City of Pensacola

City Council Workshop

Agenda - Final

Monday, April 24, 2017, 3:30 PM **Hagler-Mason Conference Room, 2nd Floor**

Code of the City of Pensacola - Recodification Workshop I

CALL TO ORDER

SELECTION OF CHAIR

DETERMINATION OF PUBLIC INPUT

DISCUSSION OF...

(Public comment upon any subject not on the agenda unless waived by a majority of the existing membership of Council.)

1. 17-00270 RECODIFICATION WORKSHOP

Recommendation: That City Council conduct the first Recodification Workshop.

Sponsors: Brian Spencer

Attachments: *Code Recodification Memorandum*
Charter and Related Special Acts
Code Recodification Title I thru IX

ADJOURNMENT

If any person decides to appeal any decision made with respect to any matter considered at such meeting, he will need a record of the proceedings, and that for such purpose he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The City of Pensacola adheres to the Americans with Disabilities Act and will make reasonable accommodations for access to City services, programs and activities. Please call 435-1606 (or TDD 435-1666) for further information. Request must be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services.

City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 17-00270 City Council Workshop 4/24/2017

DISCUSSION ITEM

FROM: City Council President Brian Spencer

SUBJECT:

RECODIFICATION WORKSHOP

REQUEST:

That City Council conduct the first Recodification Workshop.

SUMMARY:

The City is currently in the process of conducting a recodification of the City Code, this will be the first workshop to review the recommendations and proposals.

PRIOR ACTION:

None

STAFF CONTACT:

Don Kraher, Council Executive

ATTACHMENTS:

1) Code Recodification Memorandum
2) Charter and Related Special Acts
3) Code Recodification Title I thru IX

PRESENTATION: Yes

MEMORANDUM

TO: Eric Olson, City Administrator
Don Kraher, City Council Executive

FROM: William D. Wells, Special Assistant to the City Administrator

RE: Recodification Workshop – April 24, 2017

The purpose of this memorandum is to serve as a letter of transmittal for the first portion (Titles I through IX) of the proposed revisions to the Code, for the City Council's review at the April 24, 2017, workshop. Titles X through XIV will be distributed in approximately one month, prior to the second workshop scheduled for May 22. The objective of the project is to update the current Code into a recodified version with an effective date of October 1, 2017.

BACKGROUND

Since the adoption of the original City of Pensacola Charter in 1931, the code has been previously recodified on two occasions – in 1968 and in 1986. The recodification process is usually a top-to-bottom review of the entire city code, intended to conform the code to the current state of Florida and federal law, and to modernize (revise or eliminate) those provisions which have lost their vitality because they are outdated or no longer required.

Two significant changes in the law have occurred which have driven many of the suggested revisions. First, in l968, the Florida Constitution was radically altered relating to municipal power, and Home Rule was introduced, allowing municipalities to adopt local ordinances unless specifically precluded by preemptive state law. The second change has been the adoption in 2009 by referendum of the mayor-council form of government. As may be apparent in reviewing the proposed revisions, many of them are intended to conform the code to the current provisions of the Charter.

SUMMARY OF PROPOSED REVISIONS

Although a more detailed title-by-title summary will be provided prior to the Council's opportunity to vote upon a revised city code, generally the proposed changes to the code can be characterized by the following:

- References to specific departments and department heads are proposed to be changed to "the city" or "the mayor" (which, by definition, means the mayor or his or her designee). There are exceptions for positions required by state law, such as the "Building Official," the "Fire Marshall" or law enforcement and code enforcement officers in general.

- Lengthy code provisions which repeat Florida statutes are proposed to be changed to reference the statutes, inclusive of future amendments.

- Many provisions from the 1931 Charter or pre-1968 special acts which are contained in the current code are proposed to be deleted as unnecessary due to the city's Home Rule and current Charter authority.

- With valuable input from the Municode publishing company, many code provisions require revision because Florida or federal law has materially changed on the point, such as the elimination of Enterprise Zones, updating the Building and Fire Safety codes, and revisions to the city's various sign regulations.

PROCESS GOING FORWARD

The purpose of the upcoming workshop is to introduce the members of City Council to the kinds of code revisions which are being proposed. The revision process remains a fluid one, and additional suggestions from Councilmembers, city staff and Municode staff are anticipated.

If the members of the City Council desire additional information and input following the workshop, please contact Mr. Olson or Mr. Kraher and they will arrange a conference with staff for that purpose.

The overall objective is to adopt a revised city code that will serve as a durable legislative platform for future ordinances and revisions for the next two or three decades.

CHARTER AND RELATED SPECIAL ACTS

- 2013 CHARTER as amended in 2014

- 1957 Special Act – providing for public improvements and special assessments for annexed areas.

- 1955 Special Act – exempting the City's natural gas distributing system from taxation by the state or any county or municipality of the state.

- Firefighters' Relief and Pension Fund Special Act

- 1965 Special Act – Creating the Fiesta of Five Flags Commission – RECOMMEND REMOVAL FROM PUBLISHED CODE

- 1967 Special Act – Creating Pensacola-Escambia County Promotion and Development Commission

- 1972 Special Act – Creating Pensacola Downtown Improvement Board

- 1980 Special Act – Creating Area Housing Commission

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TITLE I - GENERAL PROVISIONS

CHAPTERS

CHAPTER 1-1. IN GENERAL

Sec. 1-1-1. - General provisions conforming code to ~~2010~~ Charter.

(a) The ordinances embraced in the following titles, chapters, articles, divisions and sections shall constitute and be designated ~~"The~~ the "Code of the City of Pensacola, Florida," and may be so cited.

(b) All references to the duties of mayor shall also be inclusive of the mayor's authority to execute the function described through a designee of his or her choice, unless the context of the provision clearly indicates the contrary.

(c) ~~Pursuant to Section 4.01(1), (7) and (15) of the 2010 Charter, commencing with the appointment of the mayor at noon on January 10, 2011, the mayor shall have exclusive authority to designate departments and to determine the scope of authority and responsibility of city employees and department heads.~~

(~~d~~) (c) Pursuant to the provisions of Section 4.02(a)(1) and (2) of the ~~2010~~ Charter, it shall be the responsibility and authority of the city council to determine all fees, rates and charges of the city~~, and the council may discharge these responsibilities by delegating its authority to the mayor~~.

(~~e~~)(d) All references to the positions of, actions and authority of the city manager and all interlocal agreements, contracts, resolutions and other documents reflecting city policy are hereby amended to refer to the position of mayor under the ~~2010~~ Charter unless otherwise expressly stated to the contrary.

(Code 1968, § 2-1; Ord. No. 16-10, § 1, 9-9-10)

Editor's note— Ord. No. 16-10, § 1, adopted Sept. 9, 2010, changed the title of § 1-1-1 from "how Code designated and cited" to "general provisions conforming code to 2010 Charter." See also the Code Comparative Table.

Sec. 1-1-2. - Seal.

The seal of the city shall have on its face, "The City of Pensacola, Florida," with a circle around a shield with a Latin-type cross in the upper central part of the shield, at the base of which shall be a helmet with plumes, and above the shield a hand with a pen in the act of signing, and on the left side of the shield the figures "1698," the year of the first settlement of Pensacola by the Spaniards, "1821," the year of the first city government under General Andrew Jackson, United States Army, and "1895," the date of the formation of the aldermanic government, and on the right side of the shield the figures "1913," the date of the formation of the commission form of government, "1931," the date of the institution of the council-manager form of government, and "2010," the date of the institution of the mayor-council form of government.

(Code 1968, § 2-8; Ord. No. 16-10, § 2, 9-9-10)

Sec. 1-1-3. - Section catchlines.

(a) The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of the sections nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of the sections, including the catchlines, are amended or re-enacted.

(b) No provision of this Code shall be held invalid by reason of deficiency in any such catchline or in any heading or title to any title, chapter, article or division.

Commented [RW1]: Delete – covered by Charter Sec. 4.01(a)(1), (7) and (15).

Commented [RW2]: Renumbered.

Commented [RS3]: Since fees, rates and charges are established by ordinance or resolution, this power cannot be delegated to the mayor.

Commented [RW4]: Renumbered

Sec. 1-1-4. - History notes.

The history notes appearing in parentheses after sections of this Code are not intended to have any legal effect, but are merely intended to indicate the source of matter contained in the section.

Sec. 1-1-5. - Effect of repeal of ordinances.

(a) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

(b) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

(Code 1968, § 2-5)

Sec. 1-1-6. - Provisions considered as continuation of existing ordinances.

The provisions appearing in this and the following titles, chapters, articles, divisions and sections, so far as they are the same as those of the "Code of the City of Pensacola, Florida," adopted January 30, 1986 by ~~Pensacola~~ Ordinance No ~~18-70~~2-86 or of ordinances existing at the time of the adoption of this Code, shall be considered as a continuation thereof and not as new enactments.

Commented [RW5]: Update reference to Ordinance 2-86, which adopted the 1985 Code.

Sec. 1-1-7. - Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following when not inconsistent with this Code:

(1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code;

(2) Any ordinance or resolution promising or guaranteeing the payment of money for the city, or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness, or any contract or obligation assumed by the city;

(3) Any administrative ordinances;

(4) Any right of franchise granted by any ordinance of the council to any person, firm or corporation;

(5) Any ordinance dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, repairing, or establishing and describing street grades or traffic and parking regulations of any street or public way in the city;

(6) Any appropriation ordinance;

(7) Any ordinance levying or imposing taxes, assessments or other fees or charges not included herein;

(8) Any land use or zoning ordinance or map or any amendment thereto;

(9) Any ordinance or resolution relating to salaries of city officers or employees or other personnel matters;

(10) Any ordinance pertaining to water and sanitary sewer or other utilities;

(11) Any ordinance providing for local improvements and assessing taxes therefor;

(12) Any ordinance dedicating or accepting any plat or subdivision in the city;

(13) Any ordinance annexing territory or excluding territory or extending or otherwise redefining the boundaries of the city;

(14) Any temporary or special ordinances;

~~(15) Any ordinance giving the city the authority to regulate taxicabs or other for-hire vehicles;~~

(16) Any ordinance authorizing the purchase of real property;

And all such ordinances are hereby recognized as continuing in full force and effect as if set out at length herein.

(Ord. No. 1968, § 1-3)

Sec. 1-1-8. - Penalty for violations; Abatement of nuisances.

(a) Whenever in this Code or in any ordinances of the city any act is prohibited or is made or declared to be unlawful or an offense or whenever in such Code or any ordinances the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefor, the violation of any provision of this Code or any ordinance shall be punished by a fine not exceeding five hundred dollars ($500.00) or imprisonment for a term not exceeding sixty (60) days, or by both the fine and imprisonment. Each day any violation of any provision of this Code shall continue shall constitute a separate offense.

(Code 1968, §§ 1-7, 2-4)

Cross reference— Assessment by courts for criminal justice education and law enforcement training, § 8-1-1.

State Law reference— Fines and forfeitures in county court payable to municipality, F.S. § 34.191.

Sec. 1-1-9. - Severability.

It is hereby declared to be the intention of the council that if any of the sections, paragraphs, sentences, clauses and phrases of this Code shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since the same would have been enacted by the council without the incorporation in this Code of any such unconstitutional phrase, clause, sentence, paragraph or section.

(Code 1968, §§ 1-8, 2-6)

Sec. 1-1-10. - Altering or tampering with Code; penalties for violation.

It shall be unlawful for any person, firm or corporation to change or amend by additions or deletions, any part or portion of the Code, or to insert or delete pages, or portions thereof, or to alter or tamper with the Code in any manner whatsoever which will cause the law of the city to be misrepresented thereby.

(Code 1968, § 1-10)

State Law reference— Falsely making, altering or counterfeiting a public record with intent to injure or defraud any person, F.S. §§ 831.01 and 839.13.

Commented [RS6]: Provided by home rule and Florida statutes.

Sec. 1-2-1. - Definitions and rules of construction.

In the construction of this Code and of all ordinances, the following definitions and rules of construction shall apply, unless the context clearly indicates otherwise, or unless the construction would be inconsistent with the manifest intent of the council:

Charter. The word "Charter" shall mean the Charter of the City of Pensacola, ~~approved by the electorate in a referendum on November 24, 2009, which became effective on January 1, 2010,~~ as printed in Part 1 of this volume.

City shall mean the City of Pensacola, Florida, and shall extend to and include its several officers, agents and employees.

Code. Reference to "this Code" or "the Code" shall mean the Code of the City of Pensacola, Florida, as designated in section 1-1-1.

Computation of time. Whenever a notice is required to be given or an act to be done a certain length of time before any proceeding shall be had, the day on which the notice is given or the act is done shall be counted in computing the time, but the day on which the proceeding is to be had shall not be counted. If the last day of the period is a Saturday, Sunday or legal holiday, the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

Commented [RS7]: Recommended by Municode.

Council shall mean the city council of the City of Pensacola.

County shall mean the County of Escambia.

State Law reference— Boundaries of Escambia County, F.S. § 7.17.

Delegation of authority. Whenever a provision appears requiring the head of a department or officer of the city to do some act or make certain inspections, it is to be construed as authorizing the head of the department or officer to designate, delegate and authorize subordinates to perform the required act or make the required inspection unless the terms of the provision or section designate otherwise.

F.S. The abbreviation "F.S." shall mean the latest edition or supplement of the Florida Statutes.

Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.

Mayor shall mean the independently elected position of mayor created in section 4.01 of the ~~2010~~ Charter.

Month shall mean a calendar month.

Number. A word importing the singular number only may be extended and be applied to several persons and things as well as to one person and thing.

Oath shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

Officer. Whenever any officer is referred to by title only, the reference shall be construed as if followed by the words "of the City of Pensacola, Florida." Whenever, by the provisions of this Code, any officer of the city is assigned any duty or empowered to perform any act or duty, reference to the officer shall mean and include the officer or his deputy or authorized subordinate.

Or, and. "Or" may be read "and," and "and" may be read "or," if the sense requires it.

Owner. As applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety, of the whole or a part of the building or land.

Person shall extend and be applied to associations, firms, partnerships and bodies politic and corporate as well as to individuals.

Personal property includes every species of property except real property, as herein defined.

Preceding, following means next before and next after, respectively.

Property shall include real and personal property.

Public place shall mean any park, cemetery, school yard or open space adjacent thereto and any lake or stream.

Real property shall include lands, tenements and hereditaments.

Shall, may. The word "shall" is mandatory; the word "may" is discretionary.

Sidewalk shall mean any portion of a street between the curbline and the adjacent property line, intended for the use of pedestrians, excluding parkways.

State shall be construed to mean the State of Florida.

Street shall be construed to embrace streets, avenues, boulevards, roads, alleys, lanes, viaducts and all other highways in the city.

Tenant, occupant as applied to a building or land, shall include any person holding a written or oral lease of or who occupies the whole or a part of the building or land, either alone or with others.

Tense. Words used in the past or present tense include the future as well as the past and present.

Written, in writing shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

Year shall mean a calendar year.

(Code 1968, § 2-2; Ord. No. 16-10, § 3, 9-9-10)

CHAPTER 1-3. AMENDMENTS TO CODE

Sec. 1-3-1. - Effect of new ordinances, amendatory language.

(a) All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code of Ordinances, may be numbered in accordance with the numbering system of this Code and printed for inclusion therein. When subsequent ordinances repeal any title, chapter, section or subsection or any portion thereof, such repealed portions may be excluded from said Code by omission from reprinted pages.

(b) Amendments to any of the provisions of this Code may be made by amending the provisions by specific reference to the section, subsection or paragraph number of this Code in substantially the following language: "Section _____ of the Code of the City of Pensacola, Florida, is hereby amended to read as follows: …." The new provisions shall then be set out in full as desired.

(c) If a new section not heretofore existing in the Code is to be added, the following language may be used: "Section _____ of the Code of the City of Pensacola, Florida, is created to read as follows: …." The new section may then be set out in full as desired.

(d) All sections, articles, chapters or provisions desired to be repealed shall be specifically repealed by section, article or chapter number, as the case may be.

Commented [RS8]: Recommended by MuniCode.

Sec. 1-3-2. - Supplementation of Code.

(a) Supplements to this Code shall be prepared and printed whenever authorized or directed by the mayor. A supplement to the code shall include all substantive permanent and general parts of ordinances passed by the council or adopted by initiative and referendum during the period covered by the

supplement and all changes made thereby in the code, and shall also include all amendments to the Charter during the period. The pages of a supplement shall be so numbered that they will fit properly into the code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivisions;

(2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles;

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;

(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and

(5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but, in no case, shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

(Ord. No. 16-10, § 4, 9-9-10)

TITLE II - ADMINISTRATION

Chapters

CHAPTER 2-1. GENERAL PROVISIONS

Sec. 2-1-1. - ~~General powers and corporate existence.~~ RESERVED

~~The City of Pensacola ("City"), located in Escambia County, Florida, shall have all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except when expressly prohibited by law.~~

(Laws of Fla. 1931, Ch. 15425, § 1; Laws of Fla. 1949, Ch. 26136, § 1; Laws of Fla., Ch. 61-2656, § 1; Laws of Fla., Ch. 65-2092, § 1; Laws of Fla., Ch. 79-551, § 1; Ord. No. 16-10, § 5, 9-9-10)

Editor's note— Ord. No. 16-10, § 5, adopted Sept. 9, 2010, changed the title of § 2-1-1 from "powers of the city" to "general powers and corporate existence." See also the Code Comparative Table.

Cross reference— Ratification of power to levy and collect excise taxes, § 3-4-1.

Constitutional law reference—All forms of taxation, other than ad valorem taxes, are preempted to the state except as provided by general law, Fla. Const., § 1(a) of Art. VII.

Sec. 2-1-2. - Legal notices generally.

All legal notices not otherwise provided for in this Code or the manner of publication of which is not prescribed by some provisions of general state law, shall be published at least one time in a newspaper published in the city which meets the requirements of F.S. § 50.031. The City Clerk shall place all legal notices pertaining to ordinances, resolutions, elections and public hearings.

(Code 1968, § 37-2(B))

Sec. 2-1-3. - Access to city officials.

To the extent consistent with due process of law:

(a) Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any city official the merits of any matter on which action may be taken by the city council or any committee, board or agency of the city on which the city official is a member. As used in this section, the term "city official" means any elected or appointed public official holding a city office who recommends or takes quasi-judicial action as a member of the city council or a board or agency of the city.

(b) The substance of any *ex parte* communication with the city official which relates to quasi-judicial action pending before a city official is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.

(c) The city official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a city official shall not be presumed prejudicial to the action and such written communication shall be made part of the record before final action on the matter.

Commented [RS1]: Duplicates F.S. § 166.021(1) and Fla. Const. Art. VIII, § 2(b). Municode suggests delete.

Commented [RW2]:

Commented [RW3R2]: The City Clerk has requested that its responsibility for the placement of newspaper notices be limited to those ads that the Clerk's Office prepares and sends for publication, as listed in the proposed new language.

Commented [RW4]: This code section is the result of F.S. § 286.0115, which legislatively attempts to "cure" due process violations that can arise when elected officials have ex parte communications with persons involved in quasi-judicial hearings, where the official must vote impartially upon the evidence presented at the hearing. This "cure" has been criticized in court decisions, see e.g. Jennings v. Dade County, 589 So.2d 1337 (Fla. 3rd DCA 1991).

(d) City officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activity shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.

(e) Disclosure made pursuant to subsections (b), (c) and (d) must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the *ex-parte* communication are given a reasonable opportunity to refute or respond to the communication.

(Ord. No. 19-95, § 1, 7-13-9; F.S. ~~Sec.~~ § 285.0115).~~5)~~

Commented [RW5]: Add reference to F.S. Sec. 286.0115.

Sec. 2-1-4. Introduction of ordinances and resolutions; enacting clause.

Ordinances and resolutions shall be introduced in the council only in written or printed form. The enacting clause of all ordinances shall be "BE IT ORDAINED BY THE CITY OF PENSACOLA."

(Ord. No. 51-73, Sec. 2, 10-11-73)

Commented [RW6]: This section was transferred from 1985 Code sec. 2-2-4.

Sec. 2-1-5. Compensation of members and president.

(a) The city shall pay to each member of the council, except the president of the city council, twenty-one thousand five hundred dollars ($21,500.00), per year, payable in bi-weekly installments, as compensation for services rendered to the city. The council members shall be reimbursed for ~~the actual~~ expenses incurred in connection with his or her official duties while outside of and beyond the corporate limits of the city in accordance with city travel and expense reimbursement policies. No member of council shall receive any monthly compensation or expenses from the city, except as provided herein.

(b) The compensation to be paid to the president of the city council shall be twenty-eight thousand five hundred dollars ($28,500) per year, payable in equal bi-weekly installments as compensation for services rendered to the city. The president shall be reimbursed for ~~the actual~~ expenses incurred in connection with his or her official duties while outside of and beyond the corporate limits of the city in accordance with city travel and expense reimbursement policies.

(2010 Charter, Sec. 4.02 (c); Ord. No. 24-16, Sec. 1, 08-11-16)

Commented [RW7]: This section was transferred from 1985 Code sec. 2-2-7.

Sec. 2-1-6. Compensation of mayor.

The compensation to be paid to the mayor shall be One Hundred Thousand Dollars ($100,000) per year, payable in bi-weekly installments as compensation for services rendered to the city. The mayor shall also be offered participation in the Florida Retirement System, and shall be entitled to such health, dental and life insurance benefits as are available to the city workforce at the premiums paid by the city workforce. The mayor shall be compensated for mileage on a vehicle which is incurred in connection with city business at the rate established by city policy. The mayor shall be reimbursed for ~~the actual~~ expenses incurred in connection with

Commented [RW8]: Suggest "the actual" be deleted from this section and Sec. 2-1-5(a) and (b), above, since the City now uses the federal government reimbursement tables which are based on surveys of area costs rather than exact cost of a particular trip.

his or her official duties while outside of and beyond the corporate limits of the city in accordance with the city travel and expense reimbursement policies.

(2010 Charter, Sec. 4.01 (c); Ord. No. 08-10, Sec. 1, 3/11/10)

Commented [RW9]: This section was transferred from 1985 Code sec. 2-2-8

Sec. 2-1-7. Authority of mayor and council president to conform regulations and procedures.

The mayor and the city council president are hereby jointly conferred the authority to conform the provisions of any regulation or procedure mandated by any provision of the Code of the City of Pensacola, Florida, to the requirements of law as may be determined by statute, regulation or by applicable judicial determination. Upon the recommendation of the city attorney, when the mayor and the council president concur that a practice or procedure should be altered or amended to conform to the current state of the law as reflected by statute, regulation or controlling judicial precedent, they shall exercise that authority in writing and shall notify the city clerk and the city council. This authority shall continue in effect until such time as the city council shall have the opportunity to address the matter.

Commented [RW10]: This section was transferred from 1985 Code sec. 2-4-7.

(Ord. No. 08-03, Sec. 1, 3-27-03; Ord. No. 16-10, Sec. 15, 9-9-10).

Sec. 2-1-8. Authority of mayor during state of emergency.

(a) Upon declaration of a state of emergency by the president of the United States, by the governor of the State of Florida or by Escambia County for any area which includes the City of Pensacola, the mayor shall be authorized and directed to take such emergency measures as he determines necessary to protect the health, safety and welfare of the citizens and to ensure the timely reconstruction and repair of structural damage caused by the emergency event and the continued functioning of local government. The mayor shall further be authorized to exercise such emergency management powers granted to political subdivisions by Florida law and may alter normal work schedules and grant the nonessential work force time off with pay. The mayor will make the determination of which employees are deemed essential during each emergency. The mayor is authorized to pay essential employees, both non-exempt and certain ranges of exempt under the Fair Labor Standards Act, at overtime rates when required to report for duty during the time the remaining work force is not required to report. The mayor shall further be authorized to waive or suspend all ordinances, policies, procedures or customs of the city as the mayor determines necessary for purchase of commodities and services, for contracts of no more than one (1) year duration, for the assignment of employees and for the facilitation of reconstruction and repair, both public and private, as the mayor determines necessary. The mayor is authorized to delegate such powers to staff as determined necessary to the effective administration of the government of the City of Pensacola. This authorization is subject to the limits of the Constitution and Laws of the United States and the State of Florida.

(b) The mayor's exercise of authority pursuant to this section shall exist for a period of thirty (30) days following declaration of a state of emergency unless extended or shortened by action of the city council.

Commented [RW11]: This section was transferred from 1985 Code sec. 2-4-8.

(Ord. No. 08-05, Sec. 1, 8-11-05; Ord. No. 16-10, Sec. 16, 9-9-10).

CHAPTER 2-2. OFFICE OF THE CITY COUNCIL[2]

Footnotes:

--- (**2**) ---

Cross reference— Elections, Ch. 2-5; candidates for member of council qualifications, oath, § 2-5-6.

State Law reference— Code of ethics for public officers and employees, F.S. § 112.311 et seq.; public meetings, F.S. § 286.011; public records, F.S. Ch. 119.

Sec. 2-2-1. - Reserved.

Sec. 2-2-2. - Dates of regular meetings; exceptions.

REPEAL SECTION ~~- Pursuant to the requirement of the Charter, the city council shall conduct a regular meeting at least once each month, and at such other times as it may deem advisable, and shall schedule such meetings in accordance with the policies and procedures adopted by the city council.~~

(Code 1968, § 34-1; Ord. No. 02-15, § 1, 2-12-15)

Sec. 2-2-3. - Rescheduling of meetings.

REPEAL SECTION ~~-If it shall become necessary, advisable or desirable to postpone a meeting from any officially designated date, the meeting may be postponed by the decision of the council president, which shall be communicated immediately to the members of council.~~

(Code 1968, § 34-2; Ord. No. 16-10, § 6, 9-9-10)

Sec. 2-2-4. - Introduction of ordinances and resolutions, enacting clause.

REPEAL SECTION ~~- Ordinances and resolutions shall be introduced in the council only in written or printed form. The enacting clause of all ordinances shall be "BE IT ORDAINED BY THE CITY OF PENSACOLA."~~

(Laws of Fla. 1931, Ch. 15425, § 10; Ord. No. 51-73, § 2, 10-11-73)

Sec. 2-2-5. - Reserved.

Sec. 2-2-6. - Quorum; voting.

REPEAL SECTION ~~- A majority of the members elected to the council shall constitute a quorum to do business, but a less number may adjourn from time to time to compel the attendance of absent members, in such manner and under such penalties as may be prescribed by the council. The affirmative vote of a majority of the members elected to the council shall be necessary to adopt any ordinance, resolution, order or vote; except that a vote to adjourn or regarding the attendance of absent members may be adopted by a majority of the members present. No member shall be excused from voting, except on matters involving the consideration of his own official conduct or when his financial interests are involved.~~

Commented [RW12]: Repeal Sec. 2-2-2; ~~2010~~ Charter, sec. 4.03 (a) covers the topic.

Commented [RW13]: ~~2010~~ Charter, sec. 4.03 (a) and Council Policies and Procedures covers the topic.

Commented [RW14]: Transferred to Sec. 2-1-4.

Commented [RW15]: ~~2010~~ Charter Sec. 4.03 (c) covers the topic.

(Laws of Fla. 1931, Ch. 15425, § 9; Ord. No. 51-73, § 1, 10-11-73)

Sec. 2-2-7. - Compensation of members.

REPEAL SECTION

Commented [RW16]: Transferred to Sec.2-1-5.

~~(1) The city shall pay to each member of the council, except the president of the city council, thirteen thousand nine hundred and ninety-eight dollars and fourteen cents ($13,998.14) per year, payable in equal bi-weekly installments, as compensation for services rendered to the city. The council members shall be reimbursed for the actual expenses incurred in connection with his or her official duties while outside of and beyond the corporate limits of the city in accordance with city travel and expense reimbursement policies. No member of the council shall receive any monthly compensation or expenses from the city, except as provided herein. A compensation task force shall review compensation of the mayor and members of city council in March of 2001 and every four (4) years thereafter for possible changes.~~

~~(2) The compensation to be paid to the president of the city council shall be twenty-one thousand dollars ($21,000.00) per year, payable in equal bi-weekly installments as compensation for services rendered to the city. The president shall be reimbursed for the actual expenses incurred in connection with his or her official duties while outside of and beyond the corporate limits of the city in accordance with city travel and expense reimbursement policies.~~

(Code 1968, § 42-34; Ord. No. 167-82, § 1, 10-14-82; Ord. No. 6-97, § 1, 1-30-97; Ord. No. 38-97, § 1, 11-19-97; Ord. No. 51-00, §§ 1, 5, 11-16-00; Ord. No. 15-04, § 3, 8-19-04; Ord. No. 07-07, § 1, 2-8-07; Ord. No. 16-10, § 7, 9-9-10; Ord. No. 30-10, § 1, 12-16-10)

Editor's note— Section 1 of Ord. No. 07-07 provided that the compensation of each member of the City Council shall be increased by 0.5 percent effective October 1, 2006.

Sec. 2-2-8. - Compensation of mayor.

REPEAL SECTION

Commented [RW17]: Transferred to Sec. 2-1-6

~~The compensation to be paid to the mayor shall be one hundred thousand dollars ($100,000.00) per year, payable in equal bi-weekly installments as compensation for services rendered to the city. The mayor shall also be offered participation in the Florida Retirement System, and shall be entitled to such health, dental and life insurance benefits as are available to the city workforce at the premiums paid by the city workforce. The mayor shall be compensated for mileage on a vehicle which is incurred in connection with city business at the rate established by city policy. The mayor shall be reimbursed for the actual expenses incurred in connection with his or her official duties while outside of and beyond the corporate limits of the city in accordance with the city travel and expense reimbursement policies.~~

(Code 1968, § 42-35; Ord. No. 167-82, § 2, 10-14-82; Ord. No. 6-97, § 2, 1-30-97; Ord. No. 38-97, § 2, 11-19-97; Ord. No. 51-00, §§ 2, 5, 11-16-00; Ord. No. 15-04, § 4, 8-19-04; Ord. No. 07-07, § 1, 2-8-07; Ord. No. 08-10, § 1, 3-11-10)

Editor's note— Section 1 of Ord. No. 07-07 provided that the compensation of the mayor shall be increased by 0.5 percent effective October 1, 2006.

Sec. 2-2-9. - Annual cost-of-living adjustment.

REPEAL SECTION

~~(a) The annual salary for each member of the council shall be increased effective October 1, 2001, and each fiscal year thereafter. All such increases shall be the lesser of three (3) percent or the increase in the Consumer Price Index (U)(CPI) issued by the United States Department of Labor since the date of the last increase which was granted pursuant to this section. In the event the United States Department of Labor ceases to issue a CPI (U) the city council shall utilize a CPI index that is the functional equivalent. The period to be used for calculation of any CPI increase shall be April 1 of the last calendar year in which an increase was given to March 31 of the calendar year in which the increase is to be given.~~

~~(b) The annual cost-of-living adjustment shall not be made for any fiscal year for which the city council does not appropriate funds.~~

(Ord. No. 18-01, § 1, 9-27-01; Ord. No. 07-07, § 2, 2-8-07; Ord. No. 11-08, § 1, 2-13-08; Ord. No. 08-10, § 2, 3-11-10)

Sec. ~~2-2-10.~~ 2-2-1 - Office of the city council.

Pursuant to the requirements of Sec. 4.02(a)(6) of the Charter of the City of Pensacola, Florida, there is hereby created and established the office of the city council, with staffing, duties and responsibilities in accordance with the following criteria:

(1) The city council is authorized to employ staff to fill the following positions or discharge the following functions: Budget analyst, assistant city attorney, council executive, executive assistant, and such other staff as may be deemed warranted in the performance of council's legislative function.

(2) All positions filled by the city council shall conform to the requirements of the City Charter.

(3) Each approved position shall be filled by majority vote of the city council, and each employee so hired shall be regarded as an "at will" employee under Florida law and shall serve at the pleasure of the city council. A majority vote of city council shall be required to remove any employee so employed.

(4) The compensation and fringe benefits of each employee hired shall be fixed by council in accordance with the pay plan and employee benefits extended to comparably employed employees of the City of Pensacola. Each employment contract shall be executed by the council president.

(5) All employees of the office of city council shall be regarded as employees of the City of Pensacola, shall be responsible to the city council through the president of the council and shall be supervised by the council executive.

(6) In the performance of their duties, the staff of the office of city council shall be directed by the council president or by formal council action.

(Ord. No. 05-15, § 1, 3-12-15; 1985 Code Sec. 2-2-10)

Commented [RW18]: Council has suspended this section for many years and has increased its compensation through additional code amendment specifying the increase.

Commented [RW19]: This would be the only remaining section in Chapter 2-2.

CHAPTER 2-3. CITY PROPERTY

Sec. 2-3-1. - Reserved.

Editor's note— Ord. No. 02-03, § 1, adopted Jan. 23, 2003, repealed § 2-3-1 in its entirety. Formerly, said section pertained to disposal of surplus lands and buildings authorized, as enacted by Laws of Fla., Ch. 57-1716, § 1.

Sec. 2-3-2. - Disposal of surplus tangible personal property.

Upon determination by ~~any department or office of the city~~ the mayor that any tangible personal property owned by the city ~~in the possession or custody of the department or office~~ is surplus, obsolete, unrepairable, unnecessary, unsuitable, or otherwise no longer useful ~~to such department or office, the mayor shall be notified. The mayor, or his designee, shall determine if such property is useful to another department or office of the city. If no such use for said property can be found,~~ the mayor, or his designee, may dispose of such property which has no substantial value or may sell the property, by auction, for fair consideration. If the item had an original purchase price of ten thousand dollars ($10,000.00) or a lesser amount, the mayor may dispose of such property by appropriate methods other than by auction.

Commented [RW20]: The determination of surplus is an executive function.

(Ord. No. 53-89, § 1, 10-5-89; Ord. No. 43-98, § 1, 9-10-98; Ord. No. 16-10, § 8, 9-9-10)

Sec. 2-3-3. - Naming city property.

(a) *Intent of criteria.* The criteria provided herein are intended to provide an identifiable process which citizens may utilize to propose the recognition of individuals who have made a significant contribution to the city, region or nation and whose memory may be honored by the designation of their name and achievements associated with a structure, street, park or other public place in the City of Pensacola. Such individuals may be city residents, historic figures, former elected officials or former city employees whose work, actions or life has made a significant contribution to the community or society. Consideration of such recognition will be made by the city council without reference to such immutable characteristics as race, religion, ethnicity, gender, age or disability. These criteria are intended to be flexible so that there will be an opportunity for recognition of any individual deserving of such, who may not meet all of the objective criteria contained herein. In addition, the city council recognizes that many of the facilities of the city have established interest groups such as neighborhood associations or other affinity groups, and it is the intent of the council to solicit input from all such interest groups when appropriate.

(b) *Criteria.*

(1) Parks may be named after streets, geographical locations, historical figures, events, concepts or as otherwise determined by the city council.

(2) Parks may be named for individuals or groups that have made exceptional contributions to the Pensacola community.

(3) Parks may be named for an historical figure or an individual or family or organization that has made a significant land, monetary or service contribution to the acquisition of the property, park system or the community in general. These may include the names of early residents or citizens and/or events of significance to the area's history or development which have directly impacted the park's development.

(4) Current elected officials and currently employed city staff shall not be eligible for consideration until they are no longer in office or have been retired from city service for at least four (4) years.

(5) In order to accommodate the interest in recognizing or honoring individuals deserving such recognition or honor, the city council may elect to honor individuals by the erection of informational signage or plaques at a particular facility, structure or portion thereof, without naming the entire park, structure or facility after one individual or preempting the opportunity to recognize more than one person's achievements or contributions. However, the renaming of a park, structure or facility from one name to another will be discouraged and accepted only for exceptional reasons.

(c) *Procedure.*

(1) Members of council or other individuals or groups that propose to name or rename a park, structure, facility or portion thereof must submit a letter to the city clerk with sufficient information or evidence to support a naming or name change. The clerk shall forward a copy of the letter to the offices of the mayor and the city council president. ~~and the director of neighborhood services~~. If a renaming is being proposed, the letter must document why the existing name no longer holds any historical significance, or otherwise why the existing name is no longer appropriate.

(2) If the property or facility under review is within the purview of the parks and recreation board, that board will review such request and discuss the request at a meeting of the board. Following board consideration, the board will make its recommendations to the city council. If the property or facility under review is within the purview of another organization or board, that organization or board will be given the opportunity to consider the request for naming or renaming and make its recommendation to the city council.

(3) The city council will make the final decision on all naming or renaming requests.

(Ord. No. 34-14, § 1, 9-11-14)

Sec. 2-3-4. - Disposition of property south of Bayfront/Main Streets.

Real property owned by the city or by the Pensacola Community Redevelopment Agency, which is located south of Bayfront Parkway/Main Street between the Pensacola Bay Bridge and A Street shall not be declared surplus or disposed of by sale of such property, in the absence of any exigent circumstance expressly declared to exist by the city council, but such property may be leased or otherwise be put to beneficial use in the best public interests of the city.

(Ord. No. 14-15, § 1, 6-18-15)

CHAPTER 2-4. ADMINISTRATIVE ORGANIZATION

ARTICLE I. - IN GENERAL[3]

Footnotes:

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Cross reference— Finance and taxation, Title III; leisure services, Title VI; licenses and business regulations, Title VII; personnel, Title IX, public enterprises and utilities, Title X; zoning development and structures, Title XII; code enforcement, Title XIII, Art. XII; planning, Ch. 12-0; fire codes, Ch. 14-2.

Sec. 2-4-1. - Table of organization.

REPEAL SECTION

~~The chain of authority for the administration of the city government shall be as set forth in a table of organization approved by the mayor.~~

(Code 1968, § 22-4; Ord. No. 16-10, § 9, 9-9-10)

Commented [RW21]: The ~~2010~~ Charter places authority to establish departments and organize the City with the Mayor. Charter, Sec. 4.01(a)(1) and (15), and Sec. 5.04.

Sec. 2-4-2. - Departments established; authority to change.

REPEAL SECTION

~~Subject to the provisions of subsection 1-1-1(c), the council hereby establishes the departments enumerated in section 2-4-3 within the city.~~

(Code 1968, § 22-1(A); Ord. No. 16-10, § 10, 9-9-10)

Commented [RW22]: The ~~2010~~ Charter places authority to establish departments and organize the City with the Mayor. Charter, Sec. 4.01(a)(1) and (15) and Sec. 5.04.

Sec. 2-4-3. - Departments enumerated.

REPEAL SECTION

~~Subject to the provisions of subsection 1-1-1(c), there shall be the following departments within the organizational structure of the city government: legal, city clerk, Energy Services of Pensacola, financial services, Port of Pensacola, human resources, engineering, airport, parks and recreation, West Florida Public Library, sanitation services and fleet management, police, fire, public works, housing, community development, and management information services.~~

(Code 1968, § 22-1(B); Ord. No. 27-90, § 1, 6-14-90; Ord. No. 24-93, § 1, 9-30-93; Ord. No. 47-96, § 1, 9-26-96; Ord. No. 26-99, § 1, 7-22-99; Ord. No. 39-00, § 1, 9-28-00; Ord. No. 25-02, § 1, 9-26-02; Ord. No. 18-03, § 1, 9-25-03; Ord. No. 20-06, § 3, 9-14-06; Ord. No. 32-09, § 1, 9-24-09; Ord. No. 16-10, § 11, 9-9-10)

Commented [RW23]: Repeal as outdated – some departments no longer exist or have been renamed or combined and the ~~2010~~ Charter places authority to establish departments and organize the City with the Mayor. Charter, Sec. 4.01(a)(1) and (15) and Sec. 5.04.

Editor's note— Section 6 of Ord. No. 32-09 provided for an effective date of Oct. 1, 2009.

Cross reference— Department of finance, director of finance, § 3-1-1; purchasing agent, appointed, § 3-3-11; department of cultural activities, § 6-4-16 et seq.; department of human resources, § 9-2-1.

Sec. 2-4-4. - Duties of directors.

REPEAL SECTION

~~Subject to the provisions of subsection 1-1-1(c), there shall be a director who will be the head of and responsible for the supervision and control of each department. Each director shall be responsible for the efficient administration of the business of the department in accordance with the laws of the state and the city.~~

Commented [RW24]: Charter Sec. 4.01(a)(15) places authority for determining supervision and control of each department with the Mayor.

(Code 1968, § 22-3; Ord. No. 16-10, § 12, 9-9-10)

Secs. 2-4-5, 2-4-6. - Reserved.

Editor's note— Ord. No. 16-10, §§ 13, 14, adopted Sept. 9, 2010, repealed § 2-4-5, which pertained to "appointment of directors, city clerk, administrative officials; compensation" and repealed § 2-4-6 which pertained to "authority of city manager, exceptions." See also the Code Comparative Table.

Sec. 2-4-7. - Authority of mayor and council president to conform regulations and procedures.

TRANSFER THIS SECTION TO Sec. 2-1 (GENERAL PROVISIONS)

~~The mayor and the city council president are hereby jointly conferred the authority to conform the provisions of any regulation or procedure mandated by any provision of the Code of the City of Pensacola, Florida, to the requirements of law as may be determined by statute, regulation or by applicable judicial determination. Upon the recommendation of the city attorney, when the mayor and the council president concur that a practice or procedure should be altered or amended to conform to the current state of the law as reflected by statute, regulation or controlling judicial precedent, they shall exercise that authority in writing and shall notify the city clerk and the city council. This authority shall continue in effect until such time as the city council shall have an opportunity to address the matter.~~

Commented [RW25]: This section more properly related to Administration – General Provisions, Ch. 2-1, and it should be transferred to become Sec. 2-1-7. .

(Ord. No. 08-03, § 1, 3-27-03; Ord. No. 16-10, § 15, 9-9-10)

Editor's note— Ord. No. 16-10, § 15, adopted Sept. 9, 2010, changed the title of § 2-4-7 from "authority of city manager and city attorney to conform regulations and procedures" to "authority of mayor and council president to conform regulations and procedures." See also the Code Comparative Table.

Sec. 2-4-8. - Authority of mayor during state of emergency.

TRANSFER THIS SECTION TO Sec. 2-1 (GENERAL PROVISIONS)

~~(a) Upon declaration of a state of emergency by the president of the United States, by the governor of the State of Florida or by Escambia County for any area which includes the City of Pensacola, the mayor shall be authorized and directed to take such emergency measures as he determines necessary to~~

Commented [RW26]: This section more properly belongs in Ch. 2-1, General Provisions, and has been transferred to become Sec. 2-1-8. .

protect the health, safety and welfare of the citizens and to ensure the timely reconstruction and repair of structural damage caused by the emergency event and the continued functioning of local government. The mayor shall further be authorized to exercise such emergency management powers granted to political subdivisions by Florida law and may alter normal work schedules and grant the nonessential work force time off with pay. The mayor will make the determination of which employees are deemed essential during each emergency. The mayor is authorized to pay essential employees, both non-exempt and certain ranges of exempt under the Fair Labor Standards Act, at overtime rates when required to report for duty during the time the remaining work force is not required to report. The mayor shall further be authorized to waive or suspend all ordinances, policies, procedures or customs of the city as the mayor determines necessary for purchase of commodities and services, for contracts of no more than one (1) year duration, for the assignment of employees and for the facilitation of reconstruction and repair, both public and private, as the mayor determines necessary. The mayor is authorized to delegate such powers to staff as determined necessary to the effective administration of the government of the City of Pensacola. This authorization is subject to the limits of the Constitution and Laws of the United States and the State of Florida.

(b) The mayor's exercise of authority pursuant to this section shall exist for a period of thirty (30) days following declaration of a state of emergency unless extended or shortened by action of the city council.

(Ord. No. 08-05, § 1, 8-11-05; Ord. No. 16-10, § 16, 9-9-10)

Editor's note— Ord. No. 16-10, § 16, adopted Sept. 9, 2010, changed the title of § 2-4-8 from "authority of city manager and city attorney to conform regulations and procedures" to "authority of mayor during state of emergency." See also the Code Comparative Table.

Secs. 2-4-9—2-4-20. - Reserved.

ARTICLE II. - LEGAL DEPARTMENT

Sec. 2-4-21. - Qualifications and duties of city attorney.

REPEAL

Commented [RW27]: This section is already covered by Charter Sec.5.03 and Sec. 4.02(a)(6).

The city attorney shall serve as the chief legal adviser to, and shall represent, elected or appointed officials, boards and commissions, and employees in the course and scope of their official duties or employment, respectively. The city attorney shall represent the city in legal proceedings and shall perform any other duties prescribed by state law, by the Charter, or by ordinance or resolution. The mayor shall appoint the city attorney, with the consent of the city council by an affirmative vote of a majority of city council members. The city attorney may be removed from office with the concurrence of the mayor and a majority of the city council.

(Laws of Fla. 1931, Ch. 15425, § 24; Laws of Fla., Ch. 71-855, § 1; Ord. No. 16-10, § 17, 9-9-10)

Secs. 2-4-22—2-4-35. - Reserved.

ARTICLE III. - RESERVED[4]

Footnotes:

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Editor's note—Ord. No. 23-13, § 1, adopted September 26, 2013, repealed §§ 2-4-36—2-4-39, which pertained to West Florida Public Library Department. See Code Comparative Table for complete derivation.

Secs. 2-4-36—2-4-50. - Reserved.

ARTICLE IV. - OFFICERS AND EMPLOYEES[5]

Footnotes:

--- (**5**) ---

Cross reference— Code of Ethics, Ch. 2-6; Employer-employee relations, Ch. 9-4.

State Law reference— Code of ethics for public officers and employees, F.S. § 112.311 et seq.; workers compensation, F.S. Ch. 440; unemployment compensation, F.S. Ch. 443; oath, F.S. § 876.05.

Sec. 2-4-51. - Oaths or affirmations of office.

REPEAL

Commented [RW28]: The oath of office is mandatory under state statutes.. F.S. § 876.05 through 876.10.

~~Every officer of the city shall, before entering upon the duties of his office, take and subscribe to an oath or affirmation, to be filed and kept in the office of the city clerk, that he will support, protect and defend the Constitution and laws of the United States and of the state, and in all respects discharge the duties of his office.~~

(Laws of Fla. 1931, Ch. 15425, § 95)

State Law reference— Oath, F.S. § 876.05.

Sec. 2-4-52. Budget Analyst.

(a) *Legislative findings*. The City Council is authorized to create the position of Budget Analyst in accordance with Section 4.02(a)(6) of the City Charter.
(b) *Establishment*. There is hereby created the position of Budget Analyst whose designated function is to assist the City Council in the conduct of budgetary inquiries, analyses and making budgetary decisions.
(c) *Qualifications*. Appointees serving as the Budget Analyst shall have the professional qualifications of a college degree in accounting, finance and budget analysis. Two (2) years of pertinent experience may be substituted for each year of college lacking.

(d) *Classification and Salary*. The City's position classification code classifies the position of Budget Analyst as GE-09. This classification carries a salary range of $26,270 - $43,868 as set forth in the City's Pay Scale Summary.

(e) *Duties*. The duties of the Budget Analyst shall include:

1. Providing a formal, comprehensive review and analysis of the proposed annual budget.
2. Gathering, organizing, and analyzing data and information relative to budgetary issues.
3. Providing comparative studies of other cities as they relate to municipal finance.
4. Engaging in fiscal forecasting and planning.
5. Analyzing the city's past, current, and proposed revenues and expenditures.
6. Reviewing existing and potential tax revenues.
7. Analyzing federal, state, and local programs to determine sources of funding and appropriate expenditure options.
8. Reviewing the economic effects of proposed legislation.
9. Preparing fiscal and economic project analysis as directed by the City Council.
10. Providing policy research and fiscal analysis on proposed legislation.
11. Preparing such other reports relating to budgetary and legislative policy concerns directed by the City Council.
12. Making recommendations to the City Council in connection with the analysis, studies, and reports described herein.

(f) *Appointment and Removal*. The City Council shall appoint and may remove the Budget Analyst from office by a majority vote of the members of the City Council at any time, with or without cause.

(Ord. No. 10-16, § 1, 4-14-2016)

Charter reference – Authority to appoint a budget analyst, § 4.02(a)(6).

Secs. 2-4-~~52~~ 53—2-4-65. - Reserved.

Editor's note— Ordinance No. 17-98, § 2, adopted May 28, 1998, deleted § 2-4-53. Formerly, such section pertained to liability of comptroller for unauthorized warrants and derived from Laws of Fla. 1931, Ch. 15425, § 45. Ord. No. 16-10, § 19, adopted Sept. 9, 2010, repealed § 2-4-52, which pertained to "Bonds." See also the Code Comparative Table.

ARTICLE V. - RESERVED[6]

Footnotes:

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Editor's note—Ordinance No. 17-98, § 4, adopted May 28, 1998, deleted § 2-4-66. Formerly, such section pertained to advertisements for competitive bidding and derived from § 37-2(A) of the 1968 Code.

Secs. 2-4-66—2-4-80. - Reserved.

ARTICLE VI. - DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Sec. 2-4-81. - Department of housing established; director; powers and duties.

REPEAL

~~Subject to the provisions of subsection 1-1-1(c), there shall be a department of housing within the administrative service of the city, the director of which department shall serve at the pleasure of the mayor. The department shall review, monitor, and make recommendations concerning city policy and administration in the subjects of housing, community development and rehabilitation programs, shall assist the public and provide the leadership for the city's affordable housing program, and shall perform such other duties as prescribed by the mayor.~~

(Ord. No. 25-90, § 1, 6-14-90; Ord. No. 16-10, § 20, 9-9-10)

Editor's note— Ord. No. 25-90, adopted June 14, 1990, did not specifically amend this Code; hence, inclusion of § 1 as § 2-4-81 was at the discretion of the editor with the consent of the city. Ord. No. 16-10, § 20, adopted Sept. 9, 2010, changed the title of § 2-4-81 from "department of housing and community development established; director; powers and duties" to "department of housing established; director; powers and duties." See also the Code Comparative Table.

Commented [RW29]: The Charter places authority to establish the organization of the city and the responsibilities of departments with the Mayor. Charter Sec. 4.01(a)(1) and (15), and Sec. 5.04.

CHAPTER 2-5. ELECTIONS[7]

REPEAL ALL SECTIONS AS NOTED BELOW

Footnotes:

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Charter reference— Elections, § 9 et seq.

Cross reference— City council, Ch. 2-2.

State Law reference— Florida Election Code, F.S. Chs. 97—106.

Sec. 2-5-1. - Districts and precincts designated; map adopted by reference.

REPEAL SECTION

Commented [RW30]: This section is outdated and the map referred to is no longer used.

~~The respective districts and election precincts dividing the city shall be and are hereby designated as set forth on that certain map entitled: "City of Pensacola District and Precinct Map, Revised June 20, 2002," which is on file with the city clerk and which is hereby adopted by reference for the year 2004 elections and subsequent elections.~~

(Code 1968, § 25-1; Ord. No. 52-83, § 1, 2-24-83; Ord. No. 50-84, § 1, 12-13-84; Ord. No. 2-85, § 1, 1-24-85; Ord. No. 4-87, § 1, 1-29-87; Ord. No. 7-89, § 1, 2-9-89; Ord. No. 3-91, § 1, 2-14-91; Ord. No. 41-92, § 1, 12-17-92; Ord. No. 3-93, § 1, 2-11-93; Ord. No. 5-95, § 1, 2-9-95; Ord. No. 7-97, § 1, 2-13-97; Ord. No. 2-99, § 1, 1-14-99; Ord. No. 4-01, § 1, 1-11-01; Ord. No. 5-02, § 1, 1-24-02; Ord. No. 14-02, § 1, 6-20-02; Ord. No. 07-04, § 1, 2-12-04)

Charter reference— Redistricting, § 10; creation and composition of council, § 11.

Sec. 2-5-2. - Arrangements for elections, dates of elections, inspectors, clerks and deputies of elections.

REPEAL SECTION

Commented [RW31]: This provision is covered by Charter Sec. 6.04(a) and (b)

~~(a) The council shall make all necessary arrangements for holding the regular municipal general and runoff elections and shall declare the results thereof. The general election for contests with three or more candidates shall be held on the date of the primary election established by general law for election of state and county officers. The general election for contests between two candidates, and the runoff election for candidates receiving the greatest number of votes, but none receiving a majority, shall be held on the first Tuesday following the first Monday in November of each even-numbered year.~~

~~(b) Inspectors, clerks and deputies of the elections shall be appointed by the supervisor of elections for the general election and, if necessary, by the city clerk for the runoff election. The inspectors, clerks and deputies so acting at a runoff election shall receive for their services for one (1) day an amount to be set by resolution of the council each election year, and an amount to be set by said resolution~~

~~for mileage incurred in attending instruction procedure schools for inspectors, clerks and deputies and transporting election return material to the city clerk's office as required. Election expenses above authorized shall be payable from the general fund of the city. One (1) clerk, three (3) inspectors and one (1) deputy shall be appointed to serve at each polling place.~~

(Code 1968, § 25-10; Ord. No. 50-84, § 1, 12-13-84; Ord. No. 3-99, § 1, 1-14-99; Ord. No. 26-01, § 1, 11-15-01; Ord. No. 21-08, § 1, 3-13-08)

Editor's note— Ord. No. 21-08, § 5, adopted March 13, 2008, provides for an effective date of Jan. 1, 2009 for subsection 2-5-2(a).

State Law reference— Polling places, F.S. § 98.031.

Sec. 2-5-3. - Notice of elections.

REPEAL SECTION

Commented [RW32]: This provision is covered by Charter Sec. 6.04 ©.

~~The city clerk shall cause a notice of the time and place of holding all regular municipal general and runoff elections, to be published in a newspaper published in the city, for at least once a week for two (2) consecutive weeks immediately preceding each regular municipal general or runoff election.~~

(Code 1968, § 25-12; Ord. No. 50-84, § 1, 12-13-84)

Sec. 2-5-4. - Returns; canvassing; canvassing board.

REPEAL SECTION

Commented [RW33]: This section is covered by Charter Sec. 6.04(e).

~~The general election shall be conducted and its results shall be tabulated, returned and canvassed by county election officials in accordance with general law. The city clerk shall report the results determined by the county canvassing board to the council at a meeting to be held at 12:00 noon on the day following the election, and the results as shown by the return shall be certified as the results of the election by the council. The results of the voting in any runoff election, when ascertained, shall be certified by returns in duplicate, signed by the clerk and a majority of the inspectors in each precinct. One (1) copy shall be delivered, along with the ballot boxes, by the clerk or inspectors to the city clerk, who shall make tabulation of the results. The other copy shall be sealed and delivered to the chairman or a member of the canvassing board. The canvassing board shall canvass the returns and report the results thereof to the council at a meeting to be held at 12:00 noon on the day following the election, and the result as shown by the return shall be certified as the result of the election by the council.~~

(Code 1968, § 25-11; Ord. No. 50-84, § 1, 12-13-84; Ord. No. 26-01, § 2, 11-15-01; Ord. No. 16-10, § 21, 9-9-10)

Sec. 2-5-5. - Absentee voting.

REPEAL SECTION

Commented [RW34]: The procedures for absentee voting (and early voting) are provided for in F.S. § 101.6105 through 101.662.

~~All electors qualified to vote in any municipal election, but are unable to cast their vote at the polls on the day of election, are authorized to vote absentee in any city election in conformity with the general law on absentee voting.~~

(Code 1968, § 25-14(A); Ord. No. 50-84, § 1, 12-13-84)

State Law reference— Absentee ballots, F.S. §§ 101.62, 101.64 et seq.

Secs. 2-5-6—2-5-9. - Reserved.

Editor's note— Ord. No. 16-10, §§ 22—25, adopted Sept. 9, 2010, repealed § 2-5-6—2-5-9, which pertained to "candidate qualifying period," "same—ballots," "same—runoff elections," and "alternative method of qualifying." See also the Code Comparative Table.

CHAPTER 2-6. CODE OF ETHICS

Sec. 2-6-1. - Created.

There is hereby created a Code of Ethics for the City of Pensacola, which shall be applicable to all elected and appointed officials of the city, including all city employees, ~~whether classified or unclassified,~~ regardless of capacity of employment.

(Ord. No. 07-11, § 1, 4-7-11; ~~2010~~ Charter, Sec. 8.02 (a))

Commented [RW35]: Add reference to Charter provision requiring adoption of a Code of Ethics.

Sec. 2-6-2. - Definitions.

Appear or *appear before* means to communicate in any form, including, without limitation, personally, through another person, by letter, or by telephone. This definition also applies to the noun form, "appearance."

Appearance of a conflict of interest means objective circumstances that would lead a reasonable person to conclude that a proposed decision by an individual official or employee may be reasonably criticized on the basis of bias, favoritism, or partiality, regardless of whether the circumstances meet the definition of a conflict of interest in F.S. Ch. 112, Pt. III.

~~*City* means the City of Pensacola, Florida.~~

Commission on ethics means the Florida Commission on Ethics established and created by Article II, § 8(f) of the Florida Constitution, and F.S. §§ 112.3191—112.3241.

Consultant means an independent contractor or professional person or entity engaged by the city or advising a city official, and in a position to influence a city decision or action, or have access to confidential information.

Financial benefit includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law. A "financial interest" is a relationship to something such that a direct or indirect financial benefit has been, will be, or might be received as a result of it.

A *gift* is a financial benefit as defined in F.S. Ch. 112, Pt. III.

Household includes anyone whose primary residence is in the official or employee's home, including non-relatives who are not rent payers or domestic employees.

An *interest in a contract* is a relationship to a contract such that a direct or indirect financial or other material benefit has been or will be received as a result of that contract. The official or employee does not need to be a party to the contract to have an interest in it. Indirect benefit includes a benefit to the official's family or outside business or employer.

Ministerial act means an action performed in a prescribed manner without the exercise of judgment or discretion as to the propriety of the act.

Official or *employee* means any elected or appointed official or employee of the city, whether paid or unpaid, and includes all members of a board, body, advisory board, council, commission, agency, department, district, administration, division, bureau, committee, or subcommittee of the city. This definition includes members of council and the mayor.

Personal benefit includes benefits other than those that are directly financially advantageous. These include financial benefits to relatives and business associates, as well as non-financial benefits to these people and to oneself, including such intangible matters as reputation and the success of one's career. A

"personal interest" means a relationship to something such that a personal benefit has been, will be, or might be obtained by action or inaction with respect to it.

Relative means a spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal income tax return.

State Code of Ethics means F.S. §§ 112.311—112.326, as those provisions are interpreted and applied by the Florida Commission on Ethics, and as those provisions may be amended from time to time.

Subordinate means another official or employee over whose activities an official or employee has direction, supervision, or control.

(Ord. No. 07-11, § 1, 4-7-11)

Sec. 2-6-3. - Prohibitions.

(a) All provisions of the State Code of Ethics are hereby adopted and incorporated by reference into the Code of the City of Pensacola, Florida, as they currently exist upon the effective date and as they may be modified or amended from time to time.

(b) The code of ethics adopted by the city council in its rules and procedures of the city council, effective at noon, January 10, 2011, applying to the members of council and incorporating the council's regulations of council travel policies and procedures, as that code of ethics may be altered or amended by council from time to time, is hereby adopted and incorporated by reference into this chapter.

(c) The code of ethics, adopted by the mayor and applicable to all city employees within the mayor's employment, as provided in the City of Pensacola Employment Manual, as that code of ethics may be altered or amended by the mayor from time to time, is hereby adopted and incorporated by reference into the provisions of this chapter.

(d) All members of council shall abstain from casting their vote and shall so declare upon the record and execute the appropriate form to be filed with the city clerk, whenever they have established that they would have an appearance of a conflict of interest by casting such vote.

(e) The mayor shall refrain from taking any action or conferring any benefit upon any person, group of persons or entity, when to do so would create a conflict of interest or circumstances establishing the appearance of a conflict of interest. In lieu of taking such action, the mayor shall designate an alternative decision-maker who shall have no interest in the transaction, no conflict of interest and no appearance of a conflict of interest, to execute the responsibility of the office of the mayor in that matter.

(f) An official or employee must refrain from acting upon or participating in, formally or informally, a decision-making process with respect to any matter before the city, if acting on the matter, or failing to act upon the matter, may personally or financially be of personal benefit to himself, herself or a relative or business associate.

(g) An official or employee of the City of Pensacola may not, directly or indirectly, treat anyone, including himself or herself and his or her family or business associates, preferentially or in any other manner that is not generally accorded to city residents.

(h) An official or employee of the City of Pensacola, or a former official or employee, a contractor or a consultant, may not disclose any confidential information obtained formally or informally as part of his or her work for the city or due to his or her position with the city, or use any such confidential information to further his or her own or any other person or entity's personal or financial interests.

(i) No official or employee may promise an appointment or use his or her influence to obtain an appointment to any position as a reward for any political activity or contribution.

(j) No official or employee of the City of Pensacola may use, or permit others to use, any property owned by the city for profit or personal convenience or benefit, except (i) when such use is available to the

public generally, or to a class of residents, on the same terms or conditions, (ii) when permitted by policies approved by the city's legislative body or executive, or (iii) when, in the conduct of official business, used in a purely incidental way for personal convenience. This applies not only to property such as vehicles, computers, office equipment, telephones and other tangible and intangible city property, but also to travel and other expense reimbursements, which may not be requested or spent on anything other than official business of the city.

(k) No official or employee in his or her official capacity may publicly endorse products or services in any manner that associates that official or employee with the City of Pensacola. A consultant retained by the city may not represent a person or entity other than the city in any matter, transaction, action, or proceeding in which the consultant participated personally and substantially as a consultant to the city; nor may a consultant represent a person or entity in any matter, transaction, action, or proceeding against the interest of the city unless the city provides a written waiver of any such conflict.

(l) No person seeking to become an official or employee, consultant or contractor of the City of Pensacola may make any false statement, submit any false document, or knowingly withhold information about wrongdoing in connection with employment by or rendering service to the city.

(Ord. No. 07-11, § 1, 4-7-11)

Sec. 2-6-4. - Enforcement.

(a) The provisions of the State Code of Ethics are interpreted and enforced by the commission on ethics pursuant to state law.

(b) The provisions of the code of ethics adopted by the city council in its rules and procedures of the city council, shall be enforced by the city council.

(c) The provisions of the code of ethics applicable to city employees as set forth in the City of Pensacola Employment Manual, shall be enforced by the mayor.

(d) Enforcement of the remaining provisions of this code of ethics shall be enforced by the mayor, if violated by any employee of the City of Pensacola, and by the city council to the extent authorized by law if violated by the mayor or any member of council. Any violation of this Code may be subject to a penalty imposed by the city council or the mayor, as applicable, at their discretion.

(Ord. No. 07-11, § 1, 4-7-11)

TITLE III - FINANCE AND TAXATION

Chapters

CHAPTER 3-1. GENERAL PROVISIONS

Sec. 3-1-1. - ~~Department of financial services; director of finance.~~ Financial administration.

~~Subject to the provisions of subsection 1-1-1(c), the mayor with the consent of council may appoint a director of finance who may serve as comptroller, treasurer, and plan administrator for all deferred compensation plans and all nonqualified pension plans. The director of finance may serve as plan or fund administrator and chief administrative officer for all qualified pension plans except as otherwise provided by law. The director of finance may have charge of the department of financial services as well as~~ Provisions shall be made for the administration of the financial affairs of the city, including the keeping and supervision of all accounts, the levy, assessment and collection of taxes and other revenue, the making and collection of special assessments, the custody and disbursement of city funds and monies, the control over expenditures, and such other duties as the mayor may provide.

(Laws of Fla. 1931, Ch. 15425, § 28; Ord. No. 17-98, § 1, 5-28-98; Ord. No. 48-98, § 1, 9-24-98; Ord. No. 26-99, § 6, 7-22-99; Ord. No. 16-10, § 26, 9-9-10)

Cross reference— Administrative organization, Ch. 2-4.

Sec. 3-1-2. - ~~Comptroller~~; financial reports.

~~Subject to the provisions of subsection 1-1-1(c), the director of finance shall be charged with keeping and supervising the accounts for all departments and offices of the city.~~ Provision shall be made for adequate recording of all cash receipts and disbursements, all revenues accrued and all liabilities incurred, as well as all transactions affecting the acquisition, custody and disposition of municipal properties and values. Financial reports shall be prepared for each quarter and fiscal year and for such other periods as may be required by the mayor. Those reports shall be submitted by the mayor to the council.

(Laws of Fla. 1931, Ch. 15425, § 29; Ord. No. 17-98, § 1, 5-28-98; Ord. No. 16-10, § 27, 9-9-10)

Sec. 3-1-3. - ~~Treasurer~~; taxes and monies received.

~~Subject to the provisions of subsection 1-1-1(c), the director of finance may be responsible for supervision and control of the city treasury~~. All taxes and monies received by any officer or employee of the city, or in connection with the business of the city, shall be paid promptly into the treasury and shall be deposited with responsible banking institutions in compliance with the council's adopted investment policy. ~~designated by the council in accordance with such regulation and subject to such requirements as to security therefor and interest thereon as the council may establish. All money so deposited shall accrue to the benefit of the city.~~

(Laws of Fla. 1931, Ch. 15425, § 30; Ord. No. 17-98, § 1, 5-28-98; Ord. No. 16-10, § 28, 9-9-10)

State Law reference— Security for public deposits, F.S. Ch. 280; investment of funds, F.S. § 166.261.

~~Sec. 3-1-3.5. - Insurance, risk management and loss prevention.~~

Commented [RW1]: This section was derived from the I931 Charter. The current Charter provides that the decision whether to have a finance department, or a director of finance, and what the responsibilities of the department or the director will be are exclusively the prerogative of the mayor and, except for confirming the head of a department, not the City Council. This section has been superseded by the Charter.

Commented [RW2]: This section has been superseded by the mayor's authority to direct the activities of city employees. However, as the governing body, the Council has the authority to establish standards of conduct without directing a particular individual to perform specific acts, and the Council has the authority to require periodic reports from the mayor (Sec. 4.02 (3)), and the mayor has an obligation to provide them (Sec. 4.01 (a)(12) and (13)).

Commented [RW3]: This sentence has been superseded by the Charter. The remainder of the section is authorized by F.S. § 218.415 (formerly, F.S. § 166.261) which allows the governing body of a municipality to establish an "investment plan" and take other actions regarding the handling and investment of public funds.

Subject to the provisions of subsection 1-1-1(c), the director of finance shall review, monitor and make recommendations concerning city policy and administration in the subjects of insurance, risk management and loss prevention, shall maintain all records pertaining to claims, losses and insurance policies, shall supervise and coordinate the preparation of insurance specifications for contracts, shall assist in negotiating settlements of losses and make recommendations with regard thereto, and shall perform such other duties prescribed by the mayor.

Commented [RW4]: Superseded by the Charter.

(Ord. No. 26-99, § 3, 7-22-99; Ord. No. 16-10, § 29, 9-9-10)

Sec. 3-1-3.6. - Insurance purchases and insurance claim payments. RESERVED

(a) The mayor is authorized to pay claims without city council approval under any one of the following circumstances:

The payment of the claim is required by law.

The payment of the claim is controlled by language specified in an insurance policy.

The claim amount is within the mayor's purchasing authority.

All other payments for claims must be approved by city council.

City council has budgeted or appropriated sufficient funds to pay the claim.

Commented [RW5]: The payment of claims is an executive function subject only to the city council's right to budget and appropriate funds.

(b) The mayor is authorized to purchase insurance coverages that are required by Florida Statutes or by City Code or that fall within the mayor's purchasing authority. In addition, the mayor is authorized to purchase the following insurance polices that are either routine, cover unusual risk factors, for which a premium increase is primarily based on inflation, or for which the market is extremely limited.

Those policies are:

Airport liability

Boiler and machinery

Commercial automobile physical damage

Excess workers' compensation

Fire truck and portable equipment physical damage

Gas excess liability

Group health insurance

Group life insurance

Group dental insurance

Pension board fiduciary liability

Police liability

Port liability and excess

Property insurance

Public officials liability.

Commented [RW6]: Purchasing municipal insurance is an executive function.

(c) The mayor shall report all such administrative action to council, by memorandum, as these actions occur.

(Ord. No. 32-10, § 1, 12-16-10)

Sec. 3-1-4. - Claims; accounts.

Subject to the provisions of subsection 1-1-1(c), no claim against the city may be paid except by means authorized by the director of finance. Accounts shall be kept by the department of financial services, showing the financial transactions of all departments and offices of the city.

(Laws of Fla. 1931, Ch. 15425, § 31; Ord. No. 17-98, § 1, 5-28-98; Ord. No. 26-99, § 6, 7-22-99; Ord. No. 16-10, § 30, 9-9-10)

Sec. 3-1-5. - Reserved.

Editor's note— Ord. No. 16-10, § 31, adopted Sept. 9, 2010, repealed § 3-1-5, which pertained to "budget estimate." See also the Code Comparative Table.

Sec. 3-1-6. - Appropriation resolutions; fiscal year.

(a) Based upon council's review of the budget estimate an appropriation resolution shall be prepared. Provision shall be made for public hearings on the proposed appropriation resolution before the council. The total appropriations for the budget shall not exceed the total estimated source of funds.

(b) The fiscal year of the city shall begin with the first day of October of each year and shall end with the thirtieth day of September of the following year.

(Laws of Fla. 1931, Ch. 15425, § 33; Ord. No. 17-98, § 1, 5-28-98)

State Law reference— Determination of millage and budget adoption procedure, F.S. Ch. 200.

Sec. 3-1-7. - Expenditures.

No money shall be drawn from the treasury of the city, nor shall any obligation for the expenditure of money be incurred, except pursuant to appropriations made by the council.

(Laws of Fla. 1931, Ch. 15425, § 38)

Sec. 3-1-8. - Payment of claims.

Subject to the provisions of subsection 1-1-1(c), no claim against the city shall be paid except those certified by the director of the appropriate department or his or her designee, and by means authorized by the director of finance. The director of finance shall cause to have examined all payrolls, bills and other claim and demands against the city and shall issue no payment unless he finds that the claim is in proper form, correctly computed and duly certified; and that it is justly and legally due and payable, that an appropriation has been made therefor which has not been exhausted, and that the payment has been otherwise legally authorized; and that there is money in the city treasury to make payment. He may require any claimant to make oath to the validity of a claim. He may investigate any claim, and for that purpose may examine witnesses under oath, and if he finds a claim to be fraudulent, erroneous or otherwise invalid, he shall not issue payment therefor.

Commented [RW7]: The mayor has an obligation to provide, and the council has a right to receive, reports on financial matters. Charter Sec. 4.02(3), and Sec. 4.01(a) (12) and (13).

Commented [RW8]: The specification of individual or departmental responsibilities has been superseded by the Charter. The obligation to retain financial (and other) records is provided by the Florida Public Records Act, Ch. 119.

Commented [RW9R8]:

Commented [RW10]: The budget process and the establishment of the fiscal year are provided by state statute, F.S. § 166.241 and Ch. 200.

Commented [RW11]: This restriction on expenditures is provided by state statute, F.S. § 166.241.

Commented [RW12]: This provision is derived from the 1931 Charter and has been superseded by the current Charter, and the restriction on expenditures is provided by state statute, F.S. § 166.241.

(Laws of Fla. 1931, Ch. 15425, § 44; Ord. No. 17-98, § 1, 5-28-98; Ord. No. 16-10, § 32, 9-9-10)

Sec. 3-1-9. - Requirements for issuance of bonds.

(a) *Procedures and requirements.*

(1) The city council of the city shall have the power to provide by resolution for the issuance and sale of revenue or excise tax bonds and certificates or any other bonds or certificates not secured by ad valorem taxation, so as to provide money to finance the acquisition, construction, improvement and operation of any utility, facility, enterprise, work, undertaking or project which the city is authorized by law to acquire, construct, improve or operate, or for any other municipal purpose or purposes, and to provide that the bonds and certificates and interest thereon shall be payable from the revenues to be derived by the city from the operation of the same or a combination of any or all of the utilities, facilities, enterprises, works, undertakings or projects, or from any other sources of pledged security except ad valorem taxes. The resolution may be adopted at a regular or special meeting by a majority vote of the council and at the same meeting at which it is introduced, to take effect immediately upon its passage, subject to mayoral veto. It is determined and declared as a matter of legislative intent that no election to authorize the issuance of the bonds or certificates shall be necessary. No other proceedings or procedures of any character whatever shall be necessary or required for the issuance of the bonds or certificates by the city. The words "revenue bonds" and "revenue certificates" and "excise tax bonds" and "excise tax certificates" are used interchangeably herein, and the provisions applicable to one are applicable to the other.

(2) Any and all revenue or excise tax bonds or certificates issued by the city pursuant to this section shall be special obligations of the city and shall be payable from and secured by a lien upon the revenue of the enterprise or other pledged security as more fully described in the resolution adopted, having due regard to the cost of operation and maintenance of the enterprise, and the amount or proportion, if any, of the revenue of the enterprise previously pledged. The city may by resolution pledge for the security of the bonds or certificates a fixed amount, without regard to any fixed proportion of the gross revenue of the enterprise.

(3) No recourse shall be had for the payment of the revenue bonds or excise tax bonds or certificates, or any interest thereon or any part thereof, against funds of the city realized from ad valorem taxes. The bonds or certificates and interest thereon shall not be a debt of the city nor a charge, lien or encumbrance, legal or equitable, upon the property of the city or upon any income, receipts, excise taxes, franchise fees or revenues of the municipality other than the revenues as shall have been pledged to the payment thereof, and every bond or certificate shall recite in substance that the bond or certificate, including interest thereon, is payable solely from the revenues pledged to the payment thereof, and that the municipality is under no obligation to pay the same except from the revenues.

(4) The city may issue bonds payable solely out of revenues which may be derived from a particular project or projects, or may issue bonds payable from utilities services taxes, ~~cigarette taxes~~, franchise taxes, fees or payments, or any excise or service tax which it may be authorized to impose, or a combination of either or all of such sources of revenue or unpledged revenue from any source; except that full faith and credit bonds or general obligation bonds, payable from unlimited ad valorem taxes, may not be issued unless authorized by vote of the electors of the city in the manner provided by law.

