

## ARTICLE I. EMPLOYEES' RETIREMENT SYSTEM

### Sec. 35-01. Short title.

Sections 35-01 through 35-45 may be cited as "The City of Miami Springs Retirement Ordinance."

(Code 1962, § 7A-41; Ord. 244, passed 2-22-60)

### Sec. 35-02. Retirement system established.

There is created and established the City employees retirement system, to provide for the retirement of officers and employees of the City who become superannuated due to age or disability; to provide conditions of membership in the retirement system; to provide pensions and other benefits payable upon the retirement of members, and under certain conditions to the dependents of members who die before or after retirement; to provide for the financing of the retirement system by contributions made by the City and the members of the system; to provide for the return of contributions made by members who leave City employment before becoming eligible to retire; to provide a Board of Trustees to administer the system; to provide for the investments of moneys of the system; and to delegate certain authority and responsibilities to the Board of Trustees.

(Code 1962, § 7A-42; Ord. 244, passed 2-22-60)

### Sec. 35-03. Effective date.

The effective date of the City employees retirement system shall be January 1, 1960.

(Code 1962, § 7A-43; Ord. 244, passed 2-22-60)

### Sec. 35-04. Definitions.

For purposes of §§ 35-01--35-45, the following words and phrases shall have the following meanings ascribed to them respectively.

(A) *Accumulated contributions.* The sum of all amounts deducted from a member's compensations, and credited to his individual account in the members deposit fund, together with regular interest thereon.

(B) *Actuarial equivalence or actuarially equivalent.* Any benefit payable under the terms of this system in a form other than the normal form of benefit shall have the same actuarial present value on the date payment commences as the normal form of benefit. For purposes of establishing the actuarial present value of any form of payment, other than a lump sum distribution, all future payments shall be discounted for interest and mortality by using seven percent interest and the 1983 group annuity mortality table for males, with ages set ahead five years in the case of disability retirees. In the case of a lump sum distribution, the actuarial present value shall be determined on the basis of the same mortality rates as just described and the pension benefit guaranty corporation's interest rates for terminating single employer plans which rates are in effect 90 days prior

to the member's date of termination if distribution is made within six months of such date of termination, or 90 days prior to the distribution date if distribution is made later than six months after the member's date of termination.

(C) *Beneficiary.* Any person, except a retirant, who is in receipt of, or who has entitlement to, a pension or other benefit payable from funds of the retirement system.

(D) *Board of Trustees or board.* The Board of Trustees provided for in §§ 35-01--35-45.

(E) *City.* The City of Miami Springs, Florida.

(F) *Compensation.* The salary or wages paid to an employee for personal services rendered by him to the City. In no case shall *compensation* include allowances for food, clothing, shelter, or travel expense.

(G) *Council.* The City Council.

(H) *Credited service.* The personal service rendered to the City by an employee, to the extent credited him by the Board of Trustees.

(I) *Employee.* Any person in the employ of the City and shall include any person holding an official position in the government of the City.

(J) *Final average salary.* The average of the highest annual compensations paid a member during any five years of his credited service contained within his ten years of credited service immediately preceding his retirement. If a member has less than five years of credited service, his final average salary shall be the average of his annual rates of compensation paid him during his total years of credited service. The annual rate of compensation used to compute final average salary does not include:

- (1) Overtime;
- (2) Lump sum payments at retirement for unused sick leave;
- (3) Lump sum payments at retirements for unused vacation pay;
- (4) Any other lump sum payments at retirement.

(K) *General member.* Any member except sworn police officers and fire fighters.

(L) *Member.* Any employee who is included in the membership of the retirement system.

(M) *Pension.* An annual amount payable from funds of the retirement system throughout the future life of a person, or for a temporary period, as provided in §§ 35-01--35-45. All pensions shall be paid in equal monthly installments.

(N) *Pension reserve.* The present value of all payments to be made on account of any pension determined upon the basis of mortality and other tables of experience, and regular interest, as the Board of Trustees shall from time to time adopt.

(O) *Regular interest.* The rate or rates of interest per annum, compounded annually, as the Board of Trustees shall from time to time adopt.

(P) *Retirant.* Any member who retires with a pension payable from funds of the retirement system.

(Q) *Retirement.* A member's withdrawal from the employ of the City with a pension payable from funds of the retirement system.

(R) *Retirement system or system.* The City of Miami Springs employee's retirement system, created and established by §§ 35-01--35-45.

(Code 1962, § 7A-44; Ord. 244, passed 2-22-60; amend. Ord. 595-76, passed 12-31-76; amend. Ord. 621-78, passed 8-28-78; amend. Ord. 710-86, passed 2-10-86)

### **Sec. 35-05. Board of Trustees created; membership.**

(A) There is created a Board of Trustees in whom is vested the power and authority to administer, manage, and operate the retirement system, and to construe and make effective the provisions of §§ 35-01--35-45.

(B) The board shall consist of five trustees as follows:

- (1) One person to be selected by the council.
- (2) The City Manager.
- (3) Two members of the retirement system who shall be elected by the general members.
- (4) One member to be appointed by the other four trustees.

