual allocation who does not complete six years of credited service, or separates from city employment prior to retirement, shall forfeit the balance of his share account. However, a member who dies while employed as a police officer with the city or who dies while performing qualified military service, regardless of years of service and regardless of whether or not such death was in the line of duty, shall be considered vested for the purposes of the share plan. For the purposes of the share plan, neither pre-retirement death pursuant to section 34-77 hereof, nor disability retirement as provided in section 34-78 hereof, nor participation in the DROP as provided in section 34-96 hereof, shall constitute separation from city employment prior to retirement. All funds forfeited under this subsection shall be reallocated in equal amounts to the accounts of remaining share plan members who have at least one complete year of credited service under the plan on September 30 of the plan year in which the forfeited funds are reallocated, or as otherwise required by the Internal Revenue Code.

Secs. 34-99—34-120. - Reserved.