(5) The city may, in addition to the other powers herein conferred, insert provisions in any resolution authorizing the issuance of such revenue or excise tax bonds or certificate which shall be a part of the contract with the holders of the revenue bonds or certificates, in the following respects:

a. Limitations on the purpose to which the proceeds of sale of any issue of bonds or certificates may be applied;

Commented [RW13]: Comment: The city's authority and process for borrowing money and issuing bonds is expressly granted to the governing body of the municipality by F.S. § 166.101 et seq. and Ch. 218.

Commented [RS14]: No longer collected.

b. Limitations on the issuance and on the lien of additional bonds, certificates or obligations to finance the extension, addition or improvement of the enterprise which are secured by or payable from the revenues of the enterprise;

c. Limitations on the right of the city or its governing body to restrict and regulate the use of the enterprise;

d. Pledging all or any part of the revenues of the enterprise to which its right then exists or rights which may thereafter come into existence;

e. The city may avail itself of any right, power or authority to issue bonds granted to municipalities from time to time by the provisions of Florida Statutes.

(6) The foregoing provisions of this section shall constitute full and complete authority for the issuance of the bonds and certificates herein authorized, and no procedures or proceedings, publications, notices, consents, approvals, orders, acts or things by the council or any board, officer, commission or department of the city, other than those required by this section, shall be required to issue any bond or certificate or to do or perform any act, except as shall be required by this section.

(7) Bonds, certificates or other obligations of any type or character authorized and issued by the city may bear an interest rate within the discretion of the council. There shall be no maximum limitation on the interest rate, except that the interest rate shall be based on the good faith judgment of the council after receiving advice from the mayor, city financial officials, fiscal agents and bond attorneys employed by the city.

(b) *Power to combine utilities, enterprises.* The council shall have power by resolution to combine any or all of its municipally owned utilities or other revenue-producing enterprises or undertakings for the purposes of the construction, extension, improvement, operation or financing thereof.

(Laws of Fla. 1931, Ch. 15425; Laws of Fla., Ch. 59-1725, § 1; Laws of Fla., Ch. 70-885, § 1; Ord. No. 16-10, § 33, 9-9-10)

State Law reference— Municipal borrowing, F.S. § 166.101 et seq.; municipal finance and taxation, F.S. § 166.201 et seq.; maximum rate of interest, F.S. § 215.84; bond information, notice, sale, etc., F.S. §§ 218.37, 218.38, 218.385.

Sec. 3-1-9.1. - Reserved.

Editor's note— Ord. No. 32-02, § 1, enacted Oct. 10, 2002, repealed § 3-1-9.1 in its entirety. Formerly, said section pertained to investment of city funds; authorization, as adopted by Ord. No. 20-85, § 1, enacted June 13, 1985.

Sec. 3-1-10. - Boundaries of Pensacola Downtown Improvement District.

The Pensacola Downtown Improvement Board and the council do hereby go on record as approving the boundaries of the downtown improvement district as on file in the clerk's office.

(Code 1968, § 150-9.1)

Sec. 3-1-11. - Service fee for dishonored checks.

~~There shall be assessed a service fee of twenty dollars ($20.00) or five (5) percent of the amount of the check, draft, or order, whichever is greater, for the collection of a dishonored check, draft or other order~~

Commented [RW15]:

Commented [RW16R15]: This section should be transferred to another location in the code – one that collects provisions for other city boards and special districts.

~~for the payment of money to the city or any official or agency of the city or such other amount as may be authorized by F.S. § 166.251, as said statute may be amended from time to time. The service fee shall be in addition to all other penalties imposed by law. Proceeds from this fee shall be retained by the collector of the fee.~~

The service fee for dishonored checks shall be as provided in F.S. § 832.08(5).

Commented [RS17]: The city currently uses this schedule which is $25 for checks up to $50; $30 for checks from $50-$300; and $40 or 5% for bad checks above $300.

(Ord. No. 52-89, § 1, 10-5-90; Ord. No. 16-92, § 1, 6-25-92)

Sec. 3-1-12. - Reserved.

Editor's note— Ord. No. 16-10, § 34, adopted Sept. 9, 2010, repealed § 3-1-12, which pertained to "Liability of director of finance for unauthorized payments." See also the Code Comparative Table.

Sec. 3-1-13. - Council reserve (general fund).

Effective October 1, 2013, a minimum reserve of fifteen (15) percent of the general fund beginning adopted appropriations (expenditure budget) should be incrementally established and maintained for use in meeting unanticipated needs and/or emergencies.

(1) *Use of council reserve.* Council reserves shall be used only after all efforts have been exhausted to fund unanticipated needs and/or emergencies, such as implementing a modified hiring freeze and expenditure reductions. Once the mayor has determined that it is necessary to draw down council reserves, written communication should be provided by the mayor to city council, explaining the nature of the unanticipated need and/or emergency and requires approval by a two-thirds (2/3) vote of city council. Use of funds may only be initiated when current fiscal year revenues decrease by five (5) percent or more of the total adopted beginning estimated revenues, including transfers. A maximum of fifty (50) percent of the shortfall or fifty (50) percent of the prior fiscal year ending council reserve balance may be drawn, whichever is less. At no time may the reserve be less than seven and one-half (7.5) percent of adopted annual appropriations or half of the prior fiscal year ending council reserve balance, whichever is greater. The council reserve may not be used for more than two (2) consecutive years.

(2) *Replenishment of council reserve.* If the reserves are drawn down below the minimum required level of fifteen (15) percent, then a budgetary plan shall be implemented to return the reserve to a minimum fifteen (15) percent level in no more than a five-year period. The progress of replenishment should be reported in the annual budget.

(3) *Funding of council reserves.* Proceeds from the sale of city (general government) owned surplus real property, specifically approved by city council for such purpose, and any other funds identified in the annual budget (and any amendments thereto) will be used to increase the reserve. Interest earnings will be applied on the reserve balance each fiscal year.

(Ord. No. 39-14, § 1, 10-9-14)

CHAPTER 3-2. PUBLIC WORKS AND IMPROVEMENTS[2]

Footnotes:

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Cross reference— Competitive bid for contracts for public works and purchase of material and supplies, § 3-3-2; leisure services, Title VI; buildings and building regulations, Ch. 7-13; public enterprises and utilities, Title X.

State Law reference— Supplemental and alternative procedure for making local improvements, F.S. Ch. 170; municipal public works, F.S. Ch. 180.

Sec. 3-2-1. - Powers of city; fixing fees and charges for utility services.

In addition to powers which it may now have, the city shall have power under this chapter:

(1) To construct, repair, extend or acquire extensions and improvements to the existing natural gas systems and other utility systems, and all other facilities now owned and operated or hereafter acquired by the city, including but not limited to facilities for the storage, transmission or distribution of natural gas, storage tanks, distributing mains and pipes, meters, valves and equipment, within or without the territorial boundaries of the city, and to acquire in the name of the city, by gift, purchase or the exercise of the right of eminent domain, lands or rights in land in connection therewith and any other property, real or personal, tangible or intangible, necessary, desirable or convenient in connection with the construction, operation or management of the utility systems and other facilities, and to hold and dispose of all real and personal property under its control.

(2) To construct, repair, extend and improve and make improvements to the public streets and thoroughfares of the city; and to acquire, construct, alter, repair and improve all public buildings, property, improvements and all other facilities, including recreational parks and playgrounds, now existing or hereafter to be acquired, belonging to the city and used and dedicated to municipal and public purposes and lying within or without the city limits of the city, and to acquire in the name of the city, by gift, purchase or the exercise of the right of eminent domain, lands or rights in lands or water rights in connection therewith and any other property, furnishings and equipment, real or personal, tangible or intangible, necessary, desirable or convenient in connection with the construction, operation or management, extension and improvement of the public streets, public buildings, property and all other facilities, including recreational parks and playgrounds.

(3) To employ, and to enter into agreements or contracts with, consultants, advisors, engineers, architects, managers or fiscal or other experts, for the planning, preparation, construction, supervision, management, operation and financing of natural gas systems and other utility systems, and such public streets and thoroughfares, public buildings, property, improvements, recreational and other facilities, now existing or hereafter to be acquired, or any part thereof, upon the terms and conditions as to compensation and otherwise as the ~~council~~ ~~of the~~ city shall deem desirable and proper.

(4) To prescribe, fix, establish and collect fees, rentals or other charges for the facilities, services and privileges furnished by natural gas systems and other utility systems, and public buildings, property, improvements, recreational and other facilities, or any part thereof, whether heretofore or hereafter constructed or acquired, upon any equitable basis; provided, however, that the fees, rentals or other charges or any revision thereof shall be fixed and established by resolution of the

Commented [RW18]: Some of the listed activities are the prerogative of the mayor, others of the city council, but all are within the home rule authority of "the city."

council of the city only after a public hearing has been held thereon and notice of the public hearing shall have been published at least once at least ten (10) days prior thereto in a newspaper published in the city.

(Laws of Fla. 1931, Ch. 26138, § 1)

Cross reference— Energy services, Ch. 10-4.

Sec. 3-2-2. - Revenue bonds or certificates—Issuance authorized.

The construction or acquisition of extensions, repairs or improvements of natural gas systems and other utility systems, and the acquisition, construction, repair, alteration, extension and improvement of public streets and thoroughfares, public buildings, property and all other facilities, including recreational parks and playgrounds, or the refunding of any bonds or other obligations heretofore or hereafter issued for those purposes, whether issued pursuant to the provisions of this chapter or some other law or laws, may be authorized under this chapter, and revenue bonds or certificates may be authorized to be issued under this chapter to provide funds for those purposes, by resolution or resolutions of the council of the city, which may be adopted by a majority of all the members thereof then in office, and shall take effect ~~immediately upon adoption and upon required by publication~~ ~~as~~ pursuant to the provisions of the Charter of the city. The revenue bonds or certificates shall bear interest at such a rate or rates, not exceeding the maximum rate fixed by general law, payable semiannually or annually; may be in one or more series; may bear such date or dates; may mature at such time or times, not exceeding twenty-five (25) years from their respective dates; may be payable in such medium of payment, at such place or places; may carry such registration privileges; may be subject to such terms of redemption, with or without premium; may be executed in such manner; may contain such terms, covenants and conditions shall be in fully registered form as the resolution or subsequent resolution may provide. The revenue bonds may be sold, all at one time or in blocks from time to time, at public or private sale, or, if refunding revenue bonds, may also be delivered in exchange for the outstanding obligations to be refunded thereby, in such manner as the said council shall determine by resolution. Pending the preparations of the definite revenue bonds or certificates, interim receipts, temporary revenue bonds or revenue certificates in such form and with such provisions as the council may determine may be issued to the purchaser or purchasers of revenue bonds or certificates sold pursuant to this chapter. The revenue bonds and the interim receipts, temporary revenue bonds or revenue certificates shall be fully negotiable within the meaning of and for all purposes of the law merchant and the negotiable instruments law of the state.

(Laws of Fla. 1949, Ch. 26138, § 2)

Sec. 3-2-3. - Same—General credit of city not to be pledged.

Each revenue bond or certificate issued under this chapter shall recite in substance that the revenue bond or certificate, together with the interest thereon, is payable solely from the revenues of funds pledged to the payment thereof, and the revenue bonds or certificates shall not constitute a general obligation or indebtedness of the city within the meaning of any constitutional, Charter or statutory limitation of indebtedness.

(Laws of Fla. 1949, Ch. 26138, § 4)

Sec. 3-2-4. - Same—Rights of bondholders.

In the event of a default in the payment of the principal of or interest on any revenue bonds or certificates issued pursuant to this chapter, or in the performance of any obligation or duties imposed upon the city by this chapter or by any covenants or agreements entered into with the holders of the revenue

Commented [RW19]: Note: The establishment of rates and charges is a policymaking or legislative act, but the collection of those fees would be an executive function.

Commented [RW20]: Although Florida statutes confers the authority and process for issuing bonds upon the governing body of a municipality, the Charter allows the mayor a period of time to consider veto of a resolution before it can take effect.

bonds or certificates, any holder or holders of the revenue bonds or certificate shall be entitled to such relief as provided by any court of competent jurisdiction of the state, under such terms and conditions as shall be provided in the resolution authorizing the revenue bonds or certificates.

(Laws of Fla. 1949, Ch. 26138, § 7)

Sec. 3-2-5. - Same—Sources of revenues.

This chapter shall be construed to authorize the issuance of revenue bonds payable solely from ~~sewer revenues, water revenues,~~ natural gas revenues or revenues from public buildings or recreational facilities, or from the combined net revenues from all of these sources and any or all of the other special funds provided for in this chapter, including utilities services taxes and/or excise taxes; or any portion of any or all of the net revenues from the sources as may by resolution of the council be determined.

(Laws of Fla. 1949, Ch. 26138, § 13)

Sec. 3-2-6. - Same—Covenants.

Any resolution authorizing the issuance of revenue bonds or certificates under this chapter may contain covenants as to:

(1) The pledging of all or any part of the net revenues derived from the ownership, operation or control of natural gas systems and other utility systems, public buildings, property and all other facilities, including recreational parks and playgrounds, including any part of either or all of the net revenues from those properties heretofore or hereafter constructed or acquired, or derived from any other sources, to the payment of the principal of and interest on revenue bonds or certificates issued pursuant to this chapter and for such reserve and other funds as may be deemed advisable.

(2) The fixing, establishing and collecting of such fees, rentals or other charges for the use of the services and facilities of the utility systems, buildings, property and all other facilities mentioned herein, including the parts thereof heretofore or hereafter constructed or acquired, and the revision of same from time to time, as will always provide revenues at least sufficient, together with other pledged funds, to provide for all expenses of operation, maintenance and repair of the utility systems, buildings, property and other facilities, the payment of the principal of and interest on all revenue bonds of the utility systems, buildings, property and other facilities, and all reserve and other funds required by the terms of the resolution or resolutions authorizing the issuance of the revenue bonds or other obligations.

(3) The pledging of all or any part of the net revenues derived from the imposition, levy and collection of utility services taxes and/or other excise taxes heretofore authorized by the Charter of the city or by any special act of the state relating to the city or any general law of the state now in effect or which may hereafter be authorized.

(4) Limitations or restrictions upon the issuance of additional revenue bonds or other obligations payable from the revenue of the utility systems, buildings, property and other facilities, or other pledged funds, and the rights and remedies of the holders of such additional revenue bonds or certificates issued thereafter.

(5) Such other and additional covenants as shall be deemed necessary or desirable for the security of the holders of revenue bonds or other obligations issued pursuant to this chapter. All such covenants and agreements shall constitute valid and binding contracts between the city and the holders of any revenue bonds or other obligations issued pursuant to the resolution.

(Laws of Fla. 1949, Ch. 26138, § 3)

Sec. 3-2-7. - ~~Same—Discontinuing utility services to delinquent customers; management of systems by city.~~ RESERVED

~~(a) The city may also contract with any other person, firm or corporation supplying utility services to the inhabitants of the city to discontinue the furnishing of the utility services to any person, firm or corporation delinquent in the payment of utility charges, under lawful, and reasonable terms and conditions.~~

~~(b) The council may also, notwithstanding the provisions of any other law or laws, contract with any person, firm or corporation of for the management and operation and for the repair and upkeep of any public buildings, property and all other facilities, except utility systems, including recreational parks and playgrounds, upon such terms as may be deemed just and proper; provided, however, that the control of the buildings and facilities shall always remain in the city, and all rules or regulations governing the use, control, management and operation thereof shall be made by the council of the city, and providing further that the management of all utility systems shall always be retained by the council and the city.~~

(Laws of Fla. 1949, Ch. 26138, § 8)

Cross reference— Energy services, Ch. 10-4.

Sec. 3-2-8. - Same—Taxing of public utility services.

(a) The city, in order to pay the principal and interest on any revenue bonds issued pursuant to this chapter, and any reserve or other payments required by the provisions of the resolution or other proceedings authorizing the issuance of the revenue bonds or certificates, is hereby given the right, power and authority, by nonemergency ordinance, to impose, levy and collect on all public utility services a tax to be paid by the purchaser of the services, the tax to be in addition and supplemental to any utilities services taxes and/or excise taxes heretofore authorized by the Charter of the city or by any special act by the state relating to the city or a general law of the state, now in effect or which might hereafter be authorized, for the payment of revenue bonds or certificates issued pursuant to this chapter, and to increase the rate of taxation now existing for those purposes, and to pledge the net proceeds of the additional utilities services taxes and/or excise taxes for the payment of the principal of and interest on any revenue bonds issued pursuant to this chapter, as provided in section 3-2-6(3).

(b) The powers provided for in this section shall be permissive and not mandatory, and the city may issue revenue bonds as provided in this chapter without exercising the powers provided in this section. In the event the city shall elect to exercise the powers provided in this section and pledge such utilities services taxes and/or excise taxes or any portion thereof for such revenue bonds or certificates as provided in section 3-2-6(3), then the limitations provided in section 3-2-9 shall apply.

~~(c) The state does hereby covenant and agree that in the event of the exercise by the city of the powers provided in this section and the pledge of the utilities services taxes to revenue bonds or certificates or refunding revenue bonds or certificates, as provided in this chapter, it will not, as long as any such revenue bonds or certificates and the interest accrued and to accrue thereon are outstanding and unpaid, or unless and until due provision has been made for the payment thereof, repeal, rescind, amend, alter or modify in any way the power herein granted to the city to levy and collect such utilities services taxes and/or excise taxes and pledge the same as herein provided, or repeal, rescind, amend, alter or modify in any way the absolute and unconditional obligation of the city to levy and collect such utilities services taxes and/or excise taxes in the amount and manner as herein provided or heretofore provided by the Charter of the city or by any special act of the state relating to the city or any general law of the state, now in effect or which might hereafter be authorized.~~

(Laws of Fla. 1949, Ch. 26138, § 10)

Commented [RS21]: Authority now derived from Home Rule Power, Ch. 166, F.S.

Commented [RW22]: This language was probably derived from the 1949 special act, but the city cannot, by ordinance, bind the state to an agreement. This concept does apply, however, through the prohibition on passing laws impairing the obligation of contracts.

Sec. 3-2-9. - Same—Excise taxes on utilities to continue until bonds or certificates are paid.

Notwithstanding any other law, general or special, now or hereafter enacted, the city shall not have the right to repeal or rescind any utility tax ordinance or resolution imposing excise taxes pledged to the payment of principal or interest on any of the special tax revenue certificates or bonds issued hereunder, and any such utility tax or excise tax shall automatically continue in force, until there shall be a sufficient sum of money on hand to pay the principal and interest on all outstanding bonds or certificates for which the taxes were pledged. Notwithstanding any other law, general or special, now or hereafter enacted, the city shall not have the right to reduce any of the rates or amounts of such municipal utilities taxes or excise taxes pledged to the payment of principal or interest of bonds or certificates, or grant exemptions from the payment of the taxes (except to the extent, within the limitations and in the manner that might be reserved in the resolution authorizing the bonds or certificates), as long as any bonds or certificates issued hereunder are outstanding and funds sufficient for payment of the principal and interest thereof are not on hand.

(Laws of Fla. 1949, Ch. 26138, § 6)

Sec. 3-2-10. - Same—Deemed to constitute legal investments.

Notwithstanding any provisions of any other law or laws to the contrary, all revenue bonds or certificates, including refunding revenue bonds or certificates, issued pursuant to this chapter, shall constitute legal investments for savings banks, banks, trust companies, executors, administrators, trustees, guardians and other fiduciaries, and for any board, body, agency or instrumentality of the state or of any county, municipality or other political subdivision of the state.

(Laws of Fla. 1949, Ch. 26138, § 11)

Sec. 3-2-11. - Special assessments.

(a) The city may levy or cause to be levied, to the extent and in the manner provided by law, special assessments against the premises, lands and real estate specially benefited by the construction or acquisition of repairs, extensions or improvements to the natural gas systems, public streets and thoroughfares and other utility systems, directly or indirectly, and regardless of whether or not the premises, lands and real estate abut upon the streets or lands upon which the natural gas systems or other utility systems or parts thereof are located or are repaired, extended or improved, provided the land is especially benefited. The special assessments shall be made, levied and collected in the mode and manner provided ~~n Part I, Subpart B of the Ordinances city or of the Code of~~ under the applicable laws of the state.

(b) The city may pledge the amounts collected from any special assessments levied pursuant to this section to the payment of the principal of and the interest on any revenue bonds or other obligations issued pursuant to this chapter. All collections of the special assessments pledged as provided herein shall be paid over to the appropriate fund or funds for revenues of the utility system for the construction, acquisition, extension, repair or improvement of which the special assessment was levied, and shall be deemed to be treated as other revenues derived from the system; provided, however, that no holder or holders of revenue bonds or other obligations issued pursuant to this chapter, and for which the proceeds from the special assessments have been pledged shall ever have the right to foreclose or require the foreclosure of the lien of any such special assessment upon any land, premises or real estate.

Commented [RW23]: The collection of special assessments is not referenced in Part I, Subpart B (Special Acts), but it is provided for in Florida statutes.

(Laws of Fla. 1949, Ch. 26138, § 9)

Sec. 3-2-11.1. - Proration of costs to be paid by city and abutting property owners specially benefiting from special assessment projects.

(a) Whenever the city council of the city chooses to construct an improvement in the City of Pensacola, the subject matter of which is proper for the levy of special assessments for the purpose of assessing property to be specially benefited by such improvements, and, whenever the city council chooses to use the front footage method of levying said special assessments, and provided that the city council has separately determined by resolution that the property owners to be assessed will be specially benefited by the proposed improvement, the method of prorating the costs of the improvement shall be as provided in subsection (b) hereof

(b) Whenever a special assessment project is undertaken by the city council as indicated in subsection (a) hereof, the abutting property owners shall be assessed an amount of twenty (20) percent of the cost of the project as further defined by resolution at the time the project is implemented and the city shall pay sixty (60) percent of the cost of the improvements.

(c) The provisions of this section shall not preclude the city council from choosing a different lawful method of assessing costs of any improvement or of not using a special assessment program with regard to any particular improvement if the city council deems that to be in the best interest of the city.

(Ord. No. 44-85, §§ 1—3, 12-19-85)

Editor's note— Ord. No. 44-85, §§ 1—3, enacted Dec. 19, 1985, being not specifically amendatory of the Code, has been included herein as § 3-2-11.1, at the discretion of the editor.

Sec. 3-2-12. - Rates, fees, rentals and charges to produce revenues.

The council may prescribe and collect reasonable rates, fees, rentals or charges for the services and use of utility systems, public buildings, property and other facilities, and shall revise the rates, fees, rentals or charges from time to time whenever necessary. The rates, fees, rentals or charges prescribed shall be such as will produce revenues, together with any other pledged funds, at least sufficient:

(1) To provide for all expenses of operation and maintenance and renewal of such utility systems, including reserves therefor;

(2) To pay, when due, all revenue bonds or certificates and interest thereon for the payment of which the revenue is or shall have been pledged or encumbered, including reserves therefor; and

(3) To provide for any other funds which may be required under the resolution or resolutions authorizing the issuance of the revenue bonds or certificates pursuant to this chapter.

(Laws of Fla. 1949, Ch. 26138, § 5)

Sec. 3-2-13. - Revenues and obligations to be tax exempt.

So long as the city shall own and operate public utility systems, public buildings, properties and recreational facilities, all property of and all revenue derived therefrom, including all parts thereof heretofore or hereafter constructed or acquired, shall be exempt from all taxation by the state or by any county, municipality or any other political subdivision thereof. Revenue bonds or other obligations, including refunding revenue bonds, issued pursuant to this chapter, shall, together with the income therefrom, be exempt from all taxation by the state or any county, municipality or other political subdivision thereof.

(Laws of Fla. 1949, Ch. 26138, § 12)

CHAPTER 3-3. PURCHASING

ARTICLE I. - IN GENERAL

~~Sec. 3-3-1. - Purchasing agent.~~

~~Subject to the provisions of subsection 1-1-1(c) the mayor may appoint a purchasing agent, who may be the director of finance or an officer in the department of financial services subordinate to the director thereof.~~

Commented [RW24]: Superseded by Charter.

(Laws of Fla. 1931, Ch. 15425, § 39; Ord. No. 26-99, § 6, 7-22-99; Ord. No. 16-10, § 35, 9-9-10)

Cross reference— Departments enumerated, § 2-4-3.

Sec. 3-3-2. - Contracts for public work and purchases of other commodities and services; lowest and best responsible bidder; rejection of bids; approval of council and mayor; emergency purchases.

(a) Definitions.

(1) *Commodity* means any of the various supplies, materials, equipment, goods, merchandise and all other personal property purchased, leased or otherwise contracted for by the city.

(2) *Invitation to bid* means a written solicitation for sealed competitive bids with the title, date, and hour of the public bid opening designated and specifically defining the commodity, group of commodities or services for which bids are sought. It includes instructions prescribing all conditions for bidding and shall be distributed to all prospective bidders simultaneously. The invitation to bid is normally used when the city is capable of specifically defining the scope of work for which a contractual service is required or when the city is capable of establishing precise specifications defining the actual commodity or group of commodities required.

(3) *Request for proposals* means a written solicitation for sealed proposals with the title, date, and hour of the public opening designated. The request for proposals is normally used when it would be difficult for the city to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the city is requesting that a qualified vendor propose a commodity, group of commodities or contractual service to meet the needs of the city. A request for proposals should include, but is not limited to, general information, applicable laws and rules, functional or general specifications, statement of work, proposed instructions, and evaluation criteria. Requests for proposals should state the relative importance of price and any other evaluation criteria.

(b) Purchases of commodities and services. The purchase of commodities and services that have been specifically adopted in the annual budget within a program of a department, division, office or similar or appropriated by council may be contracted for or purchased by the mayor without further action of council. Subject to the authority granted in subsections (c) and (d), below, regarding tier one city certified small business enterprises, the purchase of or contracting for commodities or services in an amount exceeding twenty-five thousand dollars ($25,000.00), that has not been specifically adopted in the annual budget or appropriated by council, must be approved by council prior to purchase or contract. All contracts for commodities or services that exceed a term of three years shall be approved by the city council.

(c) Public works and improvements. Any public work or improvement may be executed either by contract, or by direct labor, as may be determined by the council; if the cost does not exceed twenty-five thousand dollars ($25,000.00), or does not exceed one-hundred thousand dollars ($100,000.00) if

contracting with a tier one city certified small business enterprise (SBE), the mayor may make the determination. Before authorizing the direct execution of any work or improvement costing more than twenty-five thousand dollars ($25,000.00), or one hundred thousand dollars ($100,000.00) if contracting with a tier one city-certified small business enterprise (SBE), detailed plans and estimates shall be submitted to the council by the mayor unless the council does not require same. Contracts for public work in excess of twenty-five thousand dollars ($25,000.00), or one hundred thousand dollars ($100,000.00) if contracting with a tier one city-certified small business enterprise (SBE), shall be signed by the mayor after approval thereof by the city council. When the invitation to bid procedure is utilized, contracts for all such works or improvements at an estimated cost in excess of twenty-five thousand dollars ($25,000.00), or one-hundred thousand dollars ($100,000.00) if contracting with a tier one city certified small business enterprise (SBE) or more shall be awarded to the lowest and best responsible bidder after such public advertisement and competition as may be prescribed by ordinance and there shall be a separate accounting for each work or improvement so executed. The mayor shall have the authority to reject all bids and advertise again. Contract advertisements shall contain a reservation of the foregoing right.

(d) The mayor has the authority to award all contracts for the purchase of commodities and services with a value not in excess of twenty-five thousand dollars ($25,000.00), or one-hundred thousand dollars ($100,000.00) if contracting with a tier one city certified small business enterprise (SBE) without competitive bids. Whenever the purchase of commodities or services with an estimated cost in excess of twenty-five thousand dollars ($25,000.00), or one-hundred thousand dollars ($100,000.00) if contracting with a tier one city certified small business enterprise (SBE) is contemplated by the city, the council shall reserve the option to utilize the invitation to bid procedure, request for proposals, informal quotes or to authorize the mayor to negotiate, depending upon which alternative is deemed by the council to be in the best interest of the city.

(e) The mayor shall have the authority to make emergency purchases for commodities and/or services without competitive bids under circumstances where the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the city; all such purchases shall be reported to the city council at its next regularly scheduled meeting.

(f) Nothing contained herein shall be construed to prevent the city from purchasing commodities and/or services under the provisions of state purchasing contracts pursuant to F.S. § 287.042(2), as the same may be amended from time to time, from vendors at federal contract prices, and from any vendor so long as purchases are at or below listed state/federal contract price; from contracts of other municipal governments or other governmental agencies or political subdivisions providing the vendor extends the same terms and conditions of the contract to the city; or from purchasing specialized items from sole source vendors without competitive bids.

(g) The mayor is hereby authorized to enter into any contract for services or make purchases of commodities that do not exceed twenty-five thousand dollars ($25,000.00), or one-hundred thousand dollars ($100,000.00) if contracting with a tier one city certified small business enterprise (SBE), in any twelve-month period. The twelve-month period limitation applies to the purchase of commodities or services from a single vendor for the same project.

(h) All purchases are subject to availability of funds in the city's budget.

(Laws of Fla. 1931, Ch. 15425, § 40; Laws of Fla. 1955, Ch. 31162, § 1; Laws of Fla., Ch. 73-591; Ord. No. 33-81, § 1, 8-13-81; Ord. No. 48-87, § 1, 11-19-87; Ord. No. 53-90, § 1, 10-19-90; Ord. No. 34-96, § 1, 8-8-96; Ord. No. 31-97, § 1, 9-11-97; Ord. No. 02-06, § 1, 1-12-06; Ord. No. 09-09, § 1, 4-9-09; Ord. No. 09-10, § 1, 4-8-10; Ord. No. 16-10, § 36, 9-9-10; Ord. No. 18-14, § 1, 4-24-14; Ord. No. 19-14, § 1, 5-8-14)

Cross reference— Public works and improvements, Ch. 3-2.

Sec. 3-3-3. - Contractual liability.

No liability shall be enforceable against the city upon any contract not supported by previous appropriation, nor shall the city be liable for any service, material or supplies furnished to the city ~~or any department, office or division thereof,~~ the financial requirements of which are to be met out of the proceeds of taxes or of any other funds controlled by the council, unless the council shall previously have made the appropriation therefor. In the event that contracts are made to extend over a period longer than one year and are to be met from current receipts of the city, it shall be lawful for the council to make appropriations sufficient to answer the requirements of any such contracts for only one (1) year, and the contract shall be legal and binding upon the city notwithstanding no appropriation has been made for the ensuing years over which it is to be operative, and it shall be the duty of the council to make appropriations from year to year as required for the purpose of the contracts. The obligations of the city under the contracts shall not be considered to be part of the indebtedness of the city. The continuing contracts shall not be legal unless authorized by a vote of ~~eight (8)~~ a majority plus one of the members of the council.

Commented [RW25]: Since there are no longer 8 members of council, it is suggested that a supermajority vote be adopted.

(Laws of Fla. 1931, Ch. 15425, § 42)

Sec. 3-3-4. - Small business enterprise program.

(1) *Small business enterprise (SBE) policy.* The policy of the city is to create economic opportunities for certified local area small business enterprises (hereinafter referred to as "SBE") by establishing a program providing for the encouragement of such enterprises to compete for contracts and subcontracts for goods, services, and construction purchased by and for the city. This policy is to be implemented in conjunction with section 3-3-1 of the Code and with the purchasing policy and procedures manual, without sacrificing cost effectiveness based on the lowest and best responsible bidder criteria. It is further the policy of the city, to ensure that all segments of the community, including minority-owned and women-owned business establishments, have an effective opportunity to participate in the city's purchasing program. In furtherance of this goal, the city's policy is to require necessary information from prospective contractors and suppliers of goods and services regarding their minority-owned or women-owned status and that of any subcontractors involved in bids on city business.

(2) *Mayor authority.* The mayor is hereby authorized to establish a program for the purchasing and contracting activities of the city, directed toward providing economic opportunities to local area certified small business enterprises where practical and feasible. The program which is authorized by this section shall include the following elements:

(a) Definitions:

1. *Tier one (1) small business* means an independently owned and operated business concern which employs fifteen (15) or fewer permanent full-time employees, and which has a net worth of not more than one million dollars ($1,000,000.00). As applicable to sole-proprietorships, the one million dollars ($1,000,000.00) net worth shall include both personal and business investments. Goods and services provided by tier one (1) small businesses may be purchased under the mayor's spending authority up to one hundred thousand dollars ($100,000.00).

2. *Tier two (2) small business* means an independently owned and operated business concern which employs fifty (50) or fewer permanent full-time employees, and which has a net worth of not more than one million dollars ($1,000,000.00). As applicable to sole-proprietorships, the one million dollars ($1,000,000.00) net worth shall include both personal and business investments.

3. *Certified small business enterprise* means a business that has been certified by the City of Pensacola, the Florida Department of General Services, or another governmental agency to be a certified small business enterprise.

4. *Small business joint venture* is a joint business association of small businesses and non small business firms. The small business firms shall receive a share of contract dollars proportionate to the percentage participation it represents in the joint venture.

5. *Purchasing policy* are those rules and procedures adopted by the city which govern, without exception, all purchases made by and for the city.

6. *Local area* means that geographic area within the boundaries of Escambia County and Santa Rosa County, Florida.

7. Participation goal is the percentage goal as determined by the contract coordinator for a specific project based on review of specifications and available certified SBE firms.

(b) Reserved.

(c) The program to be developed and implemented by the mayor ~~shall~~ may have applicability to all purchasing and contracting, including, but not limited to, formal bidding, competitive bidding, and direct purchases by the city.

(d) In the development and implementation of this program, the mayor ~~shall~~ may ~~direct the contract coordinator to~~ review all feasible sources of small business enterprise participation in city contracting and purchasing programs and ~~to~~ develop a pool of available concerns to be utilized. The ~~contract coordinator shall~~ mayor may also be authorized to evaluate each contracting and purchasing opportunity and to establish a participation goal utilizing available small business enterprises to be required of all potential bidders, contractors, or suppliers. In evaluating competitive bids, the ~~contract coordinator shall~~ mayor may make a determination and so recommend to council regarding whether or not a bidder has either met the established participation goal or has demonstrated good faith efforts towards meeting such goal. In the event that a bidder is determined by city council, upon the recommendation of the ~~contract coordinator and~~ mayor to not have met an established participation goal and not have evidenced sufficient good faith efforts towards meeting such goal, the city council may determine that such bid was nonresponsive.

(e) The mayor or ~~his designee shall~~ may require prospective bidders or contractors to supply such information as the mayor may require pertaining to the minority-owned or women-owned status of the bidder or contractor, or of any subcontractor involved in the project. This information ~~will~~ may be collected and monitored by the mayor for purposes of determining the extent of participation by such firms in the city's contracting program.

(3) *Quarterly reports.* The mayor shall provide the city council with quarterly reports describing the operation and effectiveness of the small business enterprise program. The reports submitted by the mayor shall include information regarding the rates of participation by minority-owned and women-owned enterprises in the city's contracting program.

(Ord. No. 14-88, § 1, 4-28-88; Ord. No. 4-89, §§ 1, 2, 1-26-89; Ord. No. 61-89, §§ 1, 2, 12-7-89; Ord. No. 28-99, § 1, 7-22-99; Ord. No. 29-02, § 1, 9-26-02; Ord. No. 13-09, § 1, 4-23-09; Ord. No. 09-10, § 1, 4-8-10; Ord. No. 16-10, § 37, 9-9-10; Ord. No. 14-14, § 1, 4-10-14)

Sec. 3-3-5. - Advertisements.

All advertisements for bids relative to contracts for public work or improvement, prescribed in section 3-3-2, and all other advertisements for bids relative to contracts for the purchase of materials and supplies, which are required by law to be published, shall be published once a week for two (2) weeks in a newspaper published in the city which meets the requirements of F.S. § 50.031.

(Ord. No. 17-98, § 5, 5-28-98)

Commented [RW26]: The MBE/WBE program is a discretionary one, and the Charter prohibits the council from directing the mayor to take any particular action which is discretionary or within the mayor's executive authority.

Sec. 3-3-6. - Prohibited conduct by bidders.

(a) Prohibited conduct. Upon the publication of any solicitation for sealed bids, requests for proposals, requests for qualifications, or other solicitation of interest or invitation to negotiate by any authorized representative of the City of Pensacola, any party interested in submitting a bid, proposal, or other response reflecting an interest in participating in the purchasing or contracting process shall be prohibited from engaging in any communication pertaining to formal solicitations with a member of the Pensacola City Council or any member of a selection/evaluation committee for RFQs, whether directly or indirectly or through any representative or agent, whether in person, by mail, by facsimile, by telephone, by electronic communications device, or by any other means of communication, until such time as the city council or member of a selection/evaluation committee has completed all action with respect to the solicitation. Any member of council or committee receiving a communication prohibited by this section shall be obligated to disclose such communication to the entire city council prior to council taking any action with respect to the solicitation.

(b) Sanctions. The city council may impose any one (1) or more of the following sanctions upon a bidder or proposer for a violation of the policy set forth in this section:

(i) Rejection or disqualification of the submittal;

(ii) Termination of any contract with the City of Pensacola; or

(iii) Suspension or debarment from future participation in contracting opportunities with the City of Pensacola for a period of time to be determined by council, not to exceed five (5) years in length.

With respect to the sanctions of termination of contracts, or suspension or debarment, council shall provide an opportunity for a hearing before council prior to the imposition of such sanction, and the decision of council following such hearing shall be final subject only to judicial review within thirty (30) days by petition for writ of certiorari.

(c) The mayor ~~shall~~ may designate the appropriate contracting official who shall be charged with the responsibility of including information pertaining to this policy to all prospective bidders or proposers.

(Ord. No. 12-10, § 1, 5-13-10; Ord. No. 16-10, § 38, 9-9-10)

Sec. 3-3-7. - Purpose and scope.

The purpose of this section, consistent with the legislative findings stated below, is to enable the city, through the purchasing manager, to undertake specific activities to prevent disparate treatment and its effects against business enterprises who have been certified as MBEs ("MBEs") or WBEs ("WBEs"). The ~~purchasing manager~~ mayor is hereby expressly delegated the necessary powers to effectuate the purpose of this section.

(Ord. No. 04-15, § 1, 2-12-15)

Sec. 3-3-8. - Findings.

The City Council of Pensacola, after considering:

(1) The Report prepared by MGT of America entitled, "Comprehensive Disparity Study for the City of Pensacola, 2012" ("MGT Study") which found evidence of disparities between availability and utilization of woman- and minority-owned business enterprises and in the private sector as well as;

(2) Anecdotal evidence of disparate treatment against MBEs and WBEs by prime contractors.

(3) Hereby adopts the following findings as a strong basis in evidence supporting a narrowly tailored, remedial program in City procurement.

There exists a prima facie evidence showing that WBEs, and MBEs owned by African-Americans, Hispanics, Asian-Americans, Native Americans and Women, who have done business or attempted to do business in the private and public industries within the city and the Pensacola metropolitan area, have suffered and continue to suffer from disparate treatment by prime contractors. This disparate treatment has existed in private sector industry contracting in such work areas in which the city has been a passive participant. Because of such disparate treatment, such WBEs and MBEs have lacked equal opportunity to participate in such contracts. Such disparate treatment has prevented WBEs and MBEs from participating both in the city's contracting opportunities and in the private sector at a level which would have existed absent such disparate treatment.

The city seeks to provide a level playing field and equal access for all prime contractors and subcontractors to participate in city procurement. The city also desires to reaffirm its commitment to full and fair opportunities for all firms to participate in its contracts.

The MGT Study made recommendations for a Minority- and Women-owned business program for city procurement, emphasizing the establishment of project-specific goals, implementation of race- and gender-neutral measures, and enhancements to data gathering.

Goals program. The city, therefore, finds and declares that it has a compelling governmental interest in prohibiting, preventing, and eliminating race and gender disparate treatment and its effects in city contracts, and for this purpose, adopts the specific program of good-faith efforts goals as set forth in this section 3-3-8. This program will be carefully structured to take into consideration factors such as present availability of such WBEs and MBEs to perform work on such city contracts, and to take into consideration statistical and anecdotal evidence of disparate treatment. The program is to be narrowly tailored to prevent and eliminate disparate treatment and its effects against such MBEs and WBEs with a minimum of burden on other contractors, including:

The program does not impose a quota, set-aside, sheltered market or bid preference, never excludes any party, including nonminority- and non-woman-owned business enterprises, from competing for any contract, and never denies contracts for failure to meet project goals, if non-disparate treatment is demonstrated by a showing of a good-faith attempt to comply with project goals established therein. The program provides for graduation from the program of MBEs and WBEs whose size indicates that they have had the opportunity to overcome the effects of disparate treatment.

Definitions.

- **Certification.** An application procedure completed by a business enterprise to participate as a small, minority, or woman business enterprise under the M/WBE Program.

- **Certified Business Enterprise.** A small, minority, or women-owned business enterprise that has been certified by the city and/or certifying agencies approved by the city.

- **Minority individual.** An individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions as defined by the United States (U.S.) Census Bureau:

    A) **African Americans:** U.S. citizens or lawfully admitted permanent residents having an origin in any of the black racial groups of Africa.

    B) **Hispanic Americans:** U.S. citizens or lawfully admitted permanent residents of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese cultures or origins regardless of race.

    C) **Asian Americans:** U.S. citizens or lawfully admitted permanent residents who originate from the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

    D) **Native Americans:** U.S. citizens or lawfully admitted permanent residents who originate from any of the original peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.

E) **Women:** U.S. citizens or lawfully admitted permanent residents who are non-Hispanic white females. Minority women were included in their respective minority category.

F) **Disadvantaged Individual.** An individual defined as disadvantaged for purposes of the federal disadvantaged business enterprise program (DBE) contained in 49 CFR Part 26.

• **Minority-owned Business.** A business located in the Pensacola Regional Area, that is at least fifty-one (51) percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least fifty-one (51) percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.

• **Pensacola Regional Area.** The market area of four Florida counties: Escambia, Santa Rosa, Okaloosa, and Walton as well as Mobile, Alabama.

• **Proposal.** A response to a request for proposal, request for information, request for qualifications, or city-requested informal quote.

• **M/WBE.** A certified minority and woman business enterprise, as defined herein, located in the Pensacola Regional Area.

(Ord. No. 04-15, § 1, 2-12-15)

Sec. 3-3-9. - Rules and regulations; informal guidelines.

The ~~purchasing manager~~ mayor shall have the power and authority to each adopt rules and regulations and/or informal guidelines to effectuate the purpose and operation of this section, including by way of example, but not by way of limitation, the determination of qualification of a business enterprise; the determination of good-faith criteria and efforts with respect to the meeting of contract goals; the determination of informal procurement procedures involving notification of MBEs and WBEs; the procedures, methods and criteria of certification and decertification of MBEs and WBEs; and graduation size standards and other criteria.

(Ord. No. 04-15, § 1, 2-12-15)

Sec. 3-3-10. - Contracts excepted from this article.

In the case of a contract hereunder for which a part of the contract price is to be paid with funds from the United States Government or the State of Florida and for which the United States Government or the State of Florida has made applicable to such contract requirements, terms or conditions which are inconsistent with the terms of this section, the provisions of this section shall not apply to such contract to the extent of such inconsistency.

(Ord. No. 04-15, § 1, 2-12-15)

Sec. 3-3-11. - Program review and sunset.

(1) The city council shall hear annual reports from the ~~purchasing department~~ mayor detailing the city's performance under the program.

(2) The city council will review these reports, including the annual participation goals and the city's progress towards meeting those goals and eliminating disparate treatment in its contracting activities and marketplace.

(3) Within five (5) years after the effective date of this ordinance, the city will review the operation of the program and the evidentiary basis for the program in order to determine whether the city has a continuing compelling interest in remedying disparate treatment against MBEs and WBEs in its marketplace, and the permissible scope of any narrowly tailored remedies to redress disparate treatment against MBEs or WBEs.

(4) This subdivision shall sunset on or before March 1, 2020.

(Ord. No. 04-15, § 1, 2-12-15)

Sec. 3-3-12. - Purpose and scope of program.

The purpose of this section is to enable the city, through the mayor or his designee, to undertake specific activities to encourage Veteran-owned business participation in the city procurement program. The mayor or his designee is hereby expressly delegated the necessary powers to effectuate the purpose of this section.

(Ord. No. 09-15, § 1, 4-9-15)

Sec. 3-3-13. - Veterans business enterprise program.

(1) Veterans business enterprise is defined s a business that (i) has been certified by the State Department of Management Services to be a certified veterans business enterprise as set forth in F.S. § 295.187; and (ii) has a principal place of business in Escambia or Santa Rosa County.

(2) A business which wishes to obtain a veterans business enterprise preference on a procurement must be certified by the State Department of Management as a certified veterans business no later than the date of submittal of its bid, proposal, quote or qualification statement. Proof of certification is required.

(3) For solicitations by competitive sealed bidding and requests for quotation, the following bid preference scale shall apply to a responsive bid submitted by a responsible veterans business enterprise, provided its bid does not exceed the lowest responsive and responsible bid by more than the following:

   (a) Fifteen (15) percent on bids up to one thousand five hundred dollars ($1,500.00);

   (b) Ten (10) percent on bids from one thousand five hundred dollars and one cent ($1,500.01) to nineteen thousand nine hundred ninety-nine dollars and ninety-nine cents ($19,999.99);

   (c) Nine (9) percent on bids from twenty thousand dollars ($20,000.00) to thirty-nine thousand nine hundred ninety-nine dollars and ninety-nine cents ($39,999.99);

   (d) Eight (8) percent on bids from forty thousand dollars ($40,000.00) to fifty-nine thousand nine hundred ninety-nine dollars and ninety-nine cents ($59,999.99);

   (e) Seven (7) percent on bids from sixty thousand dollars ($60,000.00) to seventy-nine thousand nine hundred ninety-nine dollars and ninety-nine cents ($79,999.99)

   (f) Six (6) percent on bids from eighty thousand dollars ($80,000.00) to ninety-nine thousand nine hundred ninety-nine dollars and ninety-nine cents ($99,999.99);

   (g) Five (5) percent on bids from one hundred thousand dollars ($100,000.00) to one hundred forty-nine thousand nine hundred ninety-nine dollars and ninety-nine cents ($149,999.99);

   (h) Four (4) percent on bids from one hundred fifty thousand dollars ($150,000.00) to two hundred forty-nine thousand nine hundred ninety-nine dollars and ninety-nine cents ($249,999.99);

   (i) Three (3) percent on bids from two hundred fifty thousand dollars ($250,000.00) to four hundred ninety-nine thousand nine hundred ninety-nine dollars and ninety-nine cents ($499,999.99);

(j) Two (2) percent on bids from five hundred thousand dollars ($500,000.00) to nine hundred ninety-nine thousand nine hundred ninety-nine dollars and ninety-nine cents ($999,999.99); and

(k) One (1) percent on bids for one million dollars ($1,000,000.00) or more.

Notwithstanding the foregoing, this bid preference shall not apply if the lowest responsive and responsible bid was submitted by another veterans business enterprise, a minority business enterprise or a woman business enterprise.

(4) For procurement by competitive sealed proposals and requests for qualifications, participation by veterans business enterprises will receive two (2) percent of the points in the scoring as provided in the solicitation. A business which is both a veterans business enterprise and a minority business enterprise or a woman business enterprise will receive a scoring credit for either its status as a veterans business enterprise or as a minority business enterprise or woman business enterprise, but not both as provided in the solicitation.

(5) The veterans business enterprise preference shall not apply to procurements where prohibited by law or disallowed by the terms (i) of any grant or (ii) agreement with the state or federal government.

(6) The veterans business enterprise preference shall apply to solicitations issued by the city after the adoption of this ordinance.

(Ord. No. 09-15, § 1, 4-9-15)

Secs. 3-3-14, 3-3-~~15~~ 17. - Reserved.

ARTICLE II. - STOCK ACCOUNTS

~~Sec. 3-3-16. - Designation.~~

~~There is hereby created a fund designated as the general stock fund. The fund herein created shall be an internal service fund of the city.~~

~~(Code 1968, § 50-1; Ord. No. 53-98, § 1, 10-22-98)~~

~~Sec. 3-3-17. - Supervision, maintenance.~~

~~The general stock fund shall be maintained separately from other funds of the city.~~ by the director of finance and he shall be accountable for the proper maintenance of associated stock records. In order to maintain such control and accountability, at least once each year a physical inventory of the general stock fund stores shall be conducted, in a manner to be determined by the director of finance.

~~(Code 1968, § 50-2; Ord. No. 53-98, § 2, 10-22-98)~~

Sec. 3-3-18. - Responsibility and control; releases and requisitions

~~Department directors who have oversight responsibility for the various general stock fund stores shall be accountable for all materials and supplies held therein and, upon proper requisition, they shall release items to departments of the city as needed. Only department directors or their authorized designees may approve withdrawal of materials and supplies from stores. Department directors shall not issue general stock fund requisitions for supplies or materials unless the department's budgeted appropriations in excess of all unpaid obligations are sufficient to pay for the items purchased. Transactions shall be properly recorded as they occur and reported to the director of finance.~~

The mayor may develop and implement appropriate procedures for the requisitioning of supplies and the prevention of cost overruns budgeted or appropriated for the acquisition of materials and supplies.

(Code 1968, § 50-3; Ord. No. 53-98, § 3, 10-22-98)

~~Sec. 3-3-19. - Purchases and withdrawals.~~

~~Subject to the provisions of subsection 1-1-1(c) determination of the level of stores inventories to keep on hand shall be made by the director of finance. Purchase of materials and supplies for general stock fund stores and the method of managing the inventories of goods and withdrawing the same may be made only upon the authorization of the director of finance and mayor and in the manner and method they~~ designate.

Commented [RW27]: Maintaining the necessary store of material and supplies, and the process of requisitioning supplies and staying within budget are executive functions; but the council can require that expenditures are limited to what has been budgeted and appropriated.

(Code 1968, § 50-4; Ord. No. 53-98, § 4, 10-22-98; Ord. No. 16-10, § 39, 9-9-10)

Secs. 3-3-~~20~~ 19—3-3-24. - Reserved.

ARTICLE III. - CONSULTANTS' COMPETITIVE NEGOTIATION ACT

Sec. 3-3-25. - Authorization.

(a) *Intent and purpose.* These regulations are established to ensure the City of Pensacola shall be in compliance with F.S. § 287.055, the "Consultants' Competitive Negotiation Act" ("CCNA"). In addition, they shall create a systematic procedure for the making of recommendations to the city council for the engaging of architects, landscape architects, professional engineers, and registered surveyors and mappers required for city projects.

(b) *Delegation.* Subject to its oversight and approval, the city council hereby delegates to the mayor those duties set out in F.S. §§ 287.055(4) and 287.055(5), which it deems necessary and proper to accomplish the purposes of this article.

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

Firm means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in this state.

Professional services means those services within the scope of the practice or architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

Professional services committee means ~~the~~ an ad hoc committee appointed by the mayor which ~~shall~~ may evaluate and recommend professional services firms to be employed by the city.

Commented [RS28]: The CCNA does not require the use of an evaluation committee, only that evaluations be made by "the agency" (the municipality). These activities can be accomplished by the mayor under his executive authority, or by his designee, or by a committee of designees as contemplated by this provision.

(d) *Definitions incorporated by reference.* Notwithstanding the above definitions, the definitions in F.S. § 287.055, are hereby incorporated by reference into this article.

(Ord. No. 05-07, § 1, 2-8-07; Ord. No. 16-10, § 40, 9-9-10)

Sec. 3-3-26. - Policies and procedures.

(a) *Public announcement and qualification procedures.*

(1) *Public announcement.* The city shall publicly solicit proposals as provided in F.S. § 287.055(3), from firms in a uniform manner on each occasion when professional services are to be purchased for a project that the basic construction cost of which is estimated to exceed the threshold amount provided in F.S. § 287.017, for category five, or for a planning or study activity when the fee for professional services exceeds the threshold amount provided in F.S. § 287.017, for category two, except in cases of valid public emergencies so certified by the ~~city council~~ mayor. This public notice shall include a general description of the project and shall indicate how, and the time within which, interested firms may apply for consideration by the city.

(2) *Certification.* Any such firm desiring to perform such professional services for the city shall be certified by it as provided in F.S. § 287.055(3).

(b) *Professional services committee.*

(1) After the public announcement of a project, a professional services committee ~~shall~~ may be created, which will be ad hoc for each project, comprised of members appointed by the mayor.

(2) ~~The purchasing manager or his or her designee shall serve as staff advisor to the professional services committee without any voting powers~~.

(c) *Competitive selection.*

(1) *Recommendation for selection.* The competitive selection of the most highly qualified firm shall be governed by F.S. § 287.055(4). For each proposed project, the mayor or the professional services committee shall conduct discussions with and may require public presentations by no less than three (3) firms, regarding their qualifications, approaches to the project, and ability to furnish the needed services. Any such discussions and presentations shall be conducted as public meetings in accordance with F.S. § 286.011.

The mayor or the professional services committee ~~shall~~ may (on a project-by-project basis) determine the allotted time for the presentations, the mode and manner of presentations, and any other matter relating to such presentations.

(2) *Presentations.* It shall be within the discretion of the mayor or the professional services committee to determine whether to require presentations from the proposers or merely to review the proposals without presentations. Regardless of the method chosen, the mayor or the professional services committee shall select no fewer than three (3) firms, in ranked order, deemed to be the most highly qualified to perform the services. Recommendation for selection of the firms shall be based on, but not limited to, the criteria set out in F.S. § 287.055(4), and additional criteria may be added by the mayor or designee as warranted for each project.

(3) *Committee recommendation to the mayor.* If such a committee is utilized, ~~The~~ the professional services committee ~~shall~~ may forward to the mayor for approval its recommendation of the firms in ranked order. If the mayor rejects the recommendation, he or she may return it back to the committee for reevaluation and preparation of a new ranking recommendation.

(4) *Consideration of costs or compensation.* Costs or compensation to a firm may be considered only during competitive negotiations. Such negotiations shall not occur until after the most qualified firms have been selected by the mayor or the professional services committee and the ranking confirmed by the mayor.

(5) *Continuing contracts permitted.* Nothing in these policies and procedures shall be construed to prohibit a continuing contract between a firm and the city.

(d) *Competitive negotiations.*

(1) *Contract negotiations.* Once the mayor approves the ranking of the firms, he or she shall attempt to negotiate a contract with the most qualified firm. Should the mayor be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the city determines to be fair, competitive, and reasonable, negotiations with that firm shall be formally terminated. The mayor thereafter shall undertake negotiations with the second most qualified firm. Failing

Commented [RS29]: CCNA (F.S. § 287.055(3)(a) requires emergencies to be certified by "the agency head" – the mayor.

Commented [RW30]: The CCNA does not require such a committee, only that the municipality performs the function.

Commented [RW31]: This is beyond the authority of the council to require.

Commented [RS32]: The selection of at least 3 firms is required by the CCNA.

accord with the second most qualified firm, he or she shall terminate negotiations. The mayor shall then undertake negotiations with the third most qualified firm. The requirements of F.S. § 287.055 (5) shall be met.

Should the mayor be unable to negotiate a satisfactory contract with any of the selected firms, he or she shall select and advertise for additional firms and negotiations will continue after their ranking in order of competence and qualifications in accordance with these policies and procedures until a proposed contract is concluded.

(2) *City council approval.* The mayor then ~~shall~~ may recommend to the city council the approval of the proposed contract. If the city council approves the contract, it will be executed by all parties. If the contract is rejected by the city council, the city council may then ~~direct~~ request the mayor to re-negotiate it with the firm or to re-solicit the project.

(3) *Contract negotiations in cases of emergencies.* For projects certified as valid public emergencies by the mayor ~~(subject to the approval or ratification of the city council~~), the mayor shall use his or her best efforts and judgment to select the three (3) most qualified firms unless the exigencies of the situation require that only one (1) firm be engaged immediately, from the list maintained by the city or obtained by other reasonable means. The mayor ~~shall~~ may select and negotiate with the most qualified firm considering the nature and extent of the emergency.

At the earliest, practical time the mayor shall present the contract to the city council for approval. The mayor shall sufficiently apprise the city council of the nature of the emergency and the reason why the normal selection procedure could not be followed.

(e) *Design-build contracts.* The procurement of design-build contracts shall be awarded by the city in accordance with F.S. § 287.055(9). Subject to its oversight and approval, the city council hereby delegates to the mayor those duties set out in F.S. § 287.055(9), which it deems necessary and proper to accomplish the purposes of this subsection.

(1) *Design criteria package.* If the mayor determines that a design-build contract is the appropriate method of procurement for any construction project, a design criteria package for the design and construction of the project shall be prepared and sealed by a design criteria professional either employed or retained by the city.

(2) *Design criteria professional.* If the ~~city~~ mayor elects to enter into a professional contract for the preparation of the design criteria package, then the design criteria professional shall be selected and contracted with in accordance with the requirements of this article. A design criteria professional who has been selected to prepare the design criteria package shall not be eligible to render services under a design-build contract executed pursuant to the design criteria package.

(3) *Procedures.* The mayor shall establish criteria, procedures, and standards as provided for in F.S. § 287.055(9), for the evaluation of design-build contract proposals or bids, based on price, and technical and design aspects of the project.

(4) *Mayor's recommendation.* For each public construction project involving the award of a design-build contract, if the mayor elects to utilize a professional services committee, the professional services committee shall recommend to the mayor no fewer than three (3) design-build firms as the most qualified.

The mayor ~~shall~~ may evaluate the proposals or bids in consultation with the staff or retained design criteria professional for that project. The mayor shall recommend to the city council a design-build bid or proposal for the award of the design-build contract.

(5) *Public emergency.* In the case of valid public emergency, the mayor may declare such an emergency ~~(subject to the approval or ratification of the city council~~), suspend the procedures specified herein, and authorize negotiations of a design-build contract with the best qualified design-build firm available at that time. At the earliest, practical time the mayor ~~shall~~ may present the contract to the city council for approval. The mayor shall sufficiently apprise the city council of

Commented [RS33]: If a lump-sum or cost-plus-fixed-fee contract are utilized, the statute requires the preparation of financial details and certificates of compliance.

Commented [RW34]: F.S. § 287.055 (3) (a) provides that the "agency head" shall certify the existence of an emergency.

Commented [RW35]: Determination of an emergency is to be made by the "agency head" under the CCNA – F.S. § 287.055 (3) (a).

the nature of the emergency and the reason why the normal selection procedure could not be followed.

(Ord. No. 05-07, § 1, 2-8-07; Ord. No. 16-10, § 41, 9-9-10)

Secs. 3-3-27—3-3-29. - Reserved.

ARTICLE IV. - PUBLIC-PRIVATE PARTNERSHIPS (P3)

Commented [RW36]: The suggested revisions to the following sections on this subject are not intended to be substantive changes, but are intended to conform the provisions to the city's method of ordinance drafting.

Sec. 3-3-30. - Purpose and scope; applicability.

(a) This article ~~IV~~ creates a uniform process for private entities and the city to engage in a public-private partnership (P3) consistent with ~~Chapter 2013-223, Laws of Florida, section 2~~ the provisions of F.S. § 287.05712, as that statute may be altered or amended from time to time.

(b) When considering a public project, the city may elect to (1) follow this P3 process if consistent with ~~Chapter 2013-223, Laws of Florida~~ applicable state statutes, (2) follow any other legally available project delivery process, or (3) not pursue the project.

(c) The procurement of P3 agreements by the city shall ~~follow~~ be governed by the provisions of this article ~~IV~~. Requirements of other sections or articles of this chapter 3-3, including but not limited to section 3-3-4, section 3-3-10, and section 3-3-13, shall not apply to procurements under this ~~Article IV~~ article unless such requirement is expressly included or incorporated by reference in the procurement documents. The city shall ensure that generally accepted business practices for exemptions provided by this article ~~IV~~ are part of the procurement process or are included in the P3 agreement.

(d) The city may develop and maintain a separate P3 policy containing more detailed procedures and requirements for entering into P3 agreements, consistent with this article ~~IV~~.

(e) When the city procures stand-alone professional services, as defined in the Consultants' Competitive Negotiation Act, ~~codified at~~ F.S. ~~(2014) §~~ 287.055, or when it procures professional services in the context of a design-build project, the city will not follow the P3 process, but will instead continue to comply with the provisions of F.S. ~~§~~ 287.055.

(Ord. No. 20-15, § 1, 11-12-15)

Sec. 3-3-31. - Definitions.

City means the City of Pensacola, Florida.

Conceptual proposal means an unsolicited proposal that includes conceptual information sufficient for the city to determine whether the proposed ideas are attractive enough to justify investment of city resources to undertake a process that may lead to formation of a contract to implement the ideas.

Detailed proposal means a proposal (solicited or unsolicited) that contains detail beyond a conceptual level sufficient for the city to compare the proposal competitively to others.

P3 means a public-private partnership, which is an agreement between the city and a private entity that allows for greater private sector participation in the delivery of a city qualifying project.

P3 Statute means ~~Chapter 2013-223, Laws of Florida, section 2, as codified in Florida Statutes.~~ the provisions of F.S. § 287.05712, as that statute may be altered or amended from time to time.

Private entity means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other private business entity.

Proposal review fee means ~~the respective~~ a five thousand dollar~~s~~ ($5,000.00) fee ~~paid by the~~ required of a private entity ~~in~~ submitting a conceptual proposal~~,~~ ~~or~~ ; a twenty-five thousand dollar~~s~~ ($25,000.00) fee ~~paid by the~~ required of a private entity ~~in~~ submitting a detailed unsolicited proposal~~,~~ , eeor a twenty-five thousand dollar~~s~~ ($25,000.00) fee ~~paid by any~~ required of a private entity submitting a detailed proposal that competes with an unsolicited proposal. All proposal review fees are non-refundable.

Qualifying project means a facility or project that serves a public purpose, or a facility or infrastructure that is used or will be used by the public or in support of a public purpose or activity, as defined in ~~the P3 Statute.~~ F.S. § 287.05712.

Solicitation means a city-initiated procurement process seeking offers (bids, proposals, or otherwise) for city projects, which may include processes authorized by (1) ~~the City of Pensacola City Code, chapter 3-3~~ Chapter 3-3 of the Code of the City of Pensacola, Florida, (2) F.S. §§ 255.20 or 287.055, or (3) any other law or the city's home rule powers.

Unsolicited proposal means a conceptual proposal or a detailed proposal that a private entity submits to the city on its own initiative, and not in response to a solicitation.

(Ord. No. 20-15, § 1, 11-12-15)

Sec. 3-3-32. - Conceptual proposal.

(a) A private entity may submit a conceptual proposal to the city ~~purchasing~~, to gauge the city's potential interest in pursuing the proposed project as a P3. A conceptual proposal is not required. A private entity may forego submitting a conceptual proposal and submit an unsolicited detailed proposal.

(b) A private entity must tender a non-refundable proposal review fee of five thousand dollars ($5,000.00) with its conceptual proposal. ~~City purchasing~~ The city will not review a conceptual proposal that is not accompanied by the payment of this fee. ~~City purchasing~~ The city may engage the services of private consultants to assist in the review of a conceptual proposal.

(c) A conceptual proposal must contain information sufficient to inform the city ~~purchasing~~ about (1) the overall character of the proposed qualifying project, (2) the general experience of the private entity, and (3) the general strategies to ensure successful project delivery.

(d) Within fifteen (15) business days after receipt of the conceptual proposal, the city ~~purchasing~~ will either (1) summarily reject the conceptual proposal or (2) accept the conceptual proposal for substantive review and notify the private entity of the anticipated time required for the city to complete the review of the conceptual proposal.

(e) If the city ~~purchasing~~ decides to accept the conceptual proposal for substantive review, the city ~~purchasing~~ will preliminarily assess whether: (1) the proposed project is a qualifying project; (2) the proposed project delivery model offers advantages over traditional models~~, for example,~~ such as lower cost, shorter schedule, or increased investment, ~~etc.~~ ; or (3) the proposed project is reasonably likely to satisfy the criteria established by ~~the P3 Statute~~. F.S. § 287.05712.

(f) Upon completion of review of the conceptual proposal, the city ~~purchasing~~ will notify the private entity in writing of ~~it's~~ its position regarding the proposed project. ~~City purchasing~~ The city may:

(1) Decide not to pursue the proposed project;

(2) Decide to pursue the proposed project, or a similar project, using other procurement methods (in which, if open to private companies, the private entity may compete if otherwise qualified); or

(3) Decide to continue considering the proposed project ~~under the P3 Statute~~ and request the private entity to submit a detailed proposal (which request shall not constitute a formal solicitation).

(g) ~~City purchasing's~~ The city's disposition of a conceptual proposal does not limit its discretion or authority with respect to future projects, whether substantially similar or not, and whether solicited or unsolicited.

(Ord. No. 20-15, § 1, 11-12-15)

Sec. 3-3-33. - Detailed proposals (unsolicited).

(a) A private entity may submit an unsolicited detailed proposal to the city ~~purchasing~~, to initiate ~~it's~~ its consideration of whether to deem the proposed project as a qualifying project and whether to pursue it further ~~under the P3 Statute~~. ~~City purchasing~~ The city is not obligated to review, evaluate or pursue a project ~~under the P3 Statute~~, even if the project satisfies the statutory definition of a qualifying project. ~~City purchasing~~ The city may engage the services of private consultants to assist in the review and evaluation of a detailed proposal.

(b) A private entity must tender a proposal review fee of twenty-five thousand dollars ($25,000.00) with its detailed proposal, unless, in ~~it's~~ its sole determination, the private entity has already paid a fee for review of a substantially similar conceptual proposal, in which case the proposal review fee is twenty thousand dollars ($20,000.00). ~~City purchasing~~ The city will not review a detailed proposal that is not accompanied by the payment of this fee. The proposal review fee is non-refundable.

(c) A detailed proposal must contain information sufficient to inform the city ~~purchasing~~ about: the detailed quality and character of the proposed qualifying project; the detailed experience and capacity of the private entity; and the detailed financial and implementation strategies to ensure successful project delivery. This information should include the following:

(1) A description of the private entity, including name, address, type of organization, and legal structure.

(2) Name and complete contact information of the primary point of contact for the detailed proposal.

(3) Names and experience of proposed key project personnel.

(4) Type of support needed, if any, from the city, ~~for example,~~ such as facilities, equipment, materials, personnel, or financial resources~~, etc~~.

(5) Identification of any proprietary data used and the manner in which it is used.

(6) Identification of any outside entities or professionals the private entity has or intends to consult with respect to the project.

(7) The names of any other federal, state, or local agencies receiving the same proposal.

(8) A complete discussion of the objective of the project, the method of approach, the nature of the anticipated results, and the characteristics that make it a qualifying project worthy of pursuit by the city.

(9) A detailed overview of the proposed business arrangements, including the plan for the development, financing, and operation of the project.

(10) A preliminary project schedule, including anticipated initiation and completion dates.

(11) A detailed financial analysis of the proposed project.

(d) Within ninety (90) business days after receipt of the detailed proposal, the city ~~purchasing~~ will notify the private entity in writing of ~~it's~~ its decision either to reject the detailed proposal or to accept the detailed proposal for competitive review. During this period, the city ~~purchasing~~ may meet with the private entity to gain a deeper understanding of the detailed proposal, and ~~city purchasing~~ may request that the private entity submit additional information. ~~City purchasing~~ The city reserves the right to request the private entity pay the costs of any additional fees required by the city ~~purchasing~~ for in-depth review of a particular proposal as necessary. These meetings will be preliminary in nature, and

will not include or constitute substantive negotiation of agreement terms. In considering whether to accept the detailed proposal for competitive review, the city ~~purchasing~~ will assess whether: (1) the proposed project is a qualifying project; (2) the proposed project delivery model offers advantages over traditional models, such as ~~for example,~~ lower cost, shorter schedule, or increased investment~~, etc.;~~ and (3) the proposed project is reasonably likely to satisfy the criteria established by ~~the P3 Statute.~~ F.S. § 287.05712. ~~City purchasing~~ The city may determine that it requires more than ninety (90) days to complete its review of the detailed proposal and this assessment, in which case it will notify the private entity in writing of how much time will be required.

(e) An unsolicited proposal, whether conceptual or detailed, and regardless of proposal review fee, may be rejected by the city ~~purchasing~~ at any time. ~~City purchasing~~ The city has complete discretion and authority to reject any unsolicited proposal it receives.

(f) If the city ~~purchasing~~ decides to accept an unsolicited proposal for competitive review, ~~city purchasing~~ it will provide written notice of its decision, and a copy of the unsolicited proposal, to affected local jurisdictions in accordance with ~~subsection (7) of the P3 Statute~~ F.S. § 287.05712 (7).

(g) ~~Pursuant to the P3 Statute, if city purchasing~~ In the event that the city decides to accept an unsolicited proposal for competitive review, the city shall publish notice in the Florida Administrative Register and in a newspaper of general circulation within the city at least once a week for two (2) consecutive weeks, stating that the city ~~purchasing~~ has received a proposal and will accept other proposals for the same project. The timeframe within which the city ~~purchasing~~ may accept competing proposals shall be determined ~~by city purchasing~~ on a project-by-project basis, based upon the complexity of the project and the public benefit to be gained by allowing longer or shorter time within which competitive proposals may be received; however, the timeframe for allowing competing proposals must be at least twenty-one (21) days, but no more than one hundred twenty (120) days, after the initial date of publication.

(h) Each competing proposal shall be accompanied by a twenty-five thousand dollar~~s~~ ($25,000.00) proposal review fee. ~~City purchasing~~ The city will not review a competing proposal that is not accompanied by the payment of this fee. The proposal review fee is non-refundable.

(Ord. No. 20-15, § 1, 11-12-15)

Sec. 3-3-34. - Solicited detailed proposals.

(a) ~~City purchasing~~ The city may on its own initiative determine to issue a solicitation inviting private entities to submit detailed proposals for any opportunity that the city ~~purchasing~~ has identified as a qualifying project.

(b) Any solicitation that the city ~~purchasing~~ issues under the authority of ~~the P3 Statute~~ F.S. 287.05712 will ~~identify the P3 Statute~~ reference that statute and the city shall publish notice in the Florida Administrative Register and in a newspaper of general circulation within the city at least once a week for two (2) consecutive weeks, stating that the city ~~purchasing~~ requests proposals for a ~~P3~~ qualifying project. The timeframe within which the city ~~purchasing~~ may accept competing proposals shall be determined ~~by city purchasing~~ on a project-by-project basis, based upon the complexity of the project and the public benefit to be gained by allowing longer or shorter time within which competitive proposals may be received; however, the timeframe for allowing competing proposals must be at least twenty-one (21) days, but no more than one hundred twenty (120) days, after the initial date of publication. In addition to the foregoing, the city ~~purchasing~~ may further solicit proposals via other media or website posting as desired~~.~~ ~~by city purchasing~~. Each competing proposal shall be accompanied by a twenty-five thousand dollar~~s~~ ($25,000.00) proposal review fee. ~~City purchasing~~ The city will not review a competing proposal that is not accompanied by the payment of this fee. The proposal review fee is non-refundable.

(c) ~~City purchasing~~ The city is not obligated to proceed under the P3 Statute when soliciting proposals, and may follow any legally available procurement process, regardless of whether the project qualifies

as a qualifying project and regardless of whether the ultimate transaction may be characterized as a P3.

(Ord. No. 20-15, § 1, 11-12-15)

Sec. 3-3-35. - Competitive review of detailed proposals.

(a) Whether received in response to a solicitation ~~under the P3 Statute~~ pursuant to F.S. § 287.05712, or in response to notice published for competing proposals to an unsolicited proposal, within fifteen (15) business~~,~~ days after the receipt of all competing detailed proposals, the city ~~purchasing~~ will begin evaluation of responses.

(b) ~~City purchasing~~ The city may rely on subject matter experts, including private consultants and other professionals, and staff for information gathering and administrative work.

(c) ~~City purchasing~~ The city will initially review the detailed proposals and determine whether to allow for oral discussions or presentations for the purpose of gaining deeper understanding of the detailed proposals. ~~City purchasing~~ The city is not required to allow oral presentations. Any oral discussion or presentations will be limited to reviewing and discussing information contained in the detailed proposals, and will not include or constitute substantive negotiations related to any detailed proposal or the qualifying project.

(d) ~~City purchasing~~ The city will rank the detailed proposals in order of preference. ~~City purchasing~~The city may use any reasonable method to rank the detailed proposals, and is not required to numerically score them. In ranking the detailed proposals, the city ~~purchasing~~ may consider the private entity team members' professional qualifications and experience, the proposed general business terms, innovative project delivery terms (including finance, design, construction, maintenance, and operation, as applicable to the particular circumstance), and any other factors deemed pertinent ~~by city purchasing~~.

(e) Following its ranking of detailed proposals, the city ~~purchasing~~ will commence negotiations with the private entity responsible for the top-ranked proposal. ~~City purchasing~~ The city will then conduct negotiations in accordance with ~~the P3 Statute~~ F.S. § 287.05712.

(f) In ~~it's~~ the city's discretion, the city ~~purchasing~~ and the private entity may enter into an interim agreement as described in F.S. § 287.05712.

(g) ~~City purchasing~~ The city and the private entity may enter into a comprehensive agreement as ~~described in the P3 Statute~~ provided by law. ~~Any recommendation to enter into a comprehensive agreement will be brought to the city council by the mayor for consideration~~. ~~Only the~~ The city council is authorized to approve a comprehensive agreement ~~as presented to the city council by~~ only upon the recommendation of the mayor.

(h) In deciding whether to enter into a comprehensive agreement, the city council will consider and determine all reasonable factors, including but not limited to:

(1) Whether the proposed project is a qualifying project.

(2) Whether the qualifying project is in the public's best interest.