(Code 1962, § 7A-45; Ord. 244, passed 2-22-60; amend. Ord. 573, passed 3-24-75; amend. Ord. 575-76, passed 2-23-76; amend. Ord. 595-76, passed 12-31-76)

### **Sec. 35-06. Terms of office of board.**

The trustee provided for in § 35-05(B)(1) shall serve as trustee at the pleasure of the council. The City Manager shall serve by virtue of the position held by him. At the first election provided for in § 35-05(B)(3), the term of office of the general member trustees shall expire June 30, 1978. Thereafter the term of office of the trustees provided for in § 35-05(B)(3) shall be four years. Each trustee shall continue to serve until his successor has qualified for the office of trustee. The trustee provided for in § 35-05(B)(4) shall serve at the pleasure of a majority of the remaining trustees.

(Code 1962, § 7A-46; Ord. 244, passed 2-22-60; amend. Ord. 573, passed 3-24-75; amend. Ord. 575-76, passed 2-23-76; amend. Ord. 595-76, passed 12-31-76)

### **Sec. 35-07. Oath of office.**

Each trustee shall, within ten days from and after his appointment or election as trustee, as the case may be, take the oath of office prescribed in § 39 of the City of Miami Springs Charter, as amended.

(Code 1962, § 7A-47; Ord. 244, passed 2-22-60)

### **Sec. 35-08. Vacancy on Board of Trustees.**

In the event a trustee fails to attend two consecutive meetings of the Board of Trustees, unless in each case excused for cause by the remaining trustees attending the meetings, or in the event a trustee who is in the employ of the City leaves such employment, he shall be considered to have resigned from the board, and the board shall, by resolution, declare his office of trustee vacated as of the date of adoption of the resolution. If a vacancy occurs in the

office of trustee, the vacancy shall be filled for the unexpired term, in the same manner as the office was previously filled.

(Code 1962, § 7A-48; Ord. 244, passed 2-22-60)

### **Sec. 35-09. Meetings of Board of Trustees.**

The Board of Trustees shall hold meetings regularly, at least one in each quarter-year, and shall designate the time and place thereof. At any meeting of the board, three trustees shall constitute a quorum. Each trustee shall be entitled to one vote on each question before the board, and at least three concurring votes shall be required for a decision by the board at any of its meetings. The board shall adopt its own rules of procedure, and shall keep a record of its proceedings. All meetings of the board shall be public.

(Code 1962, § 7A-49; Ord. 244, passed 2-22-60)

### **Sec. 35-10. Board chairman.**

The Board of Trustees shall designate from its own number a chairman and a vice-chairman.

(Code 1962, § 7A-50; Ord. 244, passed 2-22-60)

### **Sec. 35-11. Retirement system officers.**

(A) *Head of the finance department.* The head of the finance department shall be the treasurer of the retirement system and the custodian of its funds. No payment shall be paid from the funds of the retirement system unless previously authorized by a specific or general resolution adopted by the Board of Trustees.

(B) *Secretary.* The Board of Trustees shall appoint a recording secretary to maintain all records and correspondence and to record the minutes of the board's scheduled meetings.

(C) *City Attorney.* The City Attorney shall serve as legal adviser to the Board of Trustees.

(D) *Actuary.* The Board of Trustees shall designate an actuary who shall be the technical adviser to the board, and who shall perform such other duties as are required of him under §§ 35-01--35-45.

(E) *Professional services.* The Board of Trustees shall have the authority to employ actuary, medical, and other professional services as are required in the operation of the retirement system. Compensation for these services shall be approved by the council.

(Code 1962, § 7A-51; Ord. 244, passed 2-22-60; amend. Ord. 461, passed 3-9-70; amend. Ord. 621-78, passed 8-28-78)

### **Sec. 35-12. Annual, other reports; data.**

The secretary shall keep, or cause to be kept, data as shall be necessary for an actuarial valuation of the assets and liabilities of the retirement system. The Board of Trustees shall annually submit a report to the council showing the fiscal transactions of the system for the preceding fiscal year. The board shall furnish the council additional information regarding the

operation of the retirement system as the council shall from time to time request.

(Code 1962, § 7A-52; Ord. 244, passed 2-22-60)

### **Sec. 35-13. Adoption of experience tables; regular interest.**

The Board of Trustees shall from time to time adopt mortality and other tables of experience, and regular interest, as are required in the proper operation of the retirement system.

(Code 1962, § 7A-53; Ord. 244, passed 2-22-60)

### **Sec. 35-14. Membership in retirement system.**

(A) *Eligibility.* All persons who are employees of the City on the day preceding the effective date of the retirement system, and all persons who become employees of the City on or after the effective date of the system shall become members of the system. However, the membership of the system shall not include any employee who is employed in a position that normally requires less than 1,000 hours of work per annum, nor shall it include any employee whose services are compensated wholly on a fee basis.

(B) *Determination of eligibility.* In any case of doubt as to the membership status of any employee, the Board of Trustees shall decide the question, and the decision of the board shall be final.

(Code 1962, § 7A-54; Ord. 244, passed 2-22-60)

### **Sec. 35-15. Election of benefit program.**

Each member of the retirement system shall have his benefits computed as provided, in § 35-21.

(Ord. 502, passed 1-10-72; Am. Ord. 749-89, passed 10-9-89)

### **Sec. 35-16. Termination, reinstatement of membership.**

Except as otherwise provided in §§ 35-01--35-45, should any member cease to be an employee of the City for any reason except his retirement or death, he shall thereupon cease to be a member, and his credited service at that time shall be forfeited by him. In the event he is reemployed by the City, he shall again become a member, and shall be covered under the same benefit program as he was covered under at the time of his termination of membership. Should reemployment occur within a period of five years from and after the date he last left City employment, his credited service last forfeited by him shall be restored to his credit upon his deposit to the members deposit fund the amount, if any, he may have withdrawn therefrom, together with regular interest from the date of withdrawal to the date of repayment. Upon his retirement or death, he shall thereupon cease to be a member.