(3) Whether the qualifying project involves a facility that is owned by the city or for a facility for which ownership will be conveyed to the city.

(4) Whether the comprehensive agreement has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default by the private entity or cancellation of the qualifying project by the city.

(5) Whether the comprehensive agreement has adequate safeguards in place to ensure that the city or the private entity has the opportunity to add capacity to the qualifying project or other facilities serving similar predominantly public purposes.

(6) Whether the qualifying project will be owned by the city upon completion or termination of the project and payment of amounts financed.

(7) Whether there is a public need for or benefit derived from the qualifying project.

(8) Whether the estimated cost of the qualifying project is reasonable in relation to similar facilities.

(9) Whether the comprehensive agreement will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

(Ord. No. 20-15, § 1, 11-12-15)

Sec. 3-3-36. - Public records.

All proposals submitted as part of a ~~P3~~ Public-Private Partnership statutory initiative are subject to the Florida Public Records Law, contained in F.S. ch.119. If the private entity believes that any information is exempt from the public records law, the private entity must expressly identify the statutory basis of the claimed exemption and segregate the exempt information.

(Ord. No. 20-15, § 1, 11-12-15)

Sec. 3-3-37. - Sovereign immunity.

Nothing in this article ~~IV~~ shall be deemed a waiver of the sovereign immunity of the city, or any officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including but not limited to, interconnection of the qualifying project with any other infrastructure or project. The city possesses sovereign immunity with respect to the project, including, but not limited to its design, construction, and operation.

(Ord. No. 20-15, § 1, 11-12-15)

Sec. 3-3-38. - Expiration or termination of agreements.

Expiration or termination of comprehensive agreements shall ~~follow the provisions of the P3 statute.~~be governed by the provisions of F.S. § 287.05712, as that statute may be altered or amended from time to time.

(Ord. No. 20-15, § 1, 11-12-15)

CHAPTER 3-4. TAXATION[3]

Footnotes:

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Cross reference— Administration, Title II; occupational licenses, Ch. 7-2.

State Law reference— Municipal finance and taxation, § 166.201 et seq.; occupational license taxes, F.S. Ch. 205; taxation and finance, Ch. 192 et seq.

ARTICLE I. - IN GENERAL

Sec. 3-4-1. - Ratification of power to levy and collect excise taxes.

(a) The power and authority of the city, to levy and collect excise taxes pursuant to ~~the Charter of the city and~~ all special, local and general laws of the state, and the exercise thereof pursuant to the Code of the city, is hereby in all respects ratified, validated and confirmed.

(b) To the extent that the city may not now be so authorized and empowered, the city is hereby authorized and empowered, through its council, to levy and collect any and all excise taxes as are not now prohibited by the constitution and statutes of the state, including, but not limited to, franchise taxes, gasoline taxes, license taxes, ~~occupation~~ local business taxes and amusement and admissions taxes

(Laws of Fla., Ch. 59-1726, §§ 1, 2)

Secs. 3-4-2—3-4-15. - Reserved.

ARTICLE II. - TAXES[4]

Footnotes:

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Editor's note—The city continues to levy the admissions tax and gasoline tax as they are bonded.

Constitutional law reference—All forms of taxation other than ad valorem taxes are preempted to the state except as provided by general law, Fla. Const., § 1(a) of Art. VII.

Cross reference— Power of city to pledge excise taxes for the payment of certain revenue bonds or revenue certificates, § 2-1-1(5).

State Law reference— Admission taxes, F.S. § 212.22; occupational license taxes, F.S. § 205.013 et seq.; gasoline taxes, F.S. § 206.61.

DIVISION 1. - GENERALLY

Commented [RS37]: Municode recommends deletion as charter cannot create tax authority.

Commented [RS38]: This tax was renamed by Ch. 205, Florida Statutes.

Secs. 3-4-16—3-4-30. - Reserved.

DIVISION 2. - RESERVED[5]

Footnotes:

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Editor's note—Section 1 of Ord. No. 47-90, adopted Sept. 27, 1990, repealed former §§ 3-4-31—3-4-34, which were contained in Div. 2, "Admissions Tax." The repealed provisions derived from Code 1968, §§ 150-1—150-4.

Secs. 3-4-31—3-4-45. - Reserved.

DIVISION 3. - RESERVED[6]

Footnotes:

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Editor's note—Ord. No. 56-07, § 3, adopted Dec. 13, 2007, repealed div. 3, §§ 3-3-46—3-3-52, in its entirety. Formerly, said division pertained to gasoline tax as enacted by Code 1968, §§ 150-22—150-27.

Secs. 3-4-46—3-4-65. - Reserved.

DIVISION 4. - PUBLIC SERVICE TAX[7]

Footnotes:

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Editor's note—Ord. No. 30-87, § 1, adopted Aug. 27, 1987, repealed §§ 3-4-66—3-4-72 of Div. 4 and added §§ 3-4-66—3-4-75 to read as herein set forth. Prior to repeal, said sections pertained to similar subject matter and were derived from Code 1968, §§ 150-28—150-32.

State Law reference— Municipal public service tax, F.S. § 166.231.

Sec. 3-4-66. - Levy of tax on purchase of electricity, metered or bottled gas and water service.

(a) There is hereby levied by the city a tax on the purchase in the city of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, manufactured gas either metered or bottled, and

water. The tax is levied at the rate of ten (10) percent of the first ten thousand dollars ($10,000.00) purchased per month and at the rate of one-tenth (1/10) of one (1) percent of monthly purchases over ten thousand dollars ($10,000.00).

(b) The tax imposed by paragraph (a) shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. The term "fuel adjustment charge" means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.

(Ord. No. 30-87, § 1, 8-27-87; Ord. No. 1-98, § 1, 1-29-98; Ord. No. 56-07, § 1, 12-13-07)

Editor's note— Section 5 of Ord. No. 56-07 provided for an effective date of July 1, 2008.

Sec. 3-4-66.5. - Reserved.

Editor's note— Ord. No. 56-07, § 3, adopted Dec. 13, 2007, repealed § 3-4-66.5 in its entirety. Formerly, said section pertained to tax on telecommunications service as enacted by Ord. No. 1-98, § 4, adopted Jan. 29, 1998.

Sec. 3-4-67. - Levy of tax on purchase of fuel oil.

There is hereby levied by the city on each and every purchase in the city of fuel oil a tax of four cents ($0.04) per gallon.

(Ord. No. 30-87, § 1, 8-27-87)

Sec. 3-4-68. - Collection by seller.

~~Except as provided in section 3-4-66.5 with respect to sellers of telecommunications service, it~~ It shall be the duty of every seller to collect from the purchaser the tax levied in this division at the time of collecting the selling price charged in each transaction, and no less frequently than monthly, and to file a return and remit monthly on or before the twentieth (20th) day of each month to the city all the taxes levied and collected during the preceding calendar month. It shall be unlawful for any seller to collect the price of any sale in the city without at the same time collecting the tax unless such seller shall elect to assume and pay the tax without collecting the same from the purchaser.

Commented [RS39]: Sec. 3-4-66.5 was repealed in 1998.

(Ord. No. 30-87, § 1, 8-27-87; Ord. No. 1-98, § 2, 1-29-98; Ord. No. 41-98, § 1, 9-10-98)

Sec. 3-4-69. - Liability of seller for failure to collect.

Any seller failing to collect the tax levied in this division at the time of collecting the price of any sale, where the seller has not elected to assume and pay the tax, shall be liable to the city for the amount of the tax in like manner as if the same had been actually paid to the seller, and the mayor shall bring and cause to be brought all such suits and actions and take all such proceedings as may be necessary for the recovery of the tax.

(Ord. No. 30-87, § 1, 8-27-87; Ord. No. 16-10, § 42, 9-9-10)

Sec. 3-4-70. - Discontinuance of service.

If any purchaser shall fail, neglect or refuse to pay to the seller the seller's charge and the tax levied in this division and as hereby required on account of the sale for which the charge is made, or either, the seller shall have and is hereby invested with the right to immediately discontinue further service to the purchaser until the tax and the seller's bill has been paid in full.

(Ord. No. 30-87, § 1, 8-27-87)

Sec. 3-4-71. - Records; inspection; transcripts.

Subject to the provisions of F.S. § 166.234, ~~Each~~ each and every seller of a product or service taxable under this division, shall keep complete records showing all sales in the city. The records shall show the price charged upon each sale, the date thereof and the date of payment thereof, and shall at all reasonable times be open for inspection by the duly authorized agents of the city, who shall have authority to make such transcripts thereof as they may desire.

(Ord. No. 30-87, § 1, 8-27-87)

Sec. 3-4-72. - Computation of tax where seller collects at monthly periods.

In all cases where the seller collects the price thereof at monthly periods, the tax levied in this division may be computed on the aggregate amount of sales during such period; provided the amount of tax to be collected shall be the nearest whole cent to the amount computed.

(Ord. No. 30-87, § 1, 8-27-87; Ord. No. 35-87, § 1, 9-24-87; Ord. No. 46-89, § 1, 9-21-89; Ord. No. 44-91, § 1, 9-26-91; Ord. No. 56-07, § 2, 12-13-07)

Editor's note— Section 5 of Ord. No. 56-07 provided for an effective date of July 1, 2008.

Sec. 3-4-73. - Exemptions.

Purchases by the United States of America, the State of Florida and all counties, school districts, and municipalities of the state, and by public bodies exempted by law or court order, are exempt from the taxes levied in this division. The purchase of natural gas, manufactured gas, or fuel oil by a public or private utility, either for resale or for use as fuel in the generation of electricity, or the purchase of fuel oil or kerosene for use as an aircraft engine fuel or propellant or for use in internal combustion engines shall be exempt from taxation hereunder. Purchase by any recognized church in this state for use exclusively for church purposes are exempt from the taxes levied in this division.~~; and purchases made by any religious institution that possesses a consumer certificate of exemption issued under Chapter 212, Florida Statutes, are exempt from the tax levied in section 3-4-66.5.~~

Commented [RS40]: F.S. § 166.231(4)(a) references manufactured gas also.

Commented [RS41]: Sec. 3-4-66.5 was repealed in 1998.

(Ord. No. 30-87, § 1, 8-27-87; Ord. No. 1-98, § 3, 1-29-98)

Sec. 3-4-74. - Reserved.

Editor's note— Ord. No. 56-07, § 3, adopted Dec. 13, 2007, repealed § 3-4-74 in its entirety. Formerly, said section pertained to provisions relating to tax on purchase of local telephone service as enacted by Ord. No. 30-87, § 1, adopted Aug. 27, 1987.

Sec. 3-4-75. - Interest and penalties for late payments and late returns.

Any seller of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, manufactured gas either metered or bottled, or bottled gas (manufactured or natural), fuel oil, or water service, ~~and telecommunications service~~ failing to remit to the city on or before the twentieth (20th) day of each calendar month or quarter, as applicable, all such taxes levied and collected during the preceding tax period shall be liable for interest on the unpaid amount of tax at the rate of one (1) percent per month from the date the tax was due until paid. In addition, penalties will be assessed at a rate of five (5) percent per month of the delinquent tax, not to exceed a total penalty of twenty-five (25) percent, except that in no event will the penalty for failure to file a return be less than fifteen dollars ($15.00). In the case of a fraudulent return or a willful intent to evade payment of the tax, the seller making such fraudulent return or willfully attempting to evade payment of the tax, shall be liable for a specific penalty of one hundred (100) percent of the tax. Interest and penalties shall be computed on the net tax due after application of any overpayments. The interest and penalties shall accrue from the due date until the date such taxes are paid, provided, however, that the ~~finance director~~ mayor may settle or compromise any interest due pursuant to this section as is reasonable under the circumstances. No penalty shall be assessed absent willful neglect, willful negligence, or fraud.

Commented [RS42]: Telecommunications services are taxed by the state and not by the city any longer.

Commented [RS43]: Municode recommendation based on F.S. § 166.234(7).

(Ord. No. 41-98, § 2, 9-10-98)

Sec. 3-4-76. - Costs incurred in pursuit of tax or information as a result of a violation of any section of this division.

The city is entitled to and may assess against sellers not complying with any provision of this chapter, a fee based upon the actual costs incurred by the city in collecting the tax or information due.

(Ord. No. 41-98, § 3, 9-10-98)

Sec. 3-4-77. - Authority.

This division is adopted pursuant to authority granted by, and is subject to the provisions, conditions, limitations, and exemptions of F.S. §§ 166.231 through 166.234, which are incorporated herein and made a part hereof by reference.

(Ord. No. 30-87, § 1, 8-27-87; Ord. No. 41-98, § 4, 9-10-98)

Secs. 3-4-78—3-4-80. - Reserved.

DIVISION 5. - PROPERTY INSURANCE PREMIUM TAX[8]

Footnotes:

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State Law reference— Excise tax on property insurance authorized, F.S. § 175.101.

Sec. 3-4-81. - Levy; due date for payments; collection.

(a) ~~Under authority of F.S. (1988) § 175.101~~, Pursuant to the provisions of F.S. § 175.101,there is hereby assessed, levied and imposed on every insurance company, corporation or other insurer now engaged

in or carrying on, or which shall hereafter engage in or carry on, the business of property insurance as shown by the record of the State of Florida Department of Insurance an excise tax amounting to 1.85 percent of the gross amount of receipts of premiums from policy holders on all premiums collected on property insurance policies covering property within the corporate limits of the city. In the case of multiple peril policies with a single premium for both the property and casualty coverages in such policies, seventy (70) percent of such premiums shall be used as the basis for the 1.85 percent tax. The tax shall be in addition to any lawful license or excise tax now levied or imposed by the city.

(b) The excise tax imposed by this section shall be payable annually on the first day of March of each year hereafter and shall be collected by the state treasurer for account of the city from the companies, corporations and insurers as now required by the laws of the state.

(Code 1968, § 150-35; Ord. No. 30-89, § 1, 6-8-89)

Secs. 3-4-82—3-4-90. - Reserved.

ARTICLE III. - EXEMPTIONS

DIVISION 1. - HISTORIC PROPERTIES EXEMPTION

Sec. 3-4-91. - Exemptions for improvements to historic properties authorized.

A method is hereby created to allow ad valorem tax exemptions under s. 3, Art. VII of the State Constitution to historic properties if the owners are engaging in the restoration, rehabilitation, or renovation of such properties. The city council by ordinance or resolution may authorize the exemption ~~form~~ from ad valorem taxation of up to 100 percent of the assessed value of all improvements to historic properties which result from the restoration, renovation, or rehabilitation of such properties. The exemption applies only to improvements to real property. In order for the property to qualify for the exemption, any such improvements must be made on or after the day this division is adopted and in accordance with the provisions of this division.

(Ord. No. 31-94, § 1, 9-8-94)

Sec. 3-4-92. - Taxes to which exemptions apply.

Exemptions shall apply only to taxes levied by the city, excluding levies for the downtown improvement board. The exemptions do not apply, however, to taxes levied for the payment of bonds or to taxes authorized by a vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution.

(Ord. No. 31-94, § 1, 9-8-94)

Sec. 3-4-93. - Duration of exemptions.

Any exemption granted remains in effect for up to ten years (as determined by the ordinance or resolution granting such exemption) with respect to any particular property, regardless of any change in the authority of the city to grant such exemptions or any change in ownership of the property. In order to retain the exemption, however, the historic character of the property, and improvements which qualified the property for an exemption, must be maintained over the period for which the exemption is granted. In the event that an exemption is granted for less than ten years, the city council may extend the term of the exemption provided that the total term shall not exceed ten years.

(Ord. No. 31-94, § 1, 9-8-94)

Sec. 3-4-94. - Property to which exemptions apply.

Property is qualified for an exemption under this division if:

(a) At the time the exemption is granted, the property:

(1) Is individually listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended; or

(2) Is a contributing property to a national-register-listed district; or

(3) Is designated as a historic property, or as a contributing property to a historic or preservation district, under the terms of the of the land development code or other ordinance of the city; and

(b) The preservation board has certified to the city that the property for which an exemption is requested satisfies paragraph (a).

(Ord. No. 31-94, § 1, 9-8-94)

Sec. 3-4-95. - Improvements which qualify for exemption.

In order for an improvement to a historic property to qualify the property for an exemption, the improvement must:

(a) Be consistent with the United States Secretary of Interior's Standards for Rehabilitation.

(b) Be determined by the preservation board to meet criteria established in subsections 3-4-96(b) and (c).

(c) Exceed five thousand dollars ($5,000.00) in actual expenditures on the project.

(d) Comply with the rules adopted by the Florida Department of State as required in F.S. § 196.1997(12).

(Ord. No. 31-94, § 1, 9-8-94)

Sec. 3-4-96. - Application and review.

(a) Any person, firm, or corporation that desires an ad valorem tax exemption for the improvement of a historic property must, in the year the exemption is desired to take effect, file with the preservation board an application on a form prescribed by the Department of State. For properties located within a district subject to the jurisdiction of the city's architectural review board, applications should be filed and reviewed by the preservation board prior to the submittal of plans to the architectural review board. Applications are encouraged to be filed before the improvements are initiated and must be filed no later than March 1 next following the completion of construction of the improvements. The application must include the following information:

(1) The name of the property owner and the location of the historic property.

(2) A description of the improvements to real property for which an exemption is requested and the date of commencement of construction of such improvements.

(3) Proof, to the satisfaction of the preservation board, that the property that is to be rehabilitated or renovated is a historic property under this section.

(4) Proof, to the satisfaction of the preservation board, that the improvements to the property will be consistent with the United States Secretary of Interior's Standards for Rehabilitation and will be made in accordance with guidelines developed by the Department of State.

(5) Applications submitted for properties which have been individually designated as historic properties or landmarks shall include documentation substantiating such designation and describing the historic, archaeological or architectural features which provided the basis for designation. Acceptable documentation shall include a copy of the designation report for the property and official correspondence notifying the property owner of designation.

(6) Other information deemed necessary by the preservation board.

(b) Upon receipt of the completed application and all required supporting materials, the preservation board shall conduct a review to determine:

(1) Whether the property for which an exemption is requested satisfies section 3-4-94.

(2) Whether the proposed improvements are consistent with the Secretary of Interior's Standards for Rehabilitating Historic Buildings (Revised 1990), U.S. Department of the Interior, National Park Service, which are incorporated herein by reference, and the criteria in this division, and

(3) For applications submitted under the provisions of section 3-4-100, whether the criteria of that section are met.

(c) The preservation board shall apply the recommended approaches to rehabilitation as set forth in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings in evaluating the eligibility of improvements to the historic property. For improvements intended to protect or stabilize severely deteriorated historic properties or archaeological sites, the preservation board shall apply the following additional standards:

(1) Before applying protective measures which are generally of a temporary nature and imply future historic preservation work, an analysis of the actual or anticipated threats to the property shall be made.

(2) Protective measures shall safeguard the physical condition or environment of a property or archaeological site from further deterioration or damage caused by weather or other natural, animal or human intrusions.

(3) If any historic material or architectural features are removed, they shall be properly recorded and, if possible, stored for future study or reuse.

(4) Stabilization shall reestablish the structural stability of a property through the reinforcement of loadbearing members or by arresting material deterioration leading to structural failure. Stabilization shall also reestablish weather resistant conditions for a property.

(5) Stabilization shall be accomplished in such a manner that it detracts as little as possible form the property's appearance. When reinforcement is required to reestablish structural stability, such work shall be concealed wherever possible so as not to intrude upon or detract from the aesthetic and historical quality of the property, except where concealment would result in the alteration or destruction of historically significant material or spaces.

(d) On completion of the review of an application, the preservation board shall notify the applicant and the mayor in writing of the results of the review and shall make recommendations for correction of any planned work deemed to be inconsistent with the standards cited subsection (b)(2) of this section.

(e) Each review of an application conducted by the preservation board shall be completed within thirty (30) days following receipt of the completed application and all required supporting materials.

(Ord. No. 31-94, § 1, 9-8-94; Ord. No. 7-01, § 1, 1-25-01; Ord. No. 16-10, § 43, 9-9-10)

Sec. 3-4-97. - Request of review of completed work.

(a) Following completion of the improvements, the applicant shall submit to the preservation board, a request for review of completed work on a form prescribed by the Department of State. The applicant shall submit with such request documentation demonstrating that the actual expenditure on the improvements exceeded five thousand dollars ($5,000.00). Such documentation shall include paid contractor's bills, cancelled checks or other information determined to be sufficient by the preservation board.

(b) Upon receipt of the request for review of completed work and all required supporting materials, the preservation board shall conduct a review to determine whether or not the completed improvements are in compliance with the work described in the approved preconstruction application, subsequent approved amendments, if any, and the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. The preservation board may inspect the completed work to verify such compliance.

(c) On completion of the review of a request for review of completed work, the preservation board shall recommend that the city council grant or deny the exemption. The recommendation, and the reasons therefor, shall be provided in writing to the applicant and to the local government.

(d) Each review of a request for review of completed work shall be completed within thirty (30) days following receipt of the completed request and all required supporting materials.

(Ord. No. 31-94, § 1, 9-8-94)

Sec. 3-4-98. - Approval of exemption.

A majority vote of the city council shall be required to approve an exemption. Such exemption shall take effect on the January 1 following substantial completion of the improvement. The city council shall include the following in the resolution or ordinance approving the exemption:

(a) The name of the owner and the address of the historic property for which the exemption is granted.

(b) The period of time for which the exemption will remain in effect and the expiration date of the exemption.

(c) A finding that the historic property meets the requirements of this division.

(Ord. No. 31-94, § 1, 9-8-94)

Sec. 3-4-99. - Covenant.

(a) A property owner qualifying for an exemption under this division and the city shall execute a historic preservation property tax exemption covenant, on a form approved by the Division of Historical Resources of the Department of State, requiring that the character of the property, and the qualifying improvements to the property, be maintained during the period that the exemption is granted. The covenant or agreement shall be binding on the current property owner, transferees, and their heirs, successors, or assigns. On or before the effective date of the exemption, the owner of the property shall have the covenant recorded with the deed for the property in the official records of Escambia County.

(b) The following conditions shall provide justification for removal of a property from eligibility for the property tax exemption provided under this division:

(1) The owner is in violation of the provisions of the historic preservation tax exemption covenant; or

(2) The property has been damaged by accidental or natural causes to the extent that the historic integrity of the features, materials, appearance, workmanship and environment, or archaeological integrity which made the property eligible for listing in the National Register or designation under

the provisions of the local preservation ordinance have been lost or so damaged that restoration is not feasible.

(c) Violation of the covenant or agreement results in the property owner being subject to the payment of the differences between the total amount of taxes which would have been due in March in each of the previous years in which the covenant or agreement was in effect had the property not received the exemption and the total amount of taxes actually paid in those years, plus interest on the difference calculated as provided in F.S. § 212.12(3).

(Ord. No. 2378, § 1, 5-9-94)

Sec. 3-4-100. - Additional exemptions for historic properties open to the public.

(a) If an improvement qualifies a historic property for an exemption under this division, and the property is used for nonprofit or governmental purposes and is regularly and frequently open for the public's visitation, use, and benefit, and city council by ordinance or resolution may authorize the exemption from ad valorem taxation of up to one hundred (100) percent of the assessed value of the property, as improved, any provision of this division to the contrary notwithstanding, if all other provisions of this division are complied with; provided, however, that the assessed value of the improvement must be equal to at least fifty (50) percent of the total assessed value of the property as improved. The exemption applies only to real property to which improvements are made by or for the use of the existing owner. In order for the property to qualify for the exemption provided in this section, any such improvements must be made on or after the day the ordinance granting the exemption is adopted.

(b) For purposes of the exemption under this section, a property is being used for government or nonprofit purposes if the occupant or user of at least sixty-five (65) percent of the useable space of a historic building or of the upland component of an archaeological site is an agency of the federal, state or local government, or a nonprofit corporation whose articles of incorporation have been filed by the Department of State in accordance with F.S. § 617.0125.

(c) For purposes of the exemption under this section, a property is considered regularly and frequently open to the public if public access to the property is provided not less than fifty-two (52) days a year on an equitably spaced basis, and at other times by appointment. Nothing in this section shall prohibit the owner from charging a reasonable nondiscriminatory admission fee.

(Ord. No. 31-94, § 1, 9-8-94)

Sec. 3-4-101. - Report of property appraiser.

The city shall deliver a copy of each application for a historic preservation ad valorem tax exemption to the Property Appraiser of Escambia County. Upon certification of the assessment roll, or recertification, if applicable, pursuant to F.S. § 193.122, for each fiscal year during which this division is in effect, the property appraiser shall report the following information to the city council:

(a) The total taxable value of all property within the city for the current fiscal year.

(b) The total exempted value of all property in the city which has been approved to receive historic preservation ad valorem tax exemption for the current fiscal year.

(Ord. No. 31-94, § 1, 9-8-94)

Sec. 3-4-102. - Definitions.

(a) The words and phrases used in this division which are defined in Chapter 1A-38 of the Rules of the Department of State Division of Historical Resources shall have the same meanings as are set forth in said chapter except where the context clearly indicates a different meaning.

(b) Preservation board, as used in this division, shall mean the Historic Pensacola Preservation Board of Trustees of the Department of State. Provided, however, if the Department of State does not designate the preservation board to carry out the functions prescribed to the preservation board by this division, then preservation board shall mean the Division of Historical Resources of the Department of State.

(Ord. No. 31-94, § 1, 9-8-94)

Sec. 3-4-103. - Fees.

The city council may adopt uniform fees to recover the costs of processing applications for exemptions under this division.

(Ord. No. 2378, § 1, 5-9-94)

Secs. 3-4-104—3-4-110. - Reserved.

DIVISION 2. - SENIOR CITIZENS EXEMPTION

Sec. 3-4-111. - Authority.

This division is adopted pursuant to F.S. § 196.075, as amended, and Article VII, Section 6(d), of the Florida Constitution to allow an additional homestead tax exemption of up to fifty thousand dollars ($50,000.00) for any person who has legal or equitable title to real estate and maintains thereon the permanent residence of such owner, who has attained age sixty-five (65), and whose household income does not exceed ~~twenty thousand six hundred eighty dollars ($20,680.00)~~ the limits established by F.S. § 196.075 in accordance with the regulations established herein.

Commented [RS44]: The original $20,000 income limit has been annually adjusted by a COLA.

(Ord. No. 24-01, § 1, 11-15-01; Ord. No. 15-14, § 1, 4-24-14)

Sec. 3-4-112. - Definitions.

The words and phrases in this division shall have the meanings provided by F.S. § 196.075, as amended, except where the context clearly indicates a different meaning.

~~*Household* means a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding in or renting a portion of the dwelling.~~

Commented [RS45]: Defined in statute.

~~*Household income* means the adjusted gross income, as defined in § 62 of the United States Internal Revenue Code, of all members of a household.~~

(Ord. No. 24-01, § 1, 11-15-01)

Sec. 3-4-113. - Additional homestead tax exemption for persons age sixty-five and older.

(a) In accordance with Section 6(d), Article VII of the Florida Constitution and F.S. § 196.075, as amended, the City Council hereby authorizes the following additional homestead tax exemptions:

(1) Commencing with the 2015 tax year and each year thereafter, an additional homestead tax exemption in the amount of fifty thousand dollars ($50,000.00) for any person who has legal or equitable title to real estate and maintains thereon the permanent residence of such owner, who has attained age sixty-five (65), and whose household income does not exceed ~~twenty thousand six hundred eighty dollars ($20,680.00).~~the household income limitation.

(2) Commencing with the 2015 tax year and each year thereafter, an additional homestead tax exemption in the amount of the assessed value of the property for any person who has legal or equitable title to real estate with a just value less than two hundred fifty thousand dollars ($250,000.00) and maintains thereon the permanent residence of such owner for at least twenty-five (25) years, who has attained age sixty-five (65), and whose household income does not exceed ~~twenty thousand six hundred eighty dollars ($20,680.00)~~. the household income limitation.

(b) ~~Beginning January 1, 2002, the twenty thousand six hundred eighty dollars ($20,680.00)~~ The income limitation shall be adjusted annually, on January 1, by the percentage change in the average cost-of-living index in the period January 1 through December 31 of the immediate prior year compared with the same period for the year prior to that. The index is the average of the monthly consumer-price-index figures for the stated twelve-month period, relative to the United States as a whole, issued by the United States Department of Labor.

(c) Persons receiving such additional homestead tax exemption shall be subject to the provisions of F.S. §§ 196.131 and 196.161, as amended, if applicable, pertaining to wrongful receipt of a homestead tax exemption.

(Ord. No. 24-01, § 1, 11-15-01; Ord. No. 15-14, § 2, 4-24-14)

Sec. 3-4-114. - Rescission.

It is the intent of the city council in establishing this division that it be and is hereby empowered to rescind this additional homestead tax exemption at the end of any particular year should it be determined in the sole discretion of the city council that there is an adverse financial impact of such an exemption, and it no longer serves the best financial interest of the city.

(Ord. No. 24-01, § 1, 11-15-01)

Sec. 3-4-115. - Exemption limitation.

(a) The additional homestead tax exemption established hereunder shall apply only to taxes levied by the City of Pensacola. Unless otherwise specified by the city, this exemption will apply to all levies of the city, including dependent special districts and municipal service taxing units.

(b) Should the city council hereafter specify a different exemption amount for any dependent special district or municipal service taxing unit, that exemption amount must be uniform in all such dependent special districts or municipal service taxing units within the city.

(Ord. No. 24-01, § 1, 11-15-01)

Sec. 3-4-116. - Application procedure.

(a) Those persons entitled to the homestead tax exemption in F.S. § 196.031, as amended, may apply for and may receive an additional homestead tax exemption as provided in this section.

(b) A taxpayer claiming the additional homestead tax exemption provided under this division shall annually submit to the property appraiser, no later than March 1, a sworn statement of household income on a form prescribed by the department of revenue.

(c) The filing of the statement of the taxpayer shall be supported by copies of any federal income tax returns for the prior year, any wage and earnings statements (W-2 forms), and any other documents it finds necessary, for each member of the household, to be submitted by June 1. The taxpayer's statement shall attest to the accuracy of such copies. The property appraiser may not grant the exemption without the required documentation.

(d) If title is held jointly with right of survivorship, the person residing on the subject property and otherwise qualifying may receive the entire amount of the additional homestead tax exemption.

(Ord. No. 24-01, § 1, 11-15-01)

Sec. 3-4-117. - Repeal.

The city clerk shall deliver a copy of the adopted ordinance to the property appraiser no later than December 1 of the year prior to the year that this exemption will take effect. If this ordinance is hereafter repealed, the city council shall notify the property appraiser no later than December 1 of the year prior to the year the exemption expires.

(Ord. No. 24-01, § 1, 11-15-01)

Secs. 3-4-118—3-4-130. - Reserved.

DIVISION 3. - ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION

Sec. 3-4-131. - Purpose and intent.

It is the intent of the city to secure or ensure the consideration of economic development ad valorem tax exemptions according to the following provisions:

(1) *No precedent.* No precedent shall be implied or inferred by the granting of an exemption to a new or expanding business. The city's decision to grant or deny an application shall be discretionary. Applications for exemptions shall be considered by the city on a case-by-case basis for each application, after consideration of the Escambia County Property Appraiser's report on an application and other relevant factors pertaining to the application.

(2) *Percentage of assessed value.* Per F.S. Ch. 196, any exemption granted may apply up to one hundred (100) percent of the assessed value of all improvements to real property made by or for the use of a new business and all tangible personal property of such new business, or up to one hundred (100) percent of the assessed value of all added improvements to real property which additions are made to facilitate the expansion of an existing business and of the net increase in all tangible personal property acquired to facilitate such expansion of an existing business. To qualify for this exemption, the improvements to real property must be made or the tangible personal property must be added or increased after approval by motion or resolution of the city subject to ordinance adoption, or on or after the day the ordinance is adopted.

(3) *Duration of grant.* Any exemption may be granted for a full (10) year period or any period less than ten (10) years from the time the exemption is granted.

(4) *No exemption for land.* No exemption shall be granted on the land on which new or expanded businesses are to be located.

(5) *Exemption limited to city ad valorem taxes.* The exemption applies only to ad valorem taxes levied by the city.

(Ord. No. 06-15, § 1, 3-12-15)

Sec. 3-4-132. - Definition of terms.

The following words, phrases and terms shall have the same meanings attributed to them in current state statutes and the Florida Administrative Code, except where the context clearly indicates otherwise:

(1) *Applicant.* Applicant means any person, firm or corporation submitting an economic development ad valorem tax exemption application to the city.

(2) *Business.* Business means any activity engaged in by any person, corporation or company with the object of private or public gain, benefit or advantage, either direct or indirect.

(a) *New business.* New Business shall have the meaning defined in F.S. Ch. 196.

(b) *Expansion of existing business.* Expansion of existing business shall have the meaning defined in F.S. Ch. 196.

(3) *Department.* Department means the Florida Department of Revenue.

(4) ~~*Enterprise zone.* Enterprise zone refers to the designated City of Pensacola Enterprise Zone 1702 established by Ordinance #31-02, or any other future enterprise zone designated by the state to be the city enterprise zone within the city limits.~~

Commented [RS46]: Enterprise zones have been abolished by Florida statute.

(Ord. No. 06-15, § 1, 3-12-15)

Sec. 3-4-133. - Procedure: (i) qualification by resolution subject to ordinance, or (ii) by ordinance alone.

Pursuant to F.S. Ch. 196, the city, at its discretion, by ordinance may exempt from ad valorem taxation up to one hundred (100) percent of the assessed value of all improvements to real property made by or for the use of a new business and of all tangible personal property of such new business, or up to one hundred (100) percent of the assessed value of all added improvements to real property made to facilitate the expansion of an existing business and of the net increase in all tangible personal property acquired to facilitate such expansion of an existing business. To qualify for this exemption, the improvements to real property must be made or the tangible personal property must be added or increased either (i) after approval by motion or resolution of the city, subject to later ordinance adoption, or (ii) on or after the day the ordinance is adopted.

(Ord. No. 06-15, § 1, 3-12-15)

Sec. 3-4-134. - Application for resolution subject to ordinance.

Any applicant desiring a city resolution in support of considering the grant of a potential economic development ad valorem tax exemption to be effective in a future year, shall, in any year prior to the year the desired exemption is to take effect and prior to improvements being made, file with the city a written application in a form prescribed by the city containing adequate information to the satisfaction of the city for review of the proposed application by the city in the city's sole discretion. Providing city passage of such resolution in support of considering the grant of an exemption, the applicant shall, pursuant to F.S. Ch. 196, in the year the exemption is desired to take effect, make application with the city for an ordinance granting the exemption. Such application for ordinance following resolution shall conform to the procedures of the city, this division, and F.S. Ch. 196.

(Ord. No. 06-15, § 1, 3-12-15)

Sec. 3-4-135. - Application for ordinance.

Pursuant to F.S. Ch. 196, any applicant desiring an economic development ad valorem tax exemption shall, in the year the exemption is desired to take effect, file a written application on a form prescribed by the department with the city. The application shall request the adoption of an ordinance granting the applicant an exemption pursuant to this division and F.S. Ch. 196 and shall include the following information:

(a) The name and location of the new business or the expansion of an existing business;

(b) A description of the improvements to real property for which an exemption is requested and the date of commencement of construction of such improvements;

(c) A description of the tangible personal property for which an exemption is requested and the dates when such property was or is to be purchased;

(d) Proof, to the satisfaction of the city, that the applicant is a new business or an expansion of an existing business, as defined in F.S. Ch. 196;

(e) The number of jobs the Applicant expects to create along with the average wage of the jobs and whether the jobs are full-time or part-time;

(f) The expected time schedule for job creation; and

(g) Other information deemed necessary or appropriate by the department or the city.

(Ord. No. 06-15, § 1, 3-12-15)

Sec. 3-4-136. - Report of property appraiser.

Prior to taking action on an application in the form prescribed by the department, city shall deliver a copy of the application to the Escambia County Property Appraiser. Pursuant to F.S. Ch. 196, after careful consideration, the property appraiser shall report the following information to the city:

(a) The total revenue available to the city for the current fiscal year from ad valorem tax sources, or an estimate of such revenue if the actual total revenue available cannot be determined;

(b) Any revenue lost to the city for the current fiscal year by virtue of exemptions previously granted, or an estimate of such revenue if the actual revenue lost cannot be determined;

(c) An estimate of the revenue which would be lost to the city during the current fiscal year if the exemption applied for were granted had the property for which the exemption is requested otherwise been subject to taxation; and

(d) A determination as to whether the property for which an exemption is requested is to be incorporated into a new business or the expansion of an existing business, as defined in F.S. Ch. 196 or into neither, which determination the property appraiser shall also affix to the face of the application. Upon the request of the property appraiser, the department shall provide such information as it may have available to assist in making such determination.

(Ord. No. 06-15, § 1, 3-12-15)

Sec. 3-4-137. - City review criteria.

Pursuant to F.S. Ch. 196, in considering any application for an exemption under this division, the city shall take into account the following:

(a) The total number of net new jobs to be created by the applicant;

(b) The average wage of the new jobs;

(c) The capital investment to be made by the applicant;

(d) The type of business or operation and whether it qualifies as a targeted industry as may be identified from time to time by the city;

(e) The environmental impact of the proposed business or operation;

(f) The extent to which the applicant intends to source its supplies and materials within the applicable jurisdiction; and

(g) Any other economic-related characteristics or criteria deemed necessary by the city.

(Ord. No. 06-15, § 1, 3-12-15)

Sec. 3-4-138. - Ordinance granting exemption.

Pursuant to F.S. Ch. 196, an ordinance granting an exemption shall be adopted in the same manner as any other city ordinance and shall include the following:

(a) The name and address of the new business or expansion of an existing business to which the exemption is granted;

(b) The total amount of revenue available to the city from ad valorem tax sources for the current fiscal year, the total amount of revenue lost to the city for the current fiscal year by virtue of economic development ad valorem tax exemptions currently in effect, and the estimated revenue loss to the city for the current fiscal year attributable to the exemption of the business named in the ordinance;

(c) The period of time for which the exemption will remain in effect and the expiration date of the exemption, which may be any period of time up to ten (10) years; and

(d) A finding that the business named in the ordinance meets the requirements of a new business or expansion of a business pursuant to F.S. Ch. 196.

(Ord. No. 06-15, § 1, 3-12-15)

Sec. 3-4-139. - Finding of eligibility of business.

(1) *Eligible business.* Pursuant to this division, the city shall find the business meets the requirements of a new business or expansion of a business pursuant to F.S. Ch. 196. An eligible business is a new business or expansion of a business, which is not ineligible pursuant to this division.

When considering the issue of whether or not a business or industry is an eligible business, subject to F.S. Ch. 196, the city may consider the anticipated number of employees, average wage, type of industry or business, geographical location of the proposed new business or expanding business, environmental impacts, and volume of business or production prior to accepting the economic development ad valorem tax exemption application.

(2) *Ineligible business.* An ineligible business includes one that is not qualified under this division and includes but is not limited to any business considered in the city's sole discretion to be a business in violation of any federal, state, or local law, policy or regulation, or to be noxious or offensive to the general public, or which may become a nuisance or jeopardize the health, safety or welfare of the citizens of the city.

(Ord. No. 06-15, § 1, 3-12-15)

Sec. 3-4-140. - Annual exemption renewal.

Pursuant to F.S. Ch. 196, once the original application for tax exemption has been granted, in each succeeding year an applicant shall submit an annual renewal application. In addition to statutory requirements, any applicant awarded a tax exemption under this division shall provide to the city, on a form prescribed by the city, sufficient detail in the sole discretion of the city documenting continuing qualification for the granted tax exemption, and compliance with the criteria in section 3-4-137, along with the renewal application for exemption in the form prescribed by the department (currently Form DR-418).

(Ord. No. 06-15, § 1, 3-12-15)

Sec. 3-4-141. - Fees.

No fees shall be charged for processing the economic development ad valorem tax exemption application or any exemption resolution or ordinance adopted by the city.

(Ord. No. 06-15, § 1, 3-12-15)

Sec. 3-4-142. - Revisions to Florida Statutes Control.

F.S. Ch. 196 may be amended by the Florida Legislature from time to time. Any revisions to the Florida Statutes regarding the granting of economic development ad valorem tax exemptions by municipalities shall take precedent over any contrary or conflicting provision in this division.

(Ord. No. 06-15, § 1, 3-12-15)

TITLE – IV - HEALTH AND SANITATION

CHAPTERS

CHAPTER 4-1. GENERAL PROVISIONS

(RESERVED)

CHAPTER 4-2. ANIMALS[2]

Footnotes:

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State Law reference— Cruelty to animals, F.S. Ch. 828; livestock at large, F.S. § 588.12 et seq.; damage by dogs, Ch. 767.

Cross reference— Refuse not acceptable for collection by sanitation department, § 4-3-57; animals prohibited from running at large in parks, § 6-3-5.

ARTICLE I. - IN GENERAL

~~Sec. 4-2-1. - Cruelty declared unlawful.~~ Repeal

Repeal ~~It shall be unlawful for any person to overdrive, overload, drive when overloaded, overwork, torture, torment, abandon, deprive of necessary sustenance, cruelly or unnecessarily beat or whip, slaughter or kill for other than medical or public health reasons, any animal, or cause or procure the same to be done. Any person having the charge or custody of any animal, either as owner or otherwise, who is found guilty of unnecessary cruelty, riding or working an animal when sick or unfit to work, or failing to provide it with proper food, drink, shelter or protection from the weather, shall be punished in accordance with section 4-2-41.~~

Sec. 4-2-1. – Adoption of County Animal Control Regulations.

The provisions of Escambia County county animal control ordinance, Sec. 10-1 through Sec. 10-28 of the Code of Escambia County, Florida, as those provisions may be altered or amended from time to time, shall be applicable and enforced within the City of Pensacola, as provided therein.

Commented [RS1]: Recommend repeal of most of the City's current animal regulations in favor of allowing Escambia County Animal Control to enforce the County's animal regulations in the city limits. Most of our provisions recommended for repeal are duplicated in the county code. The remaining city regulations that are unique to the city are continued, with the clarification that city officers will enforce them.

(Code 1968, §§ 62-1, 62-31(9); Ord. No. 15-90, § 1, 2-22-90; Ord. No. 17-12, § 1, 8-9-12)

~~Sec. 4-2-2. - Running at large declared unlawful.~~ Repeal

Repeal ~~It shall be unlawful for the owner or custodian of any horse, mule, cow, goat, sheep, hog, cattle or any other such animal or chicken, bird or fowl to permit it to run at large anywhere within the corporate limits of the city.~~

(Code 1968, § 62-2)

Sec. 4-2-3. - Poultry or fowl generally.

It shall be unlawful to keep roosters within the corporate limits of the city or to keep more than eight (8) poultry or other fowl at a single residence. It shall be unlawful for any person to keep any live poultry such as chickens, turkeys, ducks, geese or guinea fowl within the corporate limits of the city without the provision of coops, pens or enclosures so constructed and maintained as to prevent access by predators. Free ranging of poultry or fowl is allowed as long as they are prevented from going upon the streets, parks or public places or upon the premises of persons other ~~others~~ than the owner or custodian of the poultry or other fowl.

(Code 1968, § 62-5; Ord. No. 17-12, § 2, 8-9-12)

Sec. 4-2-4. - ~~Same~~—Required distance of enclosures from certain buildings and public parks.

It shall be unlawful to keep, harbor or confine ducks, geese, chickens, guineas, peacocks or other fowl in any pen, coop or enclosure in the city, any part of which is within thirty (30) feet of an adjacent dwelling, church, hospital, school, public building or public park.

(Code 1968, § 62-5; Ord. No. 17-12, § 3, 8-9-12)

Sec. 4-2-5. - Same—Keeping for sale.

All live poultry, such as chickens, turkeys, ducks, geese or guinea fowl, which are kept for purposes of sale within the corporate limits of the city, shall be placed and kept in coops or pens which shall be erected so that the

bottom of the coops or pens shall be at least eighteen (18) inches from the ground. The floors of the coops or pens shall be so constructed so as to permit the droppings from the poultry to fall into a removable box placed underneath the coops or pens. Each of the coops or pens shall be equipped with a water trough and feed box attached to the outside of the coops or pens in such manner at to prevent contamination of same. It shall be unlawful for any person to keep live poultry within the city for the purposes of sale or breeding, except in compliance with zoning regulations.

(Code 1968, § 62-6; Ord. No. 17-12, § 4, 8-9-12)

Sec. 4-2-6. - Doves, pigeons.

(a) It shall be unlawful for any person to keep or harbor on any premises in the city any doves or pigeons, other than homing or carrier pigeons, unless the same shall be confined in cages or coops or in such other manner as will prevent them from flying or straying beyond the premises on which they are kept.

(Code 1968, §§ 62-8, 62-9; Ord. No. 16-10, § 44, 9-9-10; Ord. No. 17-12, § 5, 8-9-12)

Sec. 4-2-7. - Rabbits.

(a) All rabbits kept within the city for the purposes of sale shall be kept in coops or pens of the character and construction provided in section 4-2-5 for the keeping of live poultry.

(b) It shall be unlawful for any person to keep or harbor on any premises in the city more than two (2) rabbits, except as set forth in (a) above.

(c) It shall be unlawful for any person to keep rabbits within the city for the purposes of breeding, except in compliance with zoning regulations.

(Code 1968, § 62-7)

Sec. 4-2-8. - Livestock.

It shall be unlawful to keep any horse, mule, donkey, goat, sheep, hogs and cattle in any stable, shed, pen or enclosure within the city limits.

(Code 1968, §§ 62-10, 62-14)

~~Sec. 4-2-9. - Wild, ferocious animals.~~ Repeal

Repeal ~~It shall be unlawful for any person to keep any wild or ferocious animal except under the charge of an armed guard or securely caged.~~

(Code 1968, § 62-18)

Secs. 4-2-10—4-2-20. - Reserved.

ARTICLE II. - DOMESTICATED ANIMALS[3]

Footnotes:

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Editor's note—Ord. No. 16-87, §§ 1, 2, passed May 14, 1987, repealed §§ 4-2-21—4-2-110 of Ch. 4-2 and enacted in lieu thereof, §§ 4-2-21—4-2-40 as set forth in Art. II hereof. Prior to repeal, said sections comprised Art. II, Divs. 1—4, Art. III, and Art. IV of this chapter, pertained to regulations for the control of domesticated animals, impoundment, and kennels, and were derived from Code 1968, §§ 62-19—62-28, 62-30, 62-31(1)—(9), 62-32—62-32.2, 62-32.4, 62-32.6, 62-32.8(2), (3) and 62-32.9(2), (3).

State Law reference— Damage by dogs, F.S. Ch. 767.

~~Sec. 4-2-21. - Definitions.~~ Repeal

Repeal ~~(a) *Owner.* The term "owner," as used in this article, shall mean any person owning, harboring, sustaining or keeping any animal or animals.~~

~~(b) *Animal.* The term "animal," as used in this article, shall mean any male, female, or altered member of the canine or feline species, or any other domesticated animal, including miniature pigs, commonly known as Vietnamese pot-bellied pigs. For purposes of this section the term "animal" does not include those classified by the Florida Fish and Game Commission as wildlife.~~

Repeal ~~(c) *Impounding officer.* The term "impounding officer," as used in this article, shall mean the mayor or his designee. Any authorized agents of the impounding officer may carry out the functions of this article.~~

~~(d) *City council.* The term "city council," as used in this article, shall mean the City Council of the City of Pensacola, Florida.~~

~~(e) *Direct control.* The term "direct control," as used in this article, shall mean immediate, continuous physical control of an animal at all times such as by means of a fence, leash, cord, or chain of such strength to restrain the same; or in the case of specifically trained or hunting animals which immediately respond to such commands, direct control shall also include aural and/or oral control, if the controlling person is at all times clearly and fully within unobstructed sight and hearing of the animal.~~

~~(f) *Dangerous or vicious animal.* The term "dangerous or vicious animal," as used in this article, shall mean any animal which bites or in any manner attacks, or attempts to bite or attack, any person or kill domestic animals; provided, however, that no animal which bites or attacks, or attempts to bite or attack, any person or domestic animal unlawfully upon its owner's or keeper's premises, shall be deemed a dangerous or vicious animal.~~

~~(g) *County.* The term "county," as used in this article, shall mean the Board of County Commissioners of Escambia County, Florida.~~

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90; Ord. No. 16-10, § 45, 9-9-10; Ord. No. 10-14, § 1, 3-13-14)

~~Sec. 4-2-22. - Animal shelter.~~ Repeal

Repeal ~~The county shall provide and maintain an animal shelter for the purpose of having impounded therein animals in violation of this article, animals running at large or believed to be strays, animals not vaccinated against rabies, or animals having or believed to have rabies or any infectious or contagious diseases, unlicensed animals, animals cruelly treated, or any other animals found under circumstances which are a violation of this article.~~

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90)

~~Sec. 4-2-23. - Impounding officer.~~ Repeal

Repeal ~~The impounding officer and his authorized agents shall have full and complete authority in the enforcement of this article and shall be~~

required Repeal to pick up, catch, or procure any animal in violation of this article, roaming at large, or stray, or any animal infected with rabies or believed to be so infected with any other contagious or infectious disease, or believed to be so infected, and cause said animal to be impounded in the animal shelter provided hereinabove. The impounding officer or his agents shall also have authority and be required to impound all unlicensed animals, except for animals confined or fenced in on the owner's premises or under direct control while participating in an organized match, show, trial, or undergoing obedience training, and shall be required to pick up and make humane disposition of any diseased or injured animal in the City of Pensacola. If an owner refuses entrance to his premises to an impounding officer attempting to enforce this article, such officer shall proceed on the owner's premises in the company of a police officer with such legal warrant or other document of authority as is necessary to lawfully enter the owner's premises for the purpose of enforcing this article.

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90)

Sec. 4-2-24. - Fees. Repeal

Repeal The county impounding officer may promulgate and establish impounding fees, adoption fees, redemption fees, neuter and spay deposits, service fees, tag fees, and per diem rates for board while keeping an animal impounded which said fees and rates shall be reasonable, and shall be paid by the owner of said animal so impounded before such animal is released, and to promulgate and make effective rules and regulations relating to the subject hereof, which, in the opinion of the impounding officer, will further guarantee and protect the health and safety of the citizens of the City of Pensacola, Florida. However, such fees, rules and regulations shall not become effective until approved by the city council. All fees collected by the animal shelter shall be paid into the county general fund with semiannual reports made to the mayor as to the amount and disposition of such funds.

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90; Ord. No. 16-10, § 46, 9-9-10)

Sec. 4-2-25. - Citations and notice to appear. Repeal

Repeal The impounding officer or his designee is hereby authorized to enforce the animal control provisions of the Code of the City of

Pensacola, Repeal Florida, through the use of citations and notices to appear in such form as they are authorized by Florida law. The use of citations and notices to appear is discretionary with the impounding officer or his designee and is supplemental to all other lawful means of enforcement of these provisions. Refusal of any person to accept and sign a citation or notice to appear shall be in violation of this section and shall be enforced in accordance with the provisions of section 4-2-41 of the Code of the City of Pensacola, Florida.

(Ord. No. 15-90, § 2, 2-22-90)

Sec. 4-2-26. - Vaccination of animals required. Repeal

Repeal Every owner of an animal three (3) months of age or older, shall cause such animal to be vaccinated against rabies by a licensed veterinarian with a U.S. approved rabies vaccine. Evidence of vaccination shall consist of a certificate signed by a licensed veterinarian administering the vaccine and containing pertinent data for identification of the animal. One copy of the certificate shall be given to the owner, one filed with the impounding officer, and one retained by the person administering the vaccine.

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90)

Sec. 4-2-27. - Animals to wear tags. Repeal

Repeal Coincident with or immediately following the issuance of the certificate of inoculation as prescribed in section 4-2-26, animals shall be tagged with an Escambia County metal, serially numbered tag attached to the collar or harness of the animal, which shall be valid for a one-year period from date of issue and must be worn at all times. No license tag issued to an owner shall be transferable to another owner. No other certificate or tag shall be valid under the provisions of this article.

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90)

Sec. 4-2-28. - Unvaccinated animals. Repeal

Repeal The impounding officer shall impound wherever found any animals not vaccinated as required by section 4-2-26 of this article. Any animal found without a vaccination tag shall be presumed not inoculated until proved otherwise. An animal impounded under this section shall be released

for vaccination to such veterinarian as the owner of the animal shall direct, Repeal provided the owner pays any impounding fee and charge for board established under this article, and further provided that said owner see to and pay for immediate vaccination of his animal.

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90)

Sec. 4-2-29. - Duplicate tag fee. Repeal

Repeal A fee to be established by the impounding officer under the provisions of section 4-2-24 shall be charged for the issuance of a duplicate tag when the original has been lost.

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90)

Sec. 4-2-30. - Unlicensed animals prohibited. Repeal

Repeal Any person who shall own, keep, sustain or harbor any animal within the City of Pensacola that is not licensed as provided in this article shall be in violation of this section and shall be punished in accordance with the provisions of section 4-2-41 of the Code of the City of Pensacola, Florida. The lack of a license tag on the collar or harness of an animal or the lack of approved license marking shall be deemed prima facie evidence that the animal has not been licensed or vaccinated and of evidence of the violation of this article.

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90)

Sec. 4-2-31. - Diseased or injured animals. Repeal

Repeal In the event any animal is impounded because of any infectious or contagious disease or injury, the impounding officer shall have full and complete authority to procure the services of a trained veterinary surgeon, in order to treat such disease or injury, if in the opinion of such persons it can be successfully treated. However, such authority shall be exercised at the discretion of the impounding officer and under no circumstances shall such treatment be required. In the event the veterinarian and such impounding officer are of the opinion that the health and safety of the citizenry of the City of Pensacola would be jeopardized by the continued existence of such infected animal or injured animal, then such animal may be destroyed and the remains disposed of without compensation being paid to the owner.

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90)

Sec. 4-2-32. - Disposition of animals. Repeal

Repeal In the event the owner of any animal impounded under any section of this article fails to reclaim it within five (5) days from the impounding date, the said impounding officer may make such disposition of the animal as is in the public interest. It is lawful for the impounding officer to release suitable, unclaimed animals to new owners on payment of required fees, and provided that any animal, so released, is vaccinated as required by section 4-2-26 of this article. New owners shall enter into a written agreement with the county animal shelter guaranteeing that the animals will be sterilized within thirty (30) days of the release to the new owner or prior to the animal's sexual maturity. The county animal shelter shall require a new owner to place a neuter and spay deposit, which deposit shall be refundable upon presentation to the county animal shelter of written evidence by the veterinarian performing the sterilization that the animal has been sterilized. It shall be a violation of this article for any new owner who has entered into such an agreement, not to have the animal sterilized as required by this section. It is unlawful for the impounding officer to dispose of animals by destroying them, unless such animals are put to death in a humane manner.

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90)

Sec. 4-2-33. - Animal control. Repeal

Commented [RS2]: Although this section is recommended for repeal, the animal nuisance of noise such as barking dogs is regulated in the city's noise regulations, see Sec. 8-1-16(4).

Repeal (a) *Animals utilized by law enforcement.* Restrictions relating to public places, schools, parks, beaches, and recreational areas shall not apply to animals utilized by law enforcement agencies.

(b) *Public places.* Animals are prohibited from public places in the City of Pensacola, such as airports, hotels, restaurants, theaters, public conveyances, grocery stores, or other establishments serving food, beverages or staple foods, and at public gatherings such as outdoor festivals, fairs, etc. Animals so found, whether roaming or in direct control by the owner, shall be impounded and the owner shall be in violation of this section and shall be punished in accordance with the provisions of section 4-2-41 of the Code of the City of Pensacola, Florida. This section shall not apply to service animals as defined under state or federal law, trained to assist the disabled, provided, such animal is in the company of such person with a disability. Further, this section shall not prohibit the

Repeal ~~suitable transport of animals by their owners or authorized agents on public conveyances when accomplished in accordance with the rules and regulations of the public conveyances involved.~~

~~(c) *Schools, parks, and beaches.* It shall be unlawful for the owner of an animal to allow his animal in public places of the City of Pensacola such as school grounds, public parks, beaches, and playgrounds, unless on a suitable leash or under the direct control of the owner.~~

~~(d) *Showing and training.* The above two (2) subsections shall not be construed to prohibit the showing and training of dogs in appropriate locations of auditoriums, schools, parks, parking lots, armories, theaters, and similar public or privately owned areas.~~

~~(e) *Dangerous or vicious animals.* The owner of any dangerous or vicious animal shall confine the animal in a building or secure enclosure. Any person who shall release, either willfully or through a failure to exercise due care or control, or take such animal out of such building or secure enclosure in such a manner which is likely to cause injury to another person or damage to the property of another person shall be in violation of this section and shall be punished in accordance with the provisions of section 4-2-41 of the Code of the City of Pensacola, Florida.~~

~~(f) *Female animals in season.* The owner of any female animal in heat who does not keep such animal confined in a building or secure enclosure, veterinary hospital, or boarding kennel in such a manner that such female animal cannot come in contact with another animal, except for intentional breeding purposes, shall be in violation of this section and shall be punished in accordance with the provisions of section 4-2-41 of the Code of the City of Pensacola, Florida. Any female animal not confined as herein provided shall be impounded and shall not be redeemed during said period of heat. Such female animal shall be redeemed in accordance with the provisions of section 4-2-35. This section shall not apply to female animals while entered in organized shows.~~

~~(g) *Disposition of dead animals.*~~

~~(1) Any animal, as defined in this article, killed or found dead on public property, shall be disposed of by the impounding officer.~~

~~(2) Any person may, on his own real property, bury or dispose of any dead animal; provided such person places not less than three (3) feet of earth over the carcass of the animal.~~

Repeal ~~(3) The owner of any dead animal may request the impounding officer to pick up and dispose of such animal. The impounding officer shall charge and collect from the owner, if any, for the disposition of such dead animal, a fee established by the impounding officer under the provisions of section 4-2-24.~~

~~(h) *Animal nuisances prohibited.* Any animal or animals that habitually or continuously bark, howl, or otherwise disturb the peace and quiet of the inhabitants of the City of Pensacola or are kept or maintained in such a manner or in such numbers as to disturb by noxious or offensive odors or otherwise endanger the health and welfare of the inhabitants of the City of Pensacola are declared to be an animal nuisance. It shall be unlawful for any person to keep, harbor or maintain an animal nuisance, as defined above. Any person who keeps, harbors or maintains an animal found to be an animal nuisance, as defined above, shall be in violation of this section and shall be punished in accordance with the provisions of section 4-2-41 of the Code of the City of Pensacola, Florida.~~

~~(i) *Direct control.* It shall be a violation of this section for any animal to be off the premises of its owner or person responsible for said animal, without being in direct control of its owner, person responsible therefor, or other person. Animals not under direct control shall be considered unlicensed animals and may be seized, restrained, impounded, and disposed of as provided by this article for any unlicensed animal.~~

~~(j) *Care of animals struck by vehicles.* It shall be unlawful for any person who shall have knowingly struck an animal by a vehicle under his control, to fail to render first aid to such animal by taking it to a veterinarian or by notifying either the owner, the impounding officer or the police.~~

~~(k) *Removal of animal waste.*~~

~~(1) It shall be the duty of each person who is in direct control of an animal on areas other than the property of said person to remove any feces left by that person's animal on any yard, sidewalk, gutter, street, right-of-way, or other public or private place.~~

~~(2) It shall further be the duty of any person while in direct control of an animal to have in his or her possession a plastic bag or "pooper scooper" or other such device sufficient for his or her use in the removal of animal waste.~~

Repeal ~~(3) Any person in violation of subsection (1) or (2) above shall be in violation of this section and shall be punished in accordance with the provisions of section 4-2-41.~~

~~(l) *Cruelty to animals.* It shall be unlawful for any owner or person to be cruel to an animal by cruelly beating, torturing, mutilating, failing to provide food, drink or shelter, or by abandoning animals. Any person cruel to an animal as herein provided shall be in violation of this section and shall be punished in accordance with the provisions of section 4-2-41.~~

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90; Ord. No. 16-95, § 1, 4-13-95; Ord. No. 19-09, § 1, 5-28-09; Ord. No. 42-14, § 1, 10-23-14)

~~Sec. 4-2-34. - Enforcement for violation.~~ Repeal

Repeal ~~(a) The impounding officer shall impound:~~

~~(1) Any animal found to be cruelly treated, as defined in subsection 4-2-33(l), or any animal suspected or believed to be infected with rabies or any infectious disease. Each animal so apprehended which is suspected to have or exhibits symptoms of having rabies or an infectious or contagious disease shall be segregated from other animals so as to prevent said animal from coming into contact with any animal.~~

~~(2) Any animal not licensed as provided for in this article.~~

~~(3) Any animal found running at large.~~

~~(b) The impounding officer or his authorized agents may, in the event an animal is deemed in violation of this article or is owned, kept, harbored, sustained or maintained in violation of this article:~~

~~(1) Issue a citation or notice to appear conforming to the requirements of state law to the owner of such animal. If the person(s) shall fail to abate the offense(s), the impounding officer may file a complaint against the person(s) in violation of this article in accordance with the provisions of section 4-2-41; and~~

~~(2) Impound such animal.~~

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90)

~~Sec. 4-2-35. - Redemption of impounded animals.~~ Repeal

Repeal ~~(a) If any animal is impounded and such animal is not redeemed within five (5) consecutive days after impoundment of such animal, including the day of impoundment, the impounding officer, without notice to the owner of such animal, if any, may dispose of the animal as provided for in section 4-2-32; provided, however, if the owner of the animal is known to the impounding officer or can be identified by the impounding officer by reason of some marking or collar attachment on the animal, the impounding officer shall notify the owner of the fact that his animal has been impounded and that he may redeem his animal within five (5) days of notification. The final day of the five-day period shall only occur on a day in which the county pound in which the animal is impounded is open for normal operating activities. The impounding officer shall give notification by first class United States mail within twenty-four (24) hours after impoundment. The depositing of a letter of notification in the United States mail shall constitute notification. This section shall not apply to animals impounded pursuant to section 4-2-31 of this article.~~

~~(b) The owner or owner's agent shall be entitled to resume possession of any impounded animal upon compliance, if applicable, with the licensing provisions in this article and the payment of impounded fees, service fees, and board fees established under section 4-2-24 of this article.~~

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90)

~~Sec. 4-2-36. - Animals killed or injured by motor vehicles.~~ Repeal

Repeal ~~If any animal roaming at large in violation of this article is accidentally killed or injured by a motor vehicle, the driver of such vehicle shall not be subject to liability for such animal.~~

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90)

~~Sec. 4-2-37. - Tag removals.~~ Repeal

Repeal ~~No person, except the owner, or his authorized agent, shall remove any license tag from an animal's collar or remove any collar with a license attached thereto from any animal. No person shall keep or harbor an animal with a fictitious, altered or invalid license tag, or a license tag not issued in connection with the licensing or keeping of the animal wearing the same. No license tag issued for one animal shall be transferable to another animal.~~

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90)

~~Sec. 4-2-38. - Interfering with impounding officer; damaging county pound; releasing animals prohibited.~~ Repeal

Repeal ~~Any person who shall in any manner interfere with, hinder, resist, obstruct, or molest the impounding officer in the performance of his duty, or without authority of a court having jurisdiction to try violations of this article or without authority under this article seek to release or remove any animal from the custody of the impounding officer, or tear down, burn, deface, destroy, or otherwise injure any county pound or enclosure thereof shall be in violation of this section and shall be punished in accordance with the provisions of section 4-2-41 of the Code of the City of Pensacola, Florida, and any other applicable provisions of law.~~

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90)

~~Sec. 4-2-39. - Concealment of animals prohibited.~~ Repeal

Repeal ~~Any person who shall hold, hide, or conceal any animal to which he does not have legal title shall be in violation of this section and shall be punished in accordance with the provisions of section 4-2-41 of the Code of the City of Pensacola, Florida; provided, however, that no person shall be in violation of this section if he shall have reported his possession of such animal to the impounding officer within forty-eight (48) hours after acquiring possession of such animal.~~

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90)

~~Sec. 4-2-40. - Exemptions from provisions of article.~~ Repeal

Repeal ~~(a) Hospitals, clinics, and other premises operated by licensed veterinarians, for the care and treatment of animals are exempt from the provisions of this article, except where expressly stated.~~

~~(b) Licensing and vaccination requirements of sections 4-2-26 and 4-2-27 of this article shall not apply to any animal belonging to a nonresident of the City of Pensacola and kept within the city for not longer than thirty (30) days; provided, the animal had been vaccinated against rabies and the owner shall at all times comply with all other provisions of this article.~~

(Ord. No. 16-87, § 2, 5-14-87; Ord. No. 15-90, § 2, 2-22-90)

~~Sec. 4-2-41. - Penalties.~~ Repeal

Repeal ~~(a) Any person who willfully refuses to sign and accept a citation or notice to appear issued by an officer shall be guilty of a misdemeanor of the second degree, punishable as provided by F.S. § 775.082, § 775.083, or § 775.084.~~

~~(b) Any person found to be in violation of section 4-2-1 through section 4-2-40 of the Code of the City of Pensacola, Florida, shall be subject to a maximum civil penalty not to exceed five hundred dollars ($500.00) in amount, however, the civil penalty for such person who has committed a violation and does not contest a citation shall be an amount less than five hundred dollars ($500.00).~~

~~(c) Violation of the provisions of section 4-2-1 through section 4-2-40 shall be a civil infraction, except in the instance of any person who willfully refuses to sign and accept a citation or notice to appear issued by an enforcement officer.~~

~~(d) An enforcement officer is authorized to issue a citation or notice to appear to any person when he has probable cause to believe that that person has committed an act in violation of section 4-2-1 through section 4-2-40 of the Code of the City of Pensacola, Florida. Such citation or notice to appear shall conform to the requirements of F.S. § 828.27.~~

(Ord. No. 15-90, § 3, 2-22-90)

Sec. 4-2-42. - Keeping pot-bellied pigs as household pets.

(a) The term "pigs" as used herein shall mean Pot-bellied Pigs.

(b) The number of such pigs shall be limited to one per each residence.

(c) The breeding of such pigs is prohibited.

(d) Male pigs four (4) weeks of age or older shall be neutered.

(e) Such pigs shall be controlled by a leash, tether, harness or adequate enclosure any time said animals are outside the residence of the owner or other person harboring, keeping or maintaining said pig.

(f) The owner shall display, upon request from the an animal control officer or any law enforcement officer, a current certification from a veterinarian

licensed in the State that all necessary and appropriate vaccinations have been administered and that the pig has been tested and demonstrated free of parasitic disease. Such certification shall be obtained on a yearly basis.

(g) It shall be unlawful for any pig owner or person in charge of a pig, to fail to remove deposits of pig excreta made by a pig in that person's charge when the deposit of the pig's excreta occurred in the presence of the pig's owner or person in charge of the pig on any property not belonging to the owner or a person in charge of the pig. If such depositing of excreta occurs, the owner or person in charge of the pig shall immediately cause its removal for disposal.

(h) It shall be unlawful for any pig owner or person in charge of a pig to allow the area in which the pig is kept or allowed to roam to become the source of odors which are detectable on adjoining properties where such odors are the result of the pig being kept or allowed to roam on the subject property.

(i) All other animal control and nuisance laws applicable to animals within the City of Pensacola shall apply to pot-bellied pigs.

(j) A homeowners' association formed in accordance with State Statute may prohibit ownership of pot-bellied pigs through a formal inclusion in the association's covenants.

(Ord. No. 10-14, § 2, 3-13-14)

Sec. 4-2-43. – Enforcement.

The provisions of Sec. 4-2-3 through 4-2-42 shall be enforced by the mayor.

Commented [RS3]: Escambia County Animal Control may not enforce unique city regulations.

Sec. 4-2-44. Penalties.

(a) Any person who willfully refuses to sign and accept a citation or notice to appear issued by an officer shall be guilty of a misdemeanor of the second degree, punishable as provided by F.S. § 775.082, § 775.083, or § 775.084.

(b) Any person found to be in violation of section 4-2-1 through section 4-2-40 of the Code of the City of Pensacola, Florida, shall be subject to a maximum civil penalty not to exceed five hundred dollars ($500.00) in amount, however, the civil penalty for such person who has committed a violation and does not contest a citation shall be an amount less than five hundred dollars ($500.00).

Secs. ~~4-2-43~~ 4-2-45—4-2-85. - Reserved.

ARTICLE III. - RESERVED[4]

Footnotes:

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Note—See the editor's footnote to Art. II of this chapter.

Secs. 4-2-86—4-2-120. - Reserved.

ARTICLE V. - BIRD SANCTUARY

Sec. 4-2-121. - City designated as bird sanctuary.

The entire area now embraced by the corporate limits of the city shall be designated as a bird sanctuary.

(Code 1968, § 62-33)

Sec. 4-2-122. - Signs.

Adequate signs shall be erected at entrances to the city, within the discretion of the council, signifying the designation of the area within the city as a bird sanctuary.

(Code 1968, § 62-34)

Sec. 4-2-123. - Killing and molesting birds prohibited.

It shall be unlawful to hunt, kill, maim or trap, hunt with slingshot, or attempt to in any manner shoot or otherwise molest birds or any wild fowl, to rob or otherwise molest the nests or birds nesting or located within the city. This is not to conflict with F.S. § 790.33.

(Code 1968, § 62-35; Ord. No. 27-11, § 1, 9-22-11)

Sec. 4-2-124. - Birds constituting nuisances; abatement.

If starlings or other similar birds are found roosting, nesting or inhabiting any locality within the city in such numbers as to constitute a nuisance or health menace to persons or property, it shall be the duty of the council to notify representatives of the Audubon Society, garden club, birdwatchers club or humane society, if representatives of any of these organizations are available, advising them that such a condition exists and requesting that immediate action to eliminate same be taken by them. If the condition has not been eliminated by representatives of the abovenamed organizations within a reasonable time, then the ~~county~~ city shall take whatever action it deems necessary to eliminate such condition or health menace.

(Code 1968, § 62-36)

CHAPTER 4-3. GARBAGE AND REFUSE[6]

Footnotes:

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Cross reference— Litter control, Ch. 4-5; streets, sidewalks and other public places, Ch. 11-4; tree/landscape regulations, Ch. 12-6; buildings, construction and fire codes, Title XIV.

State Law reference— Resource recovery and management, F.S. § 403.701 et seq.

ARTICLE I. - IN GENERAL

Secs. 4-3-1—4-3-15. - Reserved.

ARTICLE II. - RUBBISH, WEEDS AND OFFENSIVE GROWTH[7]

Footnotes:

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Editor's note—Ord. No. 19-06, § 1, adopted Aug. 24, 2006, amended Art. II, §§ 4-3-16—4-3-25, in its entirety. Formerly, said article pertained to similar subject matter as enacted by Code 1968.

Sec. 4-3-16. - Definition of "weeds."

The word *"weeds"* as herein used means all rank vegetative growth which is dangerous, or noxious to human beings, or which has grown more than twelve (12) inches in height causing unsightliness, a nuisance, or an otherwise undesirable appearance of any lot, block, parcel of land or premises within the city, or which could be a potential harbor for rats, vermin, insects, or other creatures that would constitute a hazard to the public health, safety and welfare of the community.

(Ord. No. 19-06, § 1, 8-24-06)

Cross reference— Definitions and rules of construction generally, Ch. 1-2.

Sec. 4-3-17. - Prohibited deposits on streets and sidewalks.

(a) It shall be unlawful for any person to keep on any street any firewood, empty boxes or barrels, shavings, bricks, refuse, building materials or any carriage, cart, wagon or other vehicle except as authorized by this chapter or permitted by the ~~director of sanitation services~~ mayor.

(b) It shall be unlawful to sweep into or deposit in any street any papers, trash or rubbish, or to fail to collect and put the same into receptacles.

(c) It shall be unlawful for any person to throw or deposit on any street or sidewalk any trash of any kind whatsoever.

(Ord. No. 19-06, § 1, 8-24-06)

Sec. 4-3-18. - Excessive growth of weeds prohibited.

It shall be unlawful for any person who shall own, control or occupy any lot, parcel of land or premises in the city, or for the agent, servant, representative or employee of any person, to allow weeds to grow upon the

lot, parcel of land or premises to a height exceeding twelve (12) inches or otherwise violate this article.

(Ord. No. 19-06, § 1, 8-24-06)

Sec. 4-3-19. - Authority to require removal of weeds.

Whenever any lot, block or parcel of land in the city is overgrown with any weeds of such a character or of such a height and thickness as to be detrimental to the public health or safety, the mayor or his designee may require the removal of such weeds by the owner, occupant or agent of the property.

(Ord. No. 19-06, § 1, 8-24-06; Ord. No. 16-10, § 47, 9-9-10)

Sec. 4-3-20. - Notice of city's intention to remove weeds.

Prior to cutting down or removing weeds from private premises, the mayor ~~code enforcement office of the department of sanitation services~~ shall give written notice to the person owning, occupying or controlling the premises that if such weeds are not cut down or removed within ten (10) days from the date of the notice's mailing, and if during such time the property owner does not contest the notice of violation to the City of Pensacola, then the mayor ~~director of sanitation services~~ will cause them to be cut down or removed and the premises will be assessed for the cost thereof. Notice shall be deemed to be sufficient if it is mailed to the occupant of the premises, if any, and the last owner of record on file in the office of the property appraiser. In the event that the mailed notice is undeliverable or returned then the city shall prominently post the notice upon the premises.

(Ord. No. 19-06, § 1, 8-24-06)

Sec. 4-3-21. - Removal of weeds by city.

It shall be the duty of the mayor ~~director of sanitation services~~ to cause to be cut down and removed from any private premises all weeds growing thereon to a height exceeding twelve (12) inches whenever the owner of such premises or other person who is required by this chapter to cut down and remove the same fails or refuses to do so.

(Ord. No. 19-06, § 1, 8-24-06)

Sec. 4-3-22. - Cutting and cleaning of lots; assessment of costs; liens.

Upon the completion of the cutting or cleaning by the city of any lots, parcels or tracts of land within the city by removing therefrom the weeds, trash, filth, garbage or other refuse, the mayor ~~director of sanitation services~~ shall certify ~~to the director of finance~~ the costs incident to and required for the removal of the offensive matter described above, specifying the lots and parcels so improved and the nature of the improvements. Thereafter, the mayor ~~director of finance~~ shall assess the lands, lots and parcels of land for the improvements and the costs thereof, and shall take appropriate action as necessary to place a lien upon the lands, parcels or tracts of land, which lien shall be equal in dignity to all other special assessments for benefits against property within the city, and shall be collected in the same manner as other special assessments for benefits are collected, and the mayor ~~director of finance~~ is hereby authorized and directed to perform and to do all things necessary to the recording, perfecting and collection of such lien. No such lien shall be recorded unless thirty (30) days have expired without payment of the special assessment after the mayor ~~director of finance~~ has served notice of the nature and the amount of the special assessment in the manner set forth in section 4-3-20.

(Ord. No. 19-06, § 1, 8-24-06)

Sec. 4-3-23. - Lot-cleaning fund created.

There is hereby created and established a fund to be designated as the "lot-cleaning fund" from which shall be paid and for which there is appropriated moneys in the city treasury.

(Ord. No. 19-06, § 1, 8-24-06)

Sec. 4-3-24. - Use of lot-cleaning fund.

The lot-cleaning fund shall be used as a revolving fund from which shall be paid the cost of cleaning weeds plus undergrowth, filth, garbage or other refuse from lots, tracts or parcels of land within the city when the owner thereof or his agents shall neglect, fail or refuse to clean such lots, parcels or tracts of land after notice by the mayor ~~director of sanitation services~~.

(Ord. No. 19-06, § 1, 8-24-06)

Sec. 4-3-25. - Enforcement.

The mayor ~~code enforcement division~~ is hereby authorized~~, under the supervision of the director of sanitation services,~~ to carry out the provisions of sections 4-3-18, 4-3-20 to 4-3-24 as may be deemed reasonable. A violation of this section shall, upon conviction, be punishable as provided in section 1-1-8 of this Code. Payment of a penalty for violation of this section shall not be a defense to imposition or collection of an assessment or lien as provided for in section 4-3-22.

(Ord. No. 19-06, § 1, 8-24-06)

Secs. 4-3-26—4-3-38. - Reserved.

ARTICLE III. - MANDATORY COLLECTION AND DISPOSAL SYSTEM[8]

Footnotes:

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Editor's note—Ord. No. 18-09, § 1, adopted May 28, 2009, amended Art. III in it's entirety. See also the Code Comparative Table.

DIVISION 1. - GENERALLY

Sec. 4-3-39. - Purpose.

The purpose of this article is to assure adequate sanitary conditions and to promote the public health, safety, and welfare for all persons within the corporate limits of the city.

(Ord. No. 17-03, § 2, 8-21-03; Ord. No. 18-09, § 1, 5-28-09)

Sec. 4-3-40. - Reserved.

Sec. 4-3-41. - Definitions.

For the purposes of this article, the following terms, phrases, words, and their derivations shall have the meanings given herein. Words, terms, and phrases used in this article which are not defined in this section shall be the meanings given in F.S. § 403.703, or in this article, unless the context clearly otherwise requires. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Animal. The terms "animal," as used in this article, shall mean any male, female, or altered member of the canine or feline species, or any other domesticated animal, except those classified by the Florida Fish and Game Commission as wildlife.

Bulk waste shall mean items that because of its size, shape, quality, or quantity precludes or complicates handling by normal collection, processing, or disposal methods; including, but not limited to the following:

(1) Discarded materials resulting from remodeling, repair, excavation, construction or demolition of structures, such as plaster, roofing materials, trees, and similar items, excluding asbestos materials and treated lumber, or other items excluded herein.

(2) Tree stumps, tree trunks, and limbs larger than eight (8) inches in diameter and six (6) feet in length.

(3) Household furnishings, such as sofas, chairs, mattresses, box springs, televisions, tables, appliances, water heaters, air conditioners, and space heaters.

(4) Yard trash mixed with other waste.

(5) Any other item as may be determined by the mayor ~~director~~.

Business district. All that area bound on the south by Pensacola Bay, on the west by Spring Street, on the north by Belmont Street, on the east by Tarragona Street, and includes all properties facing on the above streets.

Collection shall mean the act of removing solid waste or refuse from the source of generation to the point of disposal.

Customer. Any person subscribing to sanitation services in the city.

~~*Director.* The department of sanitation services and fleet management director.~~

Disposal facility shall mean the site where solid waste or refuse is disposed of, whether by sanitary landfilling, incineration, treatment, recover, or recycling approved by the city.

Garbage. All waste accumulations of animal, fruit, or vegetable matter that attend the preparation, use, cooking, dealing in or storage of meat, fowl, fish, fruits, or vegetables, containers originally used for foodstuffs other than those containers designated as recyclable in the city recycling program, but does not include animal waste.

Owner/occupant. Any person or entity who acquires responsibility or title of real property, a structure or dwelling, by occupancy, ownership, or agency.

Recyclables. Material(s) extracted from solid waste or refuse having known recycling potential that can be processed and returned to a useful product and are designated as a recyclable material in the city recycling program.

Residential composting. Residential composting is the managed process of controlled decomposition of organic material such as leaves, twigs, grass clippings, and vegetative food waste that is utilized as a soil amendment.

Rubbish. All nonputrescible solid wastes other than those materials designated as recyclables in the city recycling program, consisting of both combustible and noncombustible wastes, such as paper, cardboard, glass, crockery, excelsior, cloth, and similar material.

Scavenging. To search through solid waste or discarded materials for something of use or value.

Solid waste or *refuse.* ~~All noncombustible putrescible and nonputrescible wastes other than those materials designated as recyclables in the city recycling program, consisting of garbage, yard trash, green waste, rubbish, paper, cardboard, glass, crockery, cloth, and similar material, but not industrial wastes, dead animals, nor abandoned automobiles or parts and other similar items.~~ Material as defined in F.S. § 403.703.

~~*Sanitation division.* The sanitation division of the department of sanitation services and fleet management, which operates the solid waste and recyclables collection and disposal service of the city. The director shall be that duly designated head of the sanitation division.~~

Yard trash or *green waste.* Includes grass clippings, pine straw, leaves, residue from trimming limbs, shrubs, and trees, tree trunks, stumps, and bark which do not exceed six (6) feet in length and eight (8) inches in diameter.

(Ord. No. 17-03, § 2, 8-21-03; Ord. No. 18-09, § 1, 5-28-09)

Sec. 4-3-42. - Use of solid waste collection services required; exception.

(a) To assure adequate sanitary conditions and promote public health, every owner of real property with five (5) residential units or less per dwelling or structure located within the corporate limits of the city shall insure that each occupied unit has its own separate subscription to solid waste collection and disposal services of the city and that the occupied unit does not share service with any other dwelling or unit. This provision shall not apply to a dwelling, structure, or real property that has been designated by the mayor ~~director~~ as requiring commercial collection service or may be required elsewhere in this Code; or to a dwelling defined as an accessory residential unit in section 12-2-52 of the Code of the City of Pensacola, Florida.

(b) It shall be unlawful for the owner or occupant of any dwelling or structure in the city to dispose of any solid waste or refuse generated at such dwelling except by subscribing to the solid waste or refuse collection service of the city.

(c) Violation of this section shall subject the owner of real property to the penalties provided by law, including sections 13-1, 13-2, 13-3 and 1-1-8 of the Code of the City of Pensacola, Florida.

(Ord. No. 17-03, § 2, 8-21-03; Ord. No. 18-09, § 1, 5-28-09; Ord. No. 30-11, § 1, 11-10-11)

Sec. 4-3-43. - Evidence of lack of service.

Occupancy of a dwelling shall be prima facie evidence that waste is being generated and accumulated on such premises. It shall be the duty of the mayor ~~director~~ or duly appointed designee to inspect such premises, and cause to be removed therefrom, any and all waste found thereon, at the expense of the owner/occupant thereof; and it shall be the duty of the mayor ~~director~~ to institute prosecution of any person in violation of this section.

(Ord. No. 17-03, § 2, 8-21-03; Ord. No. 18-09, § 1, 5-28-09)

Sec. 4-3-44. - Solid waste or refuse to be property of city; scavenging.

(a) Ownership of the recyclables, solid waste or refuse material set out for collection shall be deemed discarded and ownership of same shall vest in the city. In no case will scavenging be permitted except where prior written permission is given by the mayor ~~director~~.

(b) Disturbing, removing after placement for collection. It shall be unlawful for any person to remove, handle, or otherwise disturb the recyclables, solid waste or refuse which has been placed curbside for collection by sanitation services. This section does not apply to the owner or occupant of a residence or dwelling so placing the contents.

(Ord. No. 17-03, § 2, 8-21-03; Ord. No. 18-09, § 1, 5-28-09)

Sec. 4-3-45. - Determination of service providers.

It shall also be unlawful for any person, firm or entity to provide recyclables, solid waste or refuse collection and disposal service to any dwelling, structure, or real property in the city unless the mayor ~~director~~ has made a written determination that the city ~~sanitation division~~ is not capable of providing such service.

(Ord. No. 17-03, § 2, 8-21-03; Ord. No. 18-09, § 1, 5-28-09)

Sec. 4-3-46. - Burying of recyclables, solid waste, refuse, or hazardous materials or substances.

No recyclables, solid waste or refuse shall be buried on any property within the city.

(Ord. No. 17-03, § 2, 8-21-03; Ord. No. 18-09, § 1, 5-28-09)

Sec. 4-3-47. - Storing or placement of recyclables, solid waste or refuse.

(a) *Storing or placement of recyclables, solid waste or refuse.* No person shall place recyclables, solid waste or refuse in any street, alley, or other public place. Nor shall any person store any such recyclables, solid waste or refuse upon any private property whether owned by the person or not, within the city. Recyclables, solid waste or refuse shall be placed in proper containers and placed for collection as required in this article.

(b) *Disposal upon water.* No person shall throw, deposit, or dispose of any recyclable material, solid waste or refuse in or upon any stream, waterway, or body of water.

(c) *Unauthorized accumulation.* Any unauthorized accumulation of recyclables, solid waste or refuse not in compliance with this Code on any real property or premises is prohibited and declared a nuisance.

(d) *Scattering of recyclables, solid waste or refuse.* No person shall cast, place, sweep, or deposit any recyclable materials, solid waste, refuse, or garbage in such manner that it may be carried or deposited by the elements.

(e) *Residential composting.* Residential composting, with the intent of utilizing such as a soil amendment, shall not be deemed to be a violation of this section.

(f) *Dead animals.* It is unlawful for any person to store dead animals in a container or place it at curbside for collection by the city. It is the responsibility of the owner of a dead animal or the person who discovers a dead animal to promptly notify a local animal control agency responsible for disposing of dead animals.

(Ord. No. 17-03, § 2, 8-21-03; Ord. No. 18-09, § 1, 5-28-09)

Sec. 4-3-48. - Placement of recyclables, solid waste or refuse in gutters or streets prohibited, declared nuisance.

The placement or scattering of yard trash, green waste, and/or other recyclables, solid waste or refuse in or upon street gutters, street surfaces, or storm water inlets is hereby declared a nuisance and a danger to water quality and shall be prohibited.

(Ord. No. 17-03, § 2, 8-21-03; Ord. No. 18-09, § 1, 5-28-09)

Sec. 4-3-49. - Enforcement.

The mayor ~~director~~ is hereby authorized and directed to carry out and enforce the provision of this article. ~~The building official, as defined in article II, section 14-1-21, of the Code, shall have equal authority and responsibility in carrying out the provisions of sections 4-3-46, 4-3-47, 4-3-48, 4-3-58, and 4-3-59.~~

(Ord. No. 17-03, § 2, 8-21-03; Ord. No. 18-09, § 1, 5-28-09)

DIVISION 2. - COLLECTION AND DISPOSAL

Sec. 4-3-50. - Special collections of scheduled and non-scheduled bulk waste items.

Bulk waste items shall be collected by the city upon customer request and the customer shall be billed for scheduled bulk waste collection under the established fee schedule set forth in section 4-3-97. If no request is made for collection of bulk items placed curbside, such items will be collected by the city at its convenience, without notification, and the property owner or occupant shall be billed for nonscheduled bulk waste collection under the established fee schedule set forth in section 4-3-97. Billing shall be to the existing city utility account or to the individual property owner or occupant where no city account has been established.

(Ord. No. 17-03, § 2, 8-21-03; Ord. 14-07, § 1, 3-22-07; Ord. No. 18-09, § 1, 5-28-09)

Secs. 4-3-51—4-3-53. - Reserved.

Sec. 4-3-54. - Collection schedule.

(a) *Recyclables, solid waste or refuse.* All recyclables, solid waste or refuse shall be collected by the city ~~sanitation services division~~ according to the following schedule except during periods of disaster cleanups or peak yard trash collection seasons when schedules may be altered, suspended, or delayed:

(1) All combined household solid waste, refuse, or garbage generated in residential areas shall be collected once each week from the city-owned wheeled container designated for garbage.

(2) All recyclables shall be collected once each week from the city-owned wheeled container designated for recycling.

(3) Yard trash/green waste shall be collected once a week.

(4) Bulk waste shall be collected as provided in the provisions of this article, including but not limited to sections 4-3-50 and 4-3-57.

(5) Corrugated cardboard moving boxes shall be collected as provided for in section 4-3-61.

(Ord. No. 17-03, § 2, 8-21-03; Ord. 14-07, § 1, 3-22-07; Ord. No. 18-09, § 1, 5-28-09)

Sec. 4-3-55. - Placement for collection.

(a) No person shall place any accumulation of recyclables, solid waste or refuse, recovered materials, or garbage container(s) in any street or gutter, or other public place of travel nor upon any private or public property, except adjacent to and directly in front of said person's own property. In all cases where conditions permit, said placement shall be in the area behind the curb, but no more than two (2) feet from the curb or the back slope or roadside.

(b) Yard trash/green waste shall not be placed on top of and shall not cover sprinkler system heads and water meters. The city shall not be responsible for damage to sprinkler systems, sprinkler heads, water meters, utility combination boxes, or the like, and other objects including fences, gates, hedges, plants, and trees damaged due to yard trash or green waste being placed over or piled on or against such items for collection.

(c) Wheeled containers shall not be placed out for collection prior to 6:00 p.m. of the day preceding the scheduled day of collection, and all containers shall be removed no later than 6:00 a.m. the day following collection.

(Ord. No. 17-03, § 2, 8-21-03; Ord. 14-07, § 1, 3-22-07; Ord. No. 18-09, § 1, 5-28-09)

Sec. 4-3-56. - Solid waste and refuse not acceptable for collection by the city ~~sanitation services division.~~

Solid waste or refuse materials not acceptable for collection by the city ~~sanitation services division~~ shall be disposed of by the person or persons generating the solid waste or refuse in accordance with federal, state, and local laws:

(1) Solid waste or refuse requiring special handling.

(2) Hazardous materials or substances. Including but not limited to, petroleum products, poisons, acids, caustics, infected materials, body wastes, explosives, radioactive and asbestos containing material.

(3) Solid wastes resulting from industrial processes.

(4) Dirt, concrete, bricks, rocks, stones, mortar, roofing materials and materials of similar nature.

(5) Tree stumps, tree trunks, and limbs larger than eight (8) inches in diameter and six (6) feet in length.

(6) Bulk waste material regulated by local, state, and federal agencies.

(Ord. No. 17-03, § 2, 8-21-03; Ord. 14-07, § 1, 3-22-07; Ord. No. 18-09, § 1, 5-28-09)

Sec. 4-3-57. - Bulk waste acceptable for collection.

Bulk waste as defined in this section shall be collected by the city ~~sanitation services division~~ provided a request is made by the customer. Collection and charge for such services shall be provided for in the fee schedule in section 4-3-97. Examples of bulk waste that are acceptable for collection under this section shall include but shall not be limited to the following:

(1) Minor amounts of discarded materials, less than two (2) cubic yards in volume, resulting from remodeling, repair, construction, or demolition of structures, such as plaster, lumber, and similar items that have resulted directly from work of the property owner or occupant, and excluding asbestos materials and treated lumber or other items excluded herein.

(2) Household furnishings such as sofas, chairs, mattresses, box springs, televisions, tables, appliances, water heaters, air conditioners, and space heaters.

(3) Yard trash or green waste mixed with other waste.

(Ord. No. 17-03, § 2, 8-21-03; Ord. 14-07, § 1, 3-22-07; Ord. No. 18-09, § 1, 5-28-09)

Sec. 4-3-58. - Building construction wastes.

(a) The person to whom a building permit is issued shall remove or have removed all refuse, waste matter, rubbish, garbage, trash, and construction debris, including, but not limited to, trees, stumps, dirt, old buildings and structures resulting from the clearing of land before the completion of the work permitted and final inspection by the city ~~city's department of inspection services~~ is made or within seventy-two (72) hours of completion of the work. It shall also be the responsibility of any person to whom the permit is issued to inspect the site and to remove therefrom all such materials which have been buried, stored, or left to remain on the site.

(b) Compliance with this section shall be the responsibility of the property owner or occupant. Failure to comply may result in the imposition of costs and/or fines as provided for in this section against the property owner or occupant.

(Ord. No. 17-03, § 2, 8-21-03; Ord. No. 18-09, § 1, 5-28-09)

Sec. 4-3-59. - Tree surgeon, fence companies, landscape contractors, swimming pool contractors and building contractors.

(a) It shall be the responsibility of all fence companies, tree surgeons, nurseries, landscape contractors, swimming pool contractors and building contractors or any individual or company doing work on private property to remove from the premises all residue and rubbish resulting from their work.

(b) Compliance with this article shall be the responsibility of the property owner or occupant. Failure to comply may result in the imposition of costs and/or fines as provided for in this article against the property owner or occupant.

(Ord. No. 17-03, § 2, 8-21-03; Ord. 14-07, § 1, 3-22-07; Ord. No. 18-09, § 1, 5-28-09)

Sec. 4-3-60. - Reserved.

Sec. 4-3-61. - Corrugated cardboard.

Corrugated cardboard moving boxes will be collected on an on-call basis. Cardboard is collected separately and must be flattened before being placed curbside.

(Ord. No. 17-03, § 2, 8-21-03; Ord. No. 18-09, § 1, 5-28-09)

Sec. 4-3-62. - Reserved.

Sec. 4-3-63. - Yard trash, green waste.

When placed curbside for collection, all limbs, trees, and shrubs shall not exceed six (6) feet in length and eight (8) inches in diameter and bushy limbs shall be cut apart and trimmed to lay flat. Yard trash/green waste piles containing limbs, trees, and shrubs that do not meet this requirement shall be subject to collection at the scheduled bulk waste collection fee as established in section 4-3-97.

(Ord. No. 17-03, § 2, 8-21-03; Ord. 14-07, § 1, 3-22-07; Ord. No. 18-09, § 1, 5-28-09)

Secs. 4-3-64—4-3-80. - Reserved.

DIVISION 3. - CONTAINERS

Sec. 4-3-81. - City-owned wheeled containers.

(a) *Mandatory use.* Except as otherwise provided in this section, all recyclables, garbage and rubbish shall be placed in separate wheeled containers issued to the customer by the city for the specific purpose of providing separate recyclable and garbage collection. The use of any other containers is unlawful.

(b) *Prohibited materials.* It shall be unlawful to place for collection in city-owned wheeled containers any materials described in sections 4-3-56, 4-3-57, and 4-3-63.

(c) *Separation of recyclables.* It shall be unlawful to place for collection in a city-owned wheeling container, designated specifically for recycling use, any materials other than those recyclable materials determined by the city to be eligible for inclusion in the city recycling program.

(d) *Responsibility of customer.* Wheeled containers issued to customers by the city are and shall continue to be the property of the city. It is the responsibility of the customer to which such container has been issued to keep it clean and to protect it from theft, destruction, and damage beyond repair. The customer shall notify the city ~~customer service department~~ prior to vacating a premises and shall place the container in a safe location where it is accessible to the city.

(e) *Damaged containers.* The customer shall be responsible for charges associated with replacement of any city-owned container damaged due to negligence or abuse.

(f) *Exceptions for disabled persons.* Service will be provided in accordance with applicable ADA guidelines.

(g) *Placement of containers.* When not placed curbside for collection, city-owned wheeled containers shall be placed beside a permanent structure or behind vegetation or other visual barrier. The mayor or his designee is authorized to grant an exemption from the requirements of this provision when a determination has been made that the existing circumstances render compliance not reasonably feasible. This subsection may be enforced pursuant to the provisions of section 1-1-8 or section 13-2-2, herein.

(Ord. No. 17-03, § 2, 8-21-03; Ord. No. 18-09, § 1, 5-28-09; Ord. No. 03-14, § 1, 2-13-14)

Sec. 4-3-82. - Overloading.

(a) Any wheeled container which is so loaded that the lid will not fit securely on the container will not be collected by the city ~~sanitation division~~.

(b) The contents of any wheeled container which, with the container, weighs more than two hundred (200) pounds, will not be collected.

(Ord. No. 17-03, § 2, 8-21-03; Ord. No. 18-09, § 1, 5-28-09)

Secs. 4-3-83—4-3-96. - Reserved.

DIVISION 4. - RATES AND FEES

Sec. 4-3-97. - Fees and surcharges.

The following fees are hereby established for recycling, solid waste or refuse collection services by the city as may be amended from time to time by resolution of the city council:

(1) *New accounts, transferred accounts, and resumption of terminated service:* Twenty dollars ($20.00).

(2) *Garbage, recycling and trash collection fee, per month:* Twenty-two dollars and eighty cents ($22.80). This fee shall be automatically adjusted October 1, 2012, and each October 1 thereafter based on the percentage difference in the cost of living as computed under the most recent Consumer Price Index for all urban consumers or similar index published by the Bureau of Labor Statistics, U.S. Department of Labor for the period beginning April 1st of the preceding year and ending March 31st of the current year~~,~~ as may be determined by council.

(3) Provided, however, the monthly fee for garbage, recycling and trash collection for the dwelling of an eligible household, occupied by a person sixty-five (65) years of age or older, under the low-income home energy assistance program pursuant to F.S. § 409.508, 1993, as administered by the Escambia County Council on Aging or for the dwelling of a family heretofore determined by the ~~housing and community development office of the~~ city to be eligible for assistance under the Section 8 existing housing assistance payments program pursuant to 42 U.S.C., section 1437(f), shall be reduced by one dollar ($1.00) per month commencing October 1, 1989, and by an additional one dollar ($1.00) per month commencing October 1, 1990, provided that sufficient monies are appropriated from the general fund to replace decreased solid waste revenues caused by such fee reductions. If insufficient monies are appropriated from the general fund to replace all of such decreased solid waste revenues, then the mayor may change the amount of the fee reduction to an amount less than the amount set forth in the preceding.

(4) *Vehicle fuel and lubricant pass-through surcharge:* One dollar and thirty cents ($1.30) per month. A collection ~~sanitation services division~~ vehicle fuel and lubricant surcharge shall be added as a separate line item to all city solid waste and/or refuse collection service fees. Said surcharge, ~~which shall be initially set on the fiscal year 2007 sanitation~~

~~services fuel and lubricant budget~~, shall be revised by the mayor ~~director of finance~~ no less frequently than annually based upon the budgeted fuel and lubricant costs adjusted for their actual costs for the previous or current fiscal years.

(5) *Tire removal:* A surcharge of three dollars ($3.00) per tire shall be added to the scheduled or nonscheduled bulk waste collection fee established herein whenever tire(s) more than twelve (12) inches in size are collected.

(6) *Scheduled bulk waste collection:* The fee for scheduled bulk item collection shall be fifteen dollars ($15.00) for the first three (3) minutes and five dollars ($5.00) for each additional three (3) minutes up to twenty-one (21) minutes after which time a disposal fee will be added.

(7) *Non-scheduled bulk waste collection:* The fee for nonscheduled bulk item collection shall be thirty-five dollars ($35.00) for the first three (3) minutes and ten dollars ($10.00) for each additional three (3) minutes up to twenty-one (21) minutes after which time a disposal fee will be added.

(8) Deposits in an amount up to a total of the highest two (2) months bills for service within the previous twelve (12) months may be required of customers who, after the passage of this section, have their service cut for nonpayment or have a late payment history. The mayor ~~department of finance~~ will be responsible for the judicious administration of deposits.

(9) A late charge equal to one and one-half (1½) percent per month of the unpaid previous balance.

(Ord. No. 17-03, § 2, 8-21-03; Ord. 14-07, § 1, 3-22-07; Ord. No. 18-09, § 1, 5-28-09; Ord. No. 16-10, § 48, 9-9-10; Ord. No. 22-11, § 1, 9-22-11)

Sec. 4-3-98. - Billing and collection charges.

(a) The city ~~department of finance~~ shall issue and send to the customers of the sanitation system bill and invoices for sanitation services.

(b) It shall be the duty of the city ~~department of finance~~ to collect the charges set forth on the bills and invoices issued to customers for sanitation services furnished.

(Ord. No. 17-03, § 2, 8-21-03; Ord. No. 37-08, § 1, 7-24-08; Ord. No. 18-09, § 1, 5-28-09)

Sec. 4-3-99. - Penalty.

Failure to comply with the provision(s) of this article shall be punishable pursuant to the Code, section 1-1-8, and any other applicable sections.

(Ord. No. 17-03, § 2, 8-21-03; Ord. No. 18-09, § 1, 5-28-09)

ARTICLE IV. - COMMERCIAL COLLECTION

Sec. 4-3-100. - Franchise required; exception; application.

(a) It shall be unlawful for any person, firm or entity to engage in the business of collecting and disposing of solid waste, generated by any other person, firm or entity without having been granted a franchise by the city. It shall be unlawful for any person, firm or entity to engage in the business of collecting and disposing of solid waste from any dwelling for which a written determination has not been made by the city ~~director of sanitation services~~ that it is impractical for the sanitation services department to provide solid waste collection service to such dwelling. Provided, however, nothing in this section shall be construed to require any generator of tree trimmings or construction or demolition debris upon any premises from himself or itself removing and disposing of such materials without first obtaining a franchise. Construction sites that utilize a solid waste service provider other than a city franchisee shall be subject to an immediate stop work order to be issued by the city building official.

(b) The mayor shall have the authority to grant all non-exclusive solid waste franchises described herein. Applicants that are denied a franchise by the mayor shall have the right to appeal as provided in section 4-3-112 that denial before city council.

(c) Franchise applicants shall obtain an application from the city ~~director of sanitation services~~ upon payment to the city of a two-hundred dollar ($200.00) application fee.

(d) As an alternative to paying a renewal application fee of two hundred dollars ($200.00), franchise holders may agree to provide in-kind solid

waste rolloff collection and disposal services, at no cost to the city, in the amount of not less than thirty (30) cubic yards. These in-kind services shall be performed by the franchise holder at the request and convenience of the city within the three-year term of the franchise.

(e) The ~~director of sanitation services shall be authorized by the~~ mayor may to issue a ninety-day temporary franchise after payment of the two hundred dollars ($200.00) application fee and completion of all documentation required to obtain a franchise. A temporary franchise granted under this section shall not be renewable beyond its ninety-day term.

(f) To ensure sufficient solid waste service capacity in the event of a declared disaster, the mayor ~~director of sanitation~~ shall be authorized to issue temporary franchises for periods not to exceed one (1) year. Such temporary franchises shall be subject to ~~the approval of the mayor and~~ ~~to~~ all provisions of this chapter.

(Ord. No. 43-89, § 1, 9-21-89; Ord. No. 53-07, § 1, 9-27-07; Ord. No. 14-08, § 1, 2-13-08; Ord. No. 16-10, § 49, 9-9-10)

Sec. 4-3-101. - Definitions.

For the purpose of this article, the following words, terms, and phrases, ~~and their deviation~~ shall have the meanings given herein unless the context clearly requires otherwise. Words, terms, and phrases in this article not defined in this section shall have the meanings given in F.S. § 403.703, or in this Code, unless the context clearly otherwise requires.

Container shall mean any portable, nonabsorbent, enclosed container with close-fitting cover or doors, open top and "roll-on"/"roll-off" approved by the city, which is used to store refuse. All containers utilized by a franchisee must be capable of being serviced by mechanical equipment.

Customer shall mean that customer utilizing a Dempster-box-type container or "roll-on"/"rolloff" container.

Designated place of business shall mean the business office address of the franchisee established by the franchise agreement issued pursuant to this article. This office will be open to the public during normal hours of business and available by toll-free telephone for the processing of service

requests, complaints, payments, emergency requests and normal inquiries.

Franchise agreement shall mean this article and a contract document specifically approved by council and accepted by a franchisee by which a franchisee is granted the privilege to engage in the collection of solid waste in the city subject to the terms and conditions of this article.

(Ord. No. 43-89, § 1, 9-21-89; Ord. No. 32-94, § 1, 9-8-94; Ord. No. 53-07, § 1, 9-27-07)

Sec. 4-3-102. - Grant of franchise.

Franchisees named in a franchise agreement shall be granted a nonexclusive franchise, including every right and privilege appertaining thereto, to operate a solid waste collection and disposal service in, upon, over and across the present and future streets, alleys, bridges, easements and other public places within the limits of the city, for solid waste generated at any place or establishment other than those residences to be served exclusively by the city pursuant to section 12-4-42. Title to the solid waste shall remain in the generator thereof until deposited in a solid waste disposal facility, whereupon title shall pass to the owner of the facility. All solid waste collected shall be promptly transported to and deposited in a lawfully operating solid waste transfer station or disposal facility, and the franchisee shall pay any and all fees charged for disposal by the operator of the facility.

(Ord. No. 43-89, § 1, 9-21-89; Ord. No. 32-94, § 2, 9-18-94; Ord. No. 53-07, § 1, 9-27-07)

Sec. 4-3-103. - Geographical limits of franchise.

A franchise shall be effective within the city's corporate limits as they may from time to time exist. The geographical limits of a franchise are subject to expansion or reduction by annexation and contraction of municipal boundaries and franchisee has no vested right in a specific area.

(Ord. No. 43-89, § 1, 9-21-89)

Sec. 4-3-104. - Contracts for collection service.

(a) A franchisee shall not provide solid waste service within the city unless the franchisee has executed a written contract between the franchisee and the customer. For purposes of providing the city with auditable records, the franchisee shall retain such contracts for inspection by the city for a period of not less than three (3) years.

(b) The franchisee shall have the sole responsibility for establishment of fees charged individual customers, billing, and collection of all charges.

(c) The city reserves the right to collect solid waste from any single customer (location) within its system up to five (5) 90-gallon wheeled containers on any one (1) collection day.

(Ord. No. 43-89, § 1, 9-21-89; Ord. No. 32-94, § 3, 9-18-94; Ord. No. 53-07, § 2, 9-27-07)

Sec. 4-3-105. - Franchise consideration; quarterly and monthly reports; annual report.

(a) The franchisee shall pay the city a franchise fee equal to one dollar fifty cents ($1.50) per cubic yard of solid waste container capacity per incident of collection and three dollars ($3.00) for solid waste collected in a compaction container per cubic yard of container capacity per incident of collection. Payment shall be made to the City of Pensacola within thirty (30) days following the end of each calendar quarter, i.e., January 30, April 30, July 30 and October 30.

(b) The city reserves the right to adjust the franchise fee after ninety (90) days' written notice of such an adjustment to the franchisee.

(c) The franchisee shall provide the city ~~director of sanitation services~~ with a quarterly report detailing service activity and franchise fee payments. This report shall contain, but is not limited to, the following: the container type, container size, dates of service, number of collections, total cubic yards of service provided, and an itemized total of the franchise fees paid to the city. The report shall also include a complete listing of locations where the franchisee provided service by roll-off container and the number and size of the containers serviced at each location. This quarterly report, in a format acceptable to the city, shall be submitted in writing to the city ~~director of sanitation services~~ within thirty (30) days following the end of each calendar quarter, i.e., January 30, April 30, July 30 and October 30. Failure by the franchisee to file a quarterly report

containing the full documentation required by the deadline shall be the basis for termination of the franchise. Notwithstanding the above, the city in its reasonable discretion also may require such franchisees to provide monthly reports detailing their service activity and franchise fee payments as set out above in the event the city determines such reports are necessary to ensure compliance with this article.

(d) Annually, the franchisee shall furnish the city ~~director of finance~~ with a financial report no later than February 28th, unless the city ~~director of finance~~ gives the franchisee prior written approval for a different deadline. The report shall be prepared in accordance with generally accepted accounting standards and its accuracy shall be attested to by the franchisee's certified public accountant or by its chief financial officer. The report shall reflect the accuracy of the franchisee's franchise fee payments to the city and shall ensure and include, but not be limited to, the following:

(1) That all in-city accounts have been properly coded to reflect charges accrued to the city.

(2) Reflect the number of in-city-related container pickups and the corresponding total cubic yards of service provided to in-city customers by the franchisee.

(3) That all franchise fee payments to the city have been correctly computed and remitted to the city on a timely basis.

(e) Commencing February 28, 2010 and reoccurring on every third anniversary of that date, the franchisee shall be required to furnish the city ~~director of finance~~ with a franchise fee audit report prepared and attested to by an independent financial accounting firm that details the completeness and accuracy of franchise fee payments made to the city by the franchisee over the prior three (3) year period. The report shall summarize any discrepancies between the franchisee's quarterly reports on file and the audit findings and shall determine whether any underpayment or overpayment of franchise fees occurred during the period. The franchisee may elect to provide this independent franchise fee audit report each year when submitting the annual report. These reports shall be furnished to the city at the sole expense of the franchisee.

(f) The franchisee shall make its books and records available to the city at all reasonable times. The records shall contain for each customer, a contract, service address, size of container and frequency of service.

Said records shall be kept open for inspection by duly authorized agents of the city during business hours on all business days; and said duly authorized officers or agents of the city shall have the right, power and authority to make transcripts of essential information therefrom. Records not located within Escambia County shall be furnished by the franchisee to the city within fourteen (14) days of written request. Should the franchisee not comply with the written request, the city may authorize an agent or officer to conduct an audit at the location where said records are located at the franchisee's expense. Failure to furnish the city with the report, or to maintain complete and accurate records, shall be considered a material breach of this franchise and the city may move to collect any damage resulting therefrom or revoke the franchise.

(Ord. No. 43-89, § 1, 9-21-89; Ord. No. 4-00, § 1, 1-13-00; Ord. No. 22-06, § 1, 9-14-06; Ord. No. 53-07, § 2, 9-27-07; Ord. No. 23-11, § 1, 9-22-11)

Sec. 4-3-106. - Term.

The initial term of each franchise shall expire on September 30, 2010, and the term of each franchise granted, renewed or extended after that date shall expire on the third anniversary of such date. The renewal term of each franchise shall be in increments not to exceed three (3) years, provided, that the franchisee has performed in accordance with all of the terms and conditions of this article.

(Ord. No. 43-89, § 1, 9-21-89; Ord. No. 53-07, § 2, 9-27-07)

Sec. 4-3-107. - Condition.

An acceptance of the provisions, conditions and stipulations of this article shall:

(1) Be in writing;

(2) Contain the franchisee's local address; and

(3) Be filed with the city clerk within fifteen (15) days of the execution of a franchise agreement.

(Ord. No. 43-89, § 1, 9-21-89)

Sec. 4-3-108. - Default.

(a) In the event that a franchisee fails to provide those services in the contracts with its commercial customers by reason of: (1) unknown emergency, labor strike, or similar event; (2) breach of contract; or (3) negligent failure to adequately perform the duties and obligations of this article (as determined by the city); the city may at its discretion, after written notification and after having allowed franchisee sufficient time to correct said default, terminate the franchise.

(b) Written notice of any determination of default and of the actions necessary to cure the default shall be given by the city ~~director of sanitation services~~ to the franchisee. A franchisee aggrieved by the determination of default or by the actions determined to be necessary to cure the default may file in the office of the city clerk, within ten (10) days of the date of the notice of default ~~the director of sanitation services~~, a written appeal to the mayor setting forth evidence and arguments as to why the franchisee feels that the notice of default ~~decision of the director of sanitation services~~ is unreasonable. The mayor may hold a conference with the franchisee if he determines that it would be helpful in his deliberations. The mayor shall make his decision within a reasonable time. Within ten (10) days of receipt of a written decision by the mayor, an aggrieved franchisee may file in the office of the city clerk a written appeal to the city council setting forth evidence and arguments as to why the franchisee feels that the decision of the mayor is unreasonable. The city clerk shall give the franchisee written notice of the meeting of the city council~~, or of any of its committees,~~ at which the appeal will be considered. The franchisee shall be permitted to speak before the city council. ~~and its committee.~~ The decision of the city council shall be final.

(Ord. No. 43-89, § 1, 9-21-89; Ord. No. 53-07, § 3, 9-27-07; Ord. No. 16-10, § 50, 9-9-10)

Sec. 4-3-109. - Default by other franchisees.

In the event of a default or failure to provide adequate services by a franchisee (as determined by the city), and should the city choose to assign the services, a franchisee may be requested by the city to provide services or temporary services if the franchisee's equipment and schedule permits, at the prevailing rate of the defaulted franchisee for the services undertaken and completed.

(Ord. No. 43-89, § 1, 9-21-89)

Sec. 4-3-110. - Insurance and indemnification.

Before starting and until termination of any activities necessary or incidental to the franchise granted by the city, the franchisee shall procure and maintain insurance of the types and to the limits specified.

Insurance shall be issued by an insurer whose business reputation, financial stability and claims payment reputation is satisfactory to the city, for the city's protection only. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements:

(a) *Workers' compensation.* The franchisee shall purchase and maintain workers' compensation insurance coverage for all workers' compensation obligations imposed by law. Additionally, the policy, or separately obtained policy, must include employers liability coverage of at least one hundred thousand dollars ($100,000.00) each person—accident; one hundred thousand dollars ($100,000.00) each person—disease; five hundred thousand dollars ($500,000.00) aggregate—disease.

(b) *Comprehensive general, automobile and umbrella liability coverage.* The franchisee shall purchase coverage on forms no more restrictive than the latest editions of the comprehensive general liability and business auto policies filed by the insurance services office. The city shall be an additional insured and such coverage shall be at least as broad as that provided to the named insured under the policy for the terms and conditions of this contract. The city shall not be considered liable for premium payment, entitled to any premium return of dividend and shall not be considered a member of any mutual or reciprocal company. Minimum limits of one million dollars ($1,000,000.00) per occurrence, and per accident, combined single limit for liability must be provided, with umbrella insurance coverage making up any difference between the policy limits of underlying policies coverage and the total amount of coverage required.

(1) *Comprehensive general liability coverage* must be provided, including bodily injury and property damage liability for premises, operations, and independent contractors. Broad form comprehensive general liability coverage, or its equivalent shall provide at least, broad form contractual liability applicable to this specific contract, personal injury liability and broad form property

damage liability. The coverage shall be written on occurrence-type basis.

(2) *Business auto policy coverage* must be provided, including bodily injury and property damage arising out of operation, maintenance or use of all owned, nonowned and hired automobiles and employee nonownership use.

(3) *Umbrella liability insurance coverage* shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

(c) *Certificates of insurance.* Required insurance shall be documented in the certificates of insurance which provide that the city shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. The city shall be named on each certificate as an additional insured and this contract shall be listed. If required by the city, the franchisees shall furnish copies of the franchisee's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "certificate of insurance" form equal to, as determined by the city an ACORD 25. Any wording in a certificate which would make notification of cancellation, adverse change or restriction in coverage to the city an option shall be deleted or crossed out by the insurance carrier or the insurance carrier's agent or employee. The franchisee shall replace any cancelled, adversely changed, restricted or nonrenewed policies with new policies acceptable to the city and shall file with the city certificate of insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the city, the franchisee shall, upon instructions of the city, cease all operations under the contract until directed by the city, in writing, to resume operations.

(d) *Insurance of the franchisee primary.* The franchisee required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the franchisee's coverage. The franchisee's policies of coverage will be considered primary as relates to all provisions of the contract.

(e) *Hold harmless.* The franchisee shall hold the city harmless from any and all claims, suits, actions, damages, liability and expenses in connection with loss of life, bodily or personal injury, or property

damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the performance of this franchise, except to the extent caused by the negligence of the city. The franchisee's obligation shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance.

(f) *Pay on behalf of the city.* The franchisee agrees to pay on behalf of the city, as well as provide a legal defense for the city, both of which will be done only if and when requested by the city, for all claims as described in the hold harmless paragraph. Such payment on the behalf of the city shall be in addition to any and all other legal remedies available to the city and shall not be considered to be the city's exclusive remedy.

(g) *Loss control and safety.* Precaution shall be exercised at all times by the franchisee for the protection of all persons, including employees and property. The franchisee shall make special effort to detect hazardous conditions and shall take prompt action where loss control/safety measures should reasonably be expected.

(Ord. No. 43-89, § 1, 9-21-89)

Sec. 4-3-111. - Licenses.

The franchisee shall, at its sole expense, procure from all local, state, and federal governmental authorities (having jurisdiction over the operations of the franchisee) all licenses, certificates, permits, or other authorizations which may be necessary for the conduct of the franchisee's operations.

The franchisee shall pay all taxes, and licenses; certifications, permits and examination fees; and all excises which may be assessed, levied, exacted, or imposed upon its property, operations, and gross receipts, or all or any combination of these things; and upon this franchise and the rights and privileges granted herein, and shall make all applications, reports, and returns required in connection therewith to all respective governmental and agency authorities.

(Ord. No. 43-89, § 1, 9-21-89)

Sec. 4-3-112. - Termination and denial.

(a) A franchise may be terminated by the mayor prior to the expiration of the term if any of the following events occur:

(1) The franchisee fails (1) to pay the sums, fees, or charges due to the city in a timely manner; or (2) the franchisee fails to perform or observe the covenants and conditions designated to it under this article. In the event of a failure, the city ~~director of sanitation services~~ shall notify the franchisee in writing of the specific failure or default, and the franchisee shall have thirty (30) days from the receipt of such notice to correct the condition giving rise to such notice. If the correction is not made to the city's ~~director's~~ satisfaction within the thirty (30) days, the mayor may give written notice to the franchisee that the privileges granted herein are terminated as of the date of such notice; or

(2) If and when the franchisee shall liquidate, dissolve, or sell substantially all of its assets; or

(3) If and when there is a transfer of fifty (50) percent or more of the franchisee's voting stock which results in a change in the franchisee's control; or

(4) If and when the franchisee becomes insolvent, or makes a general assignment for the benefit of its creditors; or if an action or petition is filed by or against the franchisee under any part of the Federal Bankruptcy Act or other law relating to the alleged insolvency of the franchisee, and such action or petition is not dismissed within ninety (90) days of the date of its filing.

(5) In the event the franchise granted herein is terminated pursuant to this section, any liability of the franchisee to the city accruing thereby, and any liability of the franchisee to the city arising out of any act or event occurring prior to the termination shall immediately become due and payable to the city, without further notice.

(6) The franchisee shall have the right to appeal to the city council the decision of the mayor to terminate its franchise within ten (10) days of receipt of the mayor's written decision. The franchisee shall file a written appeal in the office of the city clerk setting forth evidence and arguments as to why the franchisee feels that this decision is unreasonable. The city clerk shall give the franchisee written notice of the meeting of the city council, or of any of its committees, at which the appeal will be considered. The franchisee shall be permitted to

speak before the city council and its committees. The decision of the city council shall be final.

(b) The mayor may ~~shall~~ deny by written decision any application for a franchise that fails to satisfactorily comply with all the provisions of this chapter. The decision shall set out ~~setout~~ in particular the deficiencies in the application and the reason(s) for its denial. The mayor's decision to deny an application shall be made within sixty (60) days after its filing. ~~with the director of sanitation services.~~ The right of appeal to the city council as provided in this section shall be available to such an applicant that has been denied a franchise.

(Ord. No. 43-89, § 1, 9-21-89; Ord. No. 53-07, § 4, 9-27-07; Ord. No. 16-10, § 51, 9-9-10)

Sec. 4-3-113. - Notices.

All notices herein required to be given by the city to the franchisee, except where specifically provided otherwise, shall be mailed U.S. Mail, certified, return receipt requested, addressed to the franchisee at its last known business address. All notices required to be given to the city, except where specifically provided otherwise, shall be given to the office of the mayor ~~director of sanitation services~~ either by hand-delivery or by U.S. Mail, certified, return receipt requested, addressed to the Director of Sanitation Services, P.O. Box 12910, Pensacola, Florida 32521-0091.

(Ord. No. 43-89, § 1, 9-21-89; Ord. No. 53-07, § 4, 9-27-07)

Sec. 4-3-114. - Remedies.

All remedies for a default shall be deemed cumulative and not in lieu of or exclusive of each other, or of any other remedy available to the city, at law or in equity. In the event the city shall prevail in any action arising hereunder, the franchisee shall pay the city's costs and attorneys' fees.

(Ord. No. 43-89, § 1, 9-21-89)

Sec. 4-3-115. - Equipment.

(a) The franchisee shall have on hand at all times sufficient equipment in good working order to permit franchisee to perform its duties fully,

adequately and efficiently. Collection equipment shall be kept clean, sanitary, neat in appearance and in good repair at all times. No equipment will be used which allows garbage or rubbish to spill or be blown therefrom.

(b) All trucks utilized by the franchisee, and all containers owned or leased by the franchisee shall be prominently identified with the franchisee's name and business telephone number, either painted on or attached by signs reasonable in size so as to be recognizable.

(Ord. No. 43-89, § 1, 9-21-89)

Sec. 4-3-116. - Nonassignability.

A franchise may not be assigned by the franchisee without the prior written consent of the city.

(Ord. No. 43-89, § 1, 9-21-89)

Sec. 4-3-117. - Restoration.

Each franchisee agrees to repair all property, public or private, altered or damaged by it, its agents or employees in the performance of its duties herein to as good or better condition as before damage or alteration.

(Ord. No. 43-89, § 1, 9-21-89)

Sec. 4-3-118. - Spillage and litter.

The franchisee shall not litter premises or rights-of-way in the process of making collections, but shall not be required to collect any waste material that has not been placed in approved containers or in a manner herein provided. During hauling, all solid waste shall be contained, tied or enclosed so that leaking, spilling or blowing are prevented. In the event of spillage by the franchisee, the franchisee shall promptly clean up the litter.

(Ord. No. 43-89, § 1, 9-21-89)

Sec. 4-3-119. - Complaints.

All complaints shall be responded to by the franchisee within forty-eight (48) hours. Franchisee shall maintain records of all complaints on a form

approved by it and shall indicate the disposition of each. Such records shall be available for inspection by the city at all times during business hours specified herein. The form shall indicate the day and hour on which the complaint was received and the day and hour on which it was resolved. When a complaint is received on the day preceding a holiday or on a Saturday, it shall be addressed on the next working day. The franchisee shall establish procedures acceptable to city to ensure that all customers are notified as to the complaint procedure.

(Ord. No. 43-89, § 1, 9-21-89)

Sec. 4-3-120. - Franchisee personnel.

(a) Franchisee shall assign a qualified person to be in charge of operations under the franchise agreement and shall give the name and qualifications of said person to the city. Any change in the identity of said person will be furnished to the city prior to the effective date of change.

(b) A franchisee's collection employees shall wear uniforms bearing franchisee's name or wear an identification badge.

(c) Each person employed to operate a vehicle shall, at all times, carry a valid Florida driving license for the type of vehicle being driven, and any other document(s) as may be required by the State of Florida.

(d) The franchisee shall assure that operating and safety training has been provided to all personnel that operate collection equipment.

(Ord. No. 43-89, § 1, 9-21-89; Ord. No. 53-07, § 5, 9-27-07)

Sec. 4-3-121. - Monitoring performance and compliance.

The city shall ~~It shall be the function of the director of sanitation services to~~ monitor performance and compliance on the quality of service provided by each franchisee pursuant to the franchise agreement. For the purpose of this function, "service" shall be defined as the performance of duties, tasks and obligations of the franchisee enumerated in the franchise agreement and the performance of such other duties, tasks, and obligations as are generally and reasonably regarded as incidental to the safe and satisfactory discharge of responsibilities in the sanitation industry.

(Ord. No. 43-89, § 1, 9-21-89; Ord. No. 53-07, § 5, 9-27-07)

Sec. 4-3-122. - Amendments.

The city reserves the right to amend this article at any time, and in any manner that the city deems necessary for the health, safety, or welfare of the public. The city also reserves the right to prescribe, from time to time, reasonable rules and regulations further governing the franchisee's operations herein, including, but not limited to, hours of container pickup. These rules ~~shall be issued through the director of sanitation services, and they~~ need not be memorialized in an ordinance revision or further, formal action by the council, the council's approval of this article being an approval that the regulations should be so issued.

(Ord. No. 43-89, § 1, 9-21-89; Ord. No. 53-07, § 5, 9-27-07)

Sec. 4-3-123. - No official interest in franchise.

By accepting a franchise granted pursuant to this article, a franchisee represents and warrants to the city that, to the best of the knowledge of the franchisee, no appointed or elected city official, officer, employee, or agent has any interest, either directly or indirectly, in the business of the franchisee.

(Ord. No. 43-89, § 1, 9-21-89)

CHAPTER 4-5. LITTER CONTROL[10]

Footnotes:

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Cross reference— Garbage and refuse, Ch. 4-3; streets, sidewalks and other public places, Ch. 11-4.

State Law reference— Florida litter law, F.S. § 403.413.

Sec. 4-5-1. - Short title.

This chapter shall be known and may be cited as the "City of Pensacola Litter Control Ordinance."

(Ord. No. 61-83, § 1, 3-24-83)

Sec. 4-5-2. - ~~Authority.~~ RESERVED

~~This chapter is enacted under the statutory authority of the state and the general police powers of the city.~~

Commented [RS4]: Home rule power.

(Ord. No. 61-83, § 2, 3-24-83)

Sec. 4-5-3. - ~~Applicability.~~ RESERVED

~~This chapter shall apply to and be enforced in all incorporated areas of the city.~~

(Ord. No. 61-83, § 3, 3-24-83)

Sec. 4-5-4. - Definitions.

The following words, phrases or terms as used in this chapter, unless context indicates otherwise, shall have the following meanings:

Cover. Any device, equipment, container, close-fitting tarpaulin, chain, rope, wire or line used on vehicles to prevent any part of a vehicle load from sifting, blowing, leaking, falling or escaping in any manner from the vehicle.

Enforcement agency. ~~City police department, inspection department, and public service department and their agents.~~ Any officer of the city charged by the mayor with enforcement responsibility.

Litter. Refuse and rubbish including, but not limited to, paper, bottles, tin cans, glass, crockery, plastic, rubber, yard trash, waste building materials, tree and shrub trimmings, leaves and disposable packages and containers.

Nuisance. Any violation of this chapter is declared to be a public nuisance and subject to abatement as such in accordance with the terms of this chapter.

Storage. The interim containment of litter, in an approved manner after generation and prior to proper and final disposal.

Unauthorized accumulation. Accumulation of litter on any residential or commercial properties in violation of this chapter. This shall not include building materials used in construction or repairing a building stored at the

site of such building, nor shall it include refuse acceptable for collection pursuant to Chapter 4-3, Article III.

Written corrective notices. A written statement issued to the violator of any provisions of this chapter, or his agent, identifying and specifying the violation, date and time of issuance, corrective measures to be taken and date and time correction is to be completed.

(Ord. No. 61-83, § 4, 3-24-83)

Cross reference— Definitions and rules of construction generally, Ch. 1-2.

Sec. 4-5-5. - Littering prohibited.

It is a violation of this chapter for any person to throw, discard, place, drop or deposit litter in any manner or amount in or upon any public property, private property, highway, street, right-of-way or body of water in the city except in areas and containers provided therefor, or in accordance with Chapter 4-3, Article III.

(Ord. No. 61-83, § 5, 3-24-83)

Sec. 4-5-6. - Owner's, generator's responsibility generally.

Any person, corporation, establishment, firm, business, owner, agent of property within the city who generates litter shall be responsible for ensuring such litter is managed, stored, handled, transported and disposed of in accordance with the provisions of this chapter.

(Ord. No. 61-83, § 15, 3-24-83)

Sec. 4-5-7. - Duty of operators, owners to keep adjacent areas free of litter.

It shall be the duty of each operator, owner, lessee or agents of any business, industry, institution, private or public, profit or nonprofit, to keep the adjacent and surrounding areas clean and free of litter. These areas include public property, roads, rights-of-way, grounds, parking lots, loading and unloading areas and vacant lots owned or leased by said establishment or institution.

(Ord. No. 61-83, § 8, 3-24-83)

Sec. 4-5-8. - Litter discarded from motor vehicle.

In any case where litter is ejected or discarded from a motor vehicle, except at approved and permitted disposal sites, the operator of the motor vehicle shall be deemed in violation of this chapter.

(Ord. No. 61-85, § 5, 3-24-83)

Sec. 4-5-9. - Litter storage; provision of receptacles.

(a) All commercial establishments shall store their litter in containers so as to eliminate wind-driven debris and unsightly litter in and about their establishments. The number and size of containers necessary for each commercial establishment shall be as required to maintain a clean, neat, sanitary premises. Spillage and overflow around containers shall immediately be cleaned up as it occurs.

(b) All loading and unloading areas at commercial establishments shall be provided with litter receptacles by the generator to store loose debris, paper, cardboard, packaging materials and similar materials.

(c) It shall be the duty of any and every person, corporation, company, lessee, agent owning or operating any public establishment or public place to provide receptacles adequate to contain litter generated from such establishment.

(d) All construction and demolition contractors, owners or agents shall provide on-site receptacles for loose debris, paper, building materials wastes, scrap building materials and other litter products to prevent wind-driven scattering of such materials if the materials are otherwise not properly disposed of on a daily basis.

(e) It shall be the duty of every person, corporation, company, firm, owner, lessee or agent in possession, charge of or in control of any place, public or private, where litter is accumulated or generated, to provide and at all times to keep litter in adequate and suitable receptacles and/or containers capable of holding such materials until proper final disposal is accomplished.

(f) Any unauthorized accumulation of litter on any property, vacant or occupied, premises, public street, alley or other public place or private place is a violation of this chapter.

(Ord. No. 61-83, §§ 7, 8, 3-24-83)

Sec. 4-5-10. - Receptacles to be used for litter only.

It shall be a violation of this chapter for any person to deposit any item, items or materials except litter in any receptacle placed for public use as a depository for litter.

(Ord. No. 61-85, § 5, 3-24-83)

Sec. 4-5-11. - ~~Loads on vehicles.~~ RESERVED

~~(a) No vehicle shall be driven, moved, stopped or parked on any highway, street, alley or thoroughfare unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, shifting, leaking, blowing or otherwise escaping therefrom, except that sand may be dropped only for the purpose of securing traction or water or other substances may be sprinkled on a roadway in cleaning or maintaining the roadway.~~

Commented [RS5]: F.S. § 316.520 covers this.

~~(b) It is the duty of every vehicle owner, lessee and driver, severally, of any vehicle hauling upon any public road or highway open to the public, dirt, sand, lime rock, gravel, silica or other similar material which could fall or blow from such vehicle, to prevent such materials from falling, blowing or in any way escaping from such vehicle. Covering and securing the load with a close-fitting tarpaulin or other appropriate cover is required.~~

~~(c) Any owner, lessee or driver of any vehicle from which any materials or objects have fallen, blown, leaked, sifted or otherwise escaped from the vehicle shall immediately cause the materials or objects on public property or private property to be cleaned up and shall pay any costs therefor.~~

(Ord. No. 61-83, § 6, 3-24-83)

Sec. 4-5-12. - Handbills and advertising materials.

The placing of handbills or advertising materials on the windshields of vehicles is a violation of this chapter, unless permission to do so is first obtained from the owner and/or person in possession of said vehicle.

(Ord. No. 61-83, § 9, 3-24-83)

Sec. 4-5-13. - Storage, transportation, disposal generally.

Litter shall be stored and transported in accordance with the provisions of this chapter and disposed of in accordance with the ordinances of the City of Pensacola.

(Ord. No. 61-83, § 11, 3-24-83)

Sec. 4-5-14. - Permitting premises to be nuisance prohibited.

It is a violation of this chapter for any owner, lessee, operator, tenant or agent to maintain premises, private or open to the public, vacant or occupied, upon which litter is permitted, caused, allowed or exists in any manner to be a nuisance.

(Ord. No. 61-83, § 10, 3-24-83)

Sec. 4-5-15. - Disposing of litter of private property; owner not to allow.

It is a violation of this chapter for any private property owner, tenant, occupant, lessee or agent to grant permission to any person to dispose of litter on his property.

(Ord. No. 61-83, § 8, 3-24-83)

Sec. 4-5-16. - ~~Enforcement—Duty and responsibility.~~ Reserved

~~The enforcement of this chapter shall be the duty and responsibility of the city police department, inspection department and public service department, and their agents.~~

(Ord. No. 61-83, § 12, 3-24-83)

Sec. 4-5-17. - ~~Same—~~Issuance of written corrective notices; arrests.

The mayor is ~~Police officers of the police department and sworn, certified employees of the Building Inspections Department and sanitation services and fleet management department are~~ hereby empowered to issue written corrective notices, citations, court summons or arrest; and is further ~~non-sworn agents of the Building Inspections Department and the sanitation services and fleet management department are~~ hereby empowered to issue

written corrective notices ~~only~~ to persons, corporations, establishments, companies, owners, tenants, occupants and agents violating any of the provisions of this chapter.

(Ord. No. 61-83, § 13, 3-24-83; Ord. No. 48-96, § 1, 9-26-96)

Sec. 4-5-18. - ~~Same—~~Contents, service of written corrective notices.

Written corrective notices may be issued to violators of this chapter to correct an offense in lieu of arrest. The notice shall state the date and time issued, nature of the offense committed, corrective measures to be taken and the date and time such corrections shall be made. All such notices issued shall be maintained ~~by the issuing authority~~ for public inspections during normal office hours. Notices mailed by certified mail, return receipt requested, mailed to the violator's last known place of residence shall be deemed personal service upon the person, for the purpose of this chapter.

(Ord. No. 61-83, § 13, 3-24-83)

Sec. 4-5-19. - Same—Failure to comply with written corrective notice.

Any person, corporation, company, firm, business, institution, owner, lessee, agent, tenant or occupant who has been served such notice in accordance with the provisions of this chapter, and who shall neglect or shall refuse or shall fail to fully comply with the corrective notices so ordered and/or within the time frame so ordered therein, shall be in violation of this chapter.

(Ord. No. 61-83, § 14, 3-24-83)

Sec. 4-5-20. - Same—Prosecution for violation.

Prosecution for a violation of this chapter may ~~shall~~ be initiated by the ~~enforcement agency~~ officer who witnesses such offense or has sufficient probable cause or who discovers an article of litter bearing the name or address of a person, corporation, company, firm, business or institution on the property of another or on any public property. It shall be presumed that any article of litter so discovered is the property of such person whose name or address appears thereon, and that said person, company, corporation, firm, business or institution placed or caused to be placed such article of litter; provided, however, that such presumption shall be rebuttable by

competent evidence. This presumption is based on the tenet that all generators of such litter are responsible for such litter until such time it has been properly disposed of.

(Ord. No. 61-83, § 13, 3-24-83)

CHAPTER 4-6. WRECKED, ABANDONED AND JUNKED PROPERTY[11]

Footnotes:

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State Law reference— Abandoned property; supplemental procedure for removal and destruction, F.S. § 705.16; reporting of removal of motor vehicles, F.S. § 715.05.

Sec. 4-6-1. - Definitions.

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

Abandoned personal property. Wrecked or derelict property, having no apparent intrinsic value to the owner, which has been left abandoned and unprotected from the elements and shall include wrecked, inoperative or partially dismantled motor vehicles, trailers, boats, machinery, refrigerators, washing machines, plumbing fixtures, furniture and any other similar article which has no apparent intrinsic value to the owner, and which has been left abandoned and unprotected from the elements, including all property defined in F.S. § 705.101.

Abandoned swimming pools. Outdoor pools, whether in-ground or above-ground, that have been abandoned and not maintained, allowing the water to become opaque, mosquitoes to breed, or otherwise becoming a nuisance as defined in section 14-3-3(2).

Public property. Lands and improvements owned by the city lying within the municipal boundaries and includes buildings, grounds, parks,

playgrounds, streets, sidewalks, parkways, rights-of-way and other similar property.

(Ord. No. 24-84, § 1, 6-14-84; Ord. No. 13-11, § 1, 7-21-11)

Sec. 4-6-2. - Procedures supplemental.

The procedure authorized by this chapter is supplemental to other procedures authorized by law.

(Ord. No. 24-84, § 8, 6-14-84)

Sec. 4-6-3. - Mayor immune from prosecution for trespassing.

The mayor or any person authorized by the mayor shall be immune from prosecution, civil or criminal, for reasonable good faith trespassing upon real property while in the discharge of duties imposed by this chapter.

(Ord. No. 24-84, § 6, 6-14-84; Ord. No. 16-10, § 52, 9-9-10)

Sec. 4-6-4. - Obstructing, etc., mayor.

Whoever opposes, obstructs or resists the mayor or any person authorized by the mayor in the discharge of his duties as provided in this chapter upon conviction shall be subject to the penalties provided for in section 1-1-8.

(Ord. No. 24-84, § 5, 6-14-84; Ord. No. 16-10, § 53, 9-9-10)

Sec. 4-6-5. - On public property.

(a) Whenever the mayor shall ascertain that an article of abandoned property is present on public property he may ~~shall~~ cause a notice to be placed upon the article in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property (setting forth brief description) is unlawfully upon public property known as (setting forth brief description of location) and must be removed within ~~ten (10)~~ five (5) days or, if the property is a boat, thirty (30) days from the date of this notice. If this property is not removed within such period a hearing shall be held at (setting forth time and place of hearing) at which the owner or any person

Commented [RS6]: F.S. § 705.103(2) allows five days.

interested in the property may show reasonable cause why the property should not be removed and destroyed. If at the conclusion of the hearing, the owner or other person interested in it has not shown good cause why the property should not be removed and destroyed, it shall be presumed to be abandoned property and will be removed and destroyed by order of the City of Pensacola. If the property is a motor vehicle or boat, the owner will be liable for the costs of removal and destruction. Dated this: (setting forth the date of posting of notice). Signed: (setting forth name, address and telephone number of the mayor).

The notice shall be not less than eight (8) inches by ten (10) inches and shall be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the mayor may ~~shall~~ make a reasonable effort to ascertain the name and address of the owner and, if such is reasonably available to the mayor, he shall mail a copy of the notice to the owner on or before the date of posting.

(b) At the hearing which shall be held before the city council, the owner or any person having any interest in the abandoned article described in the notice will be permitted to show reasonable cause why the article should not be removed and destroyed.

(c) If, at the conclusion of the hearing, the owner or any person interested in the abandoned article described in the notice has not removed the article from public property or shown reasonable cause for failure to do so, the city council may cause the article of abandoned property to be removed and destroyed. The salvage value, if any, of the article shall be retained by the city to be applied against the cost of removal and destruction thereof, unless the costs of removal and destruction are paid by the owner as provided in section 4-6-7, in which case the salvage value shall be deposited in the general fund of the city.

(Ord. No. 24-84, § 2, 6-14-84; Ord. No. 16-10, § 54, 9-9-10)

Sec. 4-6-6. - On private property.

(a) *Notice to owner.*

(1) Whenever the mayor shall ascertain that an article of abandoned personal property is present on private property within the city limits, in violation of any ordinance or regulation of the city, the mayor or his/her designee shall cause a notice to be provided to the owner

pursuant to F.S. § 162.12, as that statute may be amended from time to time, except as otherwise provided herein. If the real property where the abandoned personal property is located is or appears to be vacant, then notice shall also be provided by posting the property as described in F.S. § 162.12.

(2) The notice shall state that the owner has fifteen (15) days in which to remove the abandoned personal property or, if the article has not been removed, the owner shall appear before the code enforcement authority for a hearing to be held at a date and time certain to show cause why the article in question is not abandoned personal property or why code enforcement should not remove and destroy the abandoned personal property.

(b) *Failure to act.* If the owner of the abandoned personal property fails to remove the article within the fifteen (15) days, fails to appear before the code enforcement authority on the designated hearing date, and fails to communicate with the code enforcement authority before the hearing, then the code enforcement authority shall enter an order declaring the subject article to be abandoned personal property and that the article shall be seized, removed, and destroyed by the city, and the salvage value, if any, of such article shall be retained by the city to be applied against the cost of removal and destruction thereof.

(c) *Appearance by the owner.* If the owner of the abandoned personal property appears before the code enforcement authority or otherwise communicates with the code enforcement authority prior to the hearing, the owner or any person having any interest in the abandoned personal property will be permitted to show reasonable cause why the article should not be removed and destroyed. If the owner or interested person requests an extension to remedy the situation, then the code enforcement authority may provide the owner or interested person one extension, until the next regular code enforcement authority meeting, in which to remove the abandoned personal property. If the owner or interested person has not removed the abandoned personal property by the time of the next code enforcement authority hearing, then the code enforcement authority shall enter an order declaring the subject article to be abandoned personal property and that the article shall be seized, removed, and destroyed by the city, and the salvage value, if any, of such article shall be retained by the city to be applied against the cost of removal and destruction thereof.

(d) *Summary proceedings.*

(1) Whenever the ~~city~~ mayor determines that an article(s) of abandoned personal property or an abandoned swimming pool creates an emergency situation or a nuisance, as defined in section 14-3-3 of this Code, then the city may institute summary proceedings. In such circumstances, the city shall notify the owner of the real property where the abandoned personal property is situated pursuant to F.S. § 162.12, of the article of abandoned personal property or abandoned swimming pool that is present on private property within the city limits and in violation of any ordinance or regulation of the city. The notice shall provide the owner with five (5) days in which to remove the abandoned personal property or remedy the abandoned swimming pool, except where the city determines that the circumstances warrant immediate action.

(2) If after five (5) days the abandoned personal property has not been removed, then the city may seize, remove and destroy the abandoned personal property, and the salvage value, if any, of such article shall be retained by the city to be applied against the cost of removal and destruction thereof.

(3) If after five (5) days the abandoned swimming pool has not been brought into compliance with section 14-3-3, then the city may take action to bring the swimming pool into compliance with section 14-3-3.

(Ord. No. 24-84, § 3, 6-14-84; Ord. No. 16-10, § 55, 9-9-10; Ord. No. 13-11, § 2, 7-21-11)

Sec. 4-6-7. - Owner liable for costs of removal.

The owner of any abandoned personal property and the owner of the real property upon which the abandoned property is located who, after notice as provided in section 4-6-2 or section 4-6-3, does not remove the abandoned personal property within the specified period shall be liable to the city for all costs of removal and destruction of the property, inclusive of the cost of city staff time and compensation and the reasonable administrative overhead therefore, less any salvage value received by the city. Upon such removal and destruction, the mayor or his/her designee shall notify the owner of the abandoned personal property and the owner of the land upon which it was situated of the amount owed and of the penalty provision of this section. Such

amounts imposed by the city shall constitute a joint and several obligation of the owners of the abandoned personal property and of the real property upon which it was situated, shall constitute a lien upon all personal and real property owned by the owner of the abandoned personal property and owner of the real property upon which it was situated, and shall be enforced as such by the city pursuant to law.

(Ord. No. 24-84, § 4, 6-14-84; Ord. No. 16-10, § 56, 9-9-10; Ord. No. 13-11, § 3, 7-21-11)

Sec. 4-6-8. - Revocation of boat registration privileges.

In the case of an abandoned boat, any person who neglects or refuses to pay the amount shall not be entitled to be issued a certificate of registration for any other boat until the costs have been paid. The mayor shall supply the department of natural resources with a list of persons whose boat registration privileges have been revoked under this chapter and neither the department nor the tax collector or other person acting as agent thereof shall issue a certificate of registration to a person whose boat registration privilege has been revoked, as provided by this section, until the costs have been paid. In the case of an abandoned motor vehicle, any person who neglects or refuses to pay the amount shall be subject to a fine of one hundred dollars ($100.00). If such cost is not paid within thirty (30) days of claiming the property, the remedies set forth in F.S. § 705.103 may apply.

(Ord. No. 24-84, § 4, 6-14-84; Ord. No. 16-10, § 57, 9-9-10)

Sec. 4-6-9. - Reserved.

Editor's note— Ord. No. 13-11, § 4, adopted July 21, 2011, repealed § 4-6-9, which pertained to state law adopted by reference and derived from § 161-1 of the 1968 Code; Ord. No. 24-84, § 7, 6-14-84.

Sec. 4-6-10. - Real property in violation.

(a) *Responsibility for and registration of real property.* Responsibility for securing compliance with all applicable codes of the City of Pensacola pertaining to the condition of dwellings, buildings and other structures, and improved and unimproved lots, is hereby placed upon the owners and occupants of such property, jointly and severally, except that non-

owners are not liable for building code violations. In addition, responsibility for securing compliance with all applicable codes of the City of Pensacola pertaining to the condition of dwellings, buildings and other structures and improved and unimproved lots is placed upon individuals and entities who hold a recorded security interest in such property after they have received notice from the mayor or his/her designee that the owner or occupant of the property has been notified, or attempts were made to notify the owner pursuant to F.S. § 162.12, of an existing code violation and has failed to remove and correct the violation after having been directed to do so by the city~~. code enforcement authority~~.

The following provisions are applicable to individuals and entities who hold a recorded mortgage or other recorded security interest in real property in the City of Pensacola which has been found by the city~~'s code enforcement authority~~ or by a court of law to be in violation of the code of ordinances pertaining to the condition of such property and which violation has not been corrected or removed by the owner or occupant after having been directed to do so by the authority or a court:

(1) The responsible party shall perform an inspection of the property within ten (10) days of receipt of notification from the city of an uncorrected violation from the city.

(2) If the property is found to be vacant or shows evidence of vacancy, it shall be deemed abandoned and the responsible party shall, within ten (10) days of inspection, register the property with the city ~~director of sanitation services or his/her designee,~~ on forms provided by the city. A registration is required for each vacant property.

(3) If the property is occupied, it shall be inspected by the responsible party monthly until all code violations have been corrected.

(4) Registration with the city shall include the name of the responsible party, a direct mailing address, a direct contact name and telephone number, and in the case of responsible parties not having an office or representative in Escambia or Santa Rosa County, the name, address and contact information of a local property management agent who shall be responsible for the security and maintenance of the property.

(5) This section also shall apply to properties that have been the subject of a foreclosure sale where the title was transferred to the beneficiary

of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure.

(6) Properties subject to this section shall remain under the annual registration requirement, security, and maintenance standards of this section as long as they remain vacant.

(7) Any responsible party, person or corporation that has registered a property under this section must report any change of information contained in the registration within ten (10) days of the change.

(b) *Maintenance requirements.*

(1) Properties subject to this section shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, fliers, notices, except those required by federal, state, or local law, discarded personal items including, but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.

(2) The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior paint.

(3) Front, side, and rear yard landscaping shall be maintained in accordance with the city's standard at the time registration was required.

(4) Landscape shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. Landscape shall not include weeds, gravel, broken concrete, asphalt or similar material.

(5) Maintenance shall include, but not be limited to, watering, irrigation, cutting, and mowing and removal of all trimmings.

(6) Pools and spas shall be maintained so the water remains free and clear of pollutants and debris. Pools and spas shall comply with enclosure requirements of this Code and the Florida Building Code, as amended from time to time.

(7) Failure of the responsible party to properly maintain the property may result in a violation of this Code and a notice of violation or notice of hearing by the city ~~city's code enforcement office. Pursuant to a~~

~~finding and determination by the city's code enforcement authority, the~~ The city may take the necessary action to ensure compliance with this section.

(c) *Security requirements.*

(1) Properties subject to this section shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

(2) A "secure manner" shall include, but not be limited to, the closure and locking of windows, doors, gates, and other openings of such size that may allow a child to access the interior of the property and/or structure. Broken windows shall be secured by reglazing or boarding of the window.

(3) If the property is owned by a responsible party headquartered outside of Escambia and Santa Rosa counties, a local property management company shall be contracted to perform monthly inspections to verify compliance with the requirements of this section and any other applicable laws.

(4) The property shall be posted with the name and twenty-four-hour contact phone number of the local property management company. The posting shall be no less than an eight-inch by ten-inch sign. The posting shall contain the following language:

THIS PROPERTY IS MANAGED BY:
TO REPORT PROBLEMS OR CONCERNS CALL:

The posting shall be placed on the interior of a window facing the street to the front of the property so it is visible, or secured to the exterior of the building/structure facing the street to the front of the property so it is visible or, if no such area exists, on a stake of sufficient size to support the posting in a location as close as possible to the main door entrance of the property. The exterior posting shall be constructed of and printed with weather-resistant materials.

(5) The local property management company shall inspect the property on a bi-weekly basis to ensure that the property is in compliance with this section. Upon the request of the city, the local property management company shall provide a copy of the inspection reports to the ~~code enforcement division~~ city.

(6) Failure of the responsible party to properly maintain the property may result in a violation of this Code and a notice of violation or notice of

hearing by the city ~~city's code enforcement office. Pursuant to a finding and determination by the city's code enforcement authority, the~~ The city may take the necessary action to ensure compliance with this section.

(d) *"Responsible party"* is any individual or entity that holds a recorded mortgage or other recorded security interest on the real property at issue.

(e) *Opposing, obstructing enforcement officer, penalty.* Whoever opposes, obstructs, or resists any enforcement officer or any person authorized by the mayor ~~enforcement office~~ in the discharge of duties as provided in this section, upon conviction shall be punished as provided in section 1-1-8 of this Code.