(Code 1962, § 7A-55; Ord. 244, passed 2-22-60; amend. Ord. 502, passed 1-10-72)

### **Sec. 35-17. Service credit; determination; limitations.**

The Board of Trustees shall fix and determine by appropriate rules and regulations the amount of service to be credited any member. However, in no case shall less than ten days of service rendered by him in any calendar month be credited as a month of service; nor shall less than ten months of service rendered in any calendar year be credited as a year of service; nor shall more than one year of service be credited any member for all service rendered by him in any calendar year.

(Code 1962, § 7A-56; Ord. 244, passed 2-22-60)

### **Sec. 35-18. Military service credit.**

(A) In the event an employee of the City who, while employed by the City, entered or enters the armed forces of the United States during any period of compulsory military service, and reenters the employ of the City, the armed service rendered by him, not to exceed a total of five years, shall be credited him as City service; provided, that:

- (1) His reemployment by the City occurs within six months from and after termination of the armed service required of him; and
- (2) He pays into the members deposit fund the amount he may have withdrawn therefrom, together with regular interest from the date of withdrawal to the date of repayment.

(B) In any case of doubt as to the period to be so credited any member, the Board of Trustees shall have final power to determine that period. During the period of armed service, and until his return to City employment, his contributions to the retirement system shall be suspended.

(Code 1962, § 7A-57; Ord. 244, passed 2-22-60)

### **Sec. 35-19. Voluntary retirement.**

Any member may retire upon his written application filed with the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided, he has attained 55 years and has ten or more years of credited service in force if he is a general member. Upon his retirement, he shall be entitled to the pension provided for in §§ 35-01--35-45.

(Code 1962, § 7A-58; Ord. 244, passed 2-22-60; amend Ord. 293, passed 2-24-64; amend. Ord. 573, passed 3-24-75; amend. Ord. 595-76, passed 12-13-76; amend. Ord. 794-92, passed 6-8-92)

### **Sec. 35-20. Normal retirement.**

(A) The normal retirement date for each member shall be the first day of the month coincident with or next following the earlier of:

- (1) The date on which such member attains his 62nd birthday and completes five years of credited service, or
- (2) The date on which the total of his age, computed in full months, plus his credited service, computed in full months, equals 900 months (i.e. 75 years).

(B) Any member may continue in employment beyond his normal retirement date; retirement shall not be compulsory at any age. Upon retirement on or after his normal

retirement date, the member shall be entitled to the pension provided for in § 35-21.

(C) Deferred Retirement Option Plan ("DROP").

(1) *Eligibility to participate in the DROP.*

(a) Any member who is eligible to receive a normal retirement benefit may choose to participate in the DROP at anytime thereafter for a continuous period of up to five years. Members shall elect to participate by applying to the board on a form provided for that purpose.

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

(2) *Amounts payable upon election to participate in DROP.*

(a) Monthly retirement benefits that would have been payable had the member retired and elected to receive monthly pension payments will be paid into the DROP and credited to the retired member. Payments into the DROP will be made monthly over the period the retired member participates in the DROP, up to a maximum of 60 months.

(b) Payments to the DROP will earn interest at a rate to be set by the board. However, if a retired member does not terminate employment at the end of eligibility for participation in the DROP, interest credits shall cease on the DROP balance.

(c) No payments will be made from the DROP until the retired member terminates employment with the department.

(d) Upon termination of employment, participants in the DROP will receive the balance of the DROP accounts in accordance with the following:

1. They may elect to begin to receive payment upon termination of employment or defer payment of DROP account until the latest day as provided under sub sub-paragraph 3.

2. Payments shall be made as follows:

a. Lump sum--The entire account balance will be paid to the retired member upon approval of the board.

b. Any other form of payment selected by the participant, approved by the board and conforming to all applicable laws.

3. Any form of payment selected by a retired member must comply with the minimum distribution requirements of the IRC 401 (A) (9), and is subject to the requirements of subsection 29 thereof, e.g., payments must commence by age 70 1/2.

4. If the DROP participant dies, the designated DROP beneficiary of that DROP participant shall have the same right to the DROP account as did the participant.

(Code 1962, § 7A-59; Ord. 244, passed 2-22-60; amend. Ord. 573, passed 3-24-75; amend. Ord. 595-76, passed 12-13-76; amend. Ord. 710-86, passed 2-10-86; amend. Ord. 794-92,

passed 6-8-92; amend. Ord. 867-00, passed 10-16-00; Ord. No. 875-01, passed 10-8-01)

### **Sec. 35-21. Amount of straight life City pension.**

(A) Upon the retirement of a member as provided in §§ 35-01--35-45, the member shall be paid a straight life City pension equal to one percent of his final average salary, multiplied by the number of years, and fraction of a year, of credited service prior to October 1, 1989, plus 2.50 percent of his final average salary, multiplied by the number of years, and fraction of a year, of credited service on and after October 1, 1989; provided that members' paid pension shall be subject to § 35-22.