(f) *Immunity of enforcement officer.* Any enforcement officer authorized or designated by the mayor or any person authorized by the enforcement officer shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon real property while in the discharge of duties imposed by this section.

(g) *Additional authority.* The mayor ~~director of sanitation services~~, or his/her designee, shall have the authority to require the mortgagee and/or owner of record of any property affected by this section, to implement additional maintenance and/or security measures including, but not limited to, securing any and all door, window, or other openings, employment of an on-site security guard, or other measures as may be reasonably required to help prevent further decline of the property.

(h) *Adoption of rules; expenditure of funds; declaration of city purpose.* The mayor or his/her designee, consistent with his or her duties and authorities under the City Charter, including those duties and authorities relating to emergency situations, is authorized and empowered to adopt rules and regulations and expend city funds as may be reasonably necessary and available to carry out the terms of this section, the expenditure of such funds being declared a proper city purpose.

(Ord. No. 13-11, § 5, 7-21-11)

TITLE V - HUMAN RESOURCES AND CIVIL RIGHTS

Chapters

TITLE V. - HUMAN RESOURCES AND CIVIL RIGHTS

CHAPTERS

CHAPTER 5-1. GENERAL PROVISIONS

(RESERVED)

CHAPTER 5-2. DISCRIMINATION

ARTICLE I. - IN GENERAL

Secs. 5-2-1—5-2-15. - Reserved.

ARTICLE II. - FAIR HOUSING[1]

Footnotes:

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Cross reference— Buildings and building regulations, Ch. 7-13; housing, § 7-13-241 et seq.; zoning, Ch. 12-2.

Sec. 5-2-16. - Declaration of policy.

It is hereby declared to be the policy of the city, in the exercise of its police power for the public safety, public health and general welfare, to ensure equal opportunity to obtain adequate housing by all persons, regardless of race, color, religion, sex, national origin, place of birth, age (provided the

person has the capacity to contract), marital status, ancestry, military status or ~~physical~~ disability and, to that end, to prohibit and eliminate discrimination in housing by any person.

(Code 1968, § 80-20)

Sec. 5-2-17. - Definitions.

For the purposes of this article, the following terms, phrases and words and their derivations shall have the meanings given herein:

Board. The fair housing board established by this article.

Director. The fair housing director established by this article.

Discrimination, discriminatory housing practice. Any difference in the treatment of persons based on race, color, religion, sex, national origin, place of birth, age (provided the person has the capacity to contract), marital status, military status, ancestry or ~~physical~~ disability.

Housing, housing accommodations, dwelling. Any building, mobile home or trailer, structure or portion thereof which is occupied as, or designed, or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any building, mobile home or trailer, structure, or portion thereof, or any real property, as defined herein, used or intended to be used for any of the purposes set forth in this subsection.

Lending institution, financial institution. Any person, as defined in Chapter 1-2, engaged in the business of lending money or guaranteeing loans.

Mortgage broker. An individual who is engaged in or performs the business or services of a mortgage broker as the same are defined by Florida Statutes.

Real estate broker, real estate salesman. Any individual who, for a fee, commission, salary or for other valuable consideration, who with the intention or expectation of receiving or collecting same, lists, sells, purchases, rents or leases any housing accommodations, including options thereupon, or who negotiates or attempts to negotiate such activities, or who advertises or holds himself out as engaged in such activities; or who negotiates or attempts to negotiate a loan secured by a mortgage or other encumbrance upon transfer of any housing accommodation; or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection

Commented [RS1]: Suggest modification to conform to current scope of legal protection.

with a contract whereby he undertakes to promote the sale, purchase, rental or lease of any housing accommodation through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.

To rent. To lease, to sublease, to let and to otherwise grant for a consideration the right to occupy premises not owned by the occupant.

(Code 1968, § 80-21; Ord. No. 60-82, § 1, 5-2-782)

Cross reference— Definitions and rules of construction generally, Ch. 1-2.

Sec. 5-2-18. - Discrimination prohibited.

It shall be unlawful within the city for a person, owner, financial institution, real estate broker, or real estate salesman, or any representative of the above to:

(1) Refuse to sell, purchase, rent or lease, or otherwise deny to or withhold any housing accommodation from a person, or to evict a person because of his race, color, religion, sex, national origin, place of birth, age (provided the person has the capacity to contract), marital status, military status, ancestry or ~~physical~~ disability;

(2) Discriminate against a person in the terms, conditions of privileges of the sale, purchase, rental or lease of any housing accommodation or in the furnishing of facilities or services in connection therewith;

(3) Refuse to receive or transmit a bona fide offer to sell, purchase, rent or lease any housing accommodation from or to a person because of his race, color, religion, sex, national origin, place of birth, age (provided the person has the capacity to contract), marital status, military status, ancestry or ~~physical~~ disability;

(4) Evict or to refuse to negotiate for the sale, purchase, rental or lease of any housing accommodation to a person because of his race, color, religion, sex, national origin, place of birth, age (provided the person has the capacity to contract), marital status, ancestry or ~~physical~~ disability;

(5) Represent to a person that any housing accommodation is not available for inspection, sale, purchase, rental or lease, when in fact it is so available, or to refuse to permit a person to inspect any housing accommodation, because of his race, color, religion, sex, national

origin, place of birth, age (provided the person has the capacity to contract), marital status, military status, ancestry or physical disability when such dwelling is in fact available to persons who are financially qualified;

(6) Make, publish, print, circulate, post or mail, or cause to be made, published, printed, circulated, posted or mailed, any notice, statement or advertisement, or to announce a policy, or to sign or to use a form of application for the sale, purchase, rental, lease or financing of any housing accommodations, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation, which indicates any discrimination or any intent to discriminate;

(7) Offer, solicit, accept or use a listing of any housing accommodations for sale, purchase, rental or lease knowing that a person may be subjected to discrimination in connection with such sale, purchase, rental or lease, or in the furnishings of facilities or services in connection therewith;

(8) Induce or discourage, or attempt to induce or discourage the sale, purchase, rental, lease, or the listing for the sale, purchase, rental or leasing of any housing accommodations in an area, by means of causing panic, inciting unrest, or creating or playing upon fear, by representing that the presence or anticipated presence in that area of persons of any particular race, color, religion, ancestry, sex, place of birth, ~~physical handicap~~ disability, marital status, or national origin, will or may result in the lowering of property value in the area, the increase in criminal or antisocial behavior in the area, or a decline in the quality of the schools serving the area;

(9) For any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to an applicant for a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration or other terms or conditions of such loans or other financial assistance, because of the race, color, religion, sex, national origin, place of birth, age (provided the person has the capacity to contract), marital status, military status, ancestry or ~~physical~~ disability of such person or of any person

associated with him in connection with the loan or other financial assistance or the purposes of the loan or other financial assistance, or of the present or prospective owners, lessees, tenants or occupants of the dwelling or dwellings in relation to which the loan or other financial assistance is to be made or given;

(10) Deny any person who is otherwise professionally qualified by state law access to, or membership or participation in, any multiple listing service, real estate brokers' organizations, or organizations, or other service, organization or facility relating to the business of selling or renting dwellings or to discriminate against him in the terms or conditions of such access, membership or participation on account of race, color, religion, sex, national origin, place of birth, age (provided the person has the capacity to contract), marital status, military status, ancestry, or ~~physical~~ disability;

(11) Make any misrepresentations concerning the listing for sale, purchase, rental or lease, or the anticipated listing for any of the above, or the sale, purchase, rental or lease of any housing accommodation in any area in the city for the purpose of inducing or attempting to induce a listing or any of the above transactions;

(12) Engage in, or hire to be done, or to conspire with others to commit acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest or create or play upon fear, with the purpose of either discouraging or inducing, or attempting to induce the sale, purchase, rental or lease, or the listing for any of the above, of any housing accommodation;

(13) Retaliate or discriminate in any manner against a person because he has opposed a practice declared unlawful by this article, or because he has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference under this article;

(14) Aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this article; to obstruct or prevent any person from complying with the provisions of this article or any order issued thereunder;

(15) Resist, prevent, impede or interfere with the fair housing board, or any of its members or representatives in the lawful performance of its or their duty under this article;

(16) By canvassing, commit any unlawful practices prohibited by this article;

(17) Otherwise deny to or withhold any housing accommodation from a person because of his race, color, religion, sex, national origin, place of birth, age (provided the person has the capacity to contract), marital status, military status, ancestry or ~~physical~~ disability.

(Code 1968, § 80-22; Ord. No. 60-82, § 2, 5-27-82)

Sec. 5-2-19. - Exemptions.

This article shall not apply to:

(1) *Religious organizations.* A religious organization, association society or any nonprofit institution or organization operating, supervised or controlled by or in conjunction with a religious organization, association or society, which limits the sale, rental or occupancy of dwellings which it owns or operates for other than commercial purposes to persons of the same religion, or which gives preference to the persons, unless membership in such religion is restricted on account of race, color, sex, national origin, age (provided the person has the capacity to contract), marital status, military status or ~~physical~~ disability;

(2) *Private clubs.* A private club not in fact open to the public, which as an incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, and which limits the rental or occupancy of the lodgings to its members or gives preference to its members;

(3) *Certain single-family houses.* Any single-family house sold or rented by an owner, provided that the private individual owner does not own more than three (3) single-family houses at any one time; provided further, that in the case of the sale of any single-family house by a private individual owner not residing in the house at the time of the sale or who was not the most recent resident of the house prior to the sale, the exemption granted by this subsection shall apply only with respect to one sale within any twenty-four-month period; provided further, that the bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion

of the proceeds from the sale or rental of more than three single-family houses at any one time; provided further the sale or rental of any single-family house shall be excepted from the application of this article only if the house is sold or rented:

(a) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman, or of the facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any broker, agent, salesman or person, and

(b) Without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of the provisions of 42 United States Code, Section 3604(c) or of section 5-2-18 of this article; but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other such professional assistance as necessary to perfect or transfer the title.

(4) *Rooms in dwelling units occupied by no more than four families.* Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his residence.

(Code 1968, § 80-23)

Sec. 5-2-20. - Fair housing director—Position created, appointment, staff, funding.

(a) The office and position of fair housing director is hereby created and established.

(b) The director shall be appointed by and serve at the will of the Escambia-Pensacola Human Relations Commission. The director shall be chosen by the Escambia-Pensacola Human Relations Commission on the basis of qualifications and experience. The fair housing director shall serve under the supervision of the Escambia-Pensacola Human Relations Commission.

(c) The Escambia-Pensacola Human Relations Commission shall appoint assistants to the director as may be necessary, subject to budget limitations, and shall provide the director required administrative support.

(d) This office shall be funded annually ~~with community development block grant funds~~ as approved by the Pensacola City Council.

Commented [RS2]: CDBG funds have not been used for many years to fund this office.

(Code 1968, § 80-24)

Sec. 5-2-21. - Same—Duties and powers.

Subject to the provisions of subsection 1-1-1(c), the duties, functions, powers and responsibilities of the fair housing director may include:

(1) Implementing the provisions of this article and rules and regulations promulgated hereunder and all city ordinances, codes, rules and regulations pertaining to housing discrimination;

(2) Investigating any and all complaints of unlawful practices in violation of this article, seeking conciliation between the complainant and the respondent, and if in the opinion of the director such conciliation is not reached within sixty (60) days of receipt of the complaint, reporting his findings and recommendations to the fair housing board and carrying out the directives of the board;

(3) Providing assistance in all matters relating to equal housing opportunity within the city;

(4) Publishing and disseminating public information and educational materials relating to housing discrimination;

(5) Subject to the approval of the fair housing board, entering into written working agreements, as may be necessary to effectuate the purposes of this article, with federal, state and county agencies involved in reducing housing discrimination;

(6) Keeping the fair housing board fully and currently informed of all complaints alleging violations of this article and actions taken thereon, and of other actions taken by the director under the provisions of this section; and attending all meetings of the fair housing board;

(7) Implementing recommendations received from the fair housing board concerning this article and the carrying out of its purpose. When in the opinion of the director, effectuating any such recommendation would be undesirable or infeasible, he will promptly so report to the board, with his reasons; any differences of judgment not susceptible of agreement between board and director will be referred to the mayor for his determination, and the board may, if it feels the matter

warrants, further carry any disagreement to the city council for decision;

(8) Making semiannual reports to the city council, through the mayor and to the fair housing board concerning the status of housing discrimination in the city and the enforcement of the provisions of this article, and making recommendations concerning methods by which to reduce the discrimination.

(Code 1968, § 80-25; Ord. No. 60-82, § 3, 5-27-82; Ord. No. 16-10, § 58, 9-9-10)

Sec. 5-2-22. - Fair housing board—Created.

The city's fair housing board is hereby created and established. The Escambia-Pensacola Human Relations Commission is hereby vested with the authority to act as the fair housing board. The qualifications of members, terms of office, organization of the board, and meetings of the board will coincide with those of the Escambia-Pensacola Human Relations Commission.

(Code 1968, § 80-26)

Sec. 5-2-23. - Same—Duties, powers, functions.

The board shall have the following duties, powers, functions and responsibilities:

(1) Making recommendations to the director for the enforcement of this article and the carrying out of its purpose;

(2) Reviewing the director's actions and decisions on all complaints of housing discrimination received by or initiated by him or her;

(3) Conducting public hearings and making determinations concerning the director's actions and decisions on the complaints upon appeal by either complainant or respondent, at the request of the director, or when the board deems it desirable, on its own initiative;

(4) In carrying out the functions of subsections (2) and (3) above, the board shall have the power to uphold, rescind, reverse, or modify the actions, decisions, and recommendations of the director;

(5) Administering oaths and compelling the attendance of witnesses and the production of evidence before it by subpoenas issued by the chairman of the board;

(6) Reviewing and commenting on the director's semiannual report, forwarding each comment to the city council;

(7) In coordination with the director, taking other informational, educational or persuasive actions to implement the purpose of this article.

(Code 1968, § 80-27)

Sec. 5-2-24. - Complaint procedure.

(a) Any person aggrieved by an unlawful practice prohibited by this article must file a written complaint with the director or his designated representative within forty-five (45) days after the alleged unlawful practice occurs.

(b) Upon receipt of a complaint, the director shall serve upon the individual accused of committing a violation (hereinafter referred to as the respondent) the complaint and a written resume setting forth the rights of the parties including, but not limited to, the right of the respondent to a fair and full hearing on the matter before adjudication by the fair housing board. The service may be by personal service or by certified mail.

(c) The director shall immediately investigate the complaint. Within sixty (60) days from the date of the receipt of the complaint, the director shall file a written report with the board, with findings of fact.

(d) Copies of the director's report shall also be sent to the complainant and the respondent. Either may, within ten (10) days after the services, request a hearing before the board.

(e) When the director, the complainant or the respondent requests a hearing by the board, or when the board itself determines that a hearing is desirable, the board shall call and conduct the hearing in accordance with section 5-2-25.

(f) Where no board hearing is requested or directed, the board will expeditiously review the report of the director, and shall approve, rescind, reverse or modify the director's findings and determinations of action.

(g) The director shall carry into execution the actions specified in his report, as approved or altered by the board in its review, or, if a hearing is held, shall carry into execution the actions taken by the board in the hearing.

(h) The director in his report, as approved by the board, or the board after hearing may determine that:

(1) The complaint is not meritorious or evidence supporting the complaint is insufficient;

(2) The complaint has been adequately dealt with by conciliation of the parties or by voluntary compliance by the respondent(s); or

(3) The complaint is meritorious.

(i) If the director's report as approved by the board or if the board, after hearing, determines that the complaint is meritorious, then the director shall order the respondent to comply with this article within thirty (30) days. If the director finds that the respondent has not timely complied with this article, then the director may assist the complainant in prosecuting a civil action against the respondent for discriminatory housing practice or other violation of this article or file in the office of the state attorney an affidavit of criminal violation of this article, when authorized by the board. Any assistance provided to a complainant pursuant to this section shall be limited to gathering and presenting evidence or testimony or other technical assistance.

(j) The provisions of Rule 1.090, Florida Rules of Civil Procedure, shall govern the computation of any period of time prescribed by this article.

(k) All papers or pleadings required by this article to be served may be served by certified mail or in accordance with the provisions of Rule 1.080(b), Florida Rules of Civil Procedure.

(Code 1968, § 80-28)

Sec. 5-2-25. - Hearings.

(a) When a hearing is required before the fair housing board as specified in subsection 5-2-24(e), the board shall schedule the hearing and serve upon all interested parties a notice of time and place of the hearing. The hearing shall be held promptly, but not less than fifteen (15) days after service of the notice and of the director's written report.

(b) The parties, or their authorized counsel, may file statements with the board, prior to the hearing date, as they deem necessary in support of their positions. The parties may appear before the board in person or by duly constituted representative and may have the assistance of attorneys. The parties may present testimony and evidence, and the right to cross-examine witnesses shall be preserved. All testimony shall be given under oath or by affirmation. The board shall not be bound by strict rules of evidence prevailing in courts of law or equity but due process shall be observed. The board shall keep a full record of the hearing, which records shall be public and open to inspection by any person, and upon request by any principal party to the proceedings the director shall furnish the party a copy of the hearing record at cost. The constitutional rights of the respondent not to incriminate himself shall be scrupulously observed.

(c) The board shall make a finding of fact, and a determination of action to be taken.

(d) The board may issue subpoenas to compel access to or the production or appearance of premises, records, documents, individuals and other evidence or possible sources of evidence relative to the complaint at issue.

(e) Upon written application to the board, a complainant or a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the board, to the same extent and subject to the same limitations as subpoenas issued by the board itself. Subpoenas issued at the request of a complainant or a respondent shall show on their face the name and address of the complainant or respondent and shall state that they were issued at his request.

(f) Witnesses summoned by subpoena of the board shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the state courts of Florida. Fees payable to a witness summoned by a subpoena issued at the request of the complainant or respondent shall be paid by him, unless he is indigent in which case the city shall bear the cost of the fees.

(g) Within ten (10) days after service of a subpoena upon any persons, the person may petition the board to revoke or modify the subpoena. The board shall grant the petition if it finds that the subpoena requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the

evidence to be produced, that compliance would be unduly onerous, or for other good reason.

(h) In case of refusal to obey a subpoena, the board or the person at whose request it was issued may petition for its enforcement in the appropriate court.

(Code 1968, § 80-29; Ord. No. 60-82, § 4, 5-27-82)

Sec. 5-2-26. - Other remedies.

Nothing herein shall prevent any person from exercising any right or seeking any remedy to which he might otherwise be entitled, or from filing of any complaint with any other agency or any court having proper jurisdiction.

(Code 1968, § 80-31)

Sec. 5-2-27. - Report to real estate commission.

If a real estate broker, a real estate salesman, or an employee thereof, has been found to have committed an unlawful practice in violation of this article, or has failed to comply with an order issued by the director, the director shall, in addition to the other procedures and penalties set forth herein, report the facts to the real estate commission of the state.

(Code 1968, § 80-32)

CHAPTER 5-3. DOMESTIC PARTNERSHIP REGISTRY

Commented [RS3]: Recommend consideration of repeal in light of U.S. Supreme Court case of Obergefell v. Hodges.

Sec. 5-3-1. - Definitions.

For purposes of this chapter:

Affidavit of domestic partnership means a sworn form under penalty of perjury, which certifies that two (2) domestic partners meet the requirements of a domestic partnership relationship as described in section 5-3-2.

City clerk means the City Clerk of the City of Pensacola or such other person or office approved by the city council to administer the domestic partnership registry.

Correctional facility means holding cells, jails, and juvenile correction centers of any kind, located within or under the jurisdiction of the City of Pensacola.

Dependent is a person who resides within the household of a registered domestic partnership and is:

(1) A biological, adopted, or foster child of a registered domestic partner; or

(2) A dependent as defined under IRS regulations; or

(3) A ward of a registered domestic partner as determined in a guardianship or other legal proceeding.

Domestic partners means only two (2) adults who are parties to a valid domestic partnership relationship and who meet the requisites for a valid domestic partnership relationship as established pursuant to section 5-3-2.

Health care facility includes, but is not limited to, hospitals, nursing homes, hospice care facilities, convalescent facilities, walk-in clinics, doctors' offices, mental health care facilities, and any other short-term or long-term health care facilities located within the City of Pensacola.

Jointly responsible means each domestic partner mutually agrees to provide for the other partner's basic needs while the domestic partnership relationship is in effect, except that partners need not contribute equally or jointly to said basic needs, such as food and shelter.

Mutual residence means a residence shared by the registered domestic partners; it is not necessary that the legal right to possess the place of residence be in both of their names. Two (2) people may share a mutual residence even if one or both have additional places to live. Registered domestic partners do not cease to share a mutual residence if one leaves the shared place but intends to return.

(Ord. No. 41-13, § 1, 12-12-13)

Sec. 5-3-2. - Registration of domestic partnerships.

(a) A domestic partnership may be registered by any two (2) persons by filing an affidavit of domestic partnership with the city, which affidavit shall comply with all requirements set forth in this chapter for establishing such domestic partnership. Upon payment of any required fees, the city clerk shall file the affidavit of domestic partnership and issue a certificate

reflecting the registration of the domestic partnership in the city. The city clerk shall record the affidavit with the Escambia County Clerk of Court.

(b) An affidavit of domestic partnership shall contain the name and address of each domestic partner, the signature of each partner, and the signatures of two (2) witnesses for each partner's signature, and each partner shall swear or affirm under penalty of perjury that:

(1) Each person is at least eighteen (18) years old and competent to contract;

(2) Neither person is currently married under Florida law or is a partner in a domestic partnership relationship or a member of civil union with anyone other than the co-applicant;

(3) They are not related by blood as defined in Florida law;

(4) Each person considers himself or herself to be a member of the immediate family of the other partner and to be jointly responsible for maintaining and supporting the registered domestic partnership;

(5) The partners reside together in a mutual residence;

(6) Each person agrees to immediately notify the city clerk, in writing, if the terms of the registered domestic partnership are no longer applicable or if one of the domestic partners wishes to terminate the domestic partnership; and

(7) Each person expressly declares their desire and intent to designate their domestic partner as their healthcare surrogate and as their agent to direct the disposition of their body for funeral and burial.

(c) Any partner to a domestic partnership may file an amendment to the domestic partnership certificate issued by the city clerk to reflect a change in his or her legal name or address. Amendments shall be signed by both members of the registered domestic partnership under oath.

(Ord. No. 41-13, § 1, 12-12-13)

Sec. 5-3-3. - Termination of registered domestic partnership relationship.

(a) Either partner to a registered domestic partnership relationship may terminate such relationship by filing a notarized affidavit of termination of domestic partnership relationship with the city clerk. Upon the payment of the required fee, the city clerk shall file the affidavit and issue a certificate of termination of domestic partnership relationship to each

partner of the former relationship. The termination shall become effective ten (10) days from the date the certificate of termination is issued.

(b) Automatic termination. A registered domestic partnership shall automatically terminate upon notice to the city clerk of the following events:

(1) One (or both) of the domestic partners marries in Florida;

(2) One of the domestic partners dies, except that upon the occurrence of this event the provisions relating to funeral and burial decisions shall survive; or

(3) One of the domestic partners registers with another partner.

The marrying, surviving, or re-registering domestic partner(s) shall file an affidavit terminating the domestic partnership relationship within ten (10) days of one of the occurrences listed in subsections (b)(1)—(3) above.

(Ord. No. 41-13, § 1, 12-12-13)

Sec. 5-3-4. - Maintenance of records; filing fees.

(a) The city clerk shall prepare the form of all affidavits, amendments, and certificates required to be filed under this chapter and shall record the same with the Escambia County Clerk of Court. The city clerk shall maintain a record of all affidavits, amendments, and certificates filed pursuant to this chapter.

(b) The city clerk is authorized to establish fees for the filing of any affidavits, amendments, and the issuance of any certificates required by this act, subject to the approval of the Pensacola City Council. Any fees established under this section shall be commensurate with the actual costs of administering the provisions of this chapter.

(c) The city clerk is authorized and directed to take all actions necessary to implement the provisions of this section within ninety (90) days after this chapter is created.

(d) If Escambia County, Florida establishes a domestic partnership registry law that is substantially similar to the City of Pensacola's domestic partnership registry provisions, the city clerk shall collaborate with Escambia County to determine whether a joint registration system will most efficiently serve our citizens. The city clerk will bring any recommendations for joint administration to the city council for its

consideration. If such a joint registry is established, the references to the city clerk shall mean the filing officer for the joint registry approved by city council and Escambia County.

(Ord. No. 41-13, § 1, 12-12-13)

Sec. 5-3-5. - Rights and legal effect of registered domestic partnership.

To the extent not superseded by federal, state, or other city law or ordinance, or contrary to rights conferred by contract or separate legal instrument, registered domestic partners shall have the following rights:

(a) *Health care facility visitation.* All health care facilities operating within the city shall honor the registered domestic partnership documentation issued pursuant to this code as evidence of the relationship and shall allow a registered domestic partner visitation as provided under federal law. A dependent of a registered domestic partner shall have the same visitation rights as a patient's child.

(b) *Health care decisions.* This section pertains to decisions concerning both physical and mental health. Registry as a domestic partner shall be considered to be written direction by each partner designating the other to make health care decisions for their incapacitated partner, and shall authorize each partner to act as the other's healthcare surrogate as provided in F.S. Ch. 765, and otherwise as provided by federal law. Further, no person designated as a health care surrogate shall be denied or otherwise defeated in serving as a health care surrogate based solely upon his or her status as the domestic partner of the partner on whose behalf health care decisions are to be made. Any statutory form, including but not limited to, a living will or health care surrogate designation in the form prescribed by F.S. Ch. 765, that is properly executed after the date of registration and that contains conflicting designations shall control over the designations by virtue of the registration.

(c) *Funeral and burial decisions.* Registry as a domestic partner shall be considered to be written direction by the decedent of his or her intention to have his or her domestic partner direct the disposition of the decedent's body for funeral and burial purposes as provided in F.S. Ch. 497, unless the decedent provides conflicting, written inter vivos authorization and directions that are dated after the date of the

registration, in which case the later dated authorization and directions shall control.

(d) *Correctional facility visitation rights.* Any person who is a party to a registered domestic partnership relationship pursuant to section 5-3-2 shall be entitled to visit his or her domestic partner, or other family member of the domestic partner, who is an inmate at a correctional facility located within the City of Pensacola, upon the same terms and conditions under which visitation is afforded to spouses, dependents, or parents of inmates. Visitation rights provided by this section shall extend to any children of the domestic partners, and the domestic partners of an inmate's parents or children.

(e) *Notification of family members.* In any situation providing for mandatory or permissible notification of family members including but not limited to notification of family members in an emergency, or when permission is granted to correctional facility inmates to contact family members, "notification of family" shall include registered domestic partners.

(f) *Preneed guardian designation.* A person who is a party to a registered domestic partnership relationship, pursuant to section 5-3-2 above, shall have the same right as any other individual to be designated as a preneed guardian pursuant to F.S. Ch. 744, and to serve in such capacity in the event of his or her domestic partner's incapacity. A domestic partner shall not be denied or otherwise be defeated in serving as the preneed guardian of his or her domestic partner or the partner's property under the provisions of F.S. Ch. 744, to the extent that the incapacitated partner has not executed a valid preneed guardian designation, based solely upon his or her status as the domestic partner of the incapacitated partner.

(g) *Participation in education.* To the extent allowed by federal and state law, and in a manner consistent with any applicable court orders or valid agreements or contracts, a registered domestic partner shall have the same rights to participate in the education of a dependent of the registered domestic partnership as a biological parent has to participate in the education of their child, in all educational facilities located within or under the jurisdiction of the city. However, if a biological parent of a minor dependent, whose parental rights have not been terminated, objects to the participation of a non-biological registered domestic partner in education conferences or other

dissemination of educational information, only the participation of the biological parents shall be allowed.

(Ord. No. 41-13, § 1, 12-12-13)

Sec. 5-3-6. - Limited effect.

(a) Nothing in this article shall be interpreted to alter, affect, or contravene city, county, state, or federal law or impair any court order or contractual agreement.

(b) Nothing in this article shall be construed as recognizing or treating a registered domestic partnership as a marriage.

(Ord. No. 41-13, § 1, 12-12-13)

Sec. 5-3-7. - Enforcement.

A registered domestic partner may enforce the rights under section 5-3-5 by filing a private judicial action against a person or entity in any court of competent jurisdiction for declaratory relief, injunctive relief, or both.

(Ord. No. 41-13, § 1, 12-12-13)

Sec. 5-3-8. - Recognition of domestic partnerships registered in other jurisdictions.

All rights, privileges, and benefits extended to domestic partnerships registered pursuant to this chapter shall also be extended to domestic partnerships registered pursuant to domestic partnership laws in other jurisdictions, so long as the registry documents issued by other jurisdictions comply with all applicable state and federal requirements. If a conflict occurs between jurisdictions, this chapter shall govern in the city.

(Ord. No. 41-13, § 1, 12-12-13)

TITLE VI - LEISURE SERVICES

CHAPTERS

TITLE VI. - LEISURE SERVICES[1]

CHAPTERS

Footnotes:

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Cross reference— Departments enumerated, § 2-4-3.

CHAPTER 6-1. GENERAL PROVISIONS

(RESERVED)

CHAPTER 6-2. PARKS AND RECREATION BOARD[2]

Footnotes:

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Editor's note—Ord. No. 06-10, § 2, adopted Feb. 11, 2010, changed the title of Ch. 6-2 from "Recreation Board" to "Parks and Recreation Board." It should also be noted that Ord. No. 06-10, § 2, provided that references in the Code to "recreation board" are hereby amended to read "parks and recreation board".

Sec. 6-2-1. - Establishment; composition; compensation; terms of office; vacancies and removal.

There is hereby established a parks and recreation board of the city. This board shall consist of nine (9) persons serving without pay who shall be appointed by the council. The term of office shall be for three (3) years or until their successors are appointed and qualified. Vacancies ~~in~~ on the board occurring otherwise than by expiration of term shall be filled by the council for the unexpired term.

It is the expressed intent of this city to recognize the importance of balance in the appointment of minority and nonminority persons to membership on the parks and recreation board and to promote that balance through the provisions of this section.

For purposes of this Code Section, "minority person" means:

(a) An African American; that is, a person having origins in any of the racial groups of the African Diaspora.

(b) A Hispanic American; that is, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race.

(c) An Asian American; that is, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands prior to 1778.

(d) A Native American; that is, a person who has origins in any of the Indian Tribes of North America prior to 1835.

(e) An American woman.

In addition, the city recognizes the importance of including persons with physical disabilities on this board. Furthermore, it is recognized that the parks and recreation board plays a vital role in shaping public policy for the city, and the selection of the best-qualified candidates is the paramount obligation.

In appointing members to the parks and recreation board, the council should select, from among the best-qualified persons, those persons whose appointment would ensure that the membership of the board accurately reflects the proportion that minority persons represent in the population of the city as a whole, unless the law regulating such appointment requires

otherwise, or minority persons cannot be recruited. If the size of the board precludes an accurate representation of minority persons, appointments should be made which conform to the requirements of this section insofar as possible.

Each board member serves at the pleasure of city council and may be removed at any time with reasonable cause or by recommendation by the parks and recreation board. Any board member missing three (3) consecutive board meetings or five (5) board meetings over the course of a calendar year shall forfeit their membership on the board. Absences may be excused by the chair.

(Code 1968, § 46-1; Ord. No. 06-10, § 1, 2-11-10; Ord. No. 16-10, § 59, 9-9-10; Ord. No. 18-12, § 1, 8-9-12; Ord. No. 21-13, § 1, 8-22-13)

Sec. 6-2-2. - Election of officers; adoption of rules and regulations.

Immediately after the appointment of the parks and recreation board, it shall meet and organize by electing one (1) of the members chairman and other officers as may be necessary. The board shall have the power to adopt bylaws, rules and regulations for the proper conduct of public recreation for the city.

(Code 1968, § 46-2; Ord. No. 06-10, § 1, 2-11-10)

Sec. 6-2-3. - Duties.

The parks and recreation board shall advise and make recommendations to the city council, and shall advise the mayor's office ~~via the director of neighborhood services~~ on matters concerning the establishment, maintenance and operation of parks within the city. The board shall provide input on master plan updates and improvements, and policy development for the use of recreational facilities.

(Code 1968, § 46-3; Ord. No. 06-10, § 1, 2-11-10; Ord. No. 21-13, § 2, 8-22-13)

Sec. 6-2-4. - Reserved

Editor's note— Ord. No. 21-13, § 3, adopted August 22, 2013, repealed § 6-2-4, which pertained to budget; gifts and donations. See Code Comparative Table for complete derivation.

Sec. 6-2-5. - Reserved.

Editor's note— Ord. No. 21-13, § 4, adopted August 22, 2013, repealed § 6-2-5, which pertained to expenditures, contracts, agreements; approval by council required. See Code Comparative Table for complete derivation.

CHAPTER 6-3. PARKS AND RECREATION[3]

Footnotes:

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Cross reference— Administration, Title II; health and sanitation, Title IV; traffic and vehicles, Title XI; zoning, Ch. 12-2; planning, Ch. 12-0; streets, sidewalks and other public places, Ch. 11-4; subdivisions, Ch. 12-8; trees, Ch. 12-6; animals prohibited in certain public places, § 4-2-33; animals restricted in schools, parks and beaches, § 4-2-33; recreation board, Ch. 6-2; injuring trees or shrubs in public places, § 8-1-6; zoning, Ch. 12-2.

State Law reference— Parks and recreation, F.S. Ch. 418.

Sec. 6-3-1. - Supervision.

The ~~director of neighborhood services~~ mayor shall have direct charge and supervision of all matters relating to city owned or leased parks.

(Code 1968, § 118-1; Ord. No. 24-13, § 1, 9-26-13)

Sec. 6-3-2. - Rules and regulations generally.

(a) The ~~director of neighborhood services~~ mayor may adopt rules and regulations for the reasonable and proper use, and for preventing injuries to or misuse of, city parks and their appurtenances and park property, and to prevent disorder and improper conduct within the precincts of such park and the waters adjacent thereto.

(b) Any rules and regulations when published or posted in the park shall have the same effect as ordinances, and any violations thereof shall be

punished as provided for in section 1-1-8 except as otherwise provided herein.

(Code 1968, § 118-11; Ord. No. 24-13, § 2, 9-26-13)

Sec. 6-3-3. - Traffic in parks.

(a) State law. All applicable provisions of laws and rules regulating the equipment and operation of motor vehicles on Florida highways will be strictly enforced in the parks, together with such rules provided in this article.

(b) Direction of traffic. The mayor is ~~All traffic officers and designated park employees are~~ authorized and instructed to direct traffic whenever and wherever needed in the parks and on the highways, streets or roads immediately adjacent thereto in accordance with the provisions of this article and such supplementary rules as may be issued by the ~~division~~ mayor or other state agency. No person shall fail to comply with any lawful order, signal or direction. ~~of such officer or employee~~. All persons shall observe carefully all traffic signs indicating speed, direction, caution, stopping or parking and all others posted for proper control and to safeguard life and property.

(c) Speed of vehicles in parks. No person shall drive a vehicle at a speed exceeding eleven (11) miles per hour.

(d) Restriction to roads. No person shall drive any motorized vehicle on any area except park roads or parking areas or such other areas as are designated as temporary parking areas.

(e) Parking.

(1) All motor cars shall be parked only in established and indicated parking areas or in such other areas and at such times as may be specifically designated. ~~by the director of neighborhood services or his or her designee.~~

(2) Parking on roads, driveways, grass or non-paved areas is forbidden at all times except in an emergency.

(3) No person shall park or station any vehicle in any zone designated and marked no parking or otherwise marked for restricted use except briefly for the expeditious loading or unloading of passengers or freight.

(4) No person shall make nonemergency repairs, perform routine maintenance or wash any vehicle in any city park or recreation area.

(5) No vehicles are permitted to remain in a parking area after closing hours. Any vehicle parked continuously in the park for in excess of twenty-four (24) hours will be towed at the owner's expense.

(f) Bicycles. Bicycles may be ridden on any designated roads or trails. When riding vehicular roads, they must observe all safety rules and regulations as constituted by state law. Bicyclists shall, when riding or parking their bikes, respect the safety and security of other park users.

(g) [Prohibited areas.] All wheeled vehicles are prohibited from all tennis and basketball courts, but may be ridden on any designated road or trail.

(h) [Penalty.] The penalty for violation of this section shall be ten dollars ($10.00) for each incident.

(i) [Enforcement.] Violations of this section may be enforced by issuance of a citation as provided in chapter 11 of this Code or by any other means permitted by law.

(Ord. No. 24-13, § 3, 9-26-13)

Editor's note— Ord. No. 24-13, § 3, adopted September 26, 2013, amended § 6-3-3 in its entirety to read as herein set out. Former § 6-3-3, pertained to motor vehicles to remain on designated roads, areas; motor vehicles not permitted. See Code Comparative Table for complete derivation.

Sec. 6-3-4. - Reserved.

Editor's note— Ord. No. 24-13, § 4, adopted September 26, 2013, repealed § 6-3-4, which pertained to racing, speeding, reckless driving. See Code Comparative Table for complete derivation.

Sec. 6-3-5. - Animals running at large not permitted.

The owner or custodian of any animal shall not permit the animal to run at large in any park.

(Code 1968, §§ 118-2(B), 118-4)

Cross reference— Certain animals prohibited from running at large in city, § 4-2-2.

Sec. 6-3-6. - Permit required for obstructions.

No person shall place or deposit, or allow to be placed or deposited, in city parks, any article or thing which would obstruct or hinder the safe and convenient use of any part of the park by the general public, without the written permit of the ~~director of neighborhood services~~ mayor.

(Code 1968, § 118-5; Ord. No. 24-13, § 5, 9-26-13)

Sec. 6-3-7. - Discharging fireworks, stones and missiles.

(a) It shall be unlawful for any person to throw stones or discharge missiles within city parks.

(b) The exploding or discharging of fireworks, rockets or other incendiaries is prohibited.

(Code 1968, § 118-7; Ord. No. 27-11, § 2, 9-22-11)

Sec. 6-3-8. - Peddling, advertising, handbills, signboards.

No person shall, without a permit from the ~~director of neighborhood services~~ mayor, expose any article or thing for sale, or do any hawking or peddling or displaying of handbills, or erect any signboards, or post, paste or affix any notice or bill or advertisement of any kind in writing or printing on any tree, post or at any other place or in any manner whatever in city parks. No animal or vehicle or person carrying or displaying any placard or advertisement of any kind shall be allowed in the park except as authorized by the ~~director~~ mayor.

(Code 1968, § 118-8; Ord. No. 24-13, § 6, 9-26-13)

Sec. 6-3-9. - Injuring trees, buildings and other property.

No person shall break or injure in any way any of the trees, shrubs, turf, grounds, fences, buildings or other structures or property of the parks.

(Code 1968, § 118-9)

Sec. 6-3-10. - History of Plaza Ferdinand VII.

Plaza Ferdinand VII has significant historical and aesthetic value for the City of Pensacola. The plaza is named after Ferdinand VII, who was king of Spain from 1813 to 1833. The transfer of Florida to the United States from Spain occurred in Plaza Ferdinand in 1821. In 1960, Plaza Ferdinand was designated a National Historic Landmark by the United States National Park Service.

Before 1985, Plaza Ferdinand was the primary park used for special events in Pensacola. Beginning in 1983, as part of the City's Directions '85 program, Plaza Ferdinand was completely renovated. Those renovations included restoration of the fountain, rebuilding of the sidewalks, rebuilding of the ballast walls along the perimeter of the park, restoration and renovation of the obelisk in the center of the park, a commemorative bust of Andrew Jackson, and restoration of the commemorative cannons in the park. The renovations cost approximately two hundred fifty-four thousand dollars ($254,000.00).

After the renovations were complete, the city allowed a festival to take place in Plaza Ferdinand in September 1987. Following the event, the city again had to spend thousands of dollars to clean the facilities, re-seed the grass, care for the plantings, and refurbish the park.

In 1987, following the September festival, the city council voted to restrict use of Plaza Ferdinand in order to preserve its landscaping, historical attributes, and general beauty. Seville Square was designated the primary special events park and various amenities were added to Seville Square, including the gazebo and electrical facilities. Since then, Seville Square has been the site of many annual festivals, assemblies and special events.

(Ord. No. 26-09, § 1, 8-13-09)

Sec. 6-3-11. - Findings and purpose.

In order to preserve Plaza Ferdinand's value to the City of Pensacola and its citizens, the city council finds it is appropriate to restrict the group use of the park, requiring a permitting process for such use, and reserving Plaza Ferdinand primarily for spontaneous, casual and passive use by people for their quiet enjoyment. By restricting the use of Plaza Ferdinand, it is the city's intent and purpose to protect the features of the park, including the commemorative statues, the fountain, the historical cannons, and the ballast

wall surrounding the Plaza, as well as protecting the grass and landscaping in Plaza Ferdinand.

(Ord. No. 26-09, § 1, 8-13-09)

Sec. 6-3-12. - Alternative parks and green space.

In finding that it is appropriate to restrict the use of Plaza Ferdinand, the city council notes that there are five (5) other city parks within approximately a half-mile radius of Plaza Ferdinand, to wit: Plaza de Luna, Seville Square, Bartram Park, Corinne Jones Park, and Martin Luther King, Jr. Plaza. These parks are open to citizens for use for group events, as well as spontaneous, casual and passive uses, and thus provide alternative venues for assembly and expressive activity. After construction of the Community Maritime Park is complete, it also will be open to group events as well as spontaneous, casual and passive uses. Furthermore, within the half-mile radius of Plaza Ferdinand, various green spaces, although not designated as public parks by the City of Pensacola, have been made available for group use, including the north lawn of City Hall, Commendencia Slip, and the state-owned area commonly known as Fountain Park.

(Ord. No. 26-09, § 1, 8-13-09)

Sec. 6-3-13. - Definitions.

Where used in sections 6-3-10 through 6-3-20, the following terms, phrases, words and their derivatives shall have the meanings given herein, unless the context otherwise requires:

(a) "Plaza Ferdinand" or "park" means Plaza Ferdinand VII in the City of Pensacola. For purposes of these sections only, the boundaries of Plaza Ferdinand are defined as follows:

(1) The northern curb of Zarragosa Street;

(2) The southern curb of Government Street;

(3) The eastern curb of Palafox Place; and

(4) The western curb of Jefferson Street.

~~(b) "Director" means the director of parks and recreation.~~

(Ord. No. 26-09, § 1, 8-13-09)

Sec. 6-3-14. - Application for Plaza Ferdinand permit.

Any person desiring a permit for use of Plaza Ferdinand shall make application for a permit to the ~~director~~ mayor not less than ten (10) days in advance of the time and date of the intended use of Plaza Ferdinand and no earlier than January 2 of the calendar year in which the applicant intends to use the park. The ten (10) days' advance application period may be shortened under extenuating circumstances. The application shall set forth the following information:

(1) The name, address and telephone number of the person requesting the permit;

(2) The name and address of the organization or group he/she is representing, if applicable;

(3) The name, address and telephone number of the person(s) who will act as chairperson of the event and will be responsible for the conduct of the event;

(4) The time and date of the commencement of the event and the time the event will terminate;

(5) Completion of the required forms, including providing any required liability insurance certificate;

(6) Deposit of any required clean-up deposit and damage deposit; and

(7) Any other relevant information as the ~~director~~ mayor may require.

Applications for permits shall be processed in the order of receipt and only upon receipt of the entire application and any applicable fees or an affidavit of indigency and request for a waiver of the fees. The ~~director~~ mayor shall decide whether to grant or deny an application within fourteen (14) days unless, by written notice to the applicant, the ~~director~~ mayor extends the period of review an additional fourteen (14) days. If the ~~director~~ mayor fails either to grant or deny an application within the fourteen-day deadline, or within the fourteen-day extension if one (1) has been noticed, then the application shall be deemed granted.

An applicant may receive only one (1) permit for use of Plaza Ferdinand during a single calendar year. However, if as of May 15 of the calendar year for which the applicant has requested a permit, the ~~director~~ mayor has received applications from fewer than six (6) applicants, then a single

applicant may request more than one (1) permit for use of Plaza Ferdinand during a single calendar year.

Permits for use of Plaza Ferdinand are not transferable or assignable and may be used only by the applicant.

(Ord. No. 26-09, § 1, 8-13-09)

Sec. 6-3-15. - Application fee.

All applicants must pay an application fee of one hundred dollars ($100.00) to cover the cost of processing the application.

(Ord. No. 26-09, § 1, 8-13-09)

Sec. 6-3-16. - Restrictions on Plaza Ferdinand permits.

(a) A person or organization must obtain a permit in order to conduct a public assembly, parade, picnic, or other event involving thirty (30) or more persons that will take place in Plaza Ferdinand.

(b) Permits shall be restricted in the following manners:

(1) Permitted events may take place only during the months of June, July and August. A maximum of six (6) events will be permitted in any calendar year.

(2) No more than two (2) events per month will be permitted. No more than one (1) permitted event may occur during any seven-day period.

(3) The attendance at a permitted event may not exceed one thousand (1,000) persons.

(4) No amplified sound or bands will be permitted.

(5) No vendors will be permitted.

(6) No booths, exhibits, or stages will be permitted.

(7) No event with utility hook-up requirements will be permitted.

(8) No alcohol will be permitted.

(9) A permitted event may not last longer than thirty-six (36) consecutive hours, including setup before the event and cleanup after the event.

(10) The other general rules for city parks apply.

(c) To the extent permitted by law, the ~~director~~ mayor may deny an application for permit if the applicant or the person on whose behalf the application for permit was made has on prior occasions made material misrepresentations regarding the nature or scope of an event or activity previously permitted or has violated the terms of prior permits issued to or on behalf of the applicant. The ~~director~~ mayor also may deny an application for permit on any of the following grounds:

(1) The application for permit (including any required attachments and submissions) is not fully completed and executed;

(2) The applicant has not tendered the required application fee with the application or has not tendered the required user fee, insurance certificate, or clean-up deposit within the time prescribed;

(3) The application for permit contains a material falsehood or misrepresentation;

(4) The applicant is legally incompetent to contract or to sue and be sued;

(5) The applicant or the person on whose behalf the application for permit was made has on prior occasions damaged city property and has not paid in full for such damage, or has other outstanding and unpaid debts to the city;

(6) A fully executed prior application for permit for the same time and place has been received, and a permit has been or will be granted to a prior applicant authorizing uses or activities which do not reasonably permit multiple occupancy of Plaza Ferdinand or part thereof;

(7) The proposed use or activity is prohibited by or inconsistent with the classifications and uses of Plaza Ferdinand or part thereof;

(8) The use or activity intended by the applicant would present an unreasonable danger to the health or safety of the applicant, other users of Plaza Ferdinand, city employees, or members of the public;

(9) The use or activity intended by the applicant is prohibited by law, by this Code, or by the regulations of the city.

(d) Notice of denial of an application for permit shall clearly set forth the grounds upon which the permit was denied and, where feasible, shall contain a proposal by the ~~director~~ mayor for measures by which the applicant may cure any defects in the application for permit or otherwise procure a permit. Where an application has been denied because of a conflict with the time and place of another event or due to other

restrictions, the ~~director~~ mayor shall propose an alternative location, time, or other manner for the applicant to comply with the restrictions.

(Ord. No. 26-09, § 1, 8-13-09)

Sec. 6-3-17. - Insurance requirements; clean-up deposit; user fees.

(a) Applicants shall provide the ~~city's risk management department~~ city with a certificate of insurance no less than ten (10) days prior to the date of the event. The certificate of insurance shall indicate that: the city is an additional insured; the certificate holder is the City of Pensacola~~, Risk Management~~; the type of event to be held; the date of the event; and the limits of liability.

(b) The user fees, clean-up deposits, and insurance liability limits that shall be provided are as follows:

Event	Clean-up Deposit	Insurance Limits	User Fee
Single day event with anticipated attendance of 20—300 persons	$500.00 per event	$300,000.00 per occurrence and the aggregate	$500.00/day
Single day event with anticipated attendance of 301—1,000 persons	$1,000.00 per event	$1,000,000.00 per occurrence and the aggregate	$1,000.00/day

These requirements are subject to change and the ~~director~~ mayor or his/her designee shall notify applicants of any changes to these requirements.

(Ord. No. 26-09, § 1, 8-13-09)

Sec. 6-3-18. - Reduction or waiver of fees, deposit or insurance.

An applicant may request a reduction or waiver of the user fee, clean-up deposit and/or insurance requirement in the same manner as described in section 11-4-180, Pensacola City Code.

(Ord. No. 26-09, § 1, 8-13-09)

Sec. 6-3-19. - Issuance or denial of permit or waiver; appeal.

An applicant who is denied a permit or a waiver of the insurance requirement, clean-up deposit or user fee, may appeal such denial in the manner described in section 11-4-174, Pensacola City Code.

(Ord. No. 26-09, § 1, 8-13-09)

Sec. 6-3-20. - Penalties for violations.

(a) A person violating the provisions of sections 6-3-14 or 6-3-16 may be directed to leave Plaza Ferdinand by ~~a sworn police officer or code enforcement officer~~ the mayor or his designee.

(b) A person refusing to leave Plaza Ferdinand when directed as described in subsection (a) shall be escorted out of Plaza Ferdinand and issued a trespass warning to not return to the park for twenty (20) days, or placed under arrest for trespass after warning.

(c) If a person who has received a trespass warning returns to Plaza Ferdinand within the time period prescribed in subsection (b), then the person may be prosecuted pursuant to F.S. § 810.09.

(d) The penalties described herein are in addition to the penalties provided in section 1-1-8, Pensacola City Code, and any other remedies available at law or in equity.

(Ord. No. 26-09, § 1, 8-13-09)

~~CHAPTER 6-4. PUBLIC LIBRARY~~[4]

Footnotes:

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Cross reference— Administration, Title II; streets, sidewalks and other public places, Ch. 11-4.

State Law reference— Public libraries, F.S. Ch. 257; certain records confidential, F.S. § 257.261.

~~Secs. 6-4-1, 6-4-2. - Reserved.~~

Editor's note— Ord. No. 35-00, § 2, adopted Aug. 17, 2000, repealed §§ 6-4-1 and 6-4-2 in their entirety. Formerly, said sections pertained to the creation of the public library and the library board regarding the appointment and removal of members, vacancies, officers, and powers and duties, respectively. See the Code Comparative Table.

~~Secs. 6-4-3—6-4-5. - Reserved.~~

Editor's note— Ord. No. 26-99, § 4, adopted July 22, 1999, renumbered §§ 6-4-3—6-4-5 as §§ 2-4-36—2-4-38.

~~Sec. 6-4-6. - Use of other governmental library facilities.~~

~~Upon approval of the council, the mayor is hereby authorized to enter into contractual agreements with other governmental agencies for the furnishing of regional library services.~~

(Code 1968, § 31-8; Ord. No. 16-10, § 60, 9-9-10)

~~Sec. 6-4-7. - Donations.~~

~~Any person may make any donation of money or lands for the benefit of the library, and the title of the property as donated or proceeds from sale thereof shall be made to and vested in the council and their successors in office. The library board shall make recommendations to the council concerning the use of the land or expenditures of the funds.~~

(Code 1968, § 31-6)

TITLE VII – LICENSES AND BUSINESS REGULATIONS

CHAPTERS

CHAPTER 7-1. GENERAL PROVISIONS

Sec. 7-1-1. - Franchise required for certain transit services and utilities.

It shall be unlawful for any person, firm or corporation to operate a bus line or bus service, airport transit service, natural gas distribution system or electric utility company within the city without a contract or lease with or franchise from the city authorizing the particular business operated.

(Code 1968, § 95-2)

Cross reference— Vehicles for hire, Ch. 7-10; airports and aircraft, Ch. 10-2; energy services, Ch. 10-4.

Sec. 7-1-2. - Operation of business in contravention to franchise prohibited.

It shall be unlawful for any person, firm or corporation to operate any business within the city in contravention to any franchise granted by the city.

(Code 1968, § 95-3)

Sec. 7-1-3. - Future rights to purchase and terminate franchise.

No franchise shall hereafter be granted except upon condition that the city shall have the right at any time after fifteen (15) years from the granting thereof, to purchase the physical properties of the franchise holder and to terminate its franchise and all privileges enjoyed by it thereunder; provided the majority of the qualified taxpaying voters of the city voting thereon shall vote to do so; and provided that upon the petition of fifteen (15) percent of the qualified taxpaying voters to the council, the matter of acquisition of the property shall be submitted to an election to be determined by a vote of the qualified taxpaying voters voting thereon, which election shall be held at the next succeeding general election in the city, after at least twenty (20) days' notice in a newspaper published in the city, and provided that the owner of the physical property shall be compensated for the value thereof, considering solely the physical assets, the value to be determined by the report of the majority of three (3) arbitrators, one to be selected by the council, one by the owner of the physical property to be valued, and the third by the arbitrators so selected, but if the owner of the physical property shall refuse for thirty

(30) days to select the arbitrator, then the judge of the court having jurisdiction over the case shall have authority to appoint a third arbitrator. The rights conferred by this section shall not be construed as applying to any exclusive jurisdiction conferred upon the Florida Public Service Commission.

(Laws of Fla. 1931, Ch. 15425, § 56)

CHAPTER 7-2. LOCAL BUSINESS TAXES[2]

Footnotes:

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Editor's note—Ord. No. 31-06, § 1, adopted Dec. 14, 2006, effective Jan. 1, 2007, amended the title of Chapter 7-2 to read as herein set out. Formerly, said chapter was entitled Occupational Licenses. Said ordinance further provided for a new Chapter 7-2, §§ 7-2-1—7-2-9, to read as herein set out.

Cross reference— Administration, Title II; condition precedent to granting of license to dealers in gasoline, § 3-4-49(b); adult entertainment, Ch. 7-3; ambulance franchise, Ch. 7-5; auctions, Ch. 7-6; pawnbrokers, junk and secondhand dealers, Ch. 7-8; peddlers and solicitors, Ch. 7-9; vehicles for rent to the public, Ch. 7-10; wreckers and wrecker companies, Ch. 7-11; fees, Ch. 7-14; energy services, Ch. 10-4; buildings, construction and fire codes, Title XIV.

Sec. 7-2-1. - Local business tax.

(a) No person shall engage in or manage the business, profession or occupation or exercise any privilege mentioned and designated in this chapter, unless a city local business tax receipt shall have been procured from the city ~~treasurer~~ by the payment of the local business taxes set opposite such designation of the business, profession, occupation or privilege as set forth in this chapter.

(b) The persons upon whom the local business tax shall be levied shall be construed to be the following:

(1) Any person who maintains a permanent business location or branch office within the city for the privilege of engaging in or managing any business within the city's jurisdiction;

(2) Any person who maintains a permanent business location or branch office within the city for the privilege of engaging in or managing any profession or occupation within the city's jurisdiction;

(3) Any person who does not qualify under the provisions of (1) or (2) above and who transacts any business or engages in any occupation or profession in interstate commerce where such a local business tax is not prohibited by Section 8 of Article I of the United States Constitution.

(Ord. No. 31-06, § 1, 12-14-06)

Sec. 7-2-2. - Expiration date of receipts, term; proration of fee, penalty for late payment of tax.

(a) Local business tax receipts shall expire on the thirtieth day of September each year. No receipt shall be issued for more than one year. For each receipt obtained between the thirtieth day of September and the first day of April, the full tax for one year shall be paid, except as herein provided. For each receipt obtained from the first day of April to the thirtieth day of June, one-half the full tax for one year shall be paid and from the first day of July to the twenty-ninth day of September, one-fourth the full tax for one year shall be paid, except as herein provided.

(b) Local business taxes shall be due and payable and subject to delinquent payment penalties and remedies as provided for in F.S. Ch. 205. Such taxes for new businesses and transferred local business tax receipt shall be due and payable on or before the date that the business commences operations.

(Ord. No. 31-06, § 1, 12-14-06)

Sec. 7-2-3. - Transferability of receipts.

Local business tax receipts shall be good only for the business and the place named and for the person to whom issued, but receipts may be transferred when there is a bona fide sale, and transfer of the property used in the business, stock or trade or removal of same from one place to another,

upon application to the city ~~treasurer~~, and payment of a transfer fee of ten (10) percent of the annual local business tax amount, but not less than three dollars ($3.00) nor more than twenty-five dollars ($25.00).

(Ord. No. 31-06, § 1, 12-14-06)

Sec. 7-2-4. - Certificate of occupancy required prior to issuance of receipt.

A certificate of occupancy, as defined in section 12-14-1 of this Code, issued by the building ~~inspection department~~ official shall be furnished to the city ~~director of finance~~ as a condition precedent to the issuance or transfer of a local business tax receipt for a business to be located in any new building or in any existing building undergoing a change in occupancy classification. A business in an existing non-residential building may obtain a receipt by applying to the ~~director of finance~~ city; however, a local business tax receipt inspection certificate, as defined in section 12-14-1 of this Code, will be required in order to continue business.

Commented [RS1]: F.S. § 468.603 defines the position of building official.

(Ord. No. 31-06, § 1, 12-14-06)

Sec. 7-2-5. - Disposition of revenue from receipts.

All revenue derived from local business taxes hereby imposed shall be paid into the general fund of the city.

(Ord. No. 31-06, § 1, 12-14-06)

Sec. 7-2-6. - Display of receipt.

Every person having a local business tax receipt shall exhibit it when called upon to do so by an authorized officer of the city, and all receipts must be conspicuously displayed at all times.

(Ord. No. 31-06, § 1, 12-14-06)

Sec. 7-2-7. - Presentation of certificate required before issuance of receipt.

Every person carrying on or practicing any trade, profession or occupation for which a certificate, registration or license to practice the trade, profession or occupation is required by the laws of the state, is hereby required to present the certificate to the city ~~treasurer~~ upon demand

therefor, ~~by the city treasurer~~, before a local business tax receipt shall be issued to the person to carry on or practice his trade, profession or occupation in the city.

(Ord. No. 31-06, § 1, 12-14-06)

Sec. 7-2-8. - Advertising of business evidence of liability for receipt.

The fact that any person representing himself as engaged in any business, profession or occupation for the transaction of which a local business tax receipt is required, or that the person exhibited a sign or advertisement indicating the business, calling, profession or occupation shall be evidence of the liability of the person to procure a receipt.

(Ord. No. 31-06, § 1, 12-14-06)

Sec. 7-2-9. - Amount of local business tax.

The amount of the local business tax which shall be paid for the several firms, persons or organizations engaging in and managing businesses, professions or occupations for which a local business tax receipt is required is hereby fixed as follows:

(1) *Insurance companies.* The local business tax for insurance companies to do business in the city shall be based on the rate of two hundred ten dollars ($210.00) per company per agency.

(2) *Professions.* The following local business taxes will be charged those individuals involved in the professions noted below and will not be subject to the schedule set out in subsection (3) herein:

a. Engineers $236.25

b. Architects 236.25

c. Certified public accountants 236.25

d. Dentists 236.25

e. Lawyers 236.25

f. Veterinarians 236.25

g. Doctors, physicians, surgeons, osteopaths, chiropractors, and naturopaths 236.25

h. Psychologists 78.75

(3) *Other businesses and occupations.*

a. Local business taxes shall be charged for all businesses active in the city under the terms of city ordinances by way of the following rate schedule utilizing the number of employees for each local business tax receipt as the principal basis of the tax amount charged. These taxes are to be levied for each separate location or place of business and would be applicable except where specifically exempt. These occupations and businesses shall use the following system as a method of computing tax charges:

Number of employees rate

1 .....$26.25

2 .....52.50

3 .....98.44

4, 5 .....131.25

6, 7 .....210.00

8—11 .....288.75

12—17 .....367.50

18—26 .....498.75

27—38 .....656.25

39—58 .....840.00

59—86 .....1,050.00

87—130 .....1,312.50

131—195 .....1,640.63

196—295 .....2,034.38

296—420 .....2,493.75

421—670 .....3,018.75

671—1,000 and over 3,675.00

b. "Employee" shall be defined as all persons actively connected with the business working within the city limits. The owner of the business or any relative, whether receiving direct compensation or not, shall be considered an employee.

c. Computation of additional number of employees shall be:

1. Total annual hours worked divided by one thousand eight hundred (1,800) or average number of employees, whichever is applicable.

2. Total number of employees employed on September 1 of each year. Determination of the number of employees of the business may use either method or a combination of the above, whichever is applicable to their business, or an alternate system may be authorized by the ~~city treasurer~~ mayor.

(4) *Coin-operated machines.* Local business taxes for businesses utilizing coin-operated or token-operated machines shall be based on the number of coin-operated or token-operated machines owned, operated or located upon the premises on any single day during the previous licensing year or, in the case of a new business, on an estimate for the current year, in the amount set forth below, or the employee schedule in subsection (3), whichever is greater:

a. Coin-operated or token-operated machines used in the operation of a self-service laundry, including, but not limited to, washers, dryers, dry cleaning machines, extractors, soap dispensers, etc., per year or fraction thereof, each $3.28

b. Coin-operated or token-operated machines used for food and drink dispensing, including ice machines, per year or fraction thereof, each 6.56

c. Other coin-operated or token operated machines, including, but not limited to, carwash, pinball, tobacco products, novelty items, jukebox and other miscellaneous machines not otherwise defined, per year or fraction thereof, each 6.56

d. Coin-operated or token-operated machines operated by authorized charities as per Internal Revenue Service listing .....No charge

(5) *Separate charges.* Separate charges will be levied from the employee local business tax system and the additional categories noted above in the following instances:

a. Door-to-door sales and solicitations. Flat tax of one hundred five dollars ($105.00) or thirty-one dollars and fifty cents ($31.50), plus ten dollars and fifty cents ($10.50), with the local business tax receipt to be issued for a period of not more than thirty (30) days.

b. Temporary receipts. A local business tax receipt may be issued for a period of not more than thirty (30) days under this section. The local business tax shall be thirty-one dollars and fifty cents ($31.50), plus one-half (½) of the regular tax for the conduct of that particular type of business.

c. Use of streets, etc.

1. Each person, firm, corporation, association, company or other business entity who uses the streets, avenues, alleys or public roads of the city for unloading, distributing, disposing of or delivering goods, wares, ~~produce~~ or merchandise of any kind, which goods, wares, produce or merchandise was transported from a point without the city to a point within the city shall pay a local business tax not in excess of the tax paid for by local taxpayers engaged in the same business. This tax shall entitle the business entity to a local business tax receipt for the privilege of engaging in the above-referenced activities on the streets of the city.

~~2. The local business tax for the usage will be at the rate of twenty-six dollars and twenty-five cents ($26.25) per motor vehicle until the maximum is paid. A decal or sticker shall be placed on each vehicle used in such activities.~~

~~3. This section shall not apply to railroad companies.~~

~~4. No local business tax receipt shall be granted under this provision until the following requirements are met:~~

~~i. The name and address of the business in question, the name of the owner or owners and the state tag number of each vehicle shall be submitted to the treasury division of the city for the purpose of making a record thereof to be furnished for public information in order to protect the city~~

Commented [RS2]: Produce is exempt from tax.

Commented [RS3]: F.S. § 205.063 exempts motor vehicles from local business taxes.

~~residents and allow them to obtain the information upon request.~~

~~ii. Evidence of appropriate liability insurance shall be submitted.~~

~~iii. Proper evidence that all state, county and other governmental regulations have been complied with.~~

~~iv. A surety bond for protection of the city or the general public shall be furnished if this is deemed necessary by the treasury division mayor based upon the particular type of activity conducted by the business entity in question.~~

5. Local business tax receipt holders shall be entitled to the following privileges:
   i. Loading and unloading zones for commercial vehicles only. The loading zones shall be appropriately marked by the city and shall be required to be used by the receipt holder when available.
   ii. Police and fire protection shall be provided while the vehicles are located within the city limits.
   iii. The appropriate office of the city ~~treasury division~~ shall be required to make periodic inspections of vehicles in order to ensure that a receipt has been granted to the taxpayer's vehicle and that all other conditions and regulations have been met.
   iv. Each receipt holder, as well as all interested city citizens, shall be entitled to review the files to be kept by the city containing information requested in the application for a receipt.
6. The following exemptions from the above requirements are hereby granted:
   i. All vehicles which pay the state mileage tax to the state department of highway safety and motor vehicles pursuant to Florida Statutes.
   ii. Ordinary commercial travelers who sell or exhibit for sale goods or merchandise to parties engaged in the business

of buying and selling and dealing in the goods or merchandise.

iii. Sale of goods or merchandise donated by the owners thereof and the proceeds of which are to be applied to any charitable or philanthropic purposes.

iv. Vehicles used by any person taxed under this chapter for the sale and delivery of tangible personal property at either wholesale or retail from his place of business on which a receipt is paid shall not be construed to be separate places of business, and no taxes may be levied on such taxpayer's vehicles or the operators thereof as salesmen or otherwise.

(6) *Miscellaneous businesses.* Local business taxes for certain select businesses shall be as follows. These taxes are to be in lieu of those set forth above.

a. Clairvoyants, astrologers, fortune-tellers and palmists, per year $236.25

b. Tattoo artists, per year 236.25

c. Cable television companies, per year 1,312.50

d. Auctioneers, per year 210.00

e. Auctions, per thirty (30) days or portion thereof 210.00

(7) *Additional taxes for certain uses.* Additional local business taxes shall be levied for the following uses which shall be in addition to those set forth elsewhere in this section.

a. Business with dancing privileges, flat fee $157.50

b. Pool and billiard tables not covered under coin-operated machines, per table, per year 13.13

c. Pawnshops, small loan companies and consumer finance companies, per year 472.50

(8) *Tax increases.* Commencing effective on October 1, 2007, and every other year thereafter, the city council of the City of Pensacola may increase by ordinance the rates of local business taxes by up to five (5) percent; provided, however, such increases may not be enacted by less than a majority plus one vote of the city council.

(9) *Exemptions.* All exemptions provided for in Chapter 205, Florida Statutes, are hereby incorporated by reference.

(Ord. No. 31-06, § 1, 12-14-06)

CHAPTER 7-3. ADULT ENTERTAINMENT[3]

Footnotes:

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Editor's note—Ord. No. 4-99, § 1, adopted Jan. 14, 1999, repealed ch. 7-3, which pertained to similar subject matter, and replaced it with a new ch. 7-3 to read as herein set out. See Code Comparative Table.

ARTICLE I. - IN GENERAL

Sec. 7-3-1. - Purpose.

The intent of the city council in adopting this chapter is to establish reasonable and uniform regulations that will reduce the adverse effects adult entertainment businesses have upon the city, and to protect the health, safety, morals and welfare of the citizens and inhabitants of the city.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-2. - Construction.

This chapter shall be liberally construed to accomplish its purpose of licensing and regulating adult entertainment and related activities. Unless otherwise indicated, all provisions of this ordinance shall apply equally to all persons regardless of gender. ~~The words "he," "his," and "him" as employed in this chapter shall be construed to apply to females as well as to males.~~

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-3. - Definitions.

For the purpose of this chapter, the following terms shall have the meaning set forth herein, unless the context clearly indicates otherwise.

Adult arcade means an establishment where, for any form of consideration, one (1) or more motion picture projectors, slide projectors, videotape or playback and viewing devices, or similar machines, for viewing by five (5) or fewer persons each, are used to show films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by emphasis on the depiction or description of specified sexual activities or specified anatomical areas. For the purpose of this chapter, adult arcade is included within the definition of adult motion picture theater.

Adult bookstore means an establishment which sells, leases or rents adult material for any form of consideration, unless the adult material is accessible only by employees and either the gross income from the sale or rental of adult material comprises less than ten (10) percent of the gross income from the sale or rental of goods or services at the establishment or the individual items or adult material offered for sale or rental comprise less than fifteen (15) percent of the individual items publicly displayed at the establishment as stock in trade. It is an affirmative defense to an alleged violation of this chapter regarding operating an adult bookstore without an adult entertainment license if the alleged violator shows that the adult material is accessible only by employees and either the gross income from the sale or rental of adult material comprise less than ten (10) percent of the gross income from the sale or rental of goods or services at the establishment, and the individual items of adult material offered for sale or rental comprise less than fifteen (15) percent of the individual items publicly displayed at the establishment as stock in trade.

Adult booth means a small enclosure within an adult entertainment establishment accessible to any person (regardless of whether a fee is charged for access) for the purpose of viewing adult materials. The term "adult booth" does not include a hallway/foyer used primarily to enter or exit the establishment or its restrooms. However, only one (1) person shall be allowed to occupy a booth at any time.

Adult dancing establishment shall mean a commercial establishment that permits, suffers or allows employees on more than three (3) days in a sixty-day period to display or expose any part of the human body except for completely or opaquely covered specified anatomical areas or permits, suffers or allows employees to wear any covering, tape, pasties or other device that simulates or otherwise gives the appearance of the display or

exposure of any specified anatomical areas. Any establishment on whose premises any employee, who need not be the same employee, displays or exposes specified anatomical areas or wears any covering, tape, pasties or other device that simulates or otherwise gives the appearance of the display or exposure of any specified anatomical areas on more than three (3) days in a sixty-day period shall be deemed an adult dancing establishment and shall be required to obtain a license under this chapter. It shall be unlawful for any establishment licensed pursuant to this chapter, or unlicensed, to permit, suffer or allow any employee, or anyone within the establishment, to display or expose specified anatomical areas that are less than completely or opaquely covered.

Adult entertainment establishment means an adult motion picture theater, a leisure spa establishment, an adult bookstore, or an adult dancing establishment.

Adult materials means any one (1) or more of the following:

(a) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual representations or recordings, novelties and devices, which have, as their primary or dominant theme, matter depicting, illustrating, describing or relating to specified sexual activities or less than completely and opaquely covered specified anatomical areas; or

(b) Instruments, devices, or paraphernalia which are designed for use in connection with specified sexual activities.

Adult motel means any hotel or motel, boarding house, rooming house or other lodging which includes the word "adult" in any name it uses, and otherwise advertises outside the individual rooms the presentation of film, video or any other visual material or methods which has, as its primary or dominant theme, matters depicting, illustrating or relating to specified sexual activities for observation by patrons thereof. For the purposes of this chapter, an adult motel is included within the definition of adult motion picture theater.

Adult motion picture theater means an enclosed building, or a portion or part of an enclosed building, or an open-air theater designed to permit viewing by patrons seated in automobiles or other seating provisions, for any form of consideration, film, video or any other visual material or method which has, as its primary or dominant theme, matters depicting, illustrating or relating to specified sexual activities for observation by patrons thereof, and includes any hotel or motel, boarding house, room house or other

lodging which, for any form of consideration, advertises the presentation of such film material. For the purposes of this chapter an adult motion picture theater includes an adult arcade, an adult motel, and an adult motion picture booth.

Alcoholic beverage means all beverages containing one-half of one (0.5) percent or more of alcohol by volume, including beer and wine.

Day care center means a facility that exists for the purpose of child care for five (5) or more children of ages that include pre-school.

Dense business area means all of that portion of the corporate limits of the city as defined in Chapter 12-14 of this Code.

Employee means a person who works or performs in a commercial establishment, irrespective of whether said person is paid a salary or wage by the owner or manager of the premises.

Establishment or *commercial establishment* means the site, physical plant, or premises or portion thereof, upon which certain activities or operations are being conducted for commercial or pecuniary gain. "Operated for commercial or pecuniary gain" shall not depend upon actual profit or loss and shall be presumed where the establishment has an occupational license. Establishment or commercial establishment shall not mean premises that are operated usually or continuously as commercial theaters or playhouses that show works that contain serious literary or artistic merit.

Inspector means ~~an employee of the city inspections department, the police department, the department of planning and neighborhood development, or the pensacola fire department (or the successors of each department), or any other authorized employees of the city~~ any person authorized by the mayor who shall inspect premises licensed under this chapter and take or require the actions authorized by this chapter in case of violations being found on licensed premises, and also inspect premises seeking to be licensed under this chapter and require corrections of unsatisfactory conditions found on said premises.

Leisure spa establishment means a site or premises or portion thereof, upon which any person performs any of the treatments, techniques or methods of treatment referred to as a leisure spa service, or where any leisure spa services are administered, practiced, used, given or applied, but shall not include the following: licensed health care facilities; licensed physicians or nurses engaged in the practice of their professions; educational or professional athletic facilities, if a leisure spa is a normal and

usual practice in such facilities; or establishments which are exempt from regulation hereunder due to their licensure under F.S. Ch. 480 or 400.

Leisure spa patron means any person who receives, or pays to receive, a leisure spa service from a leisure spa technician for value.

Leisure spa service means any method of treating the external parts of the body, consisting of touching, rubbing, stroking, kneading, tapping, or vibrating; such treatments being performed by the hand or with any other body part, or by any mechanical or electrical instrument.

Leisure spa technician means any person who engages in the business of performing leisure spa treatments, techniques or methods of treatment referred to as leisure spa services.

Licensed premises means not only rooms and areas where adult materials regulated under this chapter, or adult activities regulated by this chapter, are sold, rented, leased, offered, presented or stored or where any form of adult entertainment is presented, but also all other areas within five hundred (500) feet of the room or area where adult materials or adult activities are regulated and over which the licensee has some dominion and control and to which customers or patrons may pass, and shall include all of the floor or land areas embraced within the plan appearing on or attached to the application for the license involved and designated as such on said plan.

Person means individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations, or entities.

Personal advertising means any communication on the part of any employee of an adult entertainment establishment that is designed to encourage a prospective patron to enter said establishment and is performed by repeatedly speaking in a raised tone of voice, by making prominent physical gestures, such as waving or repeatedly pointing, or by holding signs or other written statements. Personal advertising shall not include oral or physical references to an adult entertainment establishment by patrons or spectators.

Premises means a physical plant or location, which is enclosed by walls or any other enclosing structural device, or which is covered by a single roof, and shall include any structure, structures or land, or contiguous structures or land, within five hundred (500) feet of the physical plant or location, where such structures or land and the physical plant or location are under common ownership, control or possession.