(B) Upon the retirement of a member who has contributed five percent of member compensation prior and after October 1, 1989, as provided in §§ 35-01--35-45, the member shall be paid a straight life City pension equal to one and three-fourths percent of his final average salary, multiplied by the number of years, and fraction of a year, of his credited service prior to October 1, 1989, plus 2.50 percent of his final average salary, multiplied by the number of years, and fraction of a year, of credited service on and after October 1, 1989; provided his paid pension shall be subject to § 35-22.

(C) Upon retirement, a member shall have the right to elect to have his pension paid under an option provided in § 35-25 in lieu of his straight life pension.

(Code 1962, § 7A-60; Ord. 244, passed 2-22-60; amend. Ord. 295, passed 3-23-64; amend. Ord. 502, passed 1-10-72; amend. Ord. 551, passed 9-24-73; amend. Ord. 749-89, passed 10-9-89; amend. Ord. 794-92, passed 6-8-92; amend. Ord. 827-95, passed 10-23-95; amend. Ord. 836-96, passed 10-28-96; amend. Ord. 841-97, passed 10-13-97; amend. Ord. 857-99, passed 10-25-99; amend. Ord. 867-00, passed 10-16-00; Ord. No. 874-01, passed 10-8-01)

### **Sec. 35-22. Voluntary retirement.**

In the event a member retires prior to his normal retirement date, as provided in § 35-20, his straight life City pension shall be reduced by 0.25 percent, for each month by which his actual retirement date precedes the date which would have been his normal retirement date had he remained in full-time employment with the City as a general member.

(Code 1962, § 7A-60.1; Ord. 295, passed 3-23-64; amend. Ord. 573, passed 3-24-78; amend. Ord. 595-76, passed 12-13-76; amend. Ord. 794-92, passed 6-8-92)

### **Sec. 35-23. Terminal payments.**

In the event a retirant dies before he has received in straight life pension payments an amount equal to the balance standing to his credit, at the time of his retirement, in the members deposit fund, the difference between the sum of his balance and the amount of straight life pension payments received by him shall be paid to the person or persons as he shall have nominated by written designation duly executed and filed with the Board of Trustees. If there is no designated person or persons surviving the retirant, the difference, if any, shall be paid to his estate. In no case shall any benefits be paid under this section on account of the death of a retirant if he had elected option A or B provided for in § 35-24.

(Code 1962, § 7A-63; Ord. 244, passed 2-22-60; amend. Ord. 573, passed 3-24-75; amend. 595-76, passed 12-13-76)



**Sec. 35-24. Deferred retirement.**

Each member who terminates employment with the City and who is not eligible for any of the retirement, death or disability benefits set forth herein shall receive from the fund within a reasonable time following his date of termination a refund of his accumulated contributions in accordance with § 35-32. Provided, however, that if at the time of his termination of employment the member has five or more years of credited service, he shall have the option of either receiving his accumulated contributions, as provided above, or his accrued pension payable commencing at the date which would have been his normal retirement date had he remained in full-time employment with the City as a general member. The member may direct that his accrued pension benefit, reduced as provided in § 35-22, commence at age 55, or any date thereafter provided his accumulated contributions are not withdrawn and provided he had completed at least ten years of credited service. A refund of accumulated contributions to a member or his beneficiary shall constitute a full and complete discharge of any and all rights to claims or benefits under the system by the member or his beneficiaries. During the period of his absence from City employment, and until his pension begins, the member's balance, if any, in the members deposit fund shall be accumulated at regular interest.

(Code 1962, § 7A-63.1; Ord. 244, passed 2-22-60; amend Ord. 573, passed 3-24-75; amend. Ord. 595-76, passed 12-13-76; amend. Ord. 794-92, passed 6-8-92)

**Sec. 35-25. Pension options.**

(A) Prior to the date of his retirement, but not thereafter, a member may elect to receive his pension as a straight life pension payable throughout his life, or he may elect to receive the actuarial equivalent, at that time, of his straight life pension in a reduced pension payable throughout his life, and nominate a beneficiary in accordance with the provisions of option A, B, or C set forth below:

(1) *Option A.* Joint and survivor pension. Under option A, upon the death of the retirant, his reduced pension shall be continued throughout the life of and paid to the person, having an insurable interest in his life as he shall have nominated by written designation duly executed and filed with the Board of Trustees prior to the date of his retirement.

(2) *Option B.* Modified joint and survivor pension. Under option B, upon the death of the retirant, one-half of his reduced pension shall be continued throughout the life of and paid to the person, having an insurable interest of his life, as he shall have nominated by written designation duly executed and filed with the Board of Trustees prior to the date of his retirement.

(3) *Option C.* Pension for ten years certain and life thereafter. Under option C the retirant shall receive a reduced pension payable throughout his life with the provision that if he dies before he has received 120 monthly pension payments, the payments shall be continued for the remainder of the period of 120 months and paid to the person or persons, in equal shares, as the retirant shall have nominated by written designation duly executed and filed with the Board of Trustees. If there be no designated person surviving the retirant, the remaining pension payments, if any, shall be continued and paid to the estate of the survivor of the retirant and his last surviving beneficiary.

(B) In the event a retirant who elected option A or B provided in division (A) and his beneficiary both die before they have received in pensions an aggregate amount equal to the retirant's accumulated contribution standing to his credit in the members deposit fund at the time of his retirement, the difference between his accumulated contributions and the aggregate amount of pension payments received by them shall be paid to the person or persons as the retirant shall have nominated by a written designation duly

executed and filed with the Board of Trustees. If there be no designated person surviving the retirant and his beneficiary, the difference, if any, shall be paid the estate of the survivor of the retirant and his beneficiary.