Principal stockholder means any individual, partnership or corporation that owns or controls, legally or beneficially, ten (10) percent or more of a corporation's capital stock, and includes the officers, directors and principal stockholders of a corporation; provided, that if no stockholder of a corporation owns or controls, legally or beneficially, at least ten (10) percent of the capital stock, all stockholders shall be considered principal stockholders, and further provided, that if a corporation is registered with the securities and exchange commission or pursuant to F.S. Ch. 517 (including its amendments or its successor statutes), and its stock is for sale to the general public, it shall not be considered to have any principal stockholders.

Private performance means modeling, posing, or the display or exposure of any portions of or the entire human body, including specified anatomical areas, whether completely and opaquely covered or not, by an employee of an adult entertainment establishment to a patron, while the patron is in an area not accessible during such display to all other persons in the establishment.

Religious institution means a building or structure, or groups of buildings or structures, which by design and construction are primarily intended for the conducting of organized religious services and accessory uses associated therewith. Includes temples, synagogues or other places of assembly for the purposes of organized religion.

School means an institution of learning for minors, whether public or private, which offers instruction in those courses of study required by F.S. Ch. 233. This definition includes a nursery school, kindergarten, elementary school, junior high school, middle school, senior high school, or any special institution of learning under the jurisdiction of the state department of education, but it does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college or university.

Specified anatomical areas means:

(a) (i) Human genitals or pubic region;

(ii) The human cleavage of the human buttocks;

(iii) A portion of the human female mammary gland (commonly referred to as the female breast) including the nipple and the areola (the darker colored area of the breast surrounding the nipple) and an outside area of such gland wherein such outside area is (i) reasonably compact and contiguous to the areola and

(ii) contains at least the nipple and the areola and one-quarter (¼) of the outside surface area of such gland.

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified criminal act means a violation of this chapter; an offense under F.S. Ch. 800 (Lewdness Indecent Exposure); an offense under F.S. § 806.01, 806.10, 806.111 or 806.13(2)(c) (Arson and Criminal Mischief); an offense under F.S. Ch. 796 (Prostitution); an offense under F.S. § 847.013 or 847.014 (Obscenity); an offense under F.S. § 877.03 (Breach of the Peace); an offense under F.S. § 893.13 (Possession or Sale of Controlled Substances); an offense under F.S. § 849.09(2), 849.10 or 849.25(3) (Gambling); an offense under F.S. Ch. 794 (Sexual Battery); an offense under F.S. Ch. 826 (Bigamy, Incest); or violation of analogous (to above statutes) laws or ordinances of another city or state or federal government or successor statutes to above statutes.

Specified sexual activities means:

(a) Human genitals in a state of sexual stimulation, arousal or tumescence;

(b) Acts of human anilingus, bestiality, buggery, cunnilingus, coprophagy, coprophilia, fellation, flagellation, masochism, masturbation, necrophilia, pederasty, pedophilia, sadism, sadomasochism, sapphism, sexual intercourse, sodomy, urolagnia or zooerasty;

(c) Fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breast;

(d) Excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

Straddle dance, also known as a "lap dance" or "face dance," means the use by an employee, whether clothed or not, of any part of his body to massage, rub, stroke, knead, caress or fondle the genital or pubic area of a patron, while on the premises, or the placing of the genital or pubic area of an employee in contact with the face of a patron, while on the premises.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 17-99, § 1, 4-29-99; Ord. No. 20-09, § 1, 6-25-09)

Secs. 7-3-4—7-3-10. - Reserved.

ARTICLE II. - REGULATORY PROVISIONS

Sec. 7-3-11. - Responsibility.

Ultimate responsibility for the administration of this chapter is vested in the mayor, who shall be responsible for the issuance of all licenses referenced hereunder. All references to the mayor in this chapter shall also refer to his designee.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 16-10, § 61, 9-9-10)

Sec. 7-3-12. - License required.

(1) *Requirement.* No adult bookstore, leisure spa establishment, adult motion picture theater or adult dancing establishment shall be permitted to do business in the city without having first obtained a license as required under this chapter. For adult bookstores, leisure spa establishments, adult motion picture theaters or adult dancing establishments legally in existence and operating on the date of adoption of this chapter, permission to operate is hereby granted until an application for a license under this chapter is filed with the mayor not later than forty-five (45) days following the adoption of this chapter, and thereafter for so long a time as is necessary for the mayor to issue or to deny issuance of a license under this chapter.

(2) *Classification.* Adult entertainment establishment licenses referred to in this chapter shall be one (1) of four (4) separate types of licenses which are classified as follows:

(a) Adult bookstore;

(b) Adult motion picture theater;

(c) Leisure spa;

(d) Adult dancing establishment.

An adult entertainment establishment shall be limited to one (1) of the four (4) classes of licenses and thereby limited to the one (1) type of activity for which the license is issued. However, a given adult entertainment business operating with a valid occupational license on the date of adoption of this chapter, shall be allowed to apply for and receive those licenses

necessary to operate the types of adult entertainment it offered immediately prior to the date of adoption of this chapter, provided it complies with all other requirements of this chapter.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 16-10, § 62, 9-9-10)

Sec. 7-3-13. - Disqualification.

(1) *Noncompliance of premises.* No license shall be issued as a result of investigations by the city which determine that the proposed licensed premises does not meet each and every one (1) of the general and special requirements for the type of license applied for as established in article III, article IV, article V, article VI and article VII of this chapter, except as provided in section 7-3-99, or if the proposed licensed premises fails to satisfy all applicable building, zoning, health and fire regulations, ordinances or statutes, whether federal, state or local; further, no license shall be issued based on false information given in the application for license.

(2) *Issuance of license where prior license has been revoked or suspended.* No license shall be issued to:

   (a) Any individual, partnership or corporation whose license under this chapter is suspended or revoked;

   (b) Any partnership, a partner of which has a license presently suspended or revoked under this chapter;

   (c) Any corporation of which an officer, director or principal stockholder presently has his license under this chapter suspended or revoked; or

   (d) Any individual who is, or was at the time of suspension, a partner in a partnership or an officer, director or principal stockholder of a corporation, whose license under this chapter is presently suspended.

(3) *Prohibited by law or court order.* No license shall be issued when its issuance would violate a statute, ordinance, law or when an order from a court of law prohibits the applicant from obtaining an adult entertainment or occupational license in the city.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-14. - License application; application fee.

(1) *Required information and documents.* Any individual, partnership or corporation desiring to engage in the business of operating an adult bookstore, leisure spa establishment, adult motion picture theater or adult dancing establishment, shall file an application with the mayor. The application shall contain, at a minimum, the following information, and shall be accompanied by the following information and/or documents:

(a) If the applicant is:

(i) An individual—his legal name and all aliases used by him; or

(ii) A partnership—the full name of the partnership and the legal names and all aliases used by all of the partners, whether general or limited, accompanied by, if in existence, a copy of the written partnership agreement; or

(iii) A corporation—the exact corporate name, the date of incorporation, evidence that the corporation is in good standing, and the legal names and all aliases used and the capacity of all the officers, directors and principal stockholders;

(b) If the business is to be conducted under the name other than that of the applicant, the business name and the county of registration under F.S. § 865.09, (or its successor statute).

(c) Whether the applicant or any of the other individuals listed pursuant to paragraph (a) has, within the five-year period immediately preceding the date of the application, been convicted of a specified criminal act, and if so, the particular criminal act involved and the place of conviction;

(d) Whether the applicant or any of the other individuals listed pursuant to paragraph (a), above, has had a license issued under this chapter previously suspended or revoked or has been partner in a partnership or an officer, director or principal stockholder of a corporation whose license issued under this chapter has previously been suspended or revoked, including the date of suspension or revocation;

(e) The classification of the license for which the application is being filed;

(f) Whether the applicant holds any other adult entertainment establishment licenses in any state in the United States and, if so, the

number and locations of such licensed premises and whether any such licenses have been suspended or revoked;

(g) The location of the proposed establishment, including, if known, a list of employees, or if there will be no employees, a statement to that effect; and

(h) A floor plan drawn to substantially accurate scale of the proposed licensed premises indicating the areas to be covered by the license, all windows, doors, entrances and exits and the fixed structural features of the proposed licensed premises. The term "fixed structural features" shall include walls, stages, immovable partitions, projection booths, admission booths, concession booths or stands, immovable counters and similar structures that are intended to be permanent.

(2) *Application fee.* Each application shall be accompanied by a nonrefundable fee of four hundred dollars ($400.00) payable at the time the application is filed. In the event a license is approved, said fee shall be applied to the license fee required for the first year pursuant to section 7-3-24 of this chapter.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 16-10, § 63, 9-9-10)

Sec. 7-3-15. - Investigation.

Upon receipt of an application properly filed with the mayor, and upon payment of the application fee, the mayor shall verify the information required by subsection 7-3-14(1) of this chapter. The investigation shall be concluded within ninety (90) days from the date of the application. The mayor shall state on the application the results and findings of his investigation, recommending either approval or denial of the application.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 16-10, § 64, 9-9-10)

Sec. 7-3-16. - Approval procedure; appeal.

(1) *Approval and issuance.* Upon the completion of the review of an application, the mayor shall approve or deny the application. If approved, the mayor shall issue the license upon the payment of the appropriate license fee provided for herein.

(2) *Disapproval and denial.* If the mayor disapproves the application, he shall indicate the reason therefore upon the application, or in a separate

writing, and shall deny the application. If the application is denied, the mayor shall notify the applicant of the disapproval and the reasons therefore. Notification shall be by regular U.S. mail or hand delivery and shall be sent to the address on the license application, which shall be considered the correct address.

(3) [*False information.*] Notwithstanding any other provision in this chapter, the mayor shall deny any application for a license in which the applicant has supplied false or untrue information.

(4) [*Time period.*] The mayor shall approve or disapprove all applications within ninety (90) days from the date a completed application has been submitted. Upon the expiration of ninety (90) days, the applicant shall be permitted to initiate operation of the adult entertainment establishment and the license shall be issued and forwarded to the applicant, unless the mayor notifies the applicant of a preliminary denial of the application. A preliminary denial shall specify on the license application the reasons therefore, and shall be sent within seven (7) days of the action via regular U.S. mail or hand delivery to the address specified in the application which shall be considered the correct address.

(5) *Revocation.* Should a license be issued as a result of false information, misrepresentation of fact, or mistake of fact, it shall be revoked. If the application is revoked, the mayor shall notify the licensee of the revocation and the reasons therefore. Notification shall be by regular U.S. mail or hand delivery and shall be sent to the address on the license application, which shall be considered the correct address.

(6) *Appeal.* Within fifteen (15) days after the mailing of either a notice of denial or preliminary denial of a license pursuant to an application, or a notification of the revocation of a license, the applicant or licensee may appeal to the city council. In the case of a denial of a license, if the city council finds that the initial application should have been approved or a license issued, it shall so order and upon payment of the appropriate license fee, as provided in section 7-3-24, the mayor shall issue the license. In the case of a revocation of an issued license, if the city council finds the license should not have been revoked, it shall order the reissue of the license. The appeal shall have been concluded within sixty (60) days of its filing unless continued by the city council for good cause, but in no event more than ninety (90) days after its filing.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 16-10, § 65, 9-9-10)

Sec. 7-3-17. - Limitation on licenses and licensed premises.

Except as provided in section 7-3-12, not more than one (1) license shall be issued and in effect for any single adult entertainment establishment within the city. No building, premises, structure, or other facility that allows, contains or offers any classification of adult entertainment as provided for in section 7-3-3 or 7-3-12(2) above, shall allow, contain or offer any other classification of adult entertainment. A licensed premises may be owned by a licensee or may be leased by the licensee from a person not a licensee so long as the lessee who is operating the licensed premises undergoes the equivalent licensing process under this chapter; provided, that a licensee who is a tenant or lessee may not surrender his tenancy or lease to the owner or lessor if by so doing the said owner or lessor will take possession, control and operation of the licensed premises and the business licensed under this chapter, unless the license is transferred as provided in section 7-3-20 and further provided, that a licensee who is the owner of the licensed premises may not lease or otherwise give up possession, control and operation of the licensed premises and the business licensed under this chapter to any other individual, partnership or corporation, unless the license is transferred as provided in section 7-3-20.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-18. - Display of license; mutilation prohibited.

All licensees licensed under this chapter shall display their licenses in conspicuous places on their licensed premises, in clear, transparent cover or frame. The license shall be available for inspection at all times by the public. No person shall mutilate, cover, obstruct or remove a license so displayed.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-19. - Term of license; renewals.

(1) *Term.* All licenses issued under this chapter, except new licenses, shall be annual licenses which shall be paid for on or before October 1st and shall expire on September 30th of the following year. A licensee beginning business after October 1st and before April 1st may obtain a new license upon application therefore and the payment of the

appropriate license fee and such license shall expire on the following September 30th. A licensee beginning business after March 31st and before October 1st may obtain a new license upon application therefore and the payment of one-half (½) of the appropriate license fee herein required for the annual license and such license shall expire on September 30th of the same year. The provisions of this subsection shall not affect the provisions of section 7-3-14.

(2) *Renewals.* A licensee under this chapter shall be entitled to a renewal of his annual license from year to year as a matter of course, on or before October 1st by presenting the license for the previous year or satisfactory evidence of its loss or destruction to the mayor and by paying the appropriate license fee. A license that is not renewed by October 1st of each year shall be considered delinquent, and, in addition to the regular license fee, subject to a delinquency penalty of ten (10) percent of the license fee for the month of October, or any fraction thereof, and an additional penalty of ten (10) percent of the license fee for each additional month, or fraction thereof, thereafter until paid, provided that the total delinquency penalty shall not exceed twenty-five (25) percent of the license fee. All licenses not renewed within one hundred and twenty (120) days of September 30th shall be terminated.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 16-10, § 66, 9-9-10)

Sec. 7-3-20. - Transfer of license.

When a licensee shall have made a bona fide sale of the business for which he is licensed under this chapter to conduct, he may obtain a transfer of the license issued under this chapter to the purchaser of said business, but only if, before the transfer, the application of the purchaser shall be approved by the ~~city manager~~ mayor in accordance with the same procedure provided for herein in the case of issuance of new licenses. Before the issuance of any transfer of license, the transferee shall pay a transfer fee of ten (10) percent of the appropriate annual license fee. Licenses issued under this chapter shall not be transferable in any other way than provided in this section.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 16-10, § 67 9-9-10)

Sec. 7-3-21. - Licensee moving to new location; changing name of business.

(1) *New location.* Subject to all other applicable legal requirements, a licensee may move his licensed premises to a new location and operate at the new location upon approval by the mayor of the licensee's application for a change of location. The licensee shall submit to the mayor an application for a change of location, accompanied by an application fee of four hundred dollars ($400.00) at the time the application is filed. The application will contain, or have attached to it, a plan drawn to substantially accurate scale of the licensed premises at the location indicating the area to be included in the proposed licensed premises, all windows, doors, entrances and exits and the fixed structural features of the proposed licensed premises. The term "fixed structural features" shall have the same meaning as in subsection 7-3-14(l)(h). Upon approval, which approval shall be subject to all other applicable legal requirements, of the application, there shall be issued to the licensee a license for the proposed location without the payment of any further fee other than the application fee for a change of location. The licensee's application for a change of location shall be approved or denied by the mayor within forty-five (45) days of its submittal.

(2) *Change of name.* No licensee may change the name of the business located at his licensed premises without first giving the mayor thirty (30) days' notice, in writing, of such change and without first making payment to the city of a three dollar ($3.00) change-of-name fee.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 16-10, § 67, 9-9-10; Ord. No. 16-10, § 68, 9-9-10)

Sec. 7-3-22. - Suspension of license.

(1) *Violations of health, building, zoning or fire provisions.* In the event the mayor learns or finds upon sufficient cause that a licensed adult entertainment establishment is operating in violation of a health, building, zoning or fire statute, ordinance, or regulation, whether federal, state, or local, contrary to the requirements of this chapter, he shall promptly notify the licensee of the violation and shall grant the licensee the right to exhaust applicable administrative remedies to correct said violations. Should the licensee fail to either correct the violation or to obtain an administrative reversal of the mayor's finding, the mayor shall forthwith suspend the license, and shall notify the licensee of the suspension. The

suspension shall remain in effect until the violation of the provision in question has been corrected.

(2) *Other violations.* In the event a jury or other trier of fact in a court of law finds that a licensee has violated any of the criminal provisions of this chapter, or has committed a specified criminal act as defined hereinunder, whether or not an adjudication of guilt has been entered, the mayor shall forthwith suspend the license for fifteen (15) days, and shall notify the licensee of the suspension.

(3) *Suspension of license.*

(a) *Procedure.* Notification of violations or suspension of a license or revocation of a license shall be by regular U.S. mail or hand delivery and shall be sent to the address on the license application, which shall be considered the correct address.

(b) *Periods of suspension.*

(1) In the event three (3) or more violations of the criminal provisions of this chapter, or specified criminal acts occur at a single adult entertainment establishment within a two-year period, and convictions result from at least three (3) of the violations, the mayor shall, upon the date of the third conviction, suspend the license, and notify the licensee of the suspension. The suspension shall remain in effect for a period of thirty (30) days.

(2) In the event one (1) or more violations of the criminal provisions of this chapter, or specified criminal acts occur at the establishment within a period of two (2) years from the date of the violation from which the last conviction resulted for which the license was suspended for thirty (30) days under subsection (b)(1), but not including any time during which the license was suspended for thirty (30) days, and a conviction results from one (1) or more of the violations, the mayor shall, upon the date of the first conviction, suspend the license again, and notify the licensee of the suspension. The suspension shall remain in effect for a period of ninety (90) days.

(3) In the event one (1) or more violations of the criminal provisions of this chapter, or specified criminal acts occur within a period of two (2) years from the date of the violation from which the conviction resulted for which the license was suspended for ninety (90) days, and a conviction results from one (1) or more of the

violations, the mayor shall, upon the date of the first conviction, suspend the license again, and notify the licensee of the suspension. The suspension shall remain in effect for a period of one hundred eighty (180) days.

(4) The transfer or renewal of a license pursuant to this chapter shall not defeat the terms of subsections (b)(1) through (3).

(c) *Effective date of suspension.* All periods of suspension shall begin fifteen (15) days after the date that the mayor mails or delivers the notice of suspension to the licensee or on the date the licensee surrenders his license to the mayor, which ever happens first.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 17-99, § 2, 4-29-99; Ord. No. 16-10, § 69, 9-9-10)

Sec. 7-3-23. - General appeals.

Appeals alleging error in the denial, suspension or revocation of a license or permit under this chapter shall be by petition for a formal hearing before the city council of the City of Pensacola, Florida. A notice of intent to appeal shall be filed with the city clerk within fifteen (15) days after the mailing of a notice of denial, suspension or revocation of a license or permit. Thereafter, and upon payment of a fee of one hundred dollars ($100.00) to cover administrative costs, a hearing will be scheduled within forty-five (45) days. The clerk shall give the petitioning party at least ten (10) days written notice of the time and place for the hearing.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-24. - License fee.

(1) *Levy of fees.* There are hereby levied the following annual license fees under this chapter:

(a) Adult bookstore—Four hundred dollars ($400.00);

(b) Leisure spa establishment—Four hundred and fifty dollars ($450.00);

(c) Adult motion picture theaters, as follows:

(i) Having only adult motion picture booths—Fifty dollars ($50.00) for each booth; or

(ii) Having only a hall or auditorium—Five dollars and fifty cents ($5.50) for each seat or place; or

(iii) Designed to permit viewing by patrons seated in automobiles—Three dollars and fifty cents ($3.50) for each speaker or parking space; or

(iv) Having a combination of any of the foregoing the license fee applicable to each under subparagraphs (i), (ii), and (iii);

(v) Adult motel—Eight hundred dollars ($800.00).

(d) Adult dancing establishment—Four hundred dollars ($400.00).

(2) *License fee as regulatory fee.* The license fees collected under this chapter are fees paid for the purpose of examination and inspection of licensed premises under this chapter and the administration thereof and are declared to be regulatory fees in addition to and not in lieu of the occupational license taxes imposed by other sections of this Code. The payment of a license fee under this chapter shall not relieve any licensee or other person of a liability for and the responsibility of paying an occupational license fee where the same is required by other sections of this Code, and for doing such acts and providing such information as may be required by this Code.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-25. - Records and reports; consent by licensee.

Each licensee shall keep such records and make such reports as may be required by the mayor in order to implement this chapter and carry out its purpose. By applying for a license under this chapter, an individual, partnership or corporation shall be deemed to have consented to the provisions of this chapter and to the exercise by the mayor and other interested agencies of the powers designated herein in the manner therein specified.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 16-10, § 70, 9-9-10)

Secs. 7-3-26—7-3-35. - Reserved.

ARTICLE III. - REQUIREMENTS FOR ALL ADULT ENTERTAINMENT ESTABLISHMENTS

Sec. 7-3-36. - General requirements.

In addition to the special requirements contained in articles IV, V, VI, and VII of this chapter, each licensed premise shall:

(a) Conform to all applicable building laws, ordinances or regulations, whether federal, state or local;

(b) Conform to all applicable fire laws, ordinances or regulations, whether federal, state or local;

(c) Conform to all applicable health laws, ordinances or regulations, whether federal, state or local;

(d) Have each and every glass area that faces a public thoroughfare or through which casual passersby can see the materials or activity inside the licensed premises covered over by black paint or other opaque covering; provided that this requirement shall not apply if the uncovered glass area exposes to public view only a lobby or anteroom containing no material or activities of an adult nature. Such lobby or anteroom may contain a reception center or desk and chairs or couches for customers to use while waiting.

(e) Conform to the requirements of Chapter 381, Florida Statutes, and the rules and regulations of the Florida Department of Health ~~and Rehabilitative Services~~ made pursuant thereto. Each licensed premises shall be deemed to be a "place serving the public" for the purpose of sanitary facilities.

(f) Conform to the following sanitary facilities requirements:

(i) Water supply—The water supply must be adequate, of safe, sanitary quality and from an approved source in accordance with provisions of ~~Chapter 17-22 of the Florida Administrative Code~~ applicable codes.

(ii) Plumbing—Plumbing shall be sized, installed and maintained in accordance with provisions of ~~Chapter 10D-9 of the Florida Administrative Code and applicable sections of this Code~~ applicable codes.

(iii) Restrooms—All licensed premises shall be provided with adequate and conveniently located toilet facilities for its employees and patrons in accordance with provisions of ~~Chapter 10D-9 and 10D-10 of the Florida Administrative Code~~ applicable

codes. All toilet facilities must be of readily cleanable design and be kept clean, in good repair and free from objectionable odors. Restrooms must be vented to the outside of any building, be equipped with mechanical exhaust systems and be well lighted. Floors shall be of impervious easily cleanable materials. Walls shall be smooth, nonabsorbent and easily cleanable. Toilet tissue shall be provided. Easily cleanable receptacles shall be provided for waste materials and such receptacles in toilet rooms for women shall be covered. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing doors. Such doors shall not be left open except during cleaning or maintenance. Toilet rooms shall not open directly into food service or preparation areas (beverage is considered a "food"). Hand washing signs shall be posted in each toilet room used by employees.

(g) Conform to the requirements of the Life Safety Code.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-37. - Advertising.

No establishment regulated under this chapter shall:

(1) Display a sign advertising the presentation of any activity prohibited by a Florida statute, or any ordinance of the city; or

(2) Erect, install, maintain, alter or operate any sign in violation of applicable ordinances of the city; or

(3) Engage in, encourage, or permit, any form of personal advertising for the commercial benefit of the establishment or for the commercial benefit of any individual who displays or exhibits less than completely and opaquely covered specified anatomical areas within the establishment; or

(4) Display signs or any other building treatments on the exterior of the structure wherein the business is conducted or on the property upon which the structure is located, or upon any other property within the city which utilize the depiction of the nude human figure, whether male or female, or any words that refer to specified anatomical areas or specified sexual activities.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-38. - Entrance to adult entertainment establishment.

(1) The entrance to any adult entertainment establishment shall be designed in such a manner that no person outside the building or property can see materials offered to patrons or depictions of specified anatomical areas within the adult entertainment establishment.

(2) Immediately inside the entrance of any adult entertainment establishment there shall be posted a well-lighted sign which shall read as follows:

NOTICE

THIS ESTABLISHMENT OFFERS MATERIAL OR ENTERTAINMENT HAVING ADULT CONTENT. SUCH MATERIALS OR ENTERTAINMENT ARE FOR ADULTS ONLY. IF THIS OR NUDITY WOULD OFFEND YOU, DO NOT ENTER.

Such sign shall be clear and legible and the text thereof shall be set forth in letters of uniform size having a height of not less than one (1) inch nor more than two (2) inches.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 17-99, § 3, 4-29-99)

Sec. 7-3-39. - Operation of unlicensed premises unlawful.

It shall be unlawful for any person to operate an adult bookstore, adult motion picture theater, leisure spa establishment or adult dancing establishment unless such business shall have a currently valid license therefor under this chapter, which license shall not be under suspension or either permanently or conditionally revoked.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-40. - License required of commercial establishments advertising adult entertainment.

Any establishment that displays within one hundred (100) feet of its premises a sign or other form of advertisement capable of leading a reasonable person to believe that said establishment offers, presents, permits or engages in any activity required by this chapter to be licensed shall obtain an adult entertainment license for said activity.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-41. - Proscriptions where alcoholic beverages are sold, dispensed or permitted.

The display of less than opaquely or completely covered specified anatomical areas or the wearing by employees of any covering, tape, pasties or other device that simulates or otherwise gives the appearance of the display or exposure of any specified anatomical areas shall not be permitted on a licensed premises where alcoholic beverages are sold, dispensed, permitted or consumed (except normal restroom functions occurring in restroom facilities). It shall be unlawful for any employee to exhibit less than completely and opaquely covered specified anatomical areas or to wear any covering, tape, pasties or other device that simulates or otherwise gives the appearance of the display or exposure of any specified anatomical areas while selling or dispensing any form of food or beverage.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 17-99, § 4, 4-29-99)

Sec. 7-3-42. - Admissions of minors unlawful.

Except as provided in section 7-3-60, it shall be unlawful for a licensee to admit or to permit the admission of minors within a licensed premises. This chapter shall not apply to conduct the regulation of which has been preempted to the state under Chapter 847. Florida Statutes.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-43. - Sale to minors unlawful.

Except as provided in section 7-3-60, it shall be unlawful for any person to sell, barter or give, or to offer to sell, barter or give, to any minor, any service, material, or device on the premises of any adult bookstore, adult motion picture theater, leisure spa establishment or adult dancing establishment.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-44. - Permitting violations of ordinance or illegal acts prohibited.

It shall be unlawful for a licensee, owner or employee to permit, suffer or allow violations of this chapter or illegal acts to take place on the licensed premises, if the licensee or employee knows or has reason to know that such violations or illegal acts are taking place.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 17-99, § 5, 4-29-99)

Sec. 7-3-45. - Permits for employees in licensed premises.

(1) *Adult entertainment permit required.* Unless specifically excluded below, it shall be unlawful for any person to obtain employment as an employee in an establishment licensed under this chapter, for any form of consideration, unless and until such person shall have first obtained an adult entertainment permit or temporary permit from the ~~Pensacola Police Chief~~ mayor. All references to the ~~police chief~~ mayor in this chapter shall also refer to his designee. This section shall not apply to employees engaged exclusively in performing janitorial, maintenance or other services, not including bartending, table service or entertaining.

(2) *Qualifications.* Employees of a licensee on a licensed premises shall not be less than eighteen (18) years of age.

(3) *Application for an issuance of adult entertainment permit.*

(a) Permission is hereby granted for an employee working at an establishment legally in operation under this chapter on the date of adoption of this chapter to continue working until an application for a permit under this chapter is filed with the ~~police chief~~ mayor, not later than forty-five (45) days for adult bookstores, leisure spa establishments, adult motion picture theaters, and seventy-five (75) days for adult dancing establishments, from the date of adoption of this chapter, and for a period, after filing of an application, not to exceed twenty-one (21) days.

(b) All present and prospective employees employed on the premises of an adult entertainment establishment shall file an application for an adult entertainment permit with the ~~police chief~~ mayor.

(c) All applications shall be accompanied by a nonrefundable payment of a thirty dollar ($30.00) fee.

(d) At the time an applicant applies for a permit and completes all requirements for the issuance of a permit, he shall be issued a temporary permit valid for twenty-one (21) days. No later than twenty-

one (21) days from the filing of an application, the ~~police chief~~ mayor shall issue a permit.

(e) It shall be the duty of the ~~police chief~~ mayor to issue the applicant a written permit which shall be signed by the ~~police chief~~ mayor, and shall bear the name, all aliases, age, signature and photograph of the applicant. The ~~police chief~~ mayor shall procure the fingerprints and a photograph of the applicant, the applicant's address, sex, and the name(s) of all entertainment establishments where the applicant is to work or perform and shall keep the same on file. The fingerprints, names of establishment(s) and photograph of the applicant shall be furnished by the applicant at the time of the filing of his application. Upon delivery of the permit to the applicant, the applicant may begin working on the licensed premises as a permanent employee.

There shall be submitted with each application for a permit, proof of the applicant's age. Such proof may be provided by production of the applicant's driver's license, passport, or a certified copy of his birth certificate.

(f) No permit shall be issued when its issuance would violate a statute, ordinance, law or when an order from a court of law prohibits the applicant from obtaining an adult entertainment permit in the city.

(4) *Revocation.* Should a permit be issued as a result of false information, misrepresentation of fact or mistake of fact, it shall be revoked.

(5) *Expiration and renewal.* A permit under this chapter shall expire one (1) year from the date of issuance. A permittee under this chapter shall be entitled to a renewal of his permit as a matter of course, except when said permit has been suspended or revoked, upon presentation of his previous permit or presentation of an affidavit as to its destruction to the police chief and payment of a thirty dollar ($30.00) fee.

(6) *Possession of permit required.* It shall be unlawful for an employee, as defined in this chapter, to work or perform in an adult entertainment establishment without being in possession of a valid adult entertainment permit.

(7) *Violations.* Any person who violates the provisions of this section, or otherwise fails to secure a permit as required by this section, shall be prosecuted and punished in accordance with section 1-1-8 of this Code.

(8) *Suspension of permit.*

(a) *Conviction for violation of article VIII.* In the event a permittee commits one (1) or more violations of article VIII of this chapter, and a conviction results from at least one (1) of the violations, the ~~police chief~~ mayor shall, upon the date of the conviction, suspend the permit, and notify the permittee of the suspension. The suspension shall remain in effect for a period of ninety (90) days.

(b) *Effective date of suspension.* The period of the suspension shall begin fifteen (15) days after the date the ~~police chief~~ mayor mails or delivers the notice of suspension to the permittee or on the date the permittee surrenders his permit to the ~~police chief~~ mayor, whichever happens first.

(9) *Appeal.* If an application for a permit is denied or if a permit is suspended or revoked, the applicant or permittee may, within fifteen (15) days after the mailing of a notice of denial or suspension or revocation, appeal to the ~~mayor~~ city council. ~~If, upon review, the mayor denies the application for a permit or upholds the suspension or revocation of a permit, the procedures for appeals specified in section 7-3-16 shall be available to the applicant or permittee, in the manner therein specified.~~ If the applicant or permittee does not appeal the denial, suspension or revocation of a permit, the applicant or permittee shall be deemed to have failed to have exhausted his administrative remedies.

(10) *Replacement of lost permits.* Replacements for lost permits shall be obtained by completing an application as required in this section. All applications for replacement permits shall be accompanied by a ten dollar ($10.00) fee.

(11) *Change of address, name or place of employment.* Whenever any person, after applying for or receiving an adult entertainment permit, shall move from the residential address named in such application, or in the permit issued to him, such person shall, within thirty (30) days, submit written notice to the ~~police chief~~ mayor of such change and shall make a payment to the city in the amount of three dollars ($3.00) for change-of-address fee. In no event shall this eliminate or modify the requirements of this section as to change of business location.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 17-99, § 6, 4-29-99; Ord. No. 31-02, §§ 1, 2, 9-26-02; Ord. No. 16-10, § 71, 9-9-10)

Secs. 7-3-46—7-3-55. - Reserved.

ARTICLE IV. - REQUIREMENTS FOR LEISURE SPA ESTABLISHMENTS

Sec. 7-3-56. - Leisure spa establishments.

(1) It shall be unlawful for any person, firm or corporation to operate, own, conduct, carry on, or permit to be operated, owned, conducted or carried on, any leisure spa establishment of any type or kind, including, but not limited to, leisure spa, leisure spa service business, or any leisure spa business or service offered in conjunction with, or as part of, any health club, health spa, resort or health resort, gymnasium, athletic club, or other business, without compliance with the provisions of this chapter.

(2) In addition to the general requirements contained in Article III, a leisure spa establishment shall observe the following special requirements:

(a) Dressing rooms shall be proportioned to the maximum number of persons or patrons who are expected to be in them at one (1) time, excluding attendants and assistants, and providing a minimum of twelve (12) square feet per person or patron. Separate dressing rooms shall be provided for men and women. Floors shall be of a smooth, impervious material with a nonslip surface and shall be covered at the wall junction for thorough cleaning. Each dressing room area shall contain floor drains. Partition walls shall be covered from the floor to thirty (30) inches above the floor with ceramic tile or other impervious material.

(b) One (1) shower shall be provided for each ten (10) men or women, based upon the maximum number of persons who are expected to be using shower facilities at one (1) time, and separate shower facilities shall be provided for men and women. Floors and partition walls shall be constructed as required in subsection (a) for dressing rooms. Each shower will be constructed of ceramic tile, other impervious material, or single molded material. Each shower shall provide hot and cold running water.

(c) One (1) locker shall be provided for each patron who is expected to be on the licensed premises at one time, which shall be of sufficient size to hold clothing and other articles of wearing apparel. Each locker shall be capable of being locked by the patron with no one else having

the key so long as the patron is using the locker, or the locker shall be under the constant attention and supervision of the attendant.

(d) Each room or enclosure where leisure spa services are performed shall be provided with lighting of a minimum of five (5) footcandles as measured four (4) feet above the floor, which lights shall remain on at all times during business hours, and one (1) light capable of providing fifty (50) footcandles of light in all corners of leisure spas, bath, shower or toilet rooms which light shall be turned on when cleaning these areas.

(e) The premises shall have adequate equipment for disinfecting and cleaning undisposable instruments and materials used in administering leisure spa services. Such materials and instruments shall be cleaned after each use. Methods of cleaning and sanitizing shall be consistent with the practices accepted by the National Sanitation Foundation, American Academy of Sanitarians or Center for Disease Control.

(f) Closed cabinets shall be provided for use of all storage equipment, supplies and clean linens. All used and soiled linens and towels shall be kept in water soluble linen bags designed to hold infectious linen and kept in covered containers or cabinets, which containers or cabinets shall be kept separate from the clean storage cabinets.

(g) Clean linen and towels shall be provided for each leisure spa patron. No common use of towels or linens shall be permitted.

(h) Oils, creams, lotions or other preparations used in administering leisure spa services shall be kept in clean containers or cabinets.

(i) Each room or enclosure where leisure spa services are performed shall contain a hand washing sink with hot and cold running water. Each technician shall wash his hands in hot running water, using soap or disinfectant before and after administering a massage to each patron.

(j) All walls, ceilings, floors, pools, lavatories, showers, bathtubs, steam rooms, and all other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments, and toilet rooms, shall be thoroughly cleaned each day the business is in operation. Bathtubs and showers shall be thoroughly cleaned after each use.

(k) In the event male and female patrons are served, separate rooms or enclosures for leisure spa services shall be provided.

(l) No person shall consume food or beverages in leisure spa work areas, nor shall there be any smoking in leisure spa work areas.

(m) Animals, except guide dogs, shall not be permitted in leisure spa establishments.

(n) The premises of leisure spa establishments shall be equipped with a service sink for custodial services, which sink shall be located in a janitorial room or custodial room separate from leisure spa service rooms. Such sink is to be properly connected to hot and cold running water and sewer system.

(o) Leisure spa services on a person by another person who displays or exhibits less than completely and opaquely covered specified anatomical areas are prohibited.

(p) No person shall perform leisure spa services on the genitals or pubic area of another person.

(q) It shall be unlawful for a leisure spa employee or owner to perform leisure spa services on a patron of the opposite sex.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 17-99, § 7, 4-29-99)

Sec. 7-3-57. - Leisure spa technician.

No leisure spa technician shall administer leisure spa services to any person:

(1) If said leisure spa technician believes, knows or should know that he is not free of any contagious or communicable disease or infection;

(2) If said person exhibits any skin fungus, skin infection, skin inflammation, or skin eruption; provided, however, that a physician duly licensed to practice in the State of Florida may certify that such person may be safely administered leisure spa services;

(3) If said person is not free of communicable diseases or infection or whom the leisure spa technician believes or has reason to believe is not free of communicable diseases or infection.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-58. - License required.

No employee of a leisure spa establishment may perform a leisure spa service upon any person unless he or she is duly permitted and is in good standing and active.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 17-99, § 8, 4-29-99)

Sec. 7-3-59. - Home massage treatment.

Massage may only be administered in a patron's home by a massage technician having a license issued in accordance with Chapter 480, Florida Statutes. Any leisure spa establishment must keep, for at least one (1) year, a record of all patrons receiving leisure spa services in a place other than a licensed leisure spa establishment, a record of the place where these leisure spa services were administered and a record of the leisure spa technician who administered these leisure spa services. No leisure spa technician shall administer any leisure spa services at a location which does not conform to or comply with the standards set forth herein.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-60. - Minors.

(1) No leisure spa establishment license holder shall allow a leisure spa patron under eighteen (18) years of age to enter said establishment nor shall a leisure spa technician perform any services upon a leisure spa patron under eighteen (18) years of age without the written consent of that leisure spa patron's parents or legal guardian, executed before a notary public of the State of Florida.

(2) Each leisure spa establishment license holder shall keep a register or list of all leisure spa patrons under eighteen (18) years of age and keep, for at least one (1) year following the date of the service, a copy of the written consent as required in subsection (1) of this section.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-61. - Hours of operation.

No leisure spa establishment shall be operated between the hours of 10:00 p.m. and 9:00 a.m. No leisure spa patron shall remain upon the premises of a leisure spa establishment during these hours.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-62. - Inspections.

Inspections by the city shall be from time to time and at least twice each year to inspect each leisure spa establishment in the city for the purposes of determining that the provisions of this chapter are being complied with.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-63. - Specified sexual activities.

It shall be unlawful for any person to perform or engage in specified sexual activities in a leisure spa establishment or on the premises thereof.

(Ord. No. 4-99, § 1, 1-14-99)

Secs. 7-3-64—7-3-70. - Reserved.

ARTICLE V. - REQUIREMENTS FOR ADULT MOTION PICTURE THEATERS

Sec. 7-3-71. - Adult motion picture theaters.

(1) It shall be unlawful for any person, firm, or corporation to operate, own, conduct, carry on, or permit to be operated, owned, conducted or carried on, any adult motion picture theater as defined by this chapter, without compliance with the provisions of this chapter.

(2) In addition to the general requirements contained in article III, an adult motion picture theater shall observe the following special requirements:

   (a) Each adult motion picture booth shall be open or have a rectangular shaped entranceway not less than thirty (30) inches wide nor less than six (6) feet high.

   (b) Each adult motion picture booth shall have sufficient individual, separated seats, not couches, benches, or the like, to accommodate

the person expected to use the booth who may occupy the area. Only one (1) person may occupy an adult motion picture booth at any time.

(c) Each adult motion picture booth or theater shall be designed so that a continuous main aisle runs alongside the seating areas in order that each person seated on the areas shall be visible from the aisle at all times. Neither adult motion picture theaters or booths shall be locked or secured to prevent entry except during hours in which the establishment is closed to business.

(d) Each adult motion picture theater or booth shall be designed such that all areas where a patron or customer is to be positioned must be visible from a continuous main aisle and must not be obscured, wholly or partially, by any curtain, door, wall, partition or other enclosure.

(e) In addition to the sanitary facilities required by section 7-3-36, there shall be provided within or adjacent to the common corridor, passageway or area in adult motion picture theaters having adult motion picture booths, adequate lavatories equipped with running water, hand-cleaning soap or detergent and sanitary towels or hand-drying devices; common towels are prohibited.

(f) An adult motion picture theater designed to permit viewing by patrons seated in automobiles or other seating provisions shall have the motion picture screen so situated, or the perimeter of the licensed premises so screened or fenced, that the projected film material may not be seen from any public right-of-way, from any property zoned for residential use, any religious institution, any day care center, or any school.

(g) Each adult motion picture theater or booth shall have at the entranceway to the applicable theater or booth a sign which lists the maximum number of persons who may occupy the applicable theater or booth, which number shall not exceed the number of seats within the theater or booth.

(h) Each motion picture booth shall have walls or partitions of solid construction without any holes or openings except for the entranceway as provided in subsection (a) above.

~~(i) The licensee of an adult motion picture theater(s) or booth(s) shall have sixty (60) days from the effective date of adoption of this chapter within which to obtain a building permit to effect any structural, interior, or fixture type change required by this chapter and six (6)~~

Commented [RS4]: Expired.

~~months from the date of adoption of this chapter within which to complete such changes.~~

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-72. - Minors.

No adult motion picture theater, as defined by this chapter, shall allow any person under eighteen (18) years of age to enter said establishment.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-73. - Inspections.

Inspections by the city shall be from time to time and at least twice each year to inspect each adult motion picture theater in the city for the purposes of determining that the provisions of this chapter are being complied with.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-74. - Specified anatomical areas.

It shall be unlawful for any person to display or exhibit less than completely and opaquely covered specified anatomical areas in adult motion picture theaters or on the premises thereof (except in connection with normal restroom activities in restroom facilities).

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-75. - Specified sexual activities.

It shall be unlawful for any person to engage in specified sexual activities in adult motion picture theaters or on the premises thereof.

(Ord. No. 4-99, § 1, 1-14-99)

Secs. 7-3-76—7-3-80. - Reserved.

ARTICLE VI. - REQUIREMENTS FOR ADULT BOOKSTORES

Sec. 7-3-81. - Adult bookstore establishments.

(1) It shall be unlawful for any person, firm or corporation to operate, own, conduct, carry on or permit to be operated, owned, conducted or carried on any adult bookstore as defined by this chapter, without compliance with the provisions of this chapter.

(2) In addition to the general requirements contained in article III, an adult bookstore shall observe the following special requirements:

(a) All materials, devices and novelties shall be so displayed that they cannot be seen by anyone other than customers who have entered the licensed premises.

(b) If recordings are offered for sale and customers may listen to them while on the licensed premises and/or if booths or rooms are made available for use by customers who desire to listen to such recordings or read materials available, then each such booth or room shall:

(i) Have an open entranceway not less than two (2) feet wide and not less than six (6) feet high, not capable of being closed or partially closed by any curtain, door, or other partition which would be capable of wholly or partially obscuring any person situated with the booth;

(ii) Have, except for the entranceway, walls or partitions, of solid construction without any holes or openings in such walls or partitions;

(iii) Have sufficient individual, separate seats, not couches, benches, or the like, to accommodate the expected number of persons who will occupy such booth or room at any time;

(iv) The number of patrons who may occupy the booth or room at one time clearly stated on or near the door to the booth or room, and only that number of persons shall be permitted inside the booth or room at one time;

(v) The door or doors opening into the booth or room incapable of being locked or otherwise fastened so that it or they will freely open the door from either side:

(vi) All areas where a patron or customer is to be positioned visible from a continuous main aisle and not obscured by any curtain, door, wall, or other enclosure.

~~(vii) The licensee of an adult entertainment bookstore shall have sixty (60) days from the effective date of this chapter within which to obtain a building permit to effect any structural, interior, or fixture-type changes required by this chapter and six (6) months from the effective date of this chapter within which to complete such changes.~~

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-82. - Minors.

No adult bookstore, as defined, by this chapter, shall allow any person under eighteen (18) years of age to enter said establishment.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-83. - Inspections.

Periodic inspections of at least twice a year shall be made by the city of each adult bookstore in the city for the purposes of determining that the provisions of this chapter are being satisfied.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-84. - Sale of nonadult material in adult bookstores.

(1) Adult bookstores as defined by this chapter, which sell, or offer for sale or rent for any form of consideration nonadult materials in addition to adult materials as defined by this chapter shall observe the following additional requirements:
   (a) Materials which are of a nonadult nature shall be segregated from adult material.
   (b) The adult materials shall be maintained in a separated area from which no patron may review such material from the area utilized for nonadult material.
   (c) No patron shall be required to enter said separated area of adult material in order to review nonadult materials, which are offered for sale or rental.

(2) The adult materials area shall have posted a well lighted sign at the entrance to such area which shall read as follows:

NOTICE

THIS AREA OFFERS MATERIALS HAVING ADULT CONTENT. SUCH MATERIAL IS FOR ADULTS ONLY. IF ADULT MATERIALS WOULD OFFEND YOU, DO NOT ENTER.

Such sign shall be clear and legible and the text thereof shall be set forth in letters of uniform size having a height of not less than one (1) inch nor more than two (2) inches.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 17-99, § 9, 4-29-99)

Sec. 7-3-85. - Providing of additional information.

The owner or operator of any commercial establishment which sells or rents books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other representations or recordings or novelties and devices may be required, if so requested by the city, to provide additional information referable to requirements under this chapter including, but not limited to, inventory listings and sales records for the purposes of determining if said commercial establishment is an adult bookstore. Failure to provide said materials upon written request of the city shall be sufficient cause for the suspension of the commercial establishment's license as required by article II. The owner or operator shall have a thirty (30) day period from the date of the written request within which to provide the requested information. He shall have two (2) additional periods of fifteen (15) days each within which to provide such information upon showing of good cause of his inability to provide it earlier, provided the reason(s) for not providing the requested information is submitted before the expiration of the existing period.

(Ord. No. 4-99, § 1, 1-14-99)

Secs. 7-3-86—7-3-90. - Reserved.

ARTICLE VII. - REQUIREMENTS FOR ADULT DANCING ESTABLISHMENTS

Sec. 7-3-91. - Adult dancing establishments.

In addition to the general requirements for adult entertainment establishments contained herein, an adult dancing establishment shall, regardless of whether it is licensed, observe the following special requirements:

(a) It shall have a stage provided for the display or exposure of any specified anatomical area by an employee or for the performance by any employee wearing any covering, tape, pasties or other device that simulates or otherwise gives the appearance of the display or exposure of any specified anatomical areas to a person other than another employee consisting of a permanent platform (or other similar permanent structure) raised a minimum of eighteen (18) inches above the surrounding floor and encompassing an area of at least one hundred (100) square feet; and

(b) It shall provide an area three (3) feet in width running along and/or around the entire edge of the stage within which patrons of the establishment shall not enter while the employee(s) is performing, entertaining, or standing on the stage; and

(c) There shall be no areas for private performances and private performances are prohibited; and

(d) Immediately inside the entrance of any adult dancing establishment there shall be posted a well-lighted sign which shall read as follows:

NOTICE

THIS ESTABLISHMENT OFFERS MATERIAL OR ENTERTAINMENT HAVING ADULT CONTENT. SUCH MATERIALS OR ENTERTAINMENT ARE FOR ADULTS ONLY. IF THIS OR NUDITY WOULD OFFEND YOU, DO NOT ENTER. STRADDLE DANCING IS NOT PERMITTED.

Such sign shall be clear and legible and the text thereof shall be set forth in letters of uniform size having a height of not less than one (1) inch nor more than two (2) inches.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 17-99, § 10, 4-29-99)

Sec. 7-3-92. - Minors.

No adult dancing establishment, as defined, by this chapter, shall allow any person under eighteen (18) years of age to enter said establishment.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-93. - Inspections.

Inspections by the city shall be made from time to time and at least twice each year to inspect each adult dancing establishment in the city to determine compliance with this chapter.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-94. - Specified sexual activities.

It shall be unlawful for any person to perform or engage in specified sexual activities in an adult dancing establishment or on the premises thereof.

(Ord. No. 17-99, § 11, 4-29-99)

Sec. 7-3-95. - Reserved.

ARTICLE VIII. - CRIMINAL PROVISIONS

Sec. 7-3-96. - Acts where alcoholic beverages are present.

(1) It shall be unlawful for any person within an establishment, regardless of whether it is licensed under this chapter, where said person knows or should have known that alcoholic beverages are on the premises, to exhibit or display less than completely and opaquely covered specified anatomical areas, as herein defined.
(2) It shall be unlawful for any person maintaining or operating an establishment, where said person knows or should have known that alcoholic beverages are on the premises, to knowingly, or with reason to know, permit, suffer or allow any person on the premises to exhibit or display less than completely and opaquely covered specified anatomical areas, as defined herein.

(3) Notwithstanding any provisions of this chapter to the contrary, it shall not be unlawful for any person or employee of any establishment to expose less than completely and opaquely covered specified anatomical areas in connection with the use of approved sanitary facilities commonly known as restrooms. However, less than completely and opaquely covered specified anatomical areas shall be exposed or displayed only in restroom facilities in connection with normal restroom functions.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-97. - Prohibited conduct within adult entertainment establishments.

(1) It shall be unlawful for any person to be an owner, operator or manager of an adult entertainment establishment where the person knows or should know:
   (a) That the establishment does not have the appropriate classification of adult entertainment license for the classification of entertainment offered within the establishment;
   (b) That the establishment has a license which is under suspension;
   (c) That the establishment has a license which has been revoked or canceled; or
   (d) That the establishment has a license which is expired.

(2) It shall be unlawful for any person to be an owner, operator or manager of:
   (a) An adult entertainment establishment which does not satisfy the requirements set forth herein.
   (b) An adult entertainment motion picture theater which does not satisfy all the special requirements set forth herein.
   (c) An adult dancing establishment which does not satisfy all of the special requirements set forth herein.
   (d) An adult entertainment bookstore which does not satisfy all the special requirements set forth herein.
   (e) An adult leisure spa establishment which does not satisfy all the special requirements set forth herein.

(3) It shall be unlawful for an owner or operator of an adult entertainment establishment, regardless of whether it is licensed under this chapter, to knowingly, or with reason to know, permit, suffer, or allow an employee:

(a) To engage in a straddle dance with a person at the establishment;

(b) To contract or otherwise agree with a person to engage in a straddle dance with a person at the establishment;

(c) To engage in any specified sexual activity at the establishment;

(d) To, where alcoholic beverages are sold, offered for sale, dispensed, or consumed, display or expose at the establishment less than completely and opaquely covered specified anatomical areas;

(e) To display or expose at the establishment less than completely and opaquely covered specified anatomical areas, unless such employee is continuously away from any person other than another employee, and unless such employee is in an area as described in section 7-3-36(f)(iii);

(f) To display or expose any specified anatomical area while simulating any specified sexual activity with any other person at the establishment, including with another employee;

(g) To engage in a private performance;

(h) To, while engaged in the display or exposure of any specified anatomical area, intentionally touch any person at the adult entertainment establishment, excluding another employee;

(i) To intentionally touch the clothed or unclothed body of any person at the adult entertainment establishment, excluding another employee, at any point below the waist and above the knee of the person, or to intentionally touch the clothed or unclothed breasts of any female person; or

(j) To work, if the employee has not applied for and obtained a temporary or permanent permit under this chapter.

(4) *Advertising prohibited activity.* It shall be unlawful for an owner or operator of an adult entertainment establishment, regardless of whether it is licensed under this chapter, to advertise the presentation of any activity prohibited by any applicable state statute or local ordinance.

(5) *Minors prohibited.* Except as provided in section 7-3-60 above, it shall be unlawful for an owner or operator of an adult entertainment

establishment, regardless of whether it is licensed under this chapter, to knowingly, or with reason to know, permit, suffer, or allow:

(a) Admittance to the establishment of a person under eighteen (18) years of age;

(b) A person under eighteen (18) years of age to remain at the establishment;

(c) A person under eighteen (18) years of age to purchase goods or services at the establishment; or

(d) A person to work at the establishment as an employee who is under eighteen (18) years of age.

(6) *Working at establishment which does not have valid adult entertainment license.* It shall be unlawful for any person to work in an adult entertainment establishment that he or she knows or should know is not licensed under this chapter, or which has a license which is under suspension, has been revoked or canceled, or has expired, regardless of whether he has applied for and obtained a temporary or permanent adult entertainment permit under this chapter.

(7) *Working without permit prohibited.*

(a) Subject to the limitations provided for herein, it shall be unlawful for any person to work in an adult entertainment establishment, regardless of whether it is licensed under this chapter, if the person has not applied for and obtained a temporary or permanent adult entertainment permit under this chapter.

(b) Subject to the limitations provided for herein, it shall be unlawful for any person working in an adult entertainment establishment, regardless of whether it is licensed under this chapter, to fail to produce a valid temporary or permanent permit within seventy-two (72) hours upon demand for inspection by any law enforcement officer. For the purposes of this provision, such a temporary or permanent permit is only valid if the person has applied for and obtained such permit prior to the demand.

(8) *Engaging in prohibited activity.* It shall be unlawful for any employee of any adult entertainment establishment, regardless of whether it is licensed under this chapter:

(a) To engage in a straddle dance with a person at the establishment;

(b) To contract or otherwise agree with a person to engage in a straddle dance with a person at the establishment;

(c) To engage in any specified sexual activity at the establishment;

(d) To, where the employee knows or should know that alcoholic beverages are sold, offered for sale, or consumed, display or expose at the establishment less than completely and opaquely covered specified anatomical areas or human male genitals in a discernibly turgid state, even if completely and opaquely covered;

(e) To display or expose at the establishment less than completely and opaquely covered specified anatomical areas, or human male genitals in a discernibly turgid state, even if completely and opaquely covered, unless such employee is continuously positioned away from any person other than another employee, and unless such employee is in an area as described in section 7-3-36(f)(iii);

(f) To engage in the display or exposure of any less than completely and opaquely covered specified anatomical areas while simulating any specified sexual activity with any other person at the establishment, including with another employee;

(g) To engage in a private performance;

(h) To, while engaging in the display or exposure of any specified anatomical area, intentionally touch any person at the adult entertainment establishment, excluding another employee; or

(i) To touch the clothed or unclothed body of any person at the adult entertainment establishment, excluding another employee, at any point below the waist and above the knee of the person; or

(j) To touch the clothed or unclothed breast of any female person.

(9) *Touching of employee by person.*

(a) It shall be unlawful for any person in an adult entertainment establishment, other than another employee, to intentionally touch an employee who is displaying or exposing any specified anatomical area at the adult entertainment establishment.

(b) It shall be unlawful for any person in an adult entertainment establishment, other than another employee, to touch the clothed or unclothed body of any employee at any point below the waist and above the knee of the employee.

(c) It shall be unlawful for any person in an adult entertainment establishment to intentionally touch the clothed or unclothed breast of any employee.

(10) *Exceeding occupancy limit of adult booth.* It shall be unlawful for any person to occupy an adult booth in which booth is already occupied by one person in violation of section 7-3-71 or for a greater number of persons to occupy an adult booth than are allowed in violation of section 7-3-81.

(11) *Use of restroom or dressing rooms.* Notwithstanding any provision indicating to the contrary, it shall not be unlawful for any employee of an adult entertainment establishment, regardless of whether it is licensed under this chapter, to expose any less than completely and opaquely covered specified anatomical area during the employee's bona fide use of a restroom, or during the employee's bona fide use of a dressing room which is accessible only to employees.

(12) *Hours of operation.*

(a) It shall be unlawful for any operator of an adult entertainment establishment, other than a leisure spa establishment, to allow such establishment to remain open for business, or to permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 3:00 a.m. and 11:00 a.m. of any particular day.

(b) It shall be unlawful for any employee of an adult entertainment establishment, other than a leisure spa establishment, to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 3:00 a.m. and 11:00 a.m. of any particular day.

(13) *Alteration of license or permit.*

(a) It shall be unlawful for any person to alter or otherwise change the contents of an adult entertainment license without the written permission of the city.

(b) It shall be unlawful for any person to alter or otherwise change the contents of an adult entertainment permit without the written permission of the city.

(14) *Violation subject to criminal prosecution.* Whoever violates any section of article VIII of this chapter may be prosecuted and punished as provided in section 1-1-8 of this Code.

(Ord. No. 4-99, § 1, 1-14-99)

Sec. 7-3-98. - Presumptions.

The following shall be presumed in actions brought for violations of this chapter:

(1) Any establishment which has received an occupational license to operate commercially is presumed to be an adult entertainment establishment.

(2) Any person who operates or maintains an adult entertainment establishment shall be presumed to be aware of the activities which are conducted in said establishment upon a showing that said person negligently or willfully fails or refuses to monitor conduct at the establishment.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 17-99, § 12, 4-29-99)

Sec. 7-3-99. - Prospective application of certain sections.

Sections 7-3-41; 7-3-91(a) and (b); 7-3-96; 7-3-97(2); 7-3-97(3)(d) and (e); 7-3-97(8)(d) and (e); and 7-3-97(9)(a) and (b) of this chapter shall be applied only prospectively, that is only to establishments that were not in existence or operating, or not engaged in any of the proscribed activities on the date of adoption of this chapter.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 17-99, § 13, 4-29-99)

Sec. 7-3-100. - Nonconforming establishments.

Any adult entertainment establishments existing and operating as of the effective date of this chapter which do not conform to the requirements of the definition of an adult entertainment establishment shall be classified as nonconforming. If any such nonconforming adult entertainment establishment voluntarily ceases to do business for a period of fifteen (15) consecutive days then it shall be deemed abandoned and thereafter shall not reopen except in conformance with these distance and dispersal

standards. However, no adult entertainment establishment shall expand the square footage or cubic footage of the establishment beyond its current dimensions. Non conforming establishments are still subject to licensure under this chapter and to conform to all other requirements that are not solely prospective in nature pursuant to section 7-3-99.

(Ord. No. 17-99, § 14, 4-29-99)

Sec. 7-3-101. - Obscenity not permitted.

Nothing in this chapter shall be construed to allow or permit conduct prohibited by Chapter 847, Florida Statutes (Obscenity) and its amendments or successor statutes. These matters are preempted to the state and are subject to state regulation. It is not the intent of the city council to legislate with respect to preempted matters. Nothing in this chapter nor the grant of any license or permit pursuant to the provision of this chapter shall be construed to mean that any operations or activities tolerated by the provisions of this chapter are in conformity with local community standards.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 17-99, § 14, 4-29-99)

Sec. 7-3-102. - Penalties.

(1) The city may bring suit to restrain, enjoin or otherwise prevent the violation of this chapter.

(2) Any violation of any provision of this chapter shall be punishable as provided in section 1-1-8 of this Code. Furthermore, any person who violates any provision of this chapter shall be subject to suspension or revocation of his license or permit as provided in this chapter.

(Ord. No. 4-99, § 1, 1-14-99; Ord. No. 17-99, § 14, 4-29-99)

Secs. 7-3-103—7-3-110. - Reserved.

ARTICLE IX. - DISTANCE AND LOCATION PROVISIONS

Commented [RS5]: These sections will be moved to Ch. 12-2 of the Land Development Code.

Sec. 7-3-111. - Distance requirements.

Notwithstanding any other provision of this Code, no person shall cause or permit the establishment or operation of any adult entertainment establishment, as herein defined, within:

(a) One thousand (1,000) feet from any other adult entertainment establishment; or

(b) Five hundred (500) feet from any religious institution, school, or day care center; or

(c) Five hundred (500) feet from any parcel of property zoned R-1AAAAA, R-1AAAA, R-1AAA, R-1AA, R-1A, R-ZL, R-2A, or PR-1AAA.

(Ord. No. 16-99, § 1, 4-29-99)

Sec. 7-3-112. - Measurement of distance requirements.

The city ~~engineer~~ shall determine said distances by measuring a radius from the property line of the adult entertainment establishment. If any portion of a parcel of property is within said distance, whether or not the property is located within the corporate limits of the city, then the entire parcel shall be deemed to be within said distance.

(Ord. No. 16-99, § 1, 4-29-99)

Sec. 7-3-113. - Nonconforming establishments—Distance requirements.

Any adult entertainment establishments existing and operating as of the effective date of this section, which do not conform to the distance requirements set forth herein, shall be deemed to be nonconforming, and the distance requirements set forth herein shall not apply to those establishments. If any such nonconforming adult entertainment establishment voluntarily ceases to do business for a period of fifteen (15) consecutive days, then it shall be deemed abandoned and thereafter shall not reopen except in conformance with all requirements of the City Code of the City of Pensacola. Further, no such nonconforming adult entertainment establishment may be extended to occupy any greater area of land or extended to occupy any land outside any buildings on the same parcel.

(Ord. No. 16-99, § 1, 4-29-99)

Sec. 7-3-114. - Location requirements.

An adult entertainment establishment located within the city limits shall be allowed only in the following land use districts or defined areas:

(a) C-3 (Commercial Zoning District)

(b) M-1 (Light Industrial Zoning District)

(c) M-2 (Heavy Industrial Zoning District)

(d) Dense Business Area, but excluding that area bounded on the west by Baylen Street, on the north by Garden Street, on the east by Jefferson Street, and on the south by Pensacola Bay.

(Ord. No. 16-99, § 1, 4-29-99; Ord. No. 3-01, § 1, 1-11-01)

Sec. 7-3-115. ~~- Amortization period for n~~ Nonconforming uses ~~— Location requirements.~~ RESERVED

~~Any adult entertainment establishment in existence as of the effective date of this section which does not conform to the locational requirements of section 7-3-114 shall be deemed to be nonconforming and shall have a period of one (1) year from the effective date of this section to cease to operate as such. If, during the amortization period, any such nonconforming adult entertainment establishment voluntarily ceases to do business for a period of fifteen (15) consecutive days, then it shall be deemed abandoned and thereafter shall not reopen except in conformance with all requirements of the City Code of the City of Pensacola. Further, n~~ No such nonconforming ~~adult entertainment establishment may be extended to occupy any greater area of land or extended to occupy any land outside any buildings on the same parcel.~~

Commented [RS6]: Expired.

(Ord. No. 16-99, § 1, 4-29-99)

CHAPTER 7-4. ALCOHOLIC BEVERAGES[4]

Footnotes:

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Editor's note—Ord. No. 18-86, § 1, enacted June 26, 1986, amended Ch. 7-4 in its entirety to read as herein set forth. Prior to such amendment, Ch. 7-4, §§ 7-4-1—7-4-9, pertained to similar subject matter and was derived from Code 1968, §§ 60-1—60-11, 60-13.

Cross reference— Zoning districts, Ch. 12-2.

State Law reference— State beverage law, F.S. Ch. 561 et seq.

Sec. 7-4-1. - Definitions.

The following terms, when used in this chapter, shall have the meanings ascribed herein unless the context clearly indicates otherwise:

Bottle club shall have the meaning set forth in F.S. § 561.01.

Consideration means:

(1) The payment of, or obligation to pay, any cover charge, entrance fee, dues, or commission for the right or privilege to enter or remain upon the premises; or

(2) The payment, or obligation to pay for ice, nonalcoholic mixes or other nonalcoholic liquids used in connection with alcoholic beverage drinks; or

(3) The payment of or obligation to pay for use of glassware or other containers for the consumption of alcoholic beverage drinks; or

(4) The payment of or obligation to pay for food; or

(5) The payment of or obligation to pay for entertainment of any kind, whether live, recorded, taped, or on film; or

(6) The payment, or obligation to pay, for any combination of the foregoing.

Dense business area means all of that portion of the corporate limits of the city as defined in Chapter 12-14 of this Code.

Private club means any place or establishment licensed or required to be licensed pursuant to F.S. § 565.02(4).

School means an institution primarily for academic instruction, public, parochial or private (whether for-profit or nonprofit) and having a curriculum the same as ordinarily given in a public school, but not including colleges, universities or other institutions of post-secondary education.

(Ord. No. 18-86, § 1, 6-26-86; Ord. No. 35-86, § 1, 8-28-86; Ord. No. 10-89, § 1, 2-23-89; Ord. No. 56-90, § 1, 11-1-90; Ord. No. 10-95, § 1, 2-23-95; Ord. No. 15-96, § 1, 3-28-96; Ord. No. 6-99, § 1, 1-28-99; Ord. No. 15-99, § 1, 4-15-99; Ord. No. 20-09, § 1, 6-25-09)

Sec. 7-4-2. - Hours of operation.

(a) Alcoholic beverages may be sold only on Monday through Sunday, between the hours of 7:00 a.m. and 3:00 a.m. of the following day.

(b) No saloon, barroom, cocktail lounge, club or other place where alcoholic beverages are ordinarily sold, shall remain open during such prohibited hours of sale; provided, however the provisions of this section shall not be construed as prohibiting grocery stores, restaurants or eating places, which ordinarily sell such beverages, from remaining open during the prohibited hours, so long as such beverages are not sold or permitted to be consumed upon the premises of such places during such hours.

(c) Bottle clubs may be permitted to operate on Monday through Sunday only between the hours of 10:00 p.m. and 5:00 a.m. of the following day. Subsections (a) and (b) of this section shall not be applicable to bottle clubs.

(Ord. No. 18-86, § 1, 6-26-86; Ord. No. 35-86, § 2, 8-28-86; Ord. No. 39-89, § 1, 8-10-89; Ord. No. 15-96, § 1, 3-28-96; Ord. No. 22-12, § 1, 9-27-12)

State Law reference— Municipalities may establish hours of sale for alcoholic beverages, F.S. §§ 562.14(1), 562.45(2).

Sec. 7-4-3. - Certificates of compliance.

(a) It shall be unlawful to sell, or offer to keep for sale, alcoholic beverages containing more than one percent of alcohol by weight in any place or establishment, including a private club or bottle club, for which a certificate of compliance with the provisions of this chapter has not been issued. It shall also be unlawful for a bottle club to operate at any location for which a certificate of compliance has not been issued. It shall also be unlawful for a private club to serve or receive or keep for consumption on the premises, whether by members, nonresident guests or other persons, alcoholic beverages containing more than one percent of alcohol by weight at any location for which a certificate of compliance has not been issued. Provided, however, no certificate of compliance shall be required

for any place or establishment lawfully operating on June 26, 1986. Any place or establishment lawfully operating on June 26, 1986, which would not be permitted under the terms of this chapter by reason of restrictions stated herein, shall be declared a nonconforming use and may be continued subject to the following provisions:

(1) *Extension of nonconforming use.* No such nonconforming use may be extended to occupy any greater area of land or extended to occupy any land outside any buildings on the same parcel.

(2) *Abandonment of nonconforming use.* If such nonconforming use is abandoned for a period of more than one hundred eighty (180) days, any future use of such land and structure shall be in conformity with the provisions of this title.

(3) *Change in nonconforming use.* There may be a change in tenant, ownership or management of a nonconforming use provided there is no change in the nature or character of such nonconforming use.

Provided further, however, no certificate of compliance shall be required for any place or establishment to sell or offer or keep for sale in sealed containers for consumption off of-the-premises beer, as defined by F.S. § 563.01, or wine, as defined by F.S. § 564.01(1).

(b) Each petition for a certificate of compliance shall be considered by the mayor and, if the mayor finds that the petition is in compliance with the provisions of this chapter, then the mayor shall issue a certificate of compliance with the provisions of this chapter, subject to appeal to the city council.

(c) Notice of each decision of the mayor to grant or deny a certificate of compliance with this chapter shall be filed immediately in the office of the city clerk where it shall be available for public inspection. The city clerk shall send notice of any decision to deny a certificate of compliance to the petitioner, which notice shall inform the petitioner of the right of any person aggrieved by the decision of the mayor to appeal to the city council within ten (10) calendar days after the date of such notice.

(d) Any person aggrieved by a decision of the mayor pursuant to this chapter may appeal to the city council by filing in the office of the city clerk a written notice of appeal within ten (10) calendar days after the date of the mayor's granting of a certificate of compliance or within ten (10) calendar days after the date of the city clerk's notice to the petitioner of the mayor's decision to deny a certificate of compliance. The notice of appeal shall

set forth a short and plain statement alleging the reasons why the decision of the mayor was not in compliance with the provisions of this chapter.

(e) The city council shall consider any appeal pursuant to this chapter at a city council meeting within a reasonable time following the date of filing of a notice of appeal. At the meeting, the appellant, the petitioner (if not the appellant) and the mayor may present evidence concerning whether the decision of the mayor was in compliance with the provisions of this chapter. The burden of proof shall be upon the appellant. The city council shall consider the evidence presented concerning the criteria set forth in this chapter and render its decision which shall be final.

(f) The mayor shall issue to the petitioner a certificate of compliance with the provisions of this chapter if an appeal has been timely filed, and the city council has approved the granting of a certificate of compliance.

(Ord. No. 18-86, § 1, 6-26-86; Ord. No. 35-86, § 3, 8-28-86; Ord. No. 45-87, § 1, 10-22-87; Ord. No. 50-91, §1, 9-26-91; Ord. No. 15-96, § 1, 3-28-96; Ord. No. 16-10, § 72, 9-9-10)

Sec. 7-4-4. - Establishments prohibited in proximity of residential district.

(a) A certificate of compliance shall not be issued for any place or establishment, including a private club or a bottle club, within five hundred (500) feet of any vacant or residentially developed parcel of property zoned R-1AAAAA, R-1AAAA, R-1AAA, R-1AA, R-1A, R-ZL, R-2A, or PR-1AAA. This restriction shall not apply in the Historic District, the Waterfront Redevelopment District, the South Palafox Business District or the dense business area.

(b) The city ~~engineer~~ shall determine said distance by measuring a radius from the property line of the place or establishment. If any portion of a parcel of property is within said distance, whether or not the property is located within the corporate limits of the city, then the entire parcel shall be deemed to be within said distance.

(c) The provisions of subsection (a) hereof shall not be applicable to any large multi-use retail store with a floor area of two hundred thousand (200,000) square feet or greater which has obtained a license pursuant to F.S. 565.02(1)(a), or to any motel, hotel or restaurant which has

obtained a special alcoholic beverage license pursuant to F.S. § 561.20(2)(a).

(Ord. No. 18-86, § 1, 6-26-86; Ord. No. 35-86, § 4, 8-28-86; Ord. No. 43-86, § 2, 10-23-86; Ord. No. 10-89, § 2, 2-23-89; Ord. No. 15-96, § 1, 3-28-96; Ord. No. 6-99, § 2, 1-28-99; Ord. No. 21-02, § 1, 9-12-02; Ord. No. 12-12, § 1, 5-24-12)

State Law reference— Authority to regulate location of business, F.S. § 562.45(2).

Sec. 7-4-5. - Restriction on distance from schools and churches.

(a) A certificate of compliance shall not be issued for any place or establishment within the city limits, but outside the dense business area, which lies within five hundred (500) feet of any church or school, nor for any place or establishment within the dense business area which lies within three hundred (300) feet of any church or school, unless, in the case of a church, the governing body of such church consents in writing to the issuance of a certificate of compliance.

(b) The city ~~engineer~~ shall determine distances by measuring a radius from the property line of the place or establishment. If any portion of a parcel of land in use as church or school facilities lies within said radius, whether or not the property is located within the corporate limits of the city, then the church or school shall be deemed to be within said distance.

(Ord. No. 18-86, § 1, 6-26-86; Ord. No. 10-89, § 3, 2-23-89; Ord. No. 26-92, § 1, 8-13-92; Ord. No. 15-96, § 1, 3-28-96; Ord. No. 6-99, § 3, 1-28-99)

Sec. 7-4-6. - Restriction of number of certain alcoholic beverage establishments.

(a) There shall be no more than one place or establishment where beer, as defined by F.S. § 563.01, or wine, as defined by F.S. § 564.01(1), or liquor, as defined by F.S. § 565.01, are sold, offered or kept for sale, or received, kept or brought for consumption on or off the premises, opening or having entrance upon any one side or sidewalk of any block within the city, except as provided in subsection (b) hereof. Provided that, if any such place or establishment occupies a corner location in any particular block of the city, then such place or establishment shall not be considered to be within the provisions of subsection (a) hereof.

(b) The provisions of subsection (a) hereof shall not be applicable to any motel, hotel or restaurant which has obtained a special alcoholic beverage license pursuant to F.S. § 561.20(2)(a).

(Ord. No. 18-86, § 1, 6-26-86; Ord. No. 35-86, § 5, 8-28-86; Ord. No. 50-91, § 2, 9-26-91; Ord. No. 15-96, § 1, 3-28-96)

Sec. 7-4-7. - Additional criteria for certificate of compliance.

(a) A certificate of compliance shall not be issued for any place or establishment in any area in which the comprehensive plan or zoning ordinances of the city do not permit the sale of alcoholic beverages or where the place or establishment is not in compliance with the building, plumbing, electrical and gas codes of the city.

(b) Additionally, prior to granting a certificate of compliance, the mayor shall first determine that the place or establishment complies with the other requirements of this chapter and that the granting of a certificate shall not interfere with safe traffic circulation.

(Ord. No. 18-86, § 1, 6-26-86; Ord. No. 15-96, § 1, 3-28-96; Ord. No. 16-10, § 73, 9-9-10)

Sec. 7-4-8. - Conditional certificate of compliance for places or establishments not constructed or completed.

Conditional certificates of compliance may be issued for places or establishments which have not been constructed for which certificates of occupancy have not been issued by the inspection department of the city. No conditional certificate shall be issued unless the construction plans show that the place or establishment when occupied will be in compliance with the requirements of this chapter. Prior to issuing a certificate of occupancy for a place or establishment for which a conditional certificate has been issued, ~~the inspection department shall inform~~ the mayor shall determine whether the place or establishment complies with the zoning~~, electrical, plumbing and gas~~ and building codes of the city and whether the main public entrance of the place or establishment has changed from that set forth in the construction plans so as to render the place or establishment in violation of the restrictions set forth in this chapter. If the place or establishment does not comply or if the main public entrance thereto has changed in the manner described above, the conditional permit shall be revoked by the mayor

(notice of which shall be furnished to the petitioner) subject to the right of the petitioner to recommence the petition process. If the place or establishment does comply and the main public entrance thereto has not changed in the manner described above, the mayor shall issue a certificate of compliance in accordance with subsection 7-4-3(b), the issuance of which shall be subject to review by the manner prescribed in section 7-4-3.

(Ord. No. 18-86, § 1, 6-26-86; Ord. No. 15-96, § 1, 3-28-96; Ord. No. 16-10, § 74, 9-9-10)

Sec. 7-4-9. - Sunday deliveries.

It shall be unlawful for any wholesaler or distributor of alcoholic beverages to make any deliveries of alcoholic beverages to any retail establishment or other place retailing such beverages, by motor truck or other vehicle before 1:00 p.m. on Sundays, within the corporate limits of the city.

(Ord. No. 18-86, § 1, 6-26-86; Ord. No. 15-96, § 1, 3-28-96)

Sec. 7-4-10. - Certain exemptions for distributors.

It is the intent of this chapter that the provisions of sections 7-4-4 and 7-4-5 do not apply to distributors of alcoholic beverages, as the same are defined by the Beverage Law of the State of Florida.

(Ord. No. 18-86, § 1, 6-26-86; Ord. No. 15-96, § 1, 3-28-96)

Sec. 7-4-11. - Additional exemption for certain licensed restaurants.

Notwithstanding any provisions of this chapter to the contrary, a restaurant licensed by the Division of Hotels and Restaurants of the State of Florida Department of Business Regulation may sell beer and wine for consumption on the premises only during the hours of sale permitted by section 7-4-2. Additionally, any restaurant meeting the requirements stated above, and obtaining a license pursuant to F.S. § 561.20(2)(a)4, shall be permitted to sell beer, wine, and liquor for consumption on the premises only during the hours of sale permitted by section 7-4-2.

(Ord. No. 18-86, § 1, 6-26-86; Ord. No. 15-96, § 1, 3-28-96; Ord. No. 6-99, § 4, 1-28-99)

Sec. 7-4-12. - Additional exemption for certain vendors and nonprofit civic organizations.

Vendors licensed pursuant to F.S. § 563.02(1), and nonprofit civic organizations permitted pursuant to F.S. § 561.422, shall be exempt from the provisions of this chapter to the extent required by said law.

(Ord. No. 18-86, § 1, 6-26-86; Ord. No. 35-86, § 6, 8-28-86; Ord. No. 15-96, § 1, 3-28-96)

Sec. 7-4-13. - Consumption in public places.

(1) Except as provided below, it shall be unlawful for any person to consume, possess, or control any type of alcoholic beverages or any other intoxicating liquors other than a beverage in an unopen container at or upon any park, playground or other recreational facility owned by the city, or in or upon any street right-of-way within the city, including, but not limited to, sidewalks, alleyways, and paved or unpaved portions of the right-of-way.

(2) This prohibition shall not apply to those activities, either public or private, for which prior approval by the mayor or designee has been granted or obtained pursuant to the provisions of the special events permitting, §§ 11-4-171 through 11-4-180 of the City Code.

(3) Public or private activities where alcoholic beverages or other intoxicating liquors may be consumed will be allowed under a special event permit in the following parks and recreational facilities:

   (a) Bayview Park (excluding Bayview ~~Community~~ Resource Center) and Bayview Senior Citizens Center.

   (b) Plaza de Luna.

   (c) Seville Square.

   (d) William Bartram Memorial Park.

   (e) East Pensacola Heights Clubhouse.

   (f) ~~The building facility at Sanders Beach~~ Sanders Beach Corrine Jones Resource Center (limited to the inside and the veranda).

Sale of alcoholic beverages by any activity sponsor, vendor, or other person at such a public or private activity shall be prohibited except for those events specifically permitting such sales under the activity's special event permit.

(4) Alcoholic beverages sales and consumption will be allowed on the Osceola Municipal Golf Course, in the Saenger Theatre, on the premises of the Roger Scott Tennis Center exclusive of the parking lot area outside of the perimeter fencing, and the Bayview Senior Citizens Center (limited to the inside and outdoor patio areas on the south side of the building), all subject to the terms and conditions of their respective vendor management agreements and city ordinance.

(5) At the time of application for a special event permit, the applicant as provided in section 11-4-177 shall furnish to the mayor or designee for the activity a copy of its proof of liquor liability insurance and other required insurance coverages naming the city as an additional insured to protect the city from any potential liabilities or losses related to the proposed activity.

(6) The applicant also shall arrange with the city ~~police department~~ to provide security services for the activity at the time of application for a special event permit. The cost of such security services shall be paid for by the applicant. The city ~~police department~~ shall detail the number of ~~such~~ officers as deemed appropriate to maintain public safety at the function but in no case less than the following for any proposed activity:

   (a) Outdoor events of one hundred fifty (150) people or less shall require a minimum of one (1) police officer. Outdoor events of more than one hundred fifty (150) people shall require a minimum of two (2) officers.

   (b) Indoor events of any size shall require a minimum of two (2) officers with one (1) stationed inside the facility and one (1) in the parking lot.

(7) This prohibition against open containers shall not apply to events taking place within the Specialty Center District as defined in section 11-4-171 where the event organizer has obtained a special events permit that invokes the Specialty Center District.

(Ord. No. 35-86, § 7, 8-28-86; Ord. No. 15-96, § 1, 3-28-96; Ord. No. 22-97, § 1, 6-26-97; Ord. No. 17-07, § 1, 4-26-07; Ord. No. 16-10, § 75, 9-9-10; Ord. No. 19-10, §§ 1, 2, 9-9-10; Ord. No. 04-13, § 1, 2-14-13)

Sec. 7-4-14. - Enforcement.

(1) In addition to the penalties for violations of this Code provided for in section 1-1-8 of this Code, this chapter also may be enforced by the city in an action to enjoin any violation of this chapter or to close any place or establishment where such violation occurs.

(2) For violations of section 7-4-13, in lieu of making an arrest or issuing a notice to appear pursuant to section 1-1-8, a law enforcement officer may issue a civil citation as described below:

(a) A law enforcement officer may issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a violation of section 7-4-13.

(b) A citation issued by a law enforcement officer shall be in a form prescribed by the mayor and shall contain:

(1) The date and time of issuance.

(2) The name and address of the person to whom the citation is issued.

(3) The date and time the violation of section 7-4-13 was committed.

(4) The facts constituting reasonable cause.

(5) The name of the law enforcement officer.

(6) The procedure for the person to follow in order to pay the civil penalty or to contest the citation.

(7) The applicable civil penalty if the person elects to contest the citation.

(8) The applicable civil penalty if the person elects not to contest the citation.

(9) A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, such person shall be deemed to have waived the right to contest the citation and that, in such case, judgment may be entered for an amount up to the maximum civil penalty.

(c) For violations of section 7-4-13, the following civil penalty citation schedules will apply if the person cited elects not to contest a citation and the civil penalties which will apply if such person elects to contest a citation:

(1) For those persons not contesting a citation:

a. First citation, fifty dollars ($50.00).

b. Second citation, one hundred dollars ($100.00).

c. Third citation, two hundred dollars ($200.00).

d. Fourth and all additional citations, $400.00.

(2) For those persons contesting a citation, the county court may impose a fine within the court's discretion up to a maximum of five hundred dollars ($500.00).

(d) After issuing a citation to an alleged violator, a law enforcement officer shall deposit the original citation and one copy of the citation with the county court.

(Ord. No. 35-86, § 8, 8-28-86; Ord. No. 15-96, § 1, 3-28-96; Ord. No. 04-12, § 1, 3-8-12)

Sec. 7-4-15. - Sales and consumption restricted to licensed buildings.

(1) It shall be unlawful for any owner of a licensed establishment, or for any agent, servant or employee of any such owner to permit the consumption of any alcoholic beverages in or upon any parking or other area outside of the building or room mentioned in his license certificate as the address thereof, when any part of such parking or other area is adjacent to the building or premises in which the building licensed under such section is operated, and when such parking or other area is owned, rented, leased, regulated, controlled or provided, directly or indirectly, by such owner or by any agent, servant or employee of such owner.

(2) It shall be unlawful for any person to consume any alcoholic beverage in or upon any parking or other area outside of and adjacent to licensed premises when such parking or other area is owned, rented, leased, regulated, controlled or provided, directly or indirectly, by such establishment.

(3) If any licensed owner mentioned herein be a corporation, then the officers of such corporation shall be regarded as the owners thereof, for the purposes of enforcement of this section.

(4) Any person violating any of the provisions of this section shall, upon conviction, be punished as provided in section 1-1-8 of the Code of the City of Pensacola, Florida.

(5) The mayor is hereby authorized to grant exemptions from the operation of this section. Any person seeking an exemption from the operation of this section must make a request in writing to the mayor's office, and this application must describe in detail the reasons and circumstances pertaining to the intended consumption of alcoholic beverages in an outside area. Exemptions may be granted by the mayor only in situations where it would appear that the exemption, if granted, would not create a public nuisance or a public disturbance. In determining whether to grant a requested exemption, the mayor shall take into account the following factors:

(a) The degree to which the consumption of alcoholic beverages in an outside area would be exposed to public view.

(b) The level of noise likely to be created by the granting of an exemption.

(c) The extent to which litter control is exercised by the person or entity providing for the availability of alcoholic beverages.

(d) The degree to which law enforcement services have been or may be required to be provided by the City of Pensacola.

No exemption granted by the mayor shall be effective for a period of more than one (1) year from the date of issue. Such exemption may be renewed by the mayor on an annual basis upon written request, and the mayor may grant annual renewal by application of the four (4) factors set forth above.

(6) Any person aggrieved by the denial of an exemption by the mayor shall have a right to appeal the mayor's decision to the city council. Such an appeal must be filed in writing in the office of the city clerk within ten (10) calendar days after the date of the mayor's decision to deny an exemption. The notice of appeal shall set forth a short and plain statement of the reasons why the decision of the mayor was not in compliance with the provisions of this section.

(7) The city council shall consider any appeal pursuant to this section within a reasonable time following the date of filing of a notice of appeal. At the meeting, the appellant and the mayor may present evidence concerning whether the decision of the mayor was in compliance with the provisions of this section. The burden of proof shall be upon the appellant. The city council shall consider the evidence presented concerning the criteria set forth in this section and render its decision which shall be final.

(8) The mayor is authorized to revoke any exemption which may have been granted pursuant to this section in the event that it is determined by the mayor that the conduct of patrons of a licensed establishment which has been granted an exemption constitutes a public nuisance or a public disturbance. In determining whether a public nuisance or disturbance exists, the mayor may consider and investigate the level of noise created by outdoor consumption of alcoholic beverages, the degree of litter produced, and the degree to which law enforcement services have been necessitated. In the event that the mayor determines that an exemption previously granted should be revoked, the mayor shall provide written notice to the owner of the licensed establishment no less than five (5) days in advance of the effective date of the revocation, informing the owner of the licensed establishment of the intention to revoke the exemption and the reasons therefor.

(9) Any person aggrieved by the revocation of an exemption by the mayor shall have a right to appeal the mayor's decision to the city council. Such an appeal must be filed in writing in the office of the city clerk within ten (10) calendar days after the date of the mayor's decision to deny an exemption. The notice of appeal shall set forth a short and plain statement of the reasons why the decision of the mayor was not in compliance with the provisions of this section, or why the exemption should not be revoked.

(10) The city council shall consider any appeal of a revocation of exemption pursuant to this section within a reasonable time following the date of filing of a notice of appeal. At the meeting, the appellant and the mayor may present evidence concerning whether the decision of the mayor was in compliance with the provisions of this section. The burden of proof shall be upon the appellant. The city council shall consider the evidence presented concerning the criteria set forth in this section and render its decision which shall be final.

(Ord. No. 43-86, § 1, 10-23-86; Ord. No. 19-93, § 1, 6-24-93; Ord. No. 15-96, § 1, 3-28-96; Ord. No. 16-10, § 76, 9-9-10)

CHAPTER 7-5. ~~AMBULANCE FRANCHISE~~[5]

Commented [RS7]: The city no longer requires this.

Footnotes:

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Cross reference— Occupational licenses, Ch. 7-2.

Sec. 7-5-1. ~~- Required to operate ambulance service; exception.~~ RESERVED

~~It shall be unlawful for any person, firm or corporation to operate an ambulance or ambulance service within the city unless said person, firm or corporation holds a franchise from the city. This shall not, however, prohibit the picking up of patients outside the city limits and transporting them to points inside the city.~~

(Code 1968, § 95-1)

CHAPTER 7-6. ~~AUCTIONS~~[6]

Footnotes:

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Cross reference— Occupational licenses, Ch. 7-2.

ARTICLE I. - ~~IN GENERAL~~

~~Sec. 7-6-1. - Definition of "auctioneer."~~

~~For the purpose of this chapter, the word "auctioneer" is defined to be any person who sells or offers to sell any goods, wares or merchandise, livestock, vehicles of any description or any personal property of whatsoever nature or any real estate or interest therein, at any store, stand or any place within the city, by public outcry, for gain or profit, or who advertises or holds himself out as an auctioneer for public patronage or receives fees or commissions for this service.~~

~~(Code 1968, § 67-1)~~

~~Sec. 7-6-2. - Bond required for auctioneers.~~

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Commented [RS8]: Since 1986, the state regulates auctions and auctioneers through the Florida Board of Auctioneers, F.S. § 468.381/et seq.

Before any license is issued to any person for the business of engaging in auctioneering, the applicant for the license shall execute and deliver to the city a bond of a surety company authorized to do business in the state, in the sum of one thousand dollars ($1,000.00), conditioned on the faithful observance of the provisions of this chapter by the applicant, and approved by the council, the form of which shall be approved by the city attorney.

(Code 1968, § 67-2)

Sec. 7-6-3. - License fees for auctioneers.

It shall be unlawful for any person to engage in conducting any auction sale within the city until the person has paid a license fee as prescribed in the license schedule in section 7-2-9 for each location at which the auction is held.

(Code 1968, § 67-3)

Sec. 7-6-4. - License required for certain sales.

No person shall conduct a bankrupt, fire, trustee or receivership sale of goods, wares and merchandise, or conduct sales of goods, wares and merchandise represented to be bankrupt, fire, trustee or receivership stock, without first having made written application to the city treasurer for a license so to do, stating the place where the sale is to be conducted, the kind of merchandise desired to be sold and the length of time for which it is wished to obtain a license, and paying to the city treasurer a license fee as prescribed by the license schedule (section 7-2-9) for each day during the period of time for which the party wishes to obtain a license; provided no license shall be issued for a period of less than ten (10) days.

(Code 1968, § 67-7)

Sec. 7-6-5. - List of owners of merchandise required.

It shall be the duty of the person who is engaged in the business of conducting auctions to give a list of the owners of the merchandise which is to be sold at the place or location where the sale is to be conducted, at the time of securing his license or permit.

(Code 1968, § 67-4)

~~Sec. 7-6-6. - Bidding.~~

~~Each article offered for sale at auction shall be sold as offered, if a bid be made by more than one bona fide bidder, before any other article is offered for sale, and without a reasonable delay. No by-bidding by the owner or any person acting for or representing the owner shall be permitted, or shall any bid be accepted that is not a bona fide bid, and the person shall not be permitted to bid at any such auction, and there shall be no reserve price on any such article; provided, however, the seller may have a reserve price placed on any article if the fact be made known to the bidder when the article is offered for sale at auction.~~

~~(Code 1968, § 67-5)~~

~~Sec. 7-6-7. - Auctioneering in public places prohibited.~~

~~It shall be unlawful for any auctioneer or other person to offer for sale or sell at public auction or by public outcry, any goods, wares or merchandise or any livestock or any other personal property or any real estate or interest therein, upon any street or public place in the city.~~

~~(Code 1968, § 67-6)~~

~~Sec. 7-6-8. - Exclusions for certain auctions.~~

~~Nothing in this chapter shall be construed to apply to any common carrier or public warehouseman selling unclaimed or undelivered freight or goods where the same is held for freight or storage charges, or apply to any sale made under the laws of the United States, the state or the city, requiring any property to be sold at public auction; nor to judicial sales or sales by executors and administrators, nor to any sale made under the laws of the United States, the State of Florida or any ordinance of the city, requiring any property to be sold at any public or private sale.~~

~~(Code 1968, § 67-8)~~

Secs. ~~7-6-9~~ 7-6-1– 7-6-26~~—7-6-20~~. - Reserved.

ARTICLE II. - AUCTIONS OF CERTAIN VALUABLES

Sec. 7-6-21. - Conditions.

(a) *Permitted purposes, types of sale.* No auction sale of any diamonds or other precious or semiprecious stones or imitations thereof, watches, clocks, jewelry, silverware, solid or plated, goldware, solid or plated, or other precious or semiprecious metalware, solid or plated, bric-a-brac, china and glassware, or some of these articles shall be held except to liquidate the existing inventory of estates or businesses theretofore regularly existing or conducted in the city, or because of bankruptcy, fire or other casualty causing the cessation of such businesses. It shall not be permitted as established merchandising practice.

(b) *Prohibited time of year.* No sale as specified in (a) above shall be licensed or held or continued in the month of December prior to the day after Christmas.

(c) *Length of sale.* No sale shall as specified in (a) above be licensed or permitted for a period of more than thirty (30) days, Sundays and legal holidays excepted, except that if in the initial thirty-day period it proves impossible to liquidate the stock licensed to be sold, an extension of thirty (30) days may be granted upon payment of the same amount of fee as is required for the original thirty-day period.

(d) *Time between sales by one person.* No license for any sale as specified in (a) above shall be granted to any person, or to any agent or affiliate or assignee of, or to any person acting for, any such person, within a period of two (2) years next succeeding the termination of any prior auction sale conducted by the person.

(e) *Permitted hours.* No person shall offer for sale or sell at public auction any of the merchandise listed in subsection (a) above in the city, except between the hours of 8:00 a.m. and 6:00 p.m. on days other than Sundays and legal holidays.

(Code 1968, §§ 67-10, 67-15)

Sec. 7-6-22. - License required; license fees; declaration of amount of inventory.

No person shall sell or offer for sale any of the merchandise covered by this article until he has applied for and received from the proper officers of the city a license for which he shall pay a fee as prescribed by the license schedule in section 7-2-9. The applicant shall, at the time of obtaining such license, declare upon oath the amount of the inventory of stock so to be sold,

and when the same is disposed of, the sale shall cease, and no additions whatsoever shall be made to the stock of merchandise so licensed to be sold.

(Code 1968, § 67-16)

Sec. 7-6-23. - Tagging and labeling of items; required information.

No person shall offer for sale or sell at public auction any of the articles as set out in section 7-6-21 in the city unless at the time of the sale there is securely attached to each article a tag or other label upon which shall be plainly written or printed in the English language a true and correct statement of the kind and nature of the material of which the article is made or composed and the percentage or karat of purity of such material or metal. In case the articles are plated or overlaid, then the tag or label shall contain a true statement of the kind of plate and the percentage of the plating and the kind of material or metal covered. When precious or semiprecious stones are offered for sale or sold, the written statement shall set forth the true name, weight, quality and fineness of the stones, and imitations shall be described as such. When watches or clocks are sold, the true name of the manufacturer shall be stated in writing, and no part or parts of the movements or mechanism of the watches and clocks shall be substituted or contain false or misleading names or trademarks. Nor shall secondhand, old or used movements be offered for sale in new cases without a true statement to that effect.

(Code 1968, § 67-11)

Sec. 7-6-24. - False statements on tags or labels deemed prima facie evidence of fraud.

The tag or label referred to in section 7-6-23 hereof shall remain securely attached to any article of merchandise and shall be delivered to the purchaser as a true and correct description and representation of the article sold, and shall be deemed prima facie evidence of intent to defraud the purchaser thereof in case any written statement on the tag or label is not a true and correct description and representation of the articles sold.

(Code 1968, § 67-12)

~~Sec. 7-6-25. - False or misleading bids.~~

~~It shall be unlawful for any person to act or to employ another to act as a by-bidder or what is commonly known as capper or booster at any such auction sale. It shall be unlawful to make or accept any false or misleading bid or to pretend to buy or sell any such articles sold or offered for sale at any such auction.~~

~~(Code 1968, § 67-13)~~

~~Sec. 7-6-26. - Obstructing windows or glass fronts of buildings during auction prohibited.~~

~~It shall be unlawful for any person to offer for sale or sell at public auction any of the articles covered by this article at any time in a store having a show window or glass front where such show window or glass front or partly glass front has its transparency obstructed in any way or manner.~~

~~(Code 1968, § 67-14)~~

CHAPTER 7-7. GARAGE AND OTHER SALES[7]

Footnotes:

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Cross reference— Administration, Title II; occupational licenses, Ch. 7-2; traffic and vehicles, Title XI; signs, Ch. 12-4; streets, sidewalks and other public places, Ch. 11-4.

ARTICLE I. - IN GENERAL

Secs. 7-7-1—7-7-15. - Reserved.

ARTICLE II. - RESERVED[8]

Footnotes:

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Editor's note—Ord. No. 8-87, § 1, passed Feb. 26, 1987, repealed Art. II, §§ 7-7-16—7-7-22. Prior to repeal, Art. II pertained to fire sales, going-out-of-business sales and liquidation sales, and was derived from Code 1968, §§ 108-22, 108-23(A)—(G) and 108-24. Art. II has been reserved by the editors for future use.

Secs. 7-7-16—7-7-35. - Reserved.

ARTICLE III. - GARAGE SALES

Sec. 7-7-36. - Intent and purpose.

The council of the city finds and declares that:

(1) The intrusion of nonregulated garage sales is causing annoyance to citizens in residential areas of the city and congestion of the streets in the city.

(2) The provisions contained in this article are intended to prohibit the intrusion of certain businesses in any established residential areas by regulating the term and frequency of garage sales, so as not to disturb or disrupt the residential environment of the area.

(3) The provisions of this article do not seek to control sales by individuals selling a few of their household or personal items.

(4) The provisions and prohibitions hereinafter contained are enacted not to prevent but to regulate garage sales for the safety and welfare of the citizens of the city.

(Ord. No. 104-83, § 1, 9-8-83)

Sec. 7-7-37. - Definitions.

For the purposes of this article, the following terms, phrase, words and their derivations shall have the following meanings given herein. When not

inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number the plural number. The word "shall" is always mandatory and not merely directory.

Garage sale. All general sales, open to the public, conducted from or on a residential premises in any residential zone, as defined by the zoning ordinance, for the purpose of disposing of personal property including but not limited to, all sales entitled "garage," "carport," "lawn," "yard," "attic," "porch," "room," "back yard," "patio," "flea market" or "rummage" sale. This definition shall not include a situation where no more than five (5) specific items are held out for sale and all advertisement of such sale specifically names those items to be sold.

Personal property. Property which is owned, utilized, and maintained by an individual or member of his or her residence and acquired in the normal course of living in or maintaining a residence. It does not include merchandise which was purchased for resale or obtained on consignment.

(Ord. No. 104-83, § 2, 9-8-83)

Cross reference— Definitions and rules of construction generally, Ch. 1-2.

Sec. 7-7-38. - Property permitted to be sold.

It shall be unlawful for any individual to sell or offer for sale, under authority granted by this article, property, other than personal property of the individual, which was either acquired or consigned for the purpose of resale.

(Ord. No. 104-83, § 3, 9-8-83)

Secs. 7-7-39—7-7-43. - Reserved.

Editor's note— Section 1 of Ord. No. 6-90, adopted Jan. 4, 1990, repealed §§ 7-7-39—7-7-43, which sections set forth garage sale permit requirements and which were derived from Ord. No. 104-83, §§ 4, 5, 8, 10, 14, adopted Sept. 8, 1983. Sections 7-7-39—7-7-43 have been reserved for future use by the editor.

Sec. 7-7-44. - Number of sales.

No more than three (3) garage sales may be held by any residence and/or family household during any calendar year.

(Ord. No. 104-83, § 6, 9-8-83)

Sec. 7-7-45. - Hours of operation.

Garage sales shall commence no earlier than 8:00 a.m. on the day of the sale and may continue only during daylight hours. Garage sales shall be limited in time to no more than three (3) consecutive days which period of time shall include setup and takedown of items included in the sale.

(Ord. No. 104-83, § 7, 9-8-83)

Sec. 7-7-46. - Signs.

No more than two (2) signs advertising such garage sale shall be permitted. The signs shall be located only on the premises of the applicant upon which the sale is conducted or on the parkway immediately adjacent to the premises. Signs shall be no more than two (2) feet by two (2) feet in size.

(Ord. No. 104-83, § 9, 9-8-83)

Sec. 7-7-47. - Conduct of individuals; maintenance of order on premises; traffic control.

The owner or tenant of the premises on which the sale or activity is conducted shall be jointly and severally responsible for the maintenance of good order and decorum on the premises during all hours of the sale or activity. No such individual shall permit any loud or boisterous conduct on the premises nor permit vehicles to impede the passage of traffic on any roads or streets in the area of the premises. All such individuals shall obey the reasonable orders of ~~any member of the police or fire departments of~~ the city in order to maintain the public health, safety and welfare.

(Ord. No. 104-83, § 11, 9-8-83)

Sec. 7-7-48. - Parking.

All parking of vehicles shall be conducted in compliance with all applicable laws and ordinances. Further, the ~~police department~~ mayor may enforce temporary controls to alleviate any special hazards and/or congestion created by any garage sale.

(Ord. No. 104-83, § 13, 9-8-83)

Sec. 7-7-49. - Inspection; enforcement; citations; arrests.

A police officer or city inspector authorized by the mayor shall have the right of entry onto any premises actually conducting a garage sale for the purpose of enforcement or inspection. This shall not include the right to enter a structure not open to the general public. If the provisions of this article are being violated, the premises may be closed to further sale. A city inspector may issue a citation only, and a police official may issue a citation or arrest the violator.

(Ord. No. 104-83, § 12, 9-8-83)

Sec. 7-7-50. - Public parks; rights-of-way.

No garage sale whatsoever shall be conducted in a public park or on a public right-of-way of the city.

(Ord. No. 104-83, § 17, 9-8-83; Ord. No. 6-90, § 2, 1-4-90)

Sec. 7-7-51. - Exemptions.

The provisions of this article shall not apply to or affect the following:

(1) Persons selling goods pursuant to an order or process of a court of competent jurisdiction;

(2) Persons acting in accordance with their powers and duties as public officials;

(3) Any sale conducted by any merchant or mercantile or other business establishment from or at a place of business wherein the sale would be permitted by the zoning regulations of the city or under the protection of the nonconforming use section thereof or any other sale conducted by a manufacturer, dealer or vendor and which sale would be conducted from properly zoned premises and not otherwise prohibited in other ordinances;

(4) Any bona fide charitable, eleemosynary, educational, cultural or governmental institution or organization when the proceeds from the sale are used directly for the institution or organization's charitable

purposes and the goods or articles are not sold on a consignment basis.

(Ord. No. 104-83, § 15, 9-8-83)

Sec. 7-7-52. - Violation; penalty.

(a) Every article sold and every day a sale is conducted in violation of this article shall constitute a separate offense.

(b) Any person who shall violate any of the terms and regulations of this article, shall, upon conviction, be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00).

(Ord. No. 104-83, §§ 16, 18, 9-8-83)

~~CHAPTER 7-8. PAWNBROKERS, JUNK AND SECONDHAND DEALERS~~[9]

NOTE: Suggest repeal. Pawnbrokers and secondhand dealers are now comprehensively regulated by state statutes, F.S. Ch. 538 and 539, providing for state and local law enforcement.

Footnotes:

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Cross reference— Administration, Title II; occupational licenses, Ch. 7-2; advertising and signs, Ch. 12-4; streets, sidewalks and other public places, Ch. 11-4.

State Law reference— Pawnbrokers; disposition of pledged property for nonpayment of principal or interest, F.S. § 715.04; recovery of stolen property from pawnbrokers, F.S. § 715.041; records required of junk dealers, scrap metal processors, etc., holding period for precious metals, purchases from minors prohibited, F.S. § 812.051.

~~Sec. 7-8-1. - Definitions.~~

~~Words used herein shall have, for the purposes of this chapter, the following meanings:~~

Brokerage houses. Any person, corporation, or other entity whose primary business involves the brokerage of stocks, bonds, commodities or precious metals on a commission basis for the general public.

Commercial banks and *savings and loan associations.* Those financial institutions holding charters or licenses under the "Florida Bank Code," F.S. Ch. 658, or the "Savings Association Act," F.S. Ch. 655, or comparable federal law.

Junk dealer. Any person in the business of buying, selling or dealing in old junk, metal, bottles, siphons, books or other articles and having a store, stand, place of business or junkyard.

Pawnbroker. Any person whose business is to take or receive by way of pledge, pawn or exchange, any goods, wares or merchandise or article of personal property of any kind as security for money loaned thereon.

Retail jewelry business. Any person, corporation or other entity in the primary business of purchasing new items of jewelry from manufacturers or wholesalers and selling them directly to the general public on a retail basis.

Secondhand dealer. Any person, except as provided in section 7-8-6, engaged in the business of purchasing or selling goods of any kind or description, having once been used or transferred from the manufacturer to the dealer and then received into the possession of third parties, whether same consists of clothes, rags, iron or other metal, furniture, articles of household utensils, articles of personal use or wearing apparel, jewelry of any kind or description, coins, gold or silver, plumbing fixtures, secondhand building material or any other goods of the class considered personalty, whether related to any of the goods above specifically described or not.

(Code 1968, § 119-1)

Cross reference — Definitions and rules of construction generally, Ch. 1-2.

Sec. 7-8-2. - Register or books required; entries; right of inspection and examination.

All pawnbrokers, secondhand dealers and junk dealers shall keep a register or books in connection with their business wherein shall be entered an accurate description of all property pledged or sold to them, giving, where the same occurs, as in the case of watches, the name of the maker and the number of the piece, and further accurately and fully describing the property,

with the kind of material of which it is made. There shall also be entered in the books, the name, address, age and driver's license number (or other verifiable identification) of the person by whom the same is deposited or sold, and the time when the same was done. These entries shall be made as soon after any transaction as possible, in no event allowing more than one hour to elapse after the transaction before making the above-provided entry concerning the same. These books and the articles themselves so pledged or sold shall at all times be subject to inspection and examination by the police officers of the city. No articles may be resold, destroyed, mutilated or otherwise removed or modified, so as to not be subject to examination or inspection, for a period of three (3) days after the transaction.

(Code 1968, § 119-2)

Sec. 7-8-3. - Daily delivery of copy of register to police; additional information.

Every pawnbroker, secondhand clothing dealer, auctioneer or junk dealer or any person who buys secondhand jewelry or secondhand personal property of any description within the city shall deliver to the chief of police or captain of police or his representative by 10:00 a.m. each day a full and complete copy or transcript of the register in which is entered the transactions of the preceding day as required by section 7-8-2, except that such transcript of the register for recordings on Saturday shall be delivered on the following Monday by 10:00 a.m. Such pawnbrokers, secondhand and junk dealers shall furnish any other information concerning same as shall be required by the chief of police, upon blanks to be provided for that purpose by the city.

(Code 1968, § 119-3)

Sec. 7-8-4. - Exemption of certain articles from registration.

The provisions of sections 7-8-2 and 7-8-3, with respect to junk dealers, shall be construed to require records to be kept or reports to be made of common junk material not included among the following articles: Machinery or parts of appliances thereof; materials, articles or fixtures of any railroad or machine shops or of any factory, mill, telegraph or gas or waterworks company or plant; or pertaining to any vessel or vehicle or any fire hose, or any plumbing fixtures or appliances, or any iron, brass, lead, lead pipe, locks

~~and materials and fixtures and similar articles pertaining to a house or building of any kind.~~

~~(Code 1968, § 119-4)~~

~~Sec. 7-8-5. - Purchasing or receiving materials from minors.~~

~~It shall be unlawful for any pawnbroker, junk dealer or secondhand dealer to buy, take or receive by way of pledge, pawn or exchange, any goods, wares or merchandise or article of personal property of any kind from any person under the age of eighteen (18) years.~~

~~(Code 1968, § 119-5)~~

~~Sec. 7-8-6. - Exemptions.~~

~~The provisions of this chapter shall not apply to the following:~~

~~(1) Persons engaged primarily in the retail jewelry business;~~

~~(2) Brokerage houses;~~

~~(3) Commercial banks and savings and loan associations.~~

~~(Code 1968, § 119-6)~~

CHAPTER 7-9. PEDDLERS AND SOLICITORS[10]

Footnotes:

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Cross reference— Administration, Title II; occupational licenses, Ch. 7-2; traffic and vehicles, Title XI; zoning, Ch. 12-2; streets, sidewalks and other public places, Ch. 11-4.

State Law reference— Solicitations of funds, F.S. Ch. 496; peddlers at camp meetings, F.S. § 871.03.

ARTICLE I. - IN GENERAL

Secs. 7-9-1—7-9-15. - Reserved.

ARTICLE II. - HOUSE-TO-HOUSE SOLICITING AND CANVASSING[11]

Footnotes:

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Editor's note—Section 2 of Ord. No. 14-90, adopted Feb. 22, 1990, repealed §§ 7-9-16—7-9-22 of Art. II, and §§ 3—10 added §§ 7-9-16—7-9-23 in lieu thereof, as herein set forth. Said repealed sections pertained to similar subject matter and were derived from Code 1968, §§ 142-1—142-7.

Sec. 7-9-16. - Definitions.

(a) *Solicitor* shall mean any person, including an employee or agent of another, traveling either by foot, automobile, truck, or some other type of conveyance, who engages in the practice of going door-to-door, house-to-house, along any streets within the City of Pensacola, Florida:

(1) Selling or taking orders for or offering to sell or take orders for goods, merchandise, wares, or other items of value for future delivery, or services to be performed in the future, for commercial purposes; or

(2) Requesting contribution of funds, property, or anything of value, or the pledge of any type of future donation or selling or offering for sale any type of property, including, but not limited to, goods, tickets, books, and pamphlets for commercial purposes.

(b) *Solicitation* shall mean the practices of solicitors as listed in (a)(1) and (2) of this section.

(c) *Canvassing* shall mean the activity of any person including an employee or agent of another, traveling either by foot, automobile, truck, or some other type of conveyance, who engages in the practice of going door-to-door, house-to-house, along any streets within the City of Pensacola, Florida, for the purpose of distributing handbills, leaflets, or fliers, directly to the occupants of such house or dwelling.

(d) *Residential area* shall mean any area within the City of Pensacola, Florida, which has been zoned R-1AAAAA, R-1AAAA, R-1AAA, R-1AA, R-1A, R-ZL, R-2A, HR-1, HR-2, PR-1AAA, or PR-2.

(e) *Commercial purposes* shall mean the exchange of currency in the amount of one dollar, U.S. Currency, or more, or the exchange of anything having a value of one dollar, U.S. Currency, or more.

(Ord. No. 14-90, § 3, 2-22-90; Ord. No. 14-03, § 1, 7-17-03)

Sec. 7-9-17. - Restricted hours.

Soliciting and canvassing in residential areas in the City of Pensacola, Florida, between the hours of 9:00 p.m. and 8:00 a.m. of the following morning are hereby prohibited. This prohibition shall be enforced in accordance with the provisions of section 1-1-8 of the Code of the City of Pensacola, Florida.

(Ord. No. 14-90, § 4, 2-22-90)

Sec. 7-9-18. - License.

It shall be unlawful for any solicitor to engage in solicitation activities in the City of Pensacola, Florida, without first obtaining a license from the city.

(Ord. No. 14-90, § 5, 2-22-90; Ord. No. 14-03, § 2, 7-17-03)

Sec. 7-9-19. - Application for license.

The application for a solicitor's license shall be in a form prescribed by the mayor and shall contain the following information:

(1) Proof of the identity and residential and business address of the applicant;

(2) A brief description of the nature, character, and quality of the goods or merchandise to be sold;

(3) If the solicitor is employed by another, the name and business address of such person, firm, association, organization, company, or corporation;

(4) A statement regarding whether the applicant has been convicted or pled nolo contendere to any crime within three (3) years preceding

the date of application, specifying the crime for which the applicant has been convicted or has pled nolo contendere.

(Ord. No. 14-90, § 6, 2-22-90; Ord. No. 14-03, § 3, 7-17-03; Ord. No. 16-10, § 77, 9-9-10)

Sec. 7-9-20. - Issuance of license and duration.

All applicants seeking a license to engage in soliciting in the City of Pensacola shall make application to the mayor or his designee, providing all information required. The mayor or his designee may issue such license, provided that all information sought has been furnished, and that the licensee has not engaged in any immoral, disorderly or other unlawful act or conduct affecting their fitness to engage in the business and providing further that the applicant has not been convicted of a crime or pled nolo contendere to a crime within three (3) years preceding the date of application. The mayor or his designee shall provide a document identifying the applicant and the fact that a license has been obtained. The license shall have a duration of no more than thirty (30) days from the date of issuance, and all persons engaged in soliciting shall carry with them the license which has been obtained while engaged in such activity. Any license issued under this section may be revoked by the mayor or his designee if the applicant who has obtained the license is found to have engaged in any immoral, disorderly, or other unlawful act or conduct affecting his fitness to engage in the business.

(Ord. No. 14-90, § 7, 2-22-90; Ord. No. 14-03, § 4, 7-17-03; Ord. No. 16-10, § 78, 9-9-10; Ord. No. 16-11, § 1, 7-21-11)

Sec. 7-9-21. - License renewal.

Licenses may be renewed, provided an application for renewal is received by the mayor or his designee no later than the expiration date of the current license. Applications received after that date shall be processed as new applications. The mayor or his designee shall review each application for renewal to determine that the applicant is in full compliance with the provisions of the Code of the City of Pensacola, Florida. If the mayor or his designee finds that the application meets such requirements, he shall issue a new license.

(Ord. No. 14-90, § 8, 2-22-90; Ord. No. 16-10, § 79, 9-9-10)

Sec. 7-9-22. - Unwanted solicitation and canvassing.

(a) Persons engaged in the activity of soliciting or canvassing are prohibited from entering upon the dwelling or disturbing the occupants of any residence in a residential area whenever a "No Peddlers," "No Soliciting," or "No Canvassing" sign has been posted by the occupant on or adjacent to the entrance to the dwelling or in prominent view of the entrance to the dwelling, regardless of the time of day, when such notice has been posted. Such signage shall conform to the provisions of section 12-4-5 of the Code of the City of Pensacola, Florida. Violation of this section shall constitute a public nuisance and shall be enforced according to the provisions of sections 8-1-3, 8-1-4, and 1-1-8 of the Code of the City of Pensacola, Florida.

(b) Persons engaged in the activity of soliciting or canvassing are prohibited from entering upon the dwelling or disturbing the occupants of any residence in a residential area where the residents have erected "No Peddlers," "No Soliciting," or "No Canvassing" signage conforming to section 12-4-5 of the Code of the City of Pensacola, Florida herein adjacent to ~~the~~ each entrance to the residential area and (1) the residential area is a subdivision containing privately owned streets and/or sidewalks not maintained by the City of Pensacola, or (2) the residential area is located in a subdivision with three (3) or fewer entrances marked by signage identifying the subdivision and the property owners have consented to the posting of such signage through an incorporated homeowners' association and such consent has been communicated to the mayor or his designee. The posting of such signage at each entrance shall be prima facie evidence of compliance with this subsection. This subsection applies regardless of the time of day, and violation of this section shall constitute a public nuisance and shall be enforced according to the provisions of sections 8-1-3, 8-1-4, and 1-1-8 of the Code of the City of Pensacola, Florida.

(Ord. No. 14-90, § 9, 2-22-90; Ord. No. 25-11, § 1, 9-22-11)

Sec. 7-9-23. - Exemptions.

Persons who are either running for elected public office or are supporting the campaigns of others who are running for elected public office shall be

exempt from the provisions of section 7-9-16 through section 7-9-22 of the Code of the City of Pensacola, Florida.

(Ord. No. 14-90, § 10, 2-22-90)

Secs. 7-9-24—7-9-35. - Reserved.

~~ARTICLE III. - TAG DAYS AND SIMILAR STREET SOLICITATIONS~~[12]

NOTE: Recommend appeal. Florida law now regulates public charitable solicitation, F.S. Ch. 496.

Footnotes:

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State Law reference— Solicitation of funds, F.S. Ch. 496.

~~Sec. 7-9-36. - Permits—Required.~~

~~It shall be unlawful for any person to hold a tag day in the city to sell tags, tickets, emblems, badges, flags, flowers or other items of a like character where the principal purpose of the sales is to secure donations for any use, or to solicit money on the streets of the city in a like manner, without first having secured a permit so to do from the mayor.~~

~~(Code 1968, § 142-8; Ord. No. 16-10, § 80, 9-9-10)~~

~~Sec. 7-9-37. - Same—Petition—Contents.~~

~~Any person desiring to use the streets of the city for the purpose of a tag day or other street solicitation of a like character shall file with the mayor a petition, which petition shall bear the names of the persons who are to have the general charge or supervision of tag day or street solicitation; the name of the person applying for a permit to hold the tag day or making the street solicitation; the purpose of which and the place where the funds derived therefrom are to be used, and the dates (not to exceed three (3) days) and times for which the permit is desired.~~

~~(Code 1968, § 142-9; Ord. No. 16-10, § 81, 9-9-10)~~

~~Sec. 7-9-38. - Same—Same—Referral to tag day endorsement board; report from board; hearing.~~

~~The mayor, upon receipt of any petition requesting a permit for the holding of a tag day or other street solicitation of a like character, shall refer the same to the tag day endorsement board for a report. The board shall be composed of one (1) member of the council, the president of the Greater Pensacola Community Chest, Inc., or his duly appointed representative, and the president of the Chamber of Commerce of Pensacola, Florida, or his duly appointed representative. The board shall report to the manager recommending the granting or refusal of the permit. After the receipt of the report of the tag day endorsement board, the manager shall fix a time for the hearing of the petition and shall give notice to the parties interested of the time and place of the hearing; and at the hearing the permit may either be granted or denied in the discretion of the mayor.~~

~~(Code 1968, § 142-10; Ord. No. 16-10, § 82, 9-9-10)~~

~~Sec. 7-9-39. - Minimum age for participating in soliciting.~~

~~It shall be unlawful for any person holding any tag day or soliciting money under the supervision of this article, to allow any person under the age of eighteen (18) years to participate in the tag day or street solicitation.~~

~~(Code 1968, § 142-11)~~

Secs. 7-9-40—7-9-50. - Reserved.

ARTICLE IV. - ITINERANT VENDORS

Sec. 7-9-51. - Definitions.

For the purposes of this article, the following terms, phrases and words and their derivations shall have the meanings given herein:

Itinerant vendor. All persons, firms and corporations, as well as their agents and employees, who engage in the temporary or transient business in this city, of selling, or offering for sale, any goods, or merchandise including photographs and portraits, or exhibiting the same for sale or

exhibiting the same for the purpose of taking orders for the sale thereof; and who, for the purpose of carrying on the business or conducting the exhibits thereof, either hire, rent, lease or occupy any room or space in any building, structure or other enclosure in the city in, through, or from which any goods, or merchandise, may be sold, offered for sale, exhibited for sale or exhibited for the purpose of taking orders for the sale thereof.

Temporary. Any business transacted, as described in the definition of "itinerant vendor," or conducted in the city for which definite arrangements have not been made for the hire, rental or lease of premises for at least one month in or upon which the business is to be operated or conducted.

Transient. Any business, as described in the definition of "itinerant vendor," of any itinerant vendor as may be operated or conducted by persons, firms or corporations or by their agents or employees who reside away from the city or who have fixed places of business in places other than the city or who have their headquarters in places other than the city or who move stocks of goods or merchandise or samples thereof into the city with the purpose of intention of removing them or the unsold portion thereof away from the city before the expiration of one month.

(Code 1968, § 142-22)

Cross reference— Definitions and rules of construction generally, Ch. 1-2.

Sec. 7-9-52. - License permit—Required; fee; application requirements, bond.

It shall hereafter be unlawful for any itinerant vendor to sell, offer for sale, exhibit for sale or exhibit for the purpose of taking orders for the sale of any goods or merchandise including photographs and portraits in the city without first obtaining a license permit as herein provided. The city ~~treasurer~~ shall issue to any itinerant vendor a license permit authorizing such itinerant vendor to sell, exhibit for sale, offer for sale or exhibit for the purpose of taking orders for the sale thereof, in the city his goods or merchandise only after the itinerant vendor shall have fully complied with all provisions of this article and made payment of the sum of fifty-two dollars and fifty cents ($52.50) for the permit license, and which sum shall be compensation to the city for the services herein required of it and to enable the city to partially defray the expenses of the enforcing of the provisions of this article; provided:

(1) The itinerant vendor shall make application to the city ~~treasurer~~ at least ten (10) days prior to the date of his contemplated sale or exhibit to be held in the city which application shall be in the form of an affidavit stating the full name and address of the itinerant vendor, the location of his or its principal office and place of business, the name and addresses of its officers if it be a corporation, and the partnership name and the names and addresses of all partners if the itinerant vendor is a firm.

(2) Before the license permit shall be issued the application therefor must be accompanied by:

   a. A statement showing the kind and character of the goods or merchandise to be sold, offered for sale, or exhibited;

   b. A certified copy of the charter if the itinerant vendor is a corporation incorporated under the laws of the state;

   c. A certified copy of its permit to do business in Florida if the itinerant vendor is a corporation incorporated under the laws of some state other than Florida;

   d. A bond in the sum of not less than two thousand dollars ($2,000.00), which shall be executed by the itinerant vendor as principal with two (2) or more good and sufficient sureties ~~satisfactory to the treasurer~~, which bond shall be payable to the mayor of the city and his successors in office for the use and benefit of any person or persons entitled thereto and conditioned that the principal and surety will pay all damages to person or persons caused by or arising from or growing out of, the wrongful, fraudulent, or illegal conduct of the itinerant vendor while conducting the sale or exhibit in the city. The bond shall remain in full force and effect for the entire duration of the license permit as provided herein and two (2) years thereafter.

(Code 1968, § 142-23; Ord. No. 55-98, § 1, 11-12-98; Ord. No. 16-10, § 83, 9-9-10)

Sec. 7-9-53. - Same—Transferability.

The license permit provided for herein shall not be transferable nor give authority to more than one person to sell or exhibit goods or merchandise as an itinerant vendor either by agent or clerk or in any way other than his own

proper person, but any person having obtained a license permit may have the assistance of one or more persons in conducting the sale or exhibit who shall have authority to aid that principal, but not to act for or without him.

(Code 1968, § 142-24)

Sec. 7-9-54. - Same—Term; display.

(a) The license permit as provided for in this article shall continue so long as the sale or exhibit is continuously held in the city but in no event shall it continue for more than forty (40) days from the date of its issuance.

(b) The license permit shall be prominently displayed in a conspicuous place on the premises where the sale or exhibit is being conducted and shall remain so displayed so long as any goods or merchandise are being so sold or exhibited.

(Code 1968, § 142-25)

Sec. 7-9-55. - Exemption.

This article is not, and shall not be held to be applicable to the:

(1) Ordinary commercial traveler who sells or exhibits for sale goods or merchandise to parties engaged in the business of buying and selling and dealing in the goods or merchandise;

(2) Sales of goods or merchandise donated by the owners thereof, the proceeds whereof to be applied to any charitable or philanthropic purpose.

(Code 1968, § 142-26)

CHAPTER 7-10. VEHICLES FOR RENT TO THE PUBLIC[13]

Footnotes:

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Editor's note—Ord. No. 44-87, §§ 1, 2, enacted Oct. 22, 1987, repealed Ch. 7-10 in its entirety and added a new Ch. 7-10 to read as herein set forth. Prior to repeal, Ch. 7-10, Arts. I, II and III, §§ 7-10-1—7-10-167, pertained to vehicles for hire in general, taxicabs, and sight-seeing buses

and was derived from Code 1968, §§ 155-110, 157-1—157-3(A)—(C), 157-4, 157-5, 157-10, 157-13—157-20(A), (B), 157-21, 157-22(A), (B), 157-23—157-25(A), (B), 157-26—157-31(A), (B), 157-32—157-40(A)—(J), 157-40.1, 157-41—157-44(A)—(C), 157-45—157-51, 157-56—157-59, 157-61, 157-63—157-68, 157-70; Ord. No. 13-81, § 1, enacted March 16, 1981; and Ord. No. 91-83, § 1, enacted July 14, 1983.

Subsequently, Ord. No. 16-03, § 1, adopted Aug. 21, 2003, repealed and replaced ch. 7-10 in its entirety to read as herein set out. Formerly, said chapter pertained to similar subject matter as enacted by Ord. No. 44-87, § 2, adopted Oct. 22, 1987, as amended. See the Code Comparative Table for a detailed analysis of inclusion.

Cross reference— Administration, Title II; occupational licenses, Ch. 7-2; wreckers and wrecker companies, Ch. 7-11; traffic and vehicles, Title XI; airports and aircraft, Ch. 10-2; signs, Ch. 12-4; streets, sidewalks and other public places, Ch. 11-4; franchise required for certain transit services, § 7-1-1.

ARTICLE I. - IN GENERAL

Sec. 7-10-1. - Findings and purpose.

(a) *Findings:*

(1) In 1983, the City of Pensacola deregulated entrance into the taxicab industry in an attempt to permit open competition to dictate and improve service levels.

(2) Since that time, the City of Pensacola has encountered increased regulatory problems and unsatisfactory service levels involving the taxicab industry, the limousine industry, and "courtesy cars" serving various hotels, motels, and resorts. These problems have generated increased demands for law enforcement intervention both at the airport and at other locations in the city.

(3) The City of Pensacola has received complaints from taxicab patrons, within the city and at Pensacola ~~Regional~~ International Airport, concerning substandard vehicles, unkempt drivers, and disruptive activities between taxicabs and limousines.

(4) The City of Pensacola has received complaints from taxicab and limousine operators concerning the disruptive manner in which business is conducted.

(5) The City of Pensacola has received complaints from taxicab operators concerning an inability to capture a large enough share of the available market to maintain equipment, insurance, and satisfactory service levels.

(6) The City of Pensacola requires a viable city wide taxicab and limousine industry because of the lack of availability of other modes of public transportation at all times and locations and because of the existence of tourism and the military as major factors in the local economy.

(b) *Purpose:* In response to the foregoing, the city council directed that the regulations governing taxicabs, limousines and "courtesy cars" be reviewed and more stringent regulations adopted in order to provide clean, safe, affordable and responsive service to all segments of the public. City management has received input from the public, other jurisdictions, and industry representatives associated with small (single vehicle) and large (in excess of ten (10) vehicles) taxicab companies, limousine companies, and businesses operating "courtesy cars." An ordinance has resulted which regulates market entry, fares, equipment condition, insurance, driver suitability, and service availability in an effort to assure that each of the various modes of transportation can find a place in the city's public transportation network; that they provide the public with safe, clean, and affordable transportation; that operators of each type of transportation earn enough to permit them to meet operational and regulatory requirements; and that each of the various modes will be able to attract a suitable market share to maintain economic viability.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-2. - Renting vehicles with drivers—Insurance required.

(a) Every person engaging in or carrying on in the city the business of renting or hiring to the general public automobiles or other motor vehicles with drivers shall file in the office of the mayor or his designee an insurance certificate with some casualty ~~or~~ insurance company authorized to do business in the state, and conditioned to indemnify passengers and the

public for damages or injuries to persons or property or for the death of any person resulting from or caused by the carelessness, negligence or default of the owner or driver of the motor vehicle described in the insurance policy, their servants, agents or employees, in connection with the ownership, maintenance or use thereof, or resulting from the defective construction or equipment of the vehicle, which policy of insurance shall be in ~~the following minimum principal sums~~ amounts as are required by Florida statutes.~~:~~

~~(1) Twenty-five thousand dollars ($25,000.00) because of bodily injury to or death of one person in an accident and subject to said units for one person in the minimum amount of fifty thousand dollars ($50,000.00) because of bodily injury or death of two (2) or more persons in any one accident, and in the minimum amount of ten thousand dollars ($10,000.00) because of injury to or destruction of property of others in any one accident, or in amounts as may be required by the State of Florida, if greater.~~

~~(b) If any policy of insurance shall expire, the person shall secure other policies of a like amount and provisions and file the same with the city clerk.~~

~~(c) Ten (10) days' advance written notice of any change in or cancellation of this policy shall be sent by registered mail to the mayor of the city.~~

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 01-04, § 1, 1-22-04; Ord. No. 16-10, § 84, 9-9-10)

Sec. 7-10-3. - Same—Numbers and identification marks required on vehicles.

(a) The mayor of the city shall issue to every person engaged in or carrying on in the city the business of renting or hiring to the general public automobiles or motor vehicles with drivers, a number and identification mark, identifying the particular vehicle covered by the policy of insurance as set out in section 7-10-1, which number and identifying mark shall not be transferable to any other vehicle, whether owned by the same operator or not, and which number and identification mark shall remain on the vehicle for the period covered by the insurance.

(b) It shall be unlawful for any person to engage in or carry on in the city the business of renting or hiring to the general public automobiles or other motor vehicles with drivers until the number and identification mark shall

first be obtained from the mayor, and no vehicle shall be used by any person in a business until the number and identification mark required of him shall be plainly and legibly placed on the particular vehicle covered by the policy of insurance as set forth in section 7-10-1.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 85, 9-9-10)

Sec. 7-10-4. - Same—Renter required to have a valid drivers license.

(a) No person shall rent a motor vehicle to any other person unless the latter person is duly licensed by the state of Florida ~~or, if a nonresident, is licensed under the laws of the state or county of his residence~~.

(b) No person shall rent a motor vehicle to another until he has inspected the driver's license of the person to whom the vehicle is to be rented, and compared and verified the signature thereon with the signature of the person written in his presence.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-5. - Same—Required records.

Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented and the name and address of the person to whom the vehicle is rented, the number of the license of the latter person, and the date and place when and where the license was issued. The record shall be open to inspection by any police officer or other authorized official of the city, and the record shall be maintained for a period of five (5) years from the date of rental.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-6. - Stopping or parking of buses and taxicabs.

The driver of a bus or taxicab shall not park upon any street in any business district at any place other than at a bus stop or taxicab stand, respectively, except that this provision shall not prevent the driver of the vehicle from temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in loading or unloading passengers.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-7. - Restricted use of bus and taxicab stands.

No person shall stop, stand or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand, when the stop or stand has been officially designated and appropriately signed, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually engaged in the expeditious loading and unloading of passengers when the stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-8. - Nonconforming activity prohibited; company permit required; penalty.

(a) No vehicle which has been rented, leased or otherwise made available for hire shall be operated in the city unless all applicable regulations set forth in this chapter of the Code of the City of Pensacola, Florida, have been complied with. Violation of this chapter shall be a misdemeanor subjecting the person operating such vehicle and the person or persons renting, leasing or otherwise making the vehicle available for hire to the penalties set forth in section 1-1-8 of the Code of the City of Pensacola, Florida.

(b) No vehicle which has been rented or otherwise made available for hire with a driver shall be operated in the city unless a vehicle permit has been granted for such vehicle by the city.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-9. - Renting vehicles without drivers.

(a) Every person engaging in or carrying on in the city the business of renting or hiring to the general public automobiles or other motor vehicles without drivers shall file in the office of the mayor an insurance certificate with some casualty or insurance company authorized to do business in the state, and conditioned to indemnify passengers and the public for damages or injuries to persons or property or for the death of any person resulting from or caused by the carelessness, negligence or default of the

owner or driver of the motor vehicle described in the insurance policy, their servants, agents or employees, in connection with the ownership, maintenance or use thereof, or resulting from the defective construction or equipment of the vehicle, which policy of insurance shall be in ~~the following principal sums~~ such amounts as required by Florida law.~~:~~

~~(1) Twenty-five thousand dollars ($25,000.00) because of bodily injury to or death of one person in an accident and subject to said units for one person in the minimum amount of fifty thousand dollars ($50,000.00) because of bodily injury or death of two (2) or more persons in any one accident, and in the minimum amount of ten thousand dollars ($10,000.00) because of injury to or destruction of property of others in any one accident, or in amounts as required by the State of Florida if greater.~~

(b) If any policy of insurance shall expire, the person shall secure other policies of a like amount and provisions and file the same with the city.

(c) Ten (10) days' advance written notice of any change in or cancellation of this policy shall be sent to the mayor of the city.

(d) The mayor of the city shall issue to every person engaged in or carrying on in the city the business of renting or hiring to the general public automobiles or motor vehicles without drivers, a number and identification mark, identifying the particular vehicle covered by the policy of insurance as set out in subsection (a), above, which number and identifying mark shall not be transferable to any other vehicle, whether owned by the same operator or not, and which number and identification mark shall remain on the vehicle for the period covered by the insurance.

(e) It shall be unlawful for any person to engage in or carry on in the city the business of renting or hiring to the general public automobiles or other motor vehicles without drivers until the number and identification mark shall first be obtained from the mayor, and no vehicle shall be used by any person in a business until the number and identification mark required of him shall be plainly and legibly placed on the particular vehicle covered by the policy of insurance as set forth in subsection (a), above.

(f) No person shall rent a motor vehicle to any other person unless the latter person is duly licensed or, if a nonresident, is licensed under the laws of the state or county of his residence.

(g) No person shall rent a motor vehicle to another until he has inspected the driver's license of the person to whom the vehicle is to be rented, and

compared and verified the signature thereon with the signature of the person written in his presence.

(h) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented and the name and address of the person to whom the vehicle is rented, the number of the license of the latter person, and the date and place when and where the license was issued. The record shall be open to inspection by any police officer or other authorized official of the city, and the record shall be maintained for a period of five (5) years from the date of rental.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 01-04, § 1, 1-22-04; Ord. No. 16-10, § 86, 9-9-10)

Secs. 7-10-10—7-10-20. - Reserved.

ARTICLE II. - TAXICABS

DIVISION 1. - GENERALLY

Sec. 7-10-21. - Definitions.

The following words and phrases when used in this article have the meaning as set out herein:

Company permit. A certificate of public convenience and necessity issued by the mayor authorizing the holder thereof to conduct taxicab services in the City of Pensacola.

~~*Chief of police.* The chief of the police department of the city or any of his designated agents.~~

Cruising. The driving of a taxicab or limousine on the streets, alleys, public places of the city or airport in search of or soliciting prospective passengers for hire.

Demand-responsive transportation service. Transportation service initiated by the rider or someone else for the rider involving transportation over a public way but not on a fixed route. Service operated on a basic fixed route but with deviations for individual pickup requests shall be considered not on a fixed route. Demand-responsive shall include immediate demand and delayed demand (subscription) service.

Holder. A person to whom a company permit has been issued.

Manifest. A daily record prepared by a taxicab driver of all trips made by the driver showing the time and the place of origin, the destination, the number of passengers, and the amount of fare of each trip.

Rate card. A card issued by the city for display in each taxicab which contains the rates of fare then in force and average fares to and from various locations within the Pensacola area.

Revocation. The discontinuance of a driver's or firm's privilege to operate within the City of Pensacola with reinstatement of operating privileges to be permitted after one (1) year's time upon written approval of the mayor.

Subscription service. Transportation requested by a passenger or passengers at a future specific time and place. The reservation will be agreed to by passengers and company in advance and will become a part of company records.

Suspension. The temporary discontinuance of up to thirty (30) days of a driver's or firm's privilege to operate means of public convenience within the City of Pensacola.

Taxi driver's license. The permission granted by the city to a person to drive a taxicab upon the streets of the city.

Taxicab vehicle permit. A permit issued for each taxicab operated under said permit.

Taxicab. A public passenger vehicle equipped with a taximeter operated under company permit and taxicab vehicle permit required by this article, which carries passengers for hire only at lawful rates of fare recorded and indicated on a taximeter, or rates of fare otherwise authorized by this article or rule.

Taximeter. A mechanical or electrical device which records and indicates a charge of fare calculated according to distance traveled, waiting time, traffic delay, initial charge, number of passengers, and other charges authorized by this article or by rule, or by combination of any of the foregoing, and which records other data.

Terminal. The fixed base of operations of the owner of the taxicab business.

Waiting time. The time when a taxicab is not in motion from the time of acceptance of a passenger or passengers to the time of discharge, but does

not include any time that the taxicab is not in motion due to any cause other than the request, act or fault of a passenger or passengers.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 87, 9-9-10; Ord. No. 27-10, § 1, 11-18-10)

Sec. 7-10-22. - Company permit; determination of need.

No taxicab vehicle permit shall be granted until the person applying for such permit has secured from the mayor that the public convenience and necessity warrants the operation of the additional taxicab or taxicabs for which taxicab vehicle permit is sought. In determining such public convenience and necessity, the ~~city manager~~ mayor shall consider the number of taxicabs then operating in the city, and whether the needs of the public require additional taxicab service, the financial responsibility of the applicant, the number of taxicabs for which permits are sought, the traffic conditions of the city, and the demand for additional taxicab service. The cost for the initial permit and renewal shall be fifty dollars ($50.00) annually, expiring on September 30. The vehicles must be currently operable, permitted, and inspected as required by this chapter.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 88, 9-9-10; Ord. No. 27-10, §§ 2, 29, 11-18-10)

Sec. 7-10-23. - Application for company permit.

An application for a permit shall be filed for mayor review at the appropriately designated office upon forms provided by the City of Pensacola, and said application shall be verified under oath and shall furnish the following information:

(1) The name and address of the applicant:

(2) A current financial statement of the applicant, including the amounts of all unpaid judgments against the applicant and the nature of the transaction or acts giving rise to said judgments;

(3) The experience of the applicant in the transportation of passengers;

(4) Any facts which the applicant believes tend to indicate that public convenience and necessity warrant the granting of a company permit;

(5) The number of vehicles to be operated or controlled by the applicant pursuant to permit and the location of proposed terminals;

(6) Proof of proper amount of insurance coverage;

(7) Such further information as the mayor of the City of Pensacola may require.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 89, 9-9-10)

Sec. 7-10-24. - Issuance of company permit.

Upon the filing of an application, if the mayor finds that further taxicab service in the City of Pensacola is warranted by the public convenience and necessity, and that the applicant is able to perform such public transportation, and to conform to the provisions of the City Code, then the mayor shall issue a company permit stating the name and address of the applicant and the date of issuance; otherwise, the application shall be denied.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 90, 9-9-10)

Sec. 7-10-25. - Appeal from denial of company permit.

In the event that the mayor denies the issuance of a company permit pursuant to his authority in section 7-10-24 of the Code of the City of Pensacola, Florida, the applicant shall have the right to appeal the mayor's decision to the city council. In order to take such an appeal, the applicant must notify the city clerk in writing of his desire to appeal the mayor's decision within ten (10) days from the date of the mayor's decision. The appeal shall be scheduled promptly for hearing at the next regularly scheduled city council meeting provided that such meeting does not occur less than four (4) working days prior to the request for appeal, in which case the appeal shall be considered at the next occurring council meeting.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 91, 9-9-10; Ord. 27-10, §§ 3, 29, 11-18-10)

Sec. 7-10-26. - Transfer of company permit.

No company permit may be sold, assigned, mortgaged, or otherwise transferred without the written consent of the mayor, and in determining

whether to grant its consent, the mayor shall consider the number of taxicabs already in operation, whether existing transportation is adequate to meet the public need, the eligibility of the applicant, and the anticipated effect of increased service on existing traffic conditions.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 92, 9-9-10; Ord. 27-10, §§ 4, 29, 11-18-10)

Sec. 7-10-27. - Suspension and revocation of company permits.

A company permit issued under the provisions of this article may be revoked or suspended by the mayor or his/her designee if the holder thereof has:

(1) Violated any of the provisions or requirements of this article;

(2) Discontinued operations for more than ten (10) days; or

(3) Violated any law or regulation reflecting unfavorably on the fitness of the holder to provide transportation to the public.

Any revocation or suspension of a company permit also revokes or suspends all taxicab driver permits and taxicab permits operating under the company permit.

Any person aggrieved by any ruling or decision of the mayor or his/her designee may appeal the decision by notifying the city clerk in writing of his/her desire to appeal the mayor's decision within ten (10) days from the date of the decision of suspension or revocation. The appeal shall be scheduled promptly for hearing at the next regularly scheduled city council meeting provided that such meeting does not occur less than four (4) working days prior to the request for appeal, in which case the appeal shall be considered at the next occurring council meeting. The decision of the city council thereon shall be final.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 93, 9-9-10; Ord. 27-10, §§ 5, 29, 11-18-10)

Sec. 7-10-28. - Persons presently permitted and engaged in taxicab business.

Persons duly permitted and operating taxicabs on the effective date of this chapter shall not be required to be equipped with an operable two-way radio or other communications equipment as specified under section 7-10-

142, and shall not be required to maintain an office as required under section 7-10-137 (so long as his company permit remains active and is not revoked). These exemptions shall remain valid and be transferable so long as the company permit remains active or is not revoked.

(Ord. No. 16-03, § 1, 8-21-03; Ord. 27-10, § 6, 11-18-10)

Sec. 7-10-29. - Vehicles—Initial inspection; fee.

Prior to the use and operation of any vehicle under the provisions of this article, said vehicle shall be thoroughly examined and inspected by the mayor and found to comply with such reasonable rules and regulations as may be prescribed by the mayor. These rules and regulations shall be promulgated to provide safe, convenient, attractive transportation and shall specify such safety equipment and regulatory devices as the mayor shall deem necessary therefore. The fee for inspection shall be ten dollars ($10.00).

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 94, 9-9-10)

Sec. 7-10-30. - Same—Issuance of taxicab vehicle permit.

When the mayor or his/her designee finds that a vehicle has met the established standards, the city shall issue a permit to that effect, which shall also state the authorized seating capacity of said vehicle.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 95, 9-9-10; Ord. 27-10, §§ 7, 29, 11-18-10)

Sec. 7-10-31. - Same—Periodic inspections; fee for reinspection.

(a) All vehicles shall be annually inspected for proper markings, display of information, and the following characteristics in accordance with standards which shall be available for inspection at the designated department:

(1) *Exterior:* Headlights, taillights, brake lights, signal lights, license plate lights, windshield wipers, horn, window raisers, doors and door locks, trunk latch, hood latch, and interior door handles, exhaust system, no loud twin pipes, hubcaps, bumpers, fenders, body and tires shall be inspected to ascertain that each is functioning safely and properly.

Each taxicab shall be maintained in a clean condition. There shall be no tears or rust holes in the vehicle body and no loose pieces such as fenders, bumpers or trim hanging from the vehicle body. There shall be no unrepaired body damage or any body condition which would create a safety problem or interfere with the operation of the vehicle. All taxicabs must install a light underneath their vehicle that emits a red glow should the taxi driver require police assistance.

(2) *Interior:* The rearview mirror, steering wheel, foot brakes, parking brakes, air conditioning and heating systems shall be inspected to ascertain that each is functioning safely and properly. The upholstery, floor mats or carpet, seats, seat belts, door panels and trunk compartment shall be inspected to determine whether they are clean, free of excessive wear, and that the trunk has sufficient space for passenger luggage. A rate card approved by the city shall be visible from the front and back seat of the vehicle. All taxi cabs shall have an operable taximeter.

(b) The permit holder of the taxicab failing to meet the above inspection requirements within thirty (30) days' notice by the city will subject his permit to revocation. Fee for reinspection of vehicle failing any periodic inspection shall be twenty dollars ($20.00).

(Ord. No. 16-03, § 1, 8-21-03; Ord. 27-10, § 8, 11-18-10)

Sec. 7-10-32. - Same—Must be kept clean and sanitary.

Every vehicle operating under this article shall be kept in a clean and sanitary condition according to rules and regulations promulgated by the mayor.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 96, 9-9-10)

Sec. 7-10-33. - Name of holder and rates.

Each taxicab shall bear on both sides of each vehicle, in printed letters not less than three (3) inches nor more than five (5) inches in height, the name of the holder as well as the drop fee, meter rate, and mileage rate, in printed letters not less than two (2) inches nor more than four (4) inches in height. All of the items mentioned in this section must be non-removable or permanently affixed to the vehicle. No taxicab company names may appear on any window of the vehicle.

(Ord. No. 16-03, § 1, 8-21-03; Ord. 27-10, § 9, 11-18-10)

Sec. 7-10-34. - Manifests.

(a) Every taxicab driver shall maintain a daily manifest upon which are recorded all trips made each day, showing time and place of origin and destination of each trip and amount of fare; and all completed manifests shall be returned to the holder by the driver at the conclusion of his tour of duty. The forms for each manifest shall be furnished to the driver by the owner and shall be of a character approved by the mayor.

(b) Every company permit holder shall retain and preserve all drivers' manifests in a safe place for at least the calendar year next preceding the current calendar year; and the manifests shall be available to the mayor, ~~chief of police, and their~~ or his designated representatives.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 97, 9-9-10)

Sec. 7-10-35. - Records to be kept; reports to be filed with the mayor.

(a) Every company permit holder shall keep accurate records of receipts from operations, operating and other expenses, capital expenditures and such other operating information as may be required by the mayor. Every holder shall maintain the records containing such information and other data required by this article at a place readily accessible for examination by the mayor.

(b) If any adjustments are contemplated concerning the rates, fares, and fees provided for in this article, then, in order to accomplish said adjustments, the information required in subsection (a) hereof for the three (3) prior years of operation shall be made available to the mayor. Other pertinent operating information shall be made available to the mayor in order to review at reasonable intervals the adequacy and necessity of service as well as other reasonable and proper purposes consistent with the public health, safety, convenience and general welfare.

(c) It shall be mandatory for all company permit holders to file with the mayor copies of all contracts, agreements, arrangements, memoranda or other writings relating to the furnishing of taxicab service to any hotel, theater, hall, public resort, railway station or other place of public gathering, whether such arrangement is made with the taxi company or any

corporation, firm or association with which the taxi company may be interested or connected. Failure to file the copies within ten (10) calendar days from the making thereof shall be sufficient cause for the revocation of a permit of any offending taxi company permit holder or the cancellation of the company permit.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 98, 9-9-10)

Editor's note— Ord. No. 16-10, § 98, adopted Sept. 9, 2010, changed the title of § 7-10-35 from "records to be kept; reports to be filed with the city manager" to "records to be kept; reports to be filed with the mayor." See also the Code Comparative Table.

Sec. 7-10-36. - Use of loading zones.

Permitted taxicabs may park in loading zones for periods up to ten (10) minutes for package deliveries. Taxicabs so parked shall display a sign at least three (3) by twelve (12) inches, noting the words "package deliveries," during the delivery.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-37. - Operators and drivers to report suspicious things to police department.

Every person holding a company permit, taxi vehicle permit, or taxicab driver's license shall report promptly to the ~~police department~~ city either in person or through a dispatcher any suspicious person, thing or act whom or which he may observe, regardless of whether or not the person, thing or act was observed inside or outside of any taxicab which the operator or driver was operating or driving.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-38. - Refusal by passenger to pay fare.

Any passenger refusing to pay the legal rate charged by any owner or operator of a taxicab permitted by the city under this article shall be liable for penalties as stated in section 1-1-8.

(Ord. No. 16-03, § 1, 8-21-03)

Secs. 7-10-39—7-10-45. - Reserved.

Editor's note— Ord. No. 16-10, § 99, adopted Sept. 9, 2010, repealed § 7-10-39, which pertained to "Review of article(s) addressing public conveyance." See also the Code Comparative Table. Subsequently, Ord. 27-10, § 10, adopted Nov. 18, 2010, repealed § 7-10-39.

DIVISION 2. - TAXICAB VEHICLE PERMIT

Sec. 7-10-46. - Required.

(a) No person shall engage in the business of operating a taxicab upon the streets of the city without having first obtained a taxicab vehicle permit for each of the taxicabs to be operated under a company permit.

(b) A taxicab having no city permit may bring passengers into the city, but may not pick up any passenger or accept any business within the city for any destination within the city, or any destination outside the corporate limits of the city.

(Ord. No. 16-03, § 1, 8-21-03; Ord. 27-10, § 11, 11-18-10)

Sec. 7-10-47. - Qualifications of applicant.

No taxicab vehicle permit shall be issued at any time to any person who:

(a) Has not attained the age of twenty-one (21) years;

(b) is not a person of good moral character; or

(c) Has been convicted of:

(1) Was convicted of or released from incarceration for a class three felony in the United States within the preceding three (3) years;

(2) A class two felony, a class one felony, a capital felony, or a life felony;

(3) More than one (1) driving under the influence charge; or

(4) A sex crime or listed on a sexual offender or sexual predator registry.

(Ord. No. 16-03, § 1, 8-21-03; Ord. 27-10, § 12, 11-18-10)

Sec. 7-10-48. - Application.

(a) *Contents, information required.* Application for a taxicab vehicle permit under this division shall be made under oath and in writing, to the city clerk, upon blanks to be provided by him, and shall, if the applicant is an individual, state the applicant's full name, whether married or single, age and residence; and horsepower, make, ownership, engine number, and license number of the automobile proposed to be used in the business and its seating capacity.

(b) *Endorsement ~~by chief of police~~*. The mayor may request ~~the chief of police to require~~ such additional information as the mayor deems necessary, and shall make such inquiry as he deems necessary in regard to the applicant, and within a reasonable length of time shall endorse thereon his approval or rejection. If the application is rejected, he shall note there on his reason therefor.

(c) *Rejection, reapplication.* If the mayor rejects an application for a taxicab vehicle permit, the applicant may reapply in writing to the mayor for reconsideration.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 100, 9-9-10; Ord. 27-10, § 13, 29, 11-18-10)

Sec. 7-10-49. - Liability insurance required.