(Code 1962, § 7A-64; Ord. 244, passed 2-22-60; amend. Ord. 405, passed 5-27-68)

### **Sec. 35-26. Disability retirement.**

(A) Upon the application of a member, or his department head on behalf of a member, a member who is in the employ of the City, who has ten or more years of credited service in force, and who becomes totally and permanently incapacitated for duty in the employ of the City by reason of a personal injury or disease, may be retired by the Board of Trustees. However, after a medical examination of the member made by or under the direction of a medical committee consisting of three physicians, one of whom shall be named by the board, one by the member, and the third by the first two physicians so named, the medical committee shall report to the board, by majority opinion in writing, that the member is mentally or physically totally incapacitated for duty in the employ of the City, that the incapacity will probably be permanent, and that the member should be retired.

(B) The service requirement of ten or more years contained in this section shall be waived in the case of a member with less than ten years of credited service in force whom the board finds to be in receipt of workmen's compensation on account of his disability arising out of and in the course of his City employment.

(Code 1962, § 7A-65; Ord. 244, passed 2-22-60)

### **Sec. 35-27. Disability pension.**

Upon the retirement of a member on account of disability, as provided in § 35-26, he shall be paid the applicable pensions provided for in § 35-21. In the event that the disability retiree is in receipt of workers' compensation on account of a disability arising out of and in the course of his City employment, his minimum monthly disability benefit shall be equal to 25 percent of his final monthly rate of salary.

(Code 1962, § 7A-66; Ord. 244, passed 2-22-60; amend. Ord. 502, passed 1-10-72; amend. Ord. 535, passed 2-26-73; amend. Ord. 595-76, passed 12-13-76 amend. Ord. 749-89, passed 10-9-89; amend. Ord. 774-91, passed 2-11-91; amend. Ord. 794-92, passed 6-8-92)

### **Sec. 35-28. Service credit for workmen's compensation period.**

Upon termination of the statutory period for payment of his workmen's compensation, if he was in receipt of workmen's compensation on account of his disability arising out of and in the course of his City employment, a disability retirant shall be given service credit for the period from the date of his retirement to the date he would attain, or attained, age 60, and his disability pension shall be recomputed to include such additional service credit.

(Code 1962, § 7A-67; Ord. 244, passed 2-22-60)

### **Sec. 35-29. Reexamination of disability retirant.**

(A) *Authorized; effect of medical report.* At least once each year during the first five years following a member's retirement on account of disability, and at least once in each

three-year period thereafter, the Board of Trustees may, and upon the retirant's application shall, require the retirant, if he has not attained age 55 years, to undergo a medical examination to be made by or under the direction of a physician designated by the board. If the retirant refuses to submit to a medical examination in any such period, his disability pension may be suspended by the board until his withdrawal of refusal. Should his refusal continue for one year, all his rights in and to a disability pension may be revoked by the board. If upon a medical examination of the retirant the physician reports to the board and the civil service commission that the retirant is physically able and capable of resuming employment with the City, he shall be returned to City employment, and his disability pension shall terminate; provided that the report of the physician is concurred in by the civil service commission. In returning the retirant to City employment, reasonable latitude shall be allowed the City in placing him in a position commensurate with his type of work and compensation at the time of his retirement.

(B) *Effect of return to employment.* A disability retirant who has returned to City employment, as provided in division (A) above, shall again become a member of the retirement system, and shall be covered under the same benefit program as he was covered under at the time of his disability retirement. His credited service at the time of his retirement shall be restored to full force and effect. He shall be given service credit for the period, he was in receipt of a disability pension if, within such period he was in receipt of workmen's compensation on account of his disability arising out of and in the course of his City employment; otherwise, he shall not be given service credit for the period.

(Code 1962, § 7A-68; Ord. 244, passed 2-22-60; amend. Ord. 502, passed 1-10-72)

### **Sec. 35-30. Survivor pension; death of member.**

In the event of the death of a member who has ten or more years of credited service, a benefit shall be paid to his designated beneficiary starting on the first day of the month following the member's death. The benefit applies to each member who is an active employee, and to each vested member with ten or more years of credited service who terminates employment after the effective date of this chapter and who dies before his vested benefit commences. The monthly benefit shall be determined as though the member retired on his date of death and elected Option A, as provided in § 35-25. The monthly benefit so determined shall be payable for the life of the member's designated beneficiary.

(Code 1962, § 7A-69; Ord. 244, passed 2-22-60; amend. Ord. 794-92, passed 6-8-92)

### **Sec. 35-30.1. Limitation on benefits.**

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

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

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

(C) If the member has less than ten years of service with the City (as defined in IRC section 415(b)(5) and as modified by IRC section 415(b)(6)(D)), the applicable limitation in division (A) or division (B) above shall be reduced by multiplying such limitation by a fraction, not to exceed one. The numerator of such fraction shall be the number of years, or part thereof, of service with the City; the denominator shall be ten years.

(D) For purposes of this section, the *Annual benefit* means a benefit payable annually in the form of a straight life annuity with no ancillary or incidental benefits and with no member or rollover contributions. To the extent that ancillary benefits are provided, the limits set forth in divisions (A) and (B) above will be reduced actuarially, using an interest rate assumption equal to the greater of five percent or the interest rate used in the most recent annual actuarial valuation to reflect such ancillary benefits.

(E) If distribution of retirement benefits begins before age 62, the dollar limitation as described in division (A) shall be reduced actuarially using an interest rate assumption equal to the greater of five percent or the interest rate used in the most recent annual actuarial valuation; however, retirement benefits shall not be reduced below \$75,000.00 if payment of benefits begins at or after age 55 and not below the actuarial equivalent of \$75,000.00 if payment of benefits begins before age 55. If retirement benefits begin after age 65, the dollar limitation of division (A) shall be increased actuarially using an interest rate assumption equal to the lesser of five percent or the interest rate used in the most recent annual actuarial valuation. For purposes of this section the *Average annual compensation for a member's three highest paid consecutive years* shall mean the member's greatest aggregate compensation during the period of three consecutive years in which the individual was an active member of the system.

(Ord. 710-86, passed 2-10-86)

### **Sec. 35-30.2. Distributions in plan years beginning after December 3, 1984.**

Commencing with the first plan year beginning after December 31, 1984, the entire interest of a member shall either be distributed to him not later than April 1 of the calendar year in which he attains age 70 1/2 or the calendar year in which he retires, whichever is later. In the alternative, distribution shall commence no later than the above specified commencement date and be distributable over a period of time not exceeding the limitations hereinafter set forth:

(A) Distributions to a member shall not extend beyond the life of the member or the lives of the member and his designated beneficiary, or over a period not extending beyond the life expectancy of the member or the life expectancy of the member and his designated beneficiary.

(B) If distribution has commenced to a member, and such member dies before receiving his entire interest, the remainder of such interest shall be distributed over a period at least as rapidly as under the method of distribution in effect prior to such member's death (e.g., remainder of period certain basis).

(C) Any method of distribution selected and made in writing by a member prior to January 1, 1984, and which is in compliance with plan provisions prior to said date, shall be permitted hereunder even though not in accordance with the above provisions as applied to plan years beginning after December 31, 1983.

(Ord. 710-86, passed 2-10-86)

**Sec. 35-30.3. Maximum compensation.**

In determining the pension benefit for an eligible employee, compensation in excess of limitations set forth in § 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for an *eligible employee* shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. As used in this section, *eligible employee* is an individual who was a member before the first plan year beginning after December 31, 1995.

(Ord. 825-95, passed 9-11-95)

**Sec. 35-31. Members deposit fund.**

(A) *Created; purpose.* The members deposit fund is created. It shall be the fund in which shall be accumulated, at regular interest, the contributions of members, and from which shall be made refunds and transfers of accumulated contributions, as provided in §§ 35-01--35-45.

(B) *Amount of contributions.* The contribution of a member shall be five percent of member compensation effective October 1, 1989. A member who contributed three percent of his compensation prior to October 1, 1989, shall contribute five percent of his compensation on and after October 1, 1989. In the event that the City agrees to assume and pay member contributions in lieu of direct contributions by the member, such contributions shall accordingly be paid into the fund in behalf of the members. No member subject to such agreement shall have the option of choosing to receive the contributed amounts directly instead of having them paid by the City directly to the fund. All such contributions by the City shall be deemed and considered as part of the member's accumulated contributions and subject to all provisions of this system pertaining to accumulated contributions of members. The intent of this language is to comply with section 414(h)(2) of Internal Revenue Code.

(C) *Deduction from compensation.* The officer or officers responsible for making up the payroll shall cause the contributions provided for in division (B) above to be deducted from the compensations of each member on each and every payroll, for each and every payroll period, from the date of his entrance in the retirement system to the date his City employment terminates. The members contributions provided for herein shall be made, notwithstanding that the minimum compensation provided by law for any member is thereby changed. Each member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of his compensation less the deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by him during the period covered by the payment, except as to benefits provided by §§ 35-01--35-45. When deducted, each of the contributions shall be paid into the members deposit fund, and shall be credited to the individual account of the member from whose compensation the deduction was made.

(D) *Additional deposits required.* In addition to the contributions deducted from the compensations of a member, as hereinbefore provided, a member shall deposit in the members deposit fund, by a single contribution, or by an increased rate of contribution as approved by the Board of Trustees, all amounts he may have withdrawn therefrom and not repaid thereto, together with regular interest from the date of withdrawal to the date of repayment. In no case shall any member be given credit for service rendered prior to the date he withdrew his accumulated contributions until he repays to the members deposit fund all amounts due the fund by him.

(E) *Transfers to pension reserve fund.* Upon the retirement of a member, his accumulated contributions standing to his credit in the members deposit fund shall be transferred to the pension reserve fund. Except as otherwise provided in §§ 35-01--35-45, at the expiration of a period of four years from and after the date a member ceases to be an employee of the City, any balance standing to his credit in the members deposit fund, unclaimed by the member or his legal representative, shall be transferred to the pension reserve fund.

(Code 1962, § 7A-70; Ord. 244, passed 2-22-60; amend. Ord. 502, passed 1-10-72; amend. Ord. 710-86, passed 2-10-86; Am. Ord. 749-89, passed 10-9-89)

### **Sec. 35-32. Refunds of contributions to members deposit fund.**

(A) *Cessation of employment.* Should any member cease to be employed by the City, and not be entitled to a pension payable from funds of the retirement system, he shall be paid the balance standing to his credit in the members deposit fund, provided he files his written application for same with the Board of Trustees.