(a) No taxicab vehicle permit shall be granted or continued in operation unless there is in full force and effect a liability insurance certificate issued by an insurance company authorized to do business in the State of Florida for each vehicle authorized in the minimum amount ~~of one hundred twenty-five thousand dollars ($125,000.00) because of bodily injury to or death of one (1) person in an accident and subject to said units for one person in the minimum amount of two-hundred fifty thousand dollars ($250,000.00) because of bodily injury or death of two (2) or more persons in any one accident, and in the minimum amount of fifty thousand dollars ($50,000.00) because of injury to or destruction of property of others in any one accident, or in amounts as required by the State of Florida, if greater~~ required by Florida law. Such insurance coverage shall be filed with the mayor.

(b) A company permit holder, including any taxi firm, partnership, association or corporation may be self-insured in accordance with the Florida

Statutes provided that the coverage on each vehicle is equal to or greater than the minimum liability requirements specified by the City of Pensacola.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 01-04, § 1, 1-22-04; Ord. No. 16-10, § 101, 9-9-10; Ord. 27-10, §§ 14, 29, 11-18-10)

Sec. 7-10-50. - Fees; expiration.

No taxicab vehicle permit shall be issued or continued in operation unless the permit holder thereof has paid an annual renewal fee of fifty dollars ($50.00) for the right to engage in the taxicab business and fifteen dollars ($15.00) for a taxicab vehicle permit each year for each vehicle. The permit shall expire annually on September 30 and the permit fee required by this section shall be in addition to any other license fees or charges established by proper authority and applicable to the holder or the vehicle or vehicles under his operation and control.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-51. - Revocation.

(a) *Grounds.* The mayor or his appointed representative may, for incompetence or the violation of any of the provisions of the laws of the United States, the state, this Code or of any ordinance of the city, or for any immoral or lewd conduct or unlawful activity on the part of the company permit holder, or the licensed driver of any taxicab, or for any other cause which he shall deem sufficient, recommend the revocation of any permit for the operation of any taxicab and cause the permit to be surrendered to the mayor.

(b) *Refusal to surrender badge or plates.* Any person who, after written notice by the mayor that the permit has been revoked, refuses to surrender the same shall be deemed to have been guilty of a violation of the provisions hereof.

(c) *Appeal.* Any person aggrieved by any ruling or decision of the mayor may appeal by petition to the city council, within ten (10) days from the date of revocation; and the decision of the city council thereon shall be final.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 102, 9-9-10)

Sec. 7-10-52. - Transferability; fee.

(a) Any taxicab vehicle permit holder, upon the approval of the mayor, may transfer the ownership of his taxicab or taxicabs to another company permit holder. Upon the furnishing of evidence that a permitted taxicab is no longer to be used as such, the mayor may authorize the transfer of the license for use on another taxicab. Upon the death of any person owning a vehicle permitted by this article, the mayor may, upon receipt of satisfactory evidence of the death and at the request of the deceased's personal representative, authorize the transfer of the taxicab vehicle permit to the person in whose name title of such taxicab shall be vested by reason of the death. In no event, however, shall any transfer be made as hereinbefore contemplated unless and until the transfer in all respects complies with the terms and provisions of this division.

(b) For every transfer of taxicab vehicle permit, the city shall collect from the applicant a fee of five dollars ($5.00) for each taxicab.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 103, 9-9-10)

Secs. 7-10-53—7-10-65. - Reserved.

Editor's note— Ord. No. 27-10, § 15, adopted Nov. 18, 2010, repealed § 7-10-54, which pertained to "substitution of vehicles." Code Comparative Table.

DIVISION 3. - TAXICAB DRIVER'S LICENSE

Sec. 7-10-66. - Required.

(a) No person shall operate a taxicab for hire upon the streets of the city, and no person who owns or controls a taxicab shall permit it to be so driven, and no taxicab permitted by the city shall be so driven at any time for hire unless the driver of the taxicab shall have first obtained and shall have then in force a taxicab driver's license issued under the provisions of this division.

(b) No owner-licensee shall permit any employee to operate a public taxicab within the city without first obtaining a license as a taxicab driver from the mayor.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 105, 9-9-10)

Sec. 7-10-67. - Qualifications of applicant.

(a) Each applicant for a taxicab driver's license must:

(1) Be of the age of twenty-one (21) years of age;

(2) Be able to read and write in the English language.

(b) No taxicab driver's license shall be issued to any person who has been convicted of:

(1) A Florida class three felony in the United States within the preceding three (3) years or released from incarceration for a class three felony in the United States within the preceding three (3) years;

(2) A class two felony, a class one felony, a capital felony, or a life felony;

(3) More than one (1) driving under the influence charge; or

(4) A sex crime or listed on a sexual offender or sexual predator registry;

(5) A misdemeanor three (3) times within a period of three (3) years previous to the date of application;

Nor shall a license be issued to any person who is not a person of good moral character.

(Ord. No. 16-03, § 1, 8-21-03; Ord. 27-10, § 16, 11-18-10)

Sec. 7-10-68. - Application.

(a) *Filing.* An application for a taxicab driver's license shall be filed with the mayor on forms provided by the city and the application shall be verified under oath.

(b) *Fee.* An initial filing fee of ten dollars ($10.00) must accompany the application.

(c) *Information required.* Each applicant for a driver's license must fill out, upon a blank form to be provided by the ~~police department~~ city, a statement giving his full name, residence, place of residence for five (5) years previous to moving to his present address, age, height, color of eyes and hair, place of birth, length of time he has resided in the city, whether citizen of the United States, place of previous employment, whether married or single, whether he has ever been convicted of a

felony or misdemeanor, whether he has ever previously been licensed as a driver or chauffeur, and if so, when and where, and whether his license has ever been revoked and for what cause. Such statement shall be signed and sworn to by the applicant and filed with the ~~police department~~ city as a permanent record.

(d) *Investigation.* The investigation of all applications for licenses under the provisions of this division shall be conducted by the ~~police department~~ city.

(e) *False information.* Any applicant who gives false information pertaining to the applicant's police records shall be deemed to have committed the crime of perjury and complaint may be made in the manner provided for punishment of such cases.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 106, 9-9-10; Ord. 27-10, § 17, 11-18-10)

Sec. 7-10-69. - Photograph and fingerprints required.

When an applicant for a taxicab driver's license applies at the ~~police department~~ city, his fingerprints and photograph will be taken.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-70. - Examination; class "E" motor vehicle permit required.

Before any application for a taxicab driver's license is finally passed upon by the ~~chief of police~~ city, the applicant may be required to pass a satisfactory examination as to his knowledge of the city and will need to show that he has a current class "E" permit issued by the state.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-71. - Application forwarded to mayor.

When the ~~police department's~~ city's investigation is completed, the application for a taxicab driver's license shall be forwarded ~~by the police department~~ to the mayor for consideration, accompanied by copies of the traffic and police records, for approval.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 107, 9-9-10)

Editor's note— Ord. No. 16-10, § 107, adopted Aug. 9, 2010, changed the title of § 7-10-71 from "application forwarded to city manager" to "application forwarded to mayor." See also the Code Comparative Table.

Sec. 7-10-72. - Consideration of application by mayor.

The mayor, upon consideration of the application for a taxicab driver's license and the reports and certificate required to be attached thereto, shall approve or reject the application. If the application is rejected, the applicant may request a personal appearance before the mayor to offer evidence why his application should be reconsidered.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 108, 9-9-10)

Editor's note— Ord. No. 16-10, § 108, adopted Aug. 9, 2010, changed the title of § 7-10-72 from "consideration of application by city manager" to "consideration of application by mayor." See also the Code Comparative Table.

Sec. 7-10-73. - Preparation.

The annual taxicab driver's license will be prepared upon verification of the application. The license will bear the applicant's photograph, name, address, physical description, age, Florida license number, and signature. The license will be laminated to prevent tampering and provided with a hanging clip.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-74. - Issuance of taxicab driver's license or a temporary license; fee.

(a) Upon fulfillment of the foregoing requirements and approval of the application for a taxicab driver's license, the mayor shall issue the taxicab driver's license to the applicant.

(b) The mayor shall issue taxicab drivers' licenses, provided the application for a taxicab driver's license is approved. The mayor shall be authorized to disapprove the application for a taxicab driver's license for the same reasons as set forth in section 7-10-51; provided, however, a temporary license may be issued pending such investigation for a term of not to exceed twenty (20) days.

(c) The mayor may issue a taxicab driver's license upon the applicant's conforming to the foregoing requirements and paying to the city the sum of six dollars ($6.00).

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 109, 9-9-10)

Sec. 7-10-75. - Expiration; relicensing.

(a) All taxicab drivers' licenses shall expire on the thirtieth day of September of each year, unless sooner revoked or terminated as herein provided.

(b) If the applicant for a taxicab driver's license has been previously licensed, he shall be relicensed if he meets the requirements set forth in this division.

(c) The mayor shall renew each taxicab driver's license upon application for renewal and upon payment of a fee of six dollars ($6.00) unless the license for the preceding year has been revoked as provided for in section 7-10-78.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 110, 9-9-10)

Sec. 7-10-76. - Display of license, license number, photograph.

Every licensed driver shall have his taxicab driver's license conspicuously displayed so that it may be easily seen both day and night by occupants of the taxicab.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-77. - Defacing, removing, etc., license or book.

Any taxicab driver licensee who defaces, removes or obliterates any official entry made upon his license or book shall, in addition to any other punishment imposed by this division, have his license revoked at the discretion of the mayor.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 111, 9-9-10)

Sec. 7-10-78. - Suspension and revocation.

The ~~chief of police~~ mayor is hereby given the authority to suspend any taxicab driver's license issued under this division for a driver's failing or refusing to comply with the provisions of this article, such suspension to last for a period of not more than thirty (30) days. The ~~chief of police~~ mayor is also given authority to ~~recommend revocation to the mayor of~~ revoke any taxicab driver's license for failure to comply with the provisions of this article. However, a license may not be revoked unless the driver has received reasonable notice and has had an opportunity to present evidence in his behalf.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 112, 9-9-10)

Sec. 7-10-79. - Authority of mayor to establish additional rules and regulations.

The mayor is hereby authorized and empowered to establish additional rules and regulations governing the issuance of taxicab driver's licenses, not inconsistent herewith as may be necessary and reasonable. The rules and regulations so established shall become effective on approval by the mayor, copies of which shall be placed on file with the city clerk.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 113, 9-9-10)

Editor's note— Ord. No. 16-10, § 113, adopted Sept. 9, 2010, changed the title of § 7-10-79 from "authority of city manager to establish additional rules and regulations" to "authority of mayor to establish additional rules and regulations." See also the Code Comparative Table.

Secs. 7-10-80—7-10-90. - Reserved.

DIVISION 4. - TAXICAB DRIVERS

Sec. 7-10-91. - Compliance with city, state, federal law required.

Every driver licensed under ~~division 3 of~~ this article shall comply with all city, state, and federal laws. Failure to do so will justify the mayor's suspending or revoking a license.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 114, 9-9-10)

Sec. 7-10-92. - Conduct generally.

It shall be the duty of every person driving or operating a taxicab to be courteous; to refrain from swearing, loud talking or boisterous conduct; to drive his motor vehicle carefully and in full compliance with all traffic laws and ordinances and regulations or orders of the ~~police department or any of its members~~ city; to promptly answer all court notices, traffic violation notices ~~or police notices~~; and to deal honestly with the public.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-93. - Solicitation—Generally.

(a) No taxicab shall stand in any metered area in any public street or place other than upon the stand assigned to it, in accordance with this article. Each taxicab, after discharging its passengers, shall return to its designated stand; provided, the taxicab may take on any passengers while returning, as aforesaid. No driver of the taxicab shall seek employment by repeatedly and persistently driving his taxicab back and forth in a short space or by otherwise interfering with the proper and orderly access to or egress from any theater, hall, hotel, public resort or railway station or other place of public gathering, or in any other manner obstructing or impeding traffic; but any taxicab may solicit employment by cruising through any public street or place without stops other than those due to obstruction of traffic, and at such speed as not to interfere with or impede traffic, and may pass and repass before any theater, hall, hotel or public place; but he shall not turn and repass until he shall have gone a distance of two (2) blocks beyond such place.

(b) No driver shall solicit passengers for a taxicab except when standing immediately adjacent to the curb side thereof. The driver of any taxicab shall remain in the driver's compartment or immediately adjacent to this vehicle at all times when the vehicle is upon the public street; except that, when necessary, a driver may be absent from his taxicab for not more than ten (10) consecutive minutes; and provided further, that nothing herein contained shall be held to prohibit any driver from alighting to the street or sidewalk for the purpose of assisting passengers into or out of such vehicle.

(c) No driver shall solicit patronage in a loud or annoying tone of voice or by sign, or in any manner annoy any person or obstruct the movement of any persons, or follow any person for the purpose of soliciting patronage.

(Ord. No. 16-03, § 1, 8-21-03; Ord. 27-10, § 18, 11-18-10)

Sec. 7-10-94. - Same—Other common carrier passengers.

No driver, owner or operator shall solicit passengers at the terminal of any common carrier, nor at any intermediate points along any established route of any other common carrier.

(Ord. No. 16-03, § 1, 8-21-03; Ord. 27-10, § 19, 11-18-10)

Sec. 7-10-95. - Same—Cruising.

No driver shall cruise in search of passengers except in such areas and at such time as shall be designated by the ~~Pensacola Police Department~~ mayor. The areas and times shall only be designated when the ~~Pensacola Police Department~~ mayor finds that taxicab cruising would not congest traffic or be dangerous to pedestrians and other vehicles.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 115, 9-9-10; Ord. 27-10, § 20, 11-18-10)

Sec. 7-10-96. - Same—Hotels; houses of ill repute; selling intoxicating liquors.

It shall be a violation of this article for any driver of a taxicab to solicit business for any hotel, or to attempt to divert patronage from one hotel to another. Neither shall the driver engage in selling intoxicating liquors or solicit business for any house of ill repute or use his vehicle for any purpose other than the transporting of passengers.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-97. - Receipt and discharge of passengers.

Drivers of taxicabs shall not receive or discharge passengers in the roadway, but shall pull up to the right-hand sidewalk as nearly as possible or; in the absence of a sidewalk, to the extreme right-hand side of the road and there receive or discharge passengers, except upon one-way streets,

where passengers may be discharged at either the right or left-hand sidewalk, or side of the roadway in the absence of a sidewalk.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-98. - Passengers to be seated before vehicle moves.

It shall be unlawful for the driver of any taxicab to put the vehicle in motion until all passengers are inside the vehicle and seated.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-99. - Additional passengers.

No taxicab driver shall permit any other person to occupy or ride in the taxicab unless the person or persons first employing the taxicab shall consent to the acceptance of additional passenger or passengers. No charge shall be made for an additional passenger other than the extra passenger charge. Once the original destination for the first passenger is reached, then the first fare must end and a new fare begins if the additional passenger is going on to a different destination. The additional passenger is responsible for the new fare for the ride past the original destination.

(Ord. No. 16-03, § 1, 8-21-03; Ord. 27-10, § 21, 11-18-10)

Sec. 7-10-100. - Restriction on number of passengers.

No taxicab driver shall permit more persons to be carried in a taxicab as passengers than the rated seating capacity of his taxicab, as stated in the license for said vehicle issued by the ~~police department~~ city.

(Ord. No. 16-03, § 1, 8-21-03; Ord. 27-10, § 22, 11-18-10)

Sec. 7-10-101. - Refusal to carry orderly passengers prohibited.

No taxicab driver shall refuse or neglect to convey any orderly person or persons, upon request, unless previously engaged or unable or forbidden by the provisions of this article to do so.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-102. - Search of taxicab after each use; disposition of property found.

(a) Every driver of a taxicab, immediately after their termination of hiring or employment, must carefully search the taxicab for any property lost or left therein; and any such property, unless sooner claimed or delivered to the owners, must be taken to the ~~police station~~ city and deposited with ~~the~~ an officer ~~in charge~~ within twenty-four (24) hours after the finding thereof, with brief particulars to enable the ~~police department~~ city to identify the owner of the property.

(b) The provisions of this section shall not apply to taxicab businesses which have a regularly established lost-and-found department, in which case the property must be kept subject to the call of the owner for at least thirty (30) days, at the end of which time it shall be disposed of in accordance with law.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-103. - Appearance and attire.

When on duty, licensed taxicab drivers shall maintain a clean, neat, well-groomed appearance. Drivers shall not wear T-shirts, tank tops, sandals, or beach shoes (flip-flops). Shorts are permitted providing those shorts are at least mid-thigh in length with a finished hem. Cut-offs are not permitted. Name tags shall be worn at all times.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-104. - Knowledge of proper operation.

Drivers operating cabs in the city must be thoroughly knowledgeable of the proper operation of taxi meters.

(Ord. No. 16-03, § 1, 8-21-03; Ord. 27-10, § 23, 11-18-10)

Sec. 7-10-105. - Adequate change.

Drivers operating taxicabs must maintain adequate change for fares. Failure to maintain adequate change will result in the fare being lowered to the amount for which the driver has adequate change.

(Ord. No. 27-10, § 24, 11-18-10)

Secs. 7-10-106—7-10-115. - Reserved.

DIVISION 5. - TAXICAB STANDS

Sec. 7-10-116. - Reserved

Sec. 7-10-117. - Open stands.

(a) *Establishment.* The mayor is hereby authorized and empowered to establish open stands in places upon the streets of the city. The mayor shall not create an open stand without taking into consideration the need for the stands by the companies and the convenience of the general public. The mayor shall prescribe the number of cabs that shall occupy the open stands, and a metal sign shall be attached to a post or stanchion at each stand stating the number of taxicabs permitted. The mayor shall not create an open stand in front of any place of business where the abutting property owners object to the same or where the stand would tend to create a traffic hazard.

(b) *Use.* Open stands shall be used by the different drivers on a first-come, first-served basis. The driver shall pull onto the open stand from the rear and shall advance forward as the cabs ahead pull off. Drivers shall stay within five (5) feet of their cars, and they shall not solicit passengers or engage in loud or boisterous talk while at an open stand. Nothing in this section shall be construed as preventing a passenger from boarding the cab of his choice that is parked at open stands.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 116, 9-9-10)

Sec. 7-10-118. - Other vehicles prohibited from using open stands.

Private or other vehicles for hire shall not at any time occupy the space upon the streets that has been established as either open stands or callbox stands.

(Ord. No. 16-03, § 1, 8-21-03)

Secs. 7-10-119—7-10-130. - Reserved.

DIVISION 6. - TAXIMETERS, RATES, SERVICE

Sec. 7-10-131. - Taximeters—Required.

All taxicabs operated under the authority of this article shall be equipped with taximeters fastened to the vehicle, placed in front of the passengers, visible to them at all times, day and night.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-132. - Same—Specifications.

(a) The face of the taximeter required by section 7-10-131 shall be illuminated.

(b) The taximeter shall be operated mechanically by a mechanism of standard design and construction, driven either from the transmission or from one of the front wheels by a flexible and permanently attached driving mechanism.

(c) The taximeter shall be sealed at all points. Connections which, if manipulated, would affect its correct reading and recording shall be sealed.

(d) Each taximeter shall have thereon a device to denote when the vehicle is employed and when it is not employed, and it shall be the duty of the driver activate the device.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-133. - Same—Inspections.

The taximeters shall be subject to inspection from time to time by the mayor. The mayor is hereby authorized, either on complaint of any person or without such complaint, to inspect any meter and, upon discovery of any inaccuracy therein, to notify the person operating said taxicab to cease operation. Thereupon, the taxicab shall be kept off the roadways until the taximeter is repaired and in the required working condition.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 117, 9-9-10)

Sec. 7-10-134. - Rates—Generally.

No owner or operator of a taxicab shall charge a greater or lesser sum for the use of a taxicab than in accordance with the following rates:

(1) *Mileage rates.* Two dollars ($2.00) for the first one-ninth (1/9) mile or fraction thereof; twenty-five cents ($0.25) for each additional one-ninth mile or fraction thereof; charge for additional passengers over the age of thirteen (13) years, fifty cents ($0.50) each;

(2) *Waiting time.* Eighteen dollars ($18.00) per hour;

(3) *Airport trips—Minimum fare.* Pickups from the airport, eleven dollars ($11.00) minimum per trip (limited to taxicab companies with valid permits to serve the airport). Fares over eleven dollars ($11.00) shall be calculated based upon the meter rate commencing at the airport pickup point.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 01-04, § 1, 1-22-04; Ord. No. 20-07, § 1, 5-10-07; Ord. 27-10, § 25, 11-18-10)

Sec. 7-10-135. - Same—Flat and minimum rates.

No flat rates may be charged for any taxicab ride that starts in the jurisdictional limits of the city except for charter hires as described in section 7-10-139.

(Ord. No. 16-03, § 1, 8-21-03; Ord. 27-10, § 26, 11-18-10)

Sec. 7-10-136. - Waiting time defined.

(a) Waiting time shall include the time during which the taxicab is not in action beginning with its arrival at the place to which it has been called, or the time consumed while standing at the direction of the passenger; but no charge shall be made for the first five (5) minutes of waiting after arrival or for the time lost by inefficiency of the taxicab or driver or consumed by premature arrival in response to a call. All rates are to be based upon the most direct practical routes.

(b) Waiting time shall be utilized in conjunction with mileage rates while the taxicab is in motion so that the taximeter will indicate the total cost of the trip as a combination of either time or mileage, whichever is greater. All rates are to be based upon the most direct personal route.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-137. - Service generally.

All persons engaged in the taxicab business in the city operating under the provisions of this article shall render an overall service to the public desiring to use taxicabs. Each taxicab must be currently operating, permitted, inspected, and insured as required by this chapter. It is also required that a company permit holder maintain an office in the Pensacola area where required records are kept. The office is to be staffed by company agents or employees between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Sufficient employees or answering devices to receive and dispatch calls must be maintained at all times. They shall answer all calls received by them for services as soon as they can do so, and if the services cannot be rendered within a reasonable time, they shall then notify the prospective passengers how long it will be before the call can be answered and give the reason therefor. Any taxicab permit holder who shall refuse to accept a call anywhere in the city at any time when the permit holder has available cabs, or who shall fail or refuse to give overall service, shall be deemed a violator of this article and the company permit or taxicab permit granted shall be revoked at the discretion of the mayor.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 118, 9-9-10)

Sec. 7-10-138. - Parties.

(a) No driver of a taxicab shall carry any other person than the passenger first employing the taxicab without the consent of the passenger, and in no event shall a driver pick up or carry any other passenger en route after a trip has started except that, where the passenger first engaging the taxicab is a party or member of a party together, other members of the party may be picked up at different locations en route on direction of the member or members of the party first engaging the cab.

(b) When a party of passengers engages a taxicab, the members of the party shall be entitled to be carried to the same destination for the meter rate above provided, including extra passenger fare where applicable. When a member or members of a party are being dropped off, but other members of the party are continuing to a different destination, then the fare shall be settled when the first member(s) is dropped off and the meter shall be reengaged for the next portion of the trip.

(Ord. No. 16-03, § 1, 8-21-03; Ord. 27-10, § 27, 11-18-10)

Sec. 7-10-139. - Charters; personal uses.

Notwithstanding any other provision of this division, the taximeter need not be in operation whenever a taxicab is being driven for the personal use of the taxicab owner and/or operator thereof, for the transportation of passengers for hire under the terms of a written agreement fixing a flat rate for a period of at least twenty (20) days. Signs indicating use of the taxicab for those purposes shall be affixed to the front window of the right side of the taxicab. Each sign shall be at least three (3) inches wide and twelve (12) inches long, with the same words and lettering at least two (2) inches high on each side of the signs. Signs used to indicate personal use of the taxicab by the taxicab owner and/or operator shall contain the words "Not in Service." Signs indicating transportation of passengers for hire pursuant to contractual agreements, as stated above, shall contain the word "Charter." At all other times the taxicab is carrying passengers for hire, the taximeter shall be in operation. Taxicabs may carry parcels or packages and perform other courier services and make charges agreed upon by persons requesting service and the taxicab company.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-140. - Other forms of demand-responsive service.

A taxicab may be operated in another form of demand-responsive service as may be prescribed from time to time by this chapter.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-141. - Limousines for hire.

Limousines for hire, as defined in section 7-10-175 herein, operating anywhere within the corporate limits of the City of Pensacola shall be required to comply with the following provisions of the Code of the City of Pensacola, Florida:

(1) Insurance requirements-specified in subsections 7-10-2(a) through (c).

(2) Record keeping requirements of section 7-10-5.

(3) Restricted use requirements of section 7-10-7.

(4) Nonconforming activity regulations of section 7-10-8.

(5) Certificate of public convenience and necessity with fee as required for taxicabs by sections 7-10-22 through 7-10-27.

(6) Vehicle inspection requirements of section 7-10-29 through 7-10-32.

(7) Subsection 7-10-34(b).

(8) Section 7-10-37.

(9) Section 7-10-38.

(10) Sections 7-10-46 through 7-10-52, in the same manner as those provisions are applicable to taxicabs.

(11) Sections 7-10-66 through 7-10-75 and sections 7-10-77 through 7-10-79, in the same manner as those provisions are applicable to taxicabs.

(12) Sections 7-10-91, 7-10-92, and 7-10-99, in the same manner as those provisions are applicable to taxicabs.

(13) Limousines shall not engage in cruising, as defined in section 7-10-175, anywhere in the corporate limits.

(14) Limousines or their operators shall not solicit customers as fares except by prior arrangement or contract.

(15) Limousines shall not charge less than fifty dollars ($50.00) per hour or any fraction thereof.

(16) At no time may a vehicle licensed as a taxicab be licensed as a limousine.

(Ord. No. 16-03, § 1, 8-21-03; Ord. 27-10, § 28, 11-18-10)

Sec. 7-10-142. - Radio equipment.

(a) All taxicabs covered by this chapter shall be equipped with an operable two-way radio and other communication equipment allowing the taxicab to receive calls from and to transmit calls to a permanent located dispatch. Such radio shall be in operation during the business hours of the holder.

(b) No company permit holder, taxicab permit holder, or driver operating under this article shall use or operate installed scanners or other portable radio devices to monitor communications of frequencies other than that assigned to the holder.

(Ord. No. 16-03, § 1, 8-21-03)

Secs. 7-10-143—7-10-155. - Reserved.

ARTICLE III. - RESERVED

Secs. 7-10-156—7-10-173. - Reserved.

ARTICLE IV. - AIRPORT SURFACE TRANSPORTATION

DIVISION 1. - GENERALLY

Sec. 7-10-174. - Generally.

All vehicles for hire soliciting or desiring to pick up persons, baggage, packages, or any item or object in general shall be required to comply with this article, shall have valid airport permits, and shall observe all rules and regulations of the City of Pensacola and the Pensacola ~~Regional A~~ airport with the exception that air cargo transportation vehicles shall not be required to comply with this article. Provided further, vehicles hired by an airline tenant for the purpose of providing ground transportation for its passengers or employees without charge to such passengers or employees, or for baggage, shall be exempt from the provisions of this article, except that such vehicles, the drivers thereof, and the certificate holders therefor shall not be exempt from the applicable provisions of this article pertaining to airport permits and the requirements for obtaining and maintaining such permits.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-175. - Definitions.

The following words and phrases when used in this article have the meaning as set out herein:

Airport. All land encompassed by the Pensacola ~~Regional A~~ airport, including, but not limited to, streets, parking areas, and approaches.

Airport permit. A permit issued by the ~~airport director~~ city authorizing vehicles to conduct business on the airport.

Courtesy vehicle. A vehicle which carries persons between the airport and off-airport businesses, such as valet parking lots, hotels, motels, rental car companies and attractions, for which carriage the passenger pays no direct charge.

Cruising. The driving of a taxicab at the airport in search of or soliciting prospective passengers for hire.

Queuing area. An Area designated by the airport director for taxicab to remain on the airport. Taxicabs will proceed to the passenger loading zone when alerted by signal in the queuing area.

Limousine. A chauffeur-driven vehicle for hire that is not configured with a taximeter which charges unmetered rates predetermined on a contractual basis, franchised by the city as a limousine, and carrying passengers by prearrangement or contract.

Operator. The owner or other person, firm or corporation operating or controlling the operations of one or more vehicles or any person who has rented such vehicle for the purpose of operation by his own agents.

Passenger loading zones. A clearly marked area designated by the ~~airport director~~ city in close proximity to the entrance of the airport terminal. There will be one area designated for the exclusive use of taxicabs so as to accommodate a minimum of four (4) taxicabs for passenger loading. In addition, there will be clearly marked and separate passenger loading zones in close proximity to the entrance to the airport terminal for an appropriate number of limousines. There will be a clearly marked passenger loading zone within reasonable walking distance from the entrance of the airport terminal for courtesy vehicles. ~~These areas are under the direct control of the "traffic officer."~~ In regulating such zones, ~~the airport director shall have~~ all authority conferred by section 10-2-4 of the Pensacola Code shall apply.

Revocation. The discontinuance of a driver's or firm's privilege to operate at the airport, with reinstatement of operating privileges to be permitted after one year's time upon written approval of the ~~airport~~ city ~~director~~.

Traffic officers. Employees or licensees of the airport who are obligated to assure the orderly, smooth, and nonpreferential loading and departure of authorized taxicabs from their designated passenger loading zone.

Suspension. The temporary discontinuance of up to thirty (30) days of a driver's or firm's privilege to operate at the airport.

Taxicab. A public passenger vehicle equipped with a taximeter operated under certificate and license required by this article, which carries passengers for hire only at lawful rates of fare recorded and indicated on a taximeter, or rates of fare otherwise authorized by this article or rule.

Shuttle vehicle. A vehicle for hire that is not configured with a taximeter which charges a posted flat rate from the airport to certain specified destinations.

(Ord. No. 16-03, § 1, 8-21-03)

DIVISION 2. - TAXICABS

Sec. 7-10-176. - General.

All taxicabs operating at the airport shall comply with all applicable laws, codes or regulations.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-177. - Permits.

Each operator desiring to conduct business at the airport shall obtain an airport transportation permit which includes a color-coded decal before engaging in picking up passengers, baggage, parcels, or any other person or thing for which the operator or driver will receive a fare or any type of compensation or accept business at the airport. Permits will not be required to discharge passengers at the airport.

(1) *Display.* Decals shall be permanently affixed to the lower right-hand corner of the front windshield and shall be clearly visible at all times. Decals shall be issued by the ~~airport director~~ city and shall expire September 30 of each year.

(2) *Permit fees.* An annual fee of two hundred forty dollars ($240.00) is hereby established for each taxicab desiring to conduct business at the airport. Fees shall be paid in advance by the operator holding the

city taxicab license for those taxicabs doing business under the operator's authority and planning to operate from the airport. Permits expire on September 30 of each year and no taxicab shall be allowed to pick up from the airport without a valid permit.

(3) *Issuance.* Upon full payment of all license fees, permit fees, airport and inspection certificate, a taxicab decal shall be used for each taxicab listed on the airport transportation permit. No permit shall be issued without the operator having a valid taxicab license from the City of Pensacola. Only those taxicabs displaying valid permit decals will be allowed to pick up passengers, baggage, parcels, or accept business at the airport.

(4) *Lost or damaged.* In case of loss of a decal or damage beyond recognition, a duplicate decal may be obtained after payment of five dollars ($5.00) by the operator and after submission of a statement setting forth the circumstances of the loss or damage to the decal.

(5) *Application form.* Each operator desiring to obtain a new airport transportation permit or renew an existing permit shall obtain a permit application form from the ~~airport director~~ mayor. Each vehicle for which an airport permit is desired must have a City of Pensacola taxi permit valid for the same year as the desired airport permit and be inspected in accordance with section 7-10-31. No application form will be processed that does not comply with the above. Full payment of the required airport permit fee must accompany the application form before a valid decal will be issued.

(6) *Transfer of permits.* An airport permit may be transferred to another vehicle upon compliance with section 7-10-31, section 7-10-48, and payment of twenty-five dollars ($25.00) transfer fee to the ~~airport director~~ mayor.

(7) *Permit renewal.* Application forms for yearly renewal of airport permits must be submitted to the ~~airport director~~ mayor at least ten (10) working days prior to expiration of the current permit. Renewal applications received after that time shall be charged a late fee of twenty dollars ($20.00).

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-178. - Taxicab inspection at airport.

The ~~airport director~~ mayor or his representative, any police officer, or airport operations officer may inspect a taxicab at any time while it is on the airport. Any taxicab found in violation of section 7-10-31 while at the airport shall be required to immediately leave the airport until the noted defects are corrected. All violations for FSS are subject to the uniform state traffic code.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-179. - Operational procedures.

(a) Passenger pickup will be on a first-come, first-out basis, from the terminal regardless of the fact that a specific taxicab has been called.

(b) All taxicabs with valid airport permits wishing to pick up passengers at the terminal must enter the taxicab queuing area. No taxicabs may pick up passengers without first entering the queuing area.

(c) A maximum of four (4) taxicabs at any one time will be allowed in the taxicab passenger loading zone. The ~~airport director~~ mayor may, by rule, change the location of the passenger loading zone and the number of taxicabs allowed to occupy the passenger loading zone. Notification by telephone to the company dispatching office, verbal communication to a taxicab driver who is operating a taxicab controlled by the operator or written notification by mail will constitute adequate notification of a rule change in this section. Copies of such rule changes shall be available ~~in the airport director's office~~ during normal business hours. Notification shall be given by the ~~airport director~~ mayor or an authorized representative. ~~who in turn must notify the mayor in writing of such rule changes within forty-eight (48) hours.~~

(d) All passenger pickups at the terminal shall be made at the taxicab passenger loading zone. It is a violation of this section to pick up or solicit passengers at any location upon airport property except as authorized by this section.

(e) Taxicabs shall not refuse a passenger fare while waiting at the passenger loading zone. Taxicabs refusing a fare shall immediately leave the passenger loading zone without picking up any other fare and either leave the airport or move to the rear of the queuing area.

(f) Taxicabs shall not be required to accept a fare that desires to have the taxicab bill placed on a charge basis, whether it is an individual, company, or other charge basis, unless the operator accepts and/or advertises

acceptance of credit cards. In the event the taxicab driver refuses such a fare, the person shall be referred ~~by the traffic officer~~ to the next taxicab in line.

(g) Reserved.

(h) Reserved.

(i) The first-in-line taxicab may refuse to carry baggage, packages, or other items requested by airport tenants. Nothing in this section shall authorize a taxicab to refuse service to any fare paying passenger.

(j) The driver of any taxicab shall remain within the vehicle or immediately adjacent to the vehicle at all times while on airport property; except that, when necessary for use of restroom facilities, a driver may be absent from his taxicab for not more than ten (10) consecutive minutes in the taxi queuing area. Taxicab drivers are prohibited from loitering or standing inside the airport terminal while their taxicab is in the queuing area or at the passenger loading zone except as allowed in this section.

(k) Taxicab drivers shall not handle passenger baggage except to load passenger baggage into the vehicle from curbside when requested by the passenger or unload the baggage to curbside when requested by the passenger.

(l) Taxicab vehicles shall not be repaired or have mechanical or auto body work performed on them while at the airport; except, when necessary to conduct emergency repairs for the purpose of removing a malfunctioning vehicle to a place where normal repairs may be accomplished.

(m) Arriving taxicabs which are bringing passengers to the airport may proceed directly to the terminal passenger drop-off zones for discharge only but must remain clear of the designated taxicab passenger loading zone.

(n) Arriving taxicabs that deliver passengers to the airport and are requested by the passenger to wait so the passenger can continue to his final destination in the same taxicab are not required to enter the queuing area, provided the taximeter continues to run and the passenger is charged for waiting time. Taxicabs waiting for passengers to continue on their original journey may not pick up passengers and may leave the airport only with their original passenger. Taxicabs that deliver passengers as allowed by this section and turn the taximeter off while at

the airport shall not be permitted to wait for the passenger and shall be required to enter the rear of the queuing area.

(o) ~~The traffic officer is responsible for maintaining orderly operations as specified above~~. Violations of these operational procedures will be subject to permanent suspension or revocation ~~as determined by the airport director~~.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 119, 9-9-10)

DIVISION 3. - COURTESY VEHICLES

Sec. 7-10-180. - Permits.

(a) *General.* Operation of any courtesy vehicle shall be allowed only by a valid airport permit which includes in part a color-coded decal as required by this article. Holders of such permits shall observe all rules and regulations of this article in addition to those established by other provisions of the Code of the City of Pensacola, Florida.

(b) *Permit fee.* An annual fee of two hundred forty dollars ($240.00) is hereby established for each courtesy vehicle for the privilege of conducting business at the airport. Fees shall be paid in advance by the operator of each courtesy vehicle doing business under its authority. A temporary airport permit is available for a maximum thirty-day period. The fee for such permit will be forty dollars ($40.00) per thirty-day period or any fraction thereof. All other requirements necessary for the issuance of the annual airport permit must be met, including minimum insurance coverage, before a temporary permit will be issued.

(c) *Issuance.* Upon full payment of licenses, permit fees, and successful completion of the vehicle safety inspection, a courtesy vehicle airport permit decal shall be issued for each vehicle listed on the application form. No permit shall be issued without the operator having valid courtesy vehicle licenses as may be required by the City of Pensacola.

(d) *Display.* Permit decals shall be permanently fixed to the lower right-hand corner of the front windshield and shall be clearly visible at all times. Permits shall be issued by the ~~airport director~~ city and shall expire September 30 of each year. Only those vehicles displaying valid permit decals will be authorized to pick up passengers at the airport. No permit

or license shall be required to enter the airport and discharge passengers.

(e) *Lost or damaged permit.* In case of loss of a permit or damage beyond recognition, a duplicate permit may be obtained after payment of five dollars ($5.00) by the operator and after submission of a statement setting forth the circumstances of the loss or damage of the permit.

(f) *Transfer of permits.* Permits may be transferred to another vehicle upon proper completion of the application form, successful completion of the safety inspection and a transfer fee of twenty-five dollars ($25.00).

(g) *Permit renewal.* Application forms for yearly renewal of courtesy vehicle airport permits must be submitted to the ~~airport director~~ mayor at least ten (10) working days prior to expiration of the current permit. Renewal applications received after this time shall be charged a late fee of twenty dollars ($20.00).

(h) *Application form.* Each operator desiring to obtain a new airport permit or renew an existing permit shall obtain an airport permit application form and return the completed form to the ~~airport director~~ mayor. Each vehicle for which a permit is requested must have all current licenses and insurance as may be required by the City of Pensacola before the airport application form will be processed. Full payment of the required airport permit fee must accompany the application form.

(i) *Courtesy vehicle inspection.* All courtesy vehicles will be inspected in accordance with the criteria found at section 7-10-31.

(j) *Violations.* The ~~airport director~~ mayor or his representative, police officer, or airport operations officer may inspect a courtesy vehicle at any time while it is on the airport. A vehicle found to be in violation of section 7-10-31 will be required to immediately leave the airport until the noted deficiencies are corrected.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-181. - Operational procedures.

(a) *Receipt and discharge of passengers.* Courtesy vehicles may enter upon the airport only to discharge or to pick up passengers who theretofore have in advance requested service and whose names have been entered in the courtesy vehicle driver's log; except that persons who desire lodging at the courtesy vehicle operator's place of business or seek

transportation to a rental car company by the rental company courtesy vehicle may request service by such vehicle while at the airport. All passengers loading and unloading into courtesy vehicles must do so in the specified area designated for that purpose. Nothing in this section shall allow courtesy vehicles to engage or pick up passengers and deliver them to any place other than the business location for which the vehicle permit was issued.

(b) *Driver's log book.* A log book shall be kept in each vehicle showing the name of each passenger to be picked up at the airport and the scheduled arrival time of such passenger's arriving flight. Upon request of the ~~airport director~~ mayor or authorized representative, any police officer, or airport operations officer, the driver of a courtesy vehicle shall offer for inspection said log book.

(c) *Departure.* Courtesy vehicle may remain on the airport only so long as necessary to discharge or pick up passengers who have previously made a specific reservation for such vehicle service prior to the vehicle entering onto the airport or as allowed in other parts of this division. Vehicles shall depart from the airport immediately upon loading their scheduled passengers.

(d) *Loading zone.* Courtesy vehicles shall load and unload passengers and baggage only at areas designated by the ~~airport director~~ mayor or authorized representative.

(e) *Soliciting.*

(1) Drivers and/or representatives of courtesy vehicles shall be prohibited from solicitation of business or passengers in any manner whatsoever upon the airport. The operations of such vehicles, drivers, or representatives shall be specifically limited to the pickup and delivery of passengers as allowed by this division.

(2) Paging or announcements of the availability of courtesy vehicle service on the airport public address system is prohibited, except as authorized by the ~~airport director~~ mayor. Silent paging is available by passenger name only when the vehicle is being attended.

(3) Drivers and/or representatives of courtesy vehicles shall remain with the vehicle or stand immediately adjacent to it. Such persons may assist the passengers with their baggage if requested by the passenger. Drivers shall not stand or loiter inside the airport terminal while on duty.

(f) *Cruising.* Courtesy vehicles shall not cruise at the airport and shall not park or stand on airport property except as authorized by this article.

(g) *Identifying designs.* Each courtesy vehicle shall have permanently displayed on each side the company name, in printed letters not less than six (6) inches in height, and in addition may bear the company logo or other identifying designs or markings.

(Ord. No. 16-03, § 1, 8-21-03)

Secs. 7-10-182—7-10-194. - Reserved.

DIVISION 4. - LIMOUSINES

Sec. 7-10-195. - Generally.

No person shall engage in operating a limousine upon the airport except as provided by this division and shall observe all other rules, regulations, and codes as may be required by the City of Pensacola. Permits issued under this division shall not be deemed to represent a contract with the airport or City of Pensacola.

(Ord. No. 16-03, § 1, 8-21-03)

Sec. 7-10-196. - Regulation of limousines at airport.

The following regulations are hereby adopted as being applicable to limousines and the operation of limousines:

(1) *General.* Operation of any limousine shall be allowed only by a valid airport permit which includes a color-coded decal as required by this article. Holders of such permits shall observe all rules and regulations of this article in addition to those established by other provisions of the Code of the City of Pensacola, Florida.

(2) *Permit fee.* An annual fee of two hundred forty dollars ($240.00) is hereby established for each limousine for the privilege of conducting business at the airport. Fees shall be paid in advance by the operator of each limousine doing business under its authority. A temporary airport permit is available for a maximum thirty-day (30) period. The fee for such permit will be forty dollars ($40.00) per thirty-day (30)

period or any fraction thereof. All other requirements necessary for the issuance of the annual airport permit must be met, including minimum insurance coverage, before a temporary permit will be issued.

(3) *Issuance.* Upon full payment of licenses, permit fees, and successful completion of the vehicle safety inspection, a limousine airport permit decal shall be issued for each vehicle listed on the application form. No permit shall be issued without the operator having valid limousine licenses as may be required by the City of Pensacola.

(4) *Display.* Permit decals shall be permanently affixed to the lower right-hand corner of the front windshield and shall be clearly visible at all times. Permits shall be issued by the ~~airport director~~ mayor and shall expire September 30 of each year. Only those vehicles displaying valid permit decals will be authorized to pick up passengers at the airport. No permit or license shall be required to enter the airport and discharge passengers.

(5) *Lost or damaged permit.* In case of loss of a permit or damage beyond recognition, a duplicate permit may be obtained after payment of five dollars ($5.00) by the operator and after submission of a statement setting forth the circumstances of the loss or damage of the permit.

(6) *Transfer of permits.* Permits may be transferred to another vehicle upon proper completion of the application form, successful completion of the safety inspection and a transfer fee of twenty-five dollars ($25.00).

(7) *Permit renewal.* Application forms for yearly renewal of limousine vehicle airport permits must be submitted to the ~~airport director~~ mayor at least ten (10) working days prior to expiration of the current permit. Renewal applications received after this time shall be charged a late fee of twenty dollars ($20.00).

(8) *Application form.* Each operator desiring to obtain a new airport permit or renew an existing permit shall obtain an airport permit application form and return the completed form to the ~~airport director~~ mayor. Each vehicle for which a permit is requested must have all current licenses and insurance as may be required by the City of Pensacola before the airport application form will be processed. Full payment of the required airport permit fee must accompany the application form.

(9) *Inspections.* The ~~airport director~~ mayor or his representative, police officer, or airport operations officer may inspect a limousine at any time while it is on the airport. A vehicle found to be in violation of section 7-10-31 will be required to immediately leave the airport until the noted deficiencies are corrected.

(10) *Driver's log book.* A log book shall be kept in each vehicle showing the name of each passenger to be picked up at the airport and the scheduled arrival time of such passengers arriving flight. Upon request of the ~~airport director~~ mayor or authorized representative, any police officer, or airport operations officer, the driver of a limousine shall offer for inspection said log book.

(11) *Departure.* Limousines may remain on the airport only so long as necessary to discharge or pick up passengers who have previously made a specific reservation for such vehicle service prior to the vehicle entering onto the airport or as allowed in other parts of this division. Vehicles shall depart from the airport immediately upon loading their scheduled passengers.

(12) *Loading zone.* Limousines shall load and unload passengers and baggage only at areas designated by the ~~airport director~~ mayor or authorized representative.

(13) *Soliciting.*

a. Drivers and/or representatives of limousines shall be prohibited from solicitation of business or passengers in any manner whatsoever upon the airport. The operations of such vehicles, drivers, or representatives shall be specifically limited to the pickup and delivery of passengers as allowed by this division.

b. Paging or announcements of the availability of limousine service on the airport public address system is prohibited except as authorized by the ~~airport director~~ mayor. Silent paging is available by passenger name only when the vehicle is being attended.

c. Drivers and/or representatives of limousines shall remain with the vehicle or stand immediately adjacent to it. Such persons may assist the passengers with their baggage if requested by the passenger. When necessary for use of restroom facilities, a driver may be absent from his vehicle for not more than ten (10) consecutive minutes. Drivers shall not stand or loiter inside the airport terminal while on duty.

(14) *Cruising.* Limousines shall not cruise at the airport and shall not park or stand on airport property except as authorized by this article.

(Ord. No. 16-03, § 1, 8-21-03)

Secs. 7-10-197—7-10-209. - Reserved.

DIVISION 5. - SUSPENSION AND REVOCATION

Sec. 7-10-210. - Generally.

(a) *Conduct.* Drivers shall be governed by all rules, regulations, ordinances, and laws in effect at the airport and as provided for in the Code of the City of Pensacola, Florida. Drivers shall be clean and neatly dressed at all times while operating a vehicle at the airport.

(b) *Suspension.*

(1) Upon establishment of facts indicating an owner's, operator's or driver's failure to comply with the provisions of this article while at the airport, an airport safety officer or Pensacola police officer is authorized to order the person's departure from the airport, issue a citation to such person, or arrest such person for violation of the Code of the City of Pensacola, Florida. A detailed report shall be submitted to the ~~airport director~~ mayor setting forth the circumstances of the ordered departure, citation or arrest.

(2) The ~~airport director~~ mayor or his designee and airport operations officer are hereby given authority to suspend any vehicle airport permit issued under this article for violation of the Code of the City of Pensacola, Florida, such suspension to last for a period of not more than thirty (30) days; provided, however, that the ~~airport director~~ mayor, his designee, or operations officer provide the permit holder with a written statement of the reason for suspension and a reasonable opportunity to respond prior to the effective date of the suspension.

(c) *Revocation.* The ~~airport director or his designee is given authority to recommend revocation to the mayor of~~ mayor may revoke any airport permit for failure to comply with the provisions of the Code of the City of Pensacola, Florida. However, a permit may not be revoked unless the

operator has received reasonable notice and has an opportunity to present evidence in his behalf to the mayor prior to revocation. Any aggrieved permit holder may appeal the mayor's decision to the Pensacola city council.

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 120, 9-9-10)

Sec. 7-10-211. - Authority of airport director to establish additional rules and regulations.

The ~~airport director~~ mayor is hereby authorized to establish additional rules and regulations governing the operational procedure of vehicles conducting business at the airport, not inconsistent herewith as may be necessary and reasonable. The rules and regulations so established shall become effective on approval by the mayor~~., copies of which shall be placed on file with the airport director.~~

(Ord. No. 16-03, § 1, 8-21-03; Ord. No. 16-10, § 121, 9-9-10)

CHAPTER 7-11. WRECKERS AND WRECKER COMPANIES[14]

Footnotes:

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Cross reference— Administration, Title II; occupational licenses, Ch. 7-2; vehicles for rent to the public, Ch. 7-10; traffic and vehicles, Title XI; signs, Ch. 12-4; streets, sidewalks and other public places, Ch. 11-4; following wreckers and emergency vehicles prohibited, § 11-2-7; franchise required for certain transient services and utilities, § 7-1-1.

Sec. 7-11-1. - Definitions.

The following definitions shall apply in the interpretation and the enforcement of this chapter:

Bridge. That portion of the Pensacola Bay Bridge extending between Pensacola and Gulf Breeze, Florida, coming under the jurisdiction of the ~~Pensacola Police Department~~ city of Pensacola.

Fire extinguisher. A portable fire-extinguishing unit as defined by National Board of Fire Underwriters. A minimum five (5) pound dry chemical extinguisher with Underwriters' Laboratory approval in a quick-release carrier and displaying an inspection tag or sticker which shows approval within the last twelve (12) months.

Inspection permit. A permit issued once a wrecker has met all requirements as established in this code and has passed inspection ~~as conducted under the direction of the chief of police~~, to be permanently attached to the wrecker vehicle.

Motor vehicle. Every "vehicle" which is self-propelled.

Owner. Any person who holds the legal title of a motor vehicle or who has the legal right of possession thereof.

Street. Any street, alley, public place, square or highway within the corporate limits of the city.

Vehicle. Every device in or by which any person or property is or may be transported or drawn upon a public highway, except devices moved only by human power or used exclusively upon stationary rails or tracks, and shall include trailers and semitrailers.

Wrecker. Any motor vehicle used for the purpose of towing or removing disabled or wrecked vehicles or used for the purpose of towing or removing vehicles from public or private property without the consent of the owner or other legally authorized person in control of the vehicle.

Wrecker business. The business of towing or removing disabled or wrecked vehicles on the public streets, regardless of whether the purpose of the towing is to remove, repair, wreck, store, trade or purchase such disabled or wrecked vehicles, and including the business of towing or removing vehicles from public or private property without the consent of the owner or other legally authorized person in control of the vehicle.

Wrecker company. Any person engaged in the wrecker business.

Wrecker rotation list. The rotation list of companies, prepared and used as provided in section 7-11-7 of this chapter.

Wrecker selection list. The list for selection of wrecker companies, prepared and used as provided in section 7-11-4 of this chapter.

(Code 1968, § 162-1; Ord. No. 30-93, § 1, 12-16-93; Ord. No. 11-01, § 1, 3-8-01)

Sec. 7-11-2. - Application, licenses and permits required, issuance, fees.

(a) Every wrecker company desiring to engage in the wrecker business in the city shall make application in writing, on a form provided for that purpose, to the ~~city treasury division~~ mayor for ~~an occupational~~ a license and for a vehicle permit for each wrecker proposed to be operated. The application shall contain the complete business name, address, telephone number, the wrecker number and type of wrecker equipment to be operated, the owner of the company concerned, and a statement that the applicant does or does not desire to appear on the wrecker rotation list. Every application, when filed, shall be sworn to by the applicant and accompanied by such license taxes and fees as established by city ordinance. These monies shall not be returned to the applicant.

(b) No person shall operate a wrecker on the public streets of the city unless a vehicle permit for each wrecker to be used has been issued.

(c) No person shall operate a wrecker on the public streets of the city unless an inspection permit for the wrecker has been issued for the vehicle. Each inspection permit for a wrecker vehicle shall show that such wrecker has been inspected and approved ~~under direction of the chief of police~~ by the city, and shall be affixed securely to the inside of the window of the approved wrecker vehicle.

(d) No occupational license, vehicle permit, or inspection permit is transferable, and every license and permit shall expire at 12:00 midnight on the thirtieth day of September of the fiscal year in which issued.

(e) Each vehicle inspection shall require a fee to be paid for each vehicle inspected and this fee shall not be returned to the applicant.

(Ord. No. 30-93, § 1, 12-16-93)

Sec. 7-11-3. - Wrecker classification, equipment and insurance required.

(a) No license authorizing the operation of a wrecker business and no permit authorizing the operation of a wrecker on the streets of the city shall be issued unless every wrecker proposed to be used by the applicant complies with the following provisions and requirements. Wreckers are to be classified as either general duty wreckers or heavy duty wreckers for city code qualification, as specified:

(1) General duty wreckers:

a. Has a minimum manufacturer capacity of ten thousand (10,000) pounds gross vehicle weight;

b. Has a commercially manufactured minimum crane and winch capacity of not less than eight thousand (8,000) pounds;

c. Has a commercially manufactured power winch pulling capacity of not less than eight thousand (8,000) pounds;

d. Must be equipped with a cradle tow plate, tow sling and bar with safety chains, and/or wheel lifts;

e. If double winch constructed, both winches must be able to operate both jointly and independently;

f. If equipped with a hydraulic boom, it must elevate and extend;

g. A roll-back wrecker will qualify as long as it meets the minimum requirements of having a minimum ten thousand (10,000) pound gross vehicle weight with a sixteen-foot bed, dual wheels, and one winch with an eight thousand (8,000) pound pulling capacity, and meets all other equipment requirements;

h. Must be equipped with a brake lock system.

(2) Heavy-duty wrecker:

a. Has a minimum manufacturer capacity of not less than thirty thousand (30,000) pounds gross vehicle weight;

b. Shall be equipped with a commercially manufactured power crane and winch having a manufacturers' rating of at least fifty thousand (50,000) pounds;

c. Must be equipped with airbrakes;

d. Must have dual rear wheels;

e. Must be equipped with cable capable of withstanding the required pulling capacity.

(b) Equipment required that each wrecker must have to tow on the public streets of the city, and to be on the city maintained rotation and/or selection lists:

(1) Each vehicle must be properly equipped with clearance lights, marker lights, and an amber colored emergency light, rotor beam or strobe type, mounted in such a manner that it can be seen in all directions;

(2) Wreckers shall be kept in reasonably good appearance and shall be equipped with all fenders, doors, bumpers, and hood;

(3) One heavy duty push broom;

(4) One shovel;

(5) One axe;

(6) One crowbar or prybar;

(7) One minimum five (5) pound dry chemical fire-extinguisher or equivalent displaying a current inspection tag or sticker, performed within the last twelve (12) months;

(8) Dollies (General duty wreckers-excluding roll-backs);

(9) One set of jumper cables;

(10) One set of red triangles and signal flares;

(11) Safety chains;

(12) One four-way lug wrench; and,

(13) One pair of bolt cutters.

(c) *Liability insurance required:* Each applicant shall procure and keep in full force and effect a policy or policies of garage liability and property damage insurance issued by a casualty insurance company authorized to do business in the state, and in the standard form approved by the board of insurance commissioners and the coverage provision insuring the public from any loss or damage that may arise to any person or property by reason of the operation of a wrecker of the company including "on hook" coverage for motor vehicles while being towed or transported by the wrecker company, and providing that the amount of recovery on each wrecker shall be in the limits of not less than the following sums:

(1) For damages arising out of bodily injury to or death of one person in any one accident, one hundred thousand dollars ($100,000.00);

(2) For damages arising out of bodily injury to or death of two (2) or more persons in any one accident, three hundred thousand dollars ($300,000.00);

(3) For injury to or destruction of property in any one accident, fifty thousand dollars ($50,000.00).

The city shall be added as an additional insured to the policy or policies when the wrecker company is on any of the ~~police department's~~ city's wrecker and rotation lists.

(Ord. No. 30-93, § 1, 12-16-93)

Sec. 7-11-4. - Wrecker selection list.

(a) ~~Police communications~~ The city shall maintain a wrecker selection list. This list will include, in alphabetical or numerical order, all companies that do not own their own wrecker but may require the services of a wrecker, whether to tow their company owned vehicle or any privately owned vehicle, if designated to do so by the vehicle owner, if wrecked or disabled on the public streets of the city. The selection wrecker service shall meet all minimum requirements as specified in section 7-11-3. The authorization to be a selection wrecker for any company must be submitted to the ~~police department~~ city in writing.

(Ord. No. 30-93, § 1, 12-16-93)

Sec. 7-11-5. - Wrecker rotation lists.

(a) If the owner of a vehicle involved in an accident or collision is physically unable to designate the wrecker company desired or refuses to designate one, the ~~investigating officer shall communicate that fact immediately to police department headquarters~~ the city will utilize its wrecker rotation list for this purpose. The ~~police department~~ city shall keep separate master wrecker rotation lists for general use, bridge rotation, and heavy-duty rotation. The wrecker rotation lists will be in numerical inspection order and will include all wrecker companies which:

(1) Have been issued a vehicle permit and inspection permit;

(2) Have applied to be on such lists;

(3) Maintain twenty-four (24) hour wrecker service with wreckers;

(4) Must meet all special and minimum requirements as herein established.

(b) General wrecker rotation list requirements: All minimum requirements for the general-duty wreckers and equipment will apply.

(c) Heavy-duty wrecker rotation list requirements: Wreckers qualified, as defined in section 7-11-3(a)(2) to tow heavy-duty trucks and vehicles, and equipment requirements will apply.

(d) Bridge rotation list requirements: Due to unusual circumstances arising from Pensacola Bay Bridge traffic and restraints, wrecker companies desiring to be on the bridge rotation list must be able to conform to the special requirements as follows:

(1) Maintain a response time to all calls within fifteen (15) minutes from the location of the wrecker business to the Pensacola Bay Bridge on a twenty-four (24) hour basis. Response time will be measured from the time the wrecker company receives the call from ~~police communications~~ the city until the wrecker arrives on the scene.

(2) Maintain a place of business, as defined in section 7-11-12, within five (5) miles of the Pensacola Bay Bridge.

(3) Comply with all other provisions of this chapter and as stated for the general rotation list.

(e) On receiving the first communication, the ~~dispatcher receiving the communication at police headquarters~~ city shall call the first wrecker company on the list to tow the disabled vehicle and remove the same from the public streets of the city. If a wrecker belonging to the wrecker company receiving the communication fails to arrive at the scene of the accident within thirty (30) minutes for general wrecker rotation and heavy-duty or fifteen (15) minutes for a bridge rotation call, ~~the investigating officer shall notify police headquarters. The~~ the first wrecker called shall be canceled and the next wrecker on the rotation list called. The wrecker whose call was canceled shall be placed in the last position on the rotation list. In each succeeding communication of the inability or refusal of the owner to designate a wrecker, the next company on the list shall be called, and proper notation of each call shall be made on the individual master wrecker card.

(f) When responding to a rotation call, each business shall charge as a wrecker towing fee an amount that is fair and reasonable, but in no instance to exceed eighty-five dollars ($85.00) for towing disabled vehicles on the streets of the city, when the vehicle requires only the normal wrecker services. In addition, companies required to store vehicles at their facilities shall charge as a storage fee an amount that is fair and reasonable, but in no instance to exceed ten dollars ($10.00) per day. Failure to comply will cause the wrecker business to be removed from the master wrecker rotation lists kept ~~at police headquarters~~ by the city.

(g) Requests for voluntary removal from any of the wrecker rotation lists require a written statement to be submitted to the ~~police department~~ city before removal from any of the lists.

(Ord. No. 30-93, § 1, 12-16-93; Ord. No. 43-96, § 1, 9-12-96; Ord. No. 36-97, § 1, 10-23-97; Ord. No. 11-01, § 2, 3-8-01)

Sec. 7-11-6. - Bills; billing procedure.

Each wrecker company licensed to operate within the city shall have prepared billheads with the name and address of the wrecker company printed thereon. The operator of a wrecker, before removing a disabled vehicle, shall prepare a bill on the billhead form showing total amount charged for towing service, in triplicate, a copy of which shall be given to the owner of the disabled vehicle or his authorized representative, one copy attached to the ~~police~~ law enforcement report and the original retained by the owner of the wrecker.

(Code 1968, § 162-15; Ord. No. 30-93, § 1, 12-16-93)

Sec. 7-11-7. - Recommendation of wrecker service by police prohibited.

~~No police officer investigating or present at the scene or site of any wreck, accident or collision on a public street shall, directly or indirectly, either by word, gesture, sign or otherwise,~~ The city shall not recommend to any person the name of any particular person engaged in the wrecker service or repair business, nor shall ~~any police officer~~ it influence or attempt to influence in any manner the decision of any person in choosing or selecting a wrecker or repair service. Provided, any police officer, in the exercise of his discretion as a police officer, may direct that any vehicle, whether towed by a wrecker

selected by the owner of the vehicle or from the wrecker rotation list, shall be taken by the driver of the wrecker towing the vehicle directly to the police headquarters and there held by the city for any lawful purpose.

(Code 1968, § 162-10; Ord. No. 30-93, § 1, 12-16-93)

Sec. 7-11-8. - Solicitation at scene of wreck or disablement prohibited; prima facie evidence.

No person shall solicit in any manner, directly or indirectly, on the streets of the city, the business of towing any vehicle which is wrecked or disabled on a public street, regardless of whether the solicitation is for the purpose of soliciting the business of towing, removing, repairing, wrecking, storing, trading or purchasing the vehicle. Proof of the presence of any person engaged in the wrecker business or the presence of any wrecker or motor vehicle owned or operated by any person engaged in the wrecker business, either as owner, operator, employee or agent, on any public street in the city, at or near the scene or site of a wreck, accident or collision within one hour after the happening of a wreck, accident or collision, shall be prima facie evidence of solicitation in violation of this section.

(Code 1968, § 162-13; Ord. No. 30-93, § 1, 12-16-93)

Sec. 7-11-9. - Wrecker attending accident prohibited ~~unless summoned by police~~; exception.

No person shall drive a wrecker to or near the scene or site of an accident or collision on the streets of the city unless the person has been called to the scene by ~~the police department of~~ the city; provided, when it is necessary to prevent death or bodily injury to any person involved in an accident or collision, the prohibition of this section shall be inapplicable.

(Code 1968, § 162-6; Ord. No. 30-93, § 1, 12-16-93)

Sec. 7-11-10. - Intercepting or divulging certain radio messages prohibited.

No person shall intercept any message emanating through the ~~police~~ city radios communications system or shall divulge or publish the existence, contents, substance, purpose, effect or meaning of the intercepted communication; and no person, not being entitled thereto, shall receive or

assist in receiving any such message and use the same, or any information therein contained, for his own benefit or for the benefit of another person.

(Code 1968, § 162-14; Ord. No. 30-93, § 1, 12-16-93)

Sec. 7-11-11. - Wreckers not emergency vehicles.

It is hereby declared and determined that wrecker vehicles are not emergency vehicles, and such wreckers shall comply strictly with all ordinances relating to motor vehicles.

(Code 1968, § 162-11; Ord. No. 30-93, § 1, 12-16-93)

Sec. 7-11-12. - General information, required.

(a) The wrecker business may not assign, transfer, pledge, surrender, or otherwise encumber or dispose of his approval under these rules or his place on the rotation lists.

(b) To insure uniformity in qualifying for a position on any of the wrecker rotation lists, each wrecker business must comply with the following requirements for their place of business, for each position on rotation:

(1) The business must have a sign that identifies it to the public as a wrecker establishment;

(2) The place of business must maintain its own office space;

(3) The office must have personnel on duty at the office location, from at least 9:00 a.m. to 5:00 p.m., Monday through Friday, to answer calls from the ~~police department~~ city and to serve the public;

(4) Must maintain its own telephone to answer calls;

(5) Must maintain at least one tow truck at that place of business;

(6) Must have the tow truck lettered as specified:

a. The wrecker vehicles must have the complete business name, address, and telephone number professionally lettered in contrasting colors on each side of the vehicle;

b. The business name shall be in letters at least three (3) inches high;

c. The business address and telephone number shall be at least three (3) inches high;

d. Lettering must be permanently affixed to the vehicle. Magnetic or removable signs do not meet code requirements;

e. The individual wrecker number shall be affixed on both sides of the cab in numbers at least three (3) inches high and of contrasting color.

(c) Wrecker vehicle operators are required to have a valid commercial driver's license in their possession at all times while operating the wrecker as required by Section 322.03, Florida State Statutes.

(Ord. No. 30-93, § 1, 12-16-93)

Sec. 7-11-13. - Grounds for denial, removal or suspension from rotation lists.

(a) The following are grounds for denial, removal or suspension of a wrecker company from any of the rotation lists:

(1) Failure to comply with any of the provisions of this code or to pass an annual inspection;

(2) Chasing or running wrecks without proper call from the ~~police department~~ city;

(3) Soliciting at the scene of an accident by the wrecker operator, his driver or agent;

(4) Failure to answer a call three (3) times within a three (3) month period or failure to respond in the requested time while in service;

(5) Refusal to answer a call without a valid reason;

(6) Inability of an operator or his driver to properly operate the tow truck in the removal of disabled vehicles or to remove a vehicle without causing additional damage;

(7) Failure to comply with the rate requirements as established by city code;

(8) Pulling a wrecked or damaged vehicle without it having been investigated or cleared by a proper law enforcement agency.

(b) Administrative procedures for removal or suspension from the rotation lists shall be established by the ~~chief of police~~ mayor.

(Ord. No. 30-93, § 1, 12-16-93)

Sec. 7-11-14. - Reserved.

Editor's note— Ord. No. 25-09, § 1, adopted July 9, 2009, repealed § 7-11-14, which pertained to the removal of vehicles from private property without owner consent from Ord. No. 11-01, § 3, adopted March 8, 2001.

CHAPTER 7-14. FEES[17]

Footnotes:

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Editor's note—The provisions of inadvertently repealed Ch. 12-7 were reenacted by § 4 or Ord. No. 27-92, adopted Aug. 13, 1992, and redesignated at the direction of the city as Ch. 7-14.

Ord. No. 27-85, §§ 1—3, adopted Sept. 26. 1985, amended §§ 7-14-2—7-14-5 of Ch. 7-14, and set out additional provisions which the editors have designated §§ 7-14-6—7-14-9 herein. Ord. No. 20-86, § 1, adopted July 10, 1986 also amended and restated the above-described sections.

Subsequently, Ord. No. 35-07, § 1, adopted July 12, 2007, provided for the amendment of Ch. 7-14 to read as herein set out. See the Code Comparative Table for a detailed analysis of inclusion.

Cross reference— Administration, Title II; occupational licenses, Ch. 7-2; buildings an building regulations, Ch. 7-13; zoning districts, Ch. 12-2; signs, Ch. 12-4; subdivisions, Ch. 12-8; airport zoning, Ch. 12-11; administration and enforcement, Ch. 12-12; boards and commissions, Ch. 12-13; buildings, construction and fire codes, Title XIV.

Sec. 7-14-1. - Planning and zoning fees.

The following fees to be charged by the city for development plan review, amendments, vacations of streets and alleys, subdivision plats, and division of land requiring a boundary survey shall be collected by the ~~community development department~~ city as hereinafter set forth, and said fees shall be paid before the beginning of any administrative process required for said activities.

(a) *Planning and development services plan review fees:* The applicant for development plan review for the following activities shall at the time of application pay the following fees:

Table 7-14.1

	Fee	Review Board Rehearing/Rescheduling Fee	City Council Rehearing/Rescheduling Fee
Boundary Survey for Two Lot Division	750.00	NA	NA
Preliminary Subdivision Plat	1000.00	250.00	250.00
Final Subdivision Plat plus 25.00 per lot	1,500.00	250.00	250.00
Minor Subdivision (4 lots or less combined preliminary/final plat)	2,000.00	250.00	250.00
ROW Vacation	2,000.00	250.00	500.00
License to Use ROW	500.00 (minor) 1,000.00 (major)	100.00	100.00

License to Use ROW for Sandwich Board Sign	100.00	NA	NA
Rezoning Without Comprehensive Plan FLUM Amendment	2,500.00	250.00	750.00
Rezoning with Small Scale Development (less than 10 acres) Comprehensive Plan FLUM Amendment	3,500.00	250.00	750.00
Rezoning with Comprehensive Plan FLUM Amendment for Development other than Small Scale	3,500.00	250.00	1,000.00
Conditional Use	2,000.00	100.00	250.00
Site Development Plan "A" - Preliminary Development Plan	1,500.00	100.00	250.00
Site Development Plan "A" - Final Development Plan	1,500.00	250.00	250.00
Site Development Plan "A" - Combined	2,000.00	250.00	250.00

Preliminary/Preliminary Development Plan			
Site Development Plan "B" - Preliminary Development Plan	1,500.00	250.00	250.00
Site Development Plan "B" - Final Development Plan	1,500.00	250.00	250.00
Site Development Plan "B" - Combined Preliminary/Final Development Plan	2,000.00	250.00	250.00
Site Development Plan "C" Non-Residential Parking in a Res. Zone	1,500.00	250.00	NA
Adjacent Voluntary Annexation	0.00	NA	0.00
Appeal of Planning Board Decision To City Council (Site Plan "C" only)	250.00	NA	250.00
Home Occupation Permit	50.00	NA	NA
Zoning Letter	25.00	NA	NA

Variance	500.00	250.00	NA
Front yard averaging	150.00	NA	NA
Appeal of any order, requirement, decision, or determination made by administrative official	500.00	250.00	NA
Zoning Board of Adjustment Interpretation for Historic and North Hill Preservation Districts (for uses not expressly permitted)	300.00	300.00	NA
Historic Preservation District Staff Abbreviated Review	0.00	NA	NA
Historic Preservation District Residential Site Plan-Homestead	50.00	25.00	NA
Historic Preservation District Non-Homestead or Commercial Site Plan	250.00	125.00	NA
Historic Preservation District Variance	500.00	250.00	NA

Appeal of Architectural Review Board Decision to City Council	500.00	NA	250.00
Historic Preservation District Architectural Review Board Abbreviated Review	25.00	NA	NA
Gateway Redevelopment District Residential Site Plan Review	50.00	25.00	NA
Gateway Redevelopment District Commercial Site Plan Review	250.00	125.00	NA
Gateway Redevelopment District Abbreviated Review	25.00	0.00	NA
Appeal of Gateway Redevelopment District Decision to City Council	500.00	NA	250.00

Alcoholic Beverage License Certificate of Compliance	250.00	NA	NA
Appeal of Alcoholic Beverage License Certificate of Compliance to City Council	250.00	NA	250.00
Alcoholic Beverage License Extension of Premises	25.00	NA	NA
Adult Entertainment Establishment License	400.00	NA	NA

Notes:

Site Plan "A"

- Special Planned Developments
- Major revisions to SSD's
- Exceptions to the four thousand (4,000) sq. ft. maximum area for a commercial use in an R-NC district

Site Plan "B"

- Conservation district (CO)
- Airport district—All private, nonaviation related development in the ARZ zone and all developments except single-family in an approved subdivision in the ATZ-1 and AZT-2 zones
- Waterfront Redevelopment district (WRD)
- South Palafox Business district (SPBD)

- Interstate Corridor district (IC)
- Multi family developments over thirty-five (35) feet in height within the R-2A district;
- Buildings over forty-five (45) feet in height in the R-2, R-NC and C-1 districts.

Site Plan "C"

- Non-residential parking in a residential zone

(b) Any fee paid in order to appeal from an allegedly erroneous decision by the city shall be refunded to the applicant in the event that the appropriate board determines that the applicant has prevailed in the appeal.

(c) When a boundary survey, preliminary plat, final plat, combined preliminary/final plat or any site development plan is denied because it does not comply with subdivision or development requirements a plan re-submittal fee of one-half (½) the initial fee shall be paid.

(Ord. No. 35-07, § 1, 7-12-07; Ord. No. 24-09, § 1, 7-9-09; Ord. No. 26-11, § 1, 9-22-11)

Sec. 7-14-2. - Permit fees.

The following permit fees to be charged by the city for buildings, signs, manufactured buildings, mobile homes, swimming pools, television and radio antennas, roofing, moving or demolition of buildings or structures, electrical, plumbing, gas, mechanical, fire suppression and alarm system installations, penalties for starting work without a permit, and field inspection for business license certificate of occupancy shall be collected by the ~~building inspection division~~ city for all work done within the city, as outlined below, and said fees shall be paid before the beginning of any construction or alteration as hereinafter set forth:

The applicant for any permit shall pay an administrative application fee of twenty-seven dollars ($27.00) for residential and thirty-four dollars ($34.00) for commercial purposes in addition to the building, electrical, gas, mechanical, fire protection/prevention, and plumbing permit fees specified below. Fences, tents, temporary signs and banners shall be exempt from this fee.

(a) *Building permit fees:*

(1) The applicant for a permit for any new building or structure, for any additions to an existing building or structure or portion thereof, shall, at the time of having made application and issuance of the permit, pay for each and every building or structure ten cents ($0.10) per square foot based on the square footage of gross floor area of such work. Minimum permit fees will also be based upon the number of required inspections times the minimum inspection fee of fifty dollars ($50.00) when the square footage is such that the square footage cost will not cover the cost of inspections.

(2) For remodeling, repairs or modifications of existing buildings or structures or for the construction or installation of other structures for which a gross floor area cannot be measured and for which a specific fee is not indicated, the fee shall be at the rate of seven dollars fifty cents ($7.50) per one thousand dollars ($1,000.00) of the estimated total cost of labor and materials for the work for which the permit is requested, i.e., excluding only subcontractor work that will be permitted separately.

(3) Antennas, dish and tower, roof and ground installations:

a. Residential, including amateur "ham" units $50.00

b. Commercial: Fee to be calculated in accordance with subsection 7-14-2(a)(2).

(4) Window and door installation:

Fee to be calculated in accordance with subsection 7-14-2(a)(2).

(5) Demolition of buildings or structures 100.00

Plus one dollar ($1.00) for each one hundred (100) square feet of total gross floor space, or portion thereof, over five thousand (5,000) square feet.

(6) Fences and tents 35.00

(7) Manufactured buildings and mobile homes:

a. For plan review, foundation rough-in and final inspection, per unit 140.00

b. Each additional inspection 50.00

(8) Moving of buildings or structures:

a. From one (1) location to another within the city limits: Two hundred dollars ($200.00) plus twenty dollars ($20.00) for each mile within the city in excess of five (5) miles.