(B) *Death.* Upon the death of a member, if no pension becomes payable on account of his City employment, the balance standing to his credit in the members deposit fund at the time of his death shall be paid to the person or persons as he shall have nominated by written designation, duly executed and filed with the Board of Trustees. If no such designated person or persons survives the member, his accumulated contributions shall be paid to his estate.

(C) *Manner of payment.* Payment of refunds of members deposit fund balances, as provided for in this section, may be made in monthly installments according to the rules and regulations as the Board of Trustees may from time to time adopt.

(Code 1962, § 7A-71; Ord. 244, passed 2-22-60)

### **Sec. 35-33. Pension reserve fund.**

(A) The pension reserve fund is established. It shall be the fund in which shall be accumulated the contributions made by the City to the retirement system, and from which shall be paid all pensions as provided in §§ 35-01--35-45.

(B) Computation; financing; limitation. Upon the basis of mortality and other tables of experience, and regular interest, as the Board of Trustees shall from time to time adopt, the actuary shall annually compute the pension reserves for service rendered and to be rendered by members, and the pension reserves for pensions being paid retirants and beneficiaries. The pension reserves shall be financed by annual contributions to be made by the City; the contribution to be determined in accordance with divisions (1), (2), and (3) below; provided, that in no fiscal year shall the City's contributions to the retirement system exceed ten percent of the aggregate amount of the compensation paid members in the employ of the City in the fiscal year:

(1) *For current service:* the City's appropriation for members' current service shall be a percent of their annual compensations which will equal an amount which, if paid annually by the City during the members' future service, will be sufficient to provide at the time of their retirements, the difference between the pension reserves for the future service portions of the pensions to be paid the members upon their retirements, and the present value of their future net contributions.

(2) *For accrued service:* the City's appropriation for members' accrued service shall be a percent of their annual compensations which will equal an amount which if paid annually by the City over a period of years to be determined by the council, will amortize at regular interest the unfunded pension reserves for the accrued service portions of the pensions to be paid to members upon their retirements.

(3) *For pensions being paid:* the City's appropriation for pensions being paid retirants and beneficiaries shall be a percent of the members' annual compensations which will equal an amount which, if paid annually by the City over a period of years to be determined by the council, will amortize at regular interest any unfunded pension reserves for pensions being paid retirants and beneficiaries.

(Code 1962, § 7A-72; Ord. 244, passed 2-22-60; amend. Ord. 502, passed 1-10-72; amend. Ord. 573, passed 3-24-75; amend. Ord. 595-76, passed 12-13-76)

### **Sec. 35-34. Expense fund; purpose.**

The expense fund shall be the fund to which shall be credited all moneys provided by the City to pay the administrative expenses of the retirement system, and from which shall be paid all administrative expenses of the system.

(Code 1962, § 7A-75; Ord. 244, passed 2-22-60)

### **Sec. 35-35. Reduction of amount of pensions; limitation; applicability.**

If at the end of the fiscal year after October 31, 1964, the total of the pensions paid from the pension reserve fund during the fiscal year is more than ten percent of the balance in the pension reserve fund at the end of the fiscal year, the pensions payable in the next ensuing fiscal year shall be reduced pro rata so that the total of the pensions so reduced shall not exceed ten percent of the balance in the pension reserve fund. The pro rata reduction shall be applied to all pensions payable in the said fiscal year.

(Code 1962, § 7A-76; Ord. 244, passed 2-22-60)

### **Sec. 35-36. Investments and fund management.**

(A) Authority of Board of Trustees. The Board of Trustees shall be the trustees of the retirement system, and shall have the following investment powers and authority subject to all the terms, conditions, limitations, and restrictions imposed by the laws of the state:

(1) The Board of Trustees shall be vested with full legal title to the fund and have actual custody and supervision of the assets thereof, subject, however, to the authority and power of the City Council to amend or terminate this trust, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this system. All contributions paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund, and the board shall not be required to segregate or invest separately any portion of the fund.

(2) The board shall be required to appoint a national or state bank with trust powers for the purpose of serving as custodian of the fund, and all assets of the

fund shall be promptly and continually deposited therewith.

(3) The board shall be required to retain the services of a custodian bank, an investment advisor registered under the Investment Advisors Act of 1940, an insurance company, or a combination of these, for purposes of investment decisions and management.

(4) The board shall be required to prescribe policies and guidelines for the investment of all fund assets by an investment manager, under written agreement, approved by the board, and reviewed periodically.

(a) The fund may be invested and reinvested in securities, as shall be approved by the Board of Trustees, including but not limited to stocks, common or preferred, and bonds, and other evidence of indebtedness or ownership.

(b) The Board of Trustees may retain in cash, and keep unproductive of income an amount of the fund as it may deem advisable, having regard for the cash requirements of the system.

(c) No person or entity shall be liable for the making, retention, or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the fund, except that due to his or its own willful misconduct or gross negligence.

(d) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee, or into the name of the nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the trust fund.

(e) The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust, and to give general or specific proxies or powers of attorney, with or without power of substitution, to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to the securities; to deposit the stock or other securities in any voting trust or any protective or like committee, or 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.

(B) Accurate records of all funds and securities of the system are to be maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:

- (1) Current amounts of accumulated contributions of members on both an individual and aggregate account basis, and
- (2) Receipts and disbursements, and
- (3) Benefit payments, and
- (4) Current amounts clearly reflecting all moneys, funds and assets whatsoever attributable to contributions and deposits from the City, and
- (5) All interest, dividends, and gains (or losses) whatsoever, and
- (6) Other entries as may be properly required so as to reflect a clear and



complete financial report of the fund.

(C) Limitation upon use of moneys. All moneys and investments of the retirement system shall be held for the exclusive purpose of meeting the disbursements for pensions and other payments authorized by §§ 35-01--35-45, and shall be used for no other purpose.

(Code 1962, § 7A-77; Ord. 244, passed 2-22-60; amend. Ord. 380, passed 6-12-67; amend. Ord. 507, passed 3-27-72; amend. Ord. 711-86, passed 8-11-86; amend. Ord. 847-98, passed 8-10-98)

### **Sec. 35-37. Segregation of retirement system moneys.**

The various funds of the retirement system shall be interpreted to refer to the accounting records of the system, and not to the actual segregation of the assets in the various funds of the system.

(Code 1962, § 7A-78; Ord. 244, passed 2-22-60)

### **Sec. 35-38. Allowance of regular interest; credit of earnings and investments.**

All interest and other earnings on moneys and investments of the retirement system shall be credited to the pension reserve fund. The Board of Trustees shall, at the end of each fiscal year, allow and credit regular interest computed on the balance at the beginning of the fiscal year in each member's individual account in the members deposit fund. The interest allowed and credited shall be charged to the pension reserve fund.

(Code 1962, § 7A-79; Ord. 244, passed 2-22-60; amend. Ord. 573, passed 3-24-75; amend. Ord. 595-76, passed 12-13-76)

### **Sec. 35-39. Fiscal year.**

The fiscal year of the retirement system shall coincide with the City's fiscal year.

(Code 1962, § 7A-80; Ord. 244, passed 2-22-60)

### **Sec. 35-40. No trustee shall gain from investments of systems.**

Except as otherwise provided in §§ 35-01--35-45, no trustee and no employee of the City shall have any interest, direct or indirect, in the gains or profits arising from any investment made by the Board of Trustees. No person, directly or indirectly, for himself or as an agent or partner of others, shall borrow any funds or deposits of the retirement system, or in any manner use the same except to make current and necessary payments as are authorized by the board. No person shall become an endorser or surety, or become in any manner any obligor, for moneys loaned by or borrowed from the board. Nothing contained herein shall be construed to impair the rights of any member of the retirement system to benefits provided by the system.

(Code 1962, § 7A-81; Ord. 244, passed 2-22-60)

### **Sec. 35-41. Correction of errors.**

Should any change or error in the records of the City or the retirement system result in

any person receiving from the system more or less than that to which he would have been entitled had the records been correct, the Board of Trustees shall correct the error, and as far as practicable, shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the person was correctly entitled shall be paid.

(Code 1962, § 7A-82; Ord. 244, passed 2-22-60)

**Sec. 35-42. Subrogation when benefits are payable due to tortious act of third party.**

In the event a person becomes entitled to a pension or other benefit payable from funds of the retirement system, as the result of an accident or injury caused by the act of a third party, the City shall be subrogated to the rights of the person against the third party to the extent of the benefits which the City pays or becomes liable to pay.

(Code 1962, § 7A-83; Ord. 244, passed 2-22-60)

**Sec. 35-43. Assignments prohibited; exception; right of setoff.**

The right of a person to a pension, the return of contributions, the pension itself, any optional benefit, any other right accrued or accruing to any member, retirant, or beneficiary under the provisions of §§ 35-01--35-45, and all moneys belonging to the retirement system shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, and shall be unassignable, except as is specifically provided in §§ 35-01--35-45; provided that should a member be covered by a group insurance or prepayment plan participated in by the City, and should he be permitted to and elect to continue coverage as a retirant, he may authorize the Board of Trustees to continue coverage under the group insurance or prepayment plan; provided further that the Board of Trustees of the retirement system may enter into any type of group life or other group policies as they may from time to time decide to do, and pay the premiums to the extent that they decide, from the funds of the system; provided further that the City shall have the right of setoff for any claim arising from embezzlement by or fraud of a member, retirant, or beneficiary.

(Code 1962, § 7A-84; Ord. 244, passed 2-22-60; amend. Ord. 281, passed 10-14-63)

**Sec. 35-44. Fraud penalty.**

Whoever, with the intent to deceive, shall make any statement or report required under §§ 35-01--35-45 which is untrue, or shall falsify or permit to be falsified any record or records of the retirement system, or who shall otherwise violate the provisions of §§ 35-01--35-45, or as it may from time to time be amended, with intent to deceive, shall be fined not to exceed \$100.00 or imprisonment for not to exceed 60 days, or both, in the discretion of the court, together with costs of prosecution.

(Code 1962, § 7A-85; Ord. 244, passed 2-22-60)

**Sec. 35-45. Contract status of provisions; subsequent amendments.**

Sections 35-01--35-45 shall not be construed to be a contract between the City and the employees of the City. Sections 35-01--35-45 may from time to time be amended by the council; provided any amendments shall be within the provisions of the Charter covering the retirement system.

(Code 1962, § 7A-86; Ord. 244, passed 2-22-60)

**Sec. 35-46. Direct transfers of eligible rollover distributions.**

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

(B) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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

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

*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, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

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

(Ord. 817-94, passed 12-12-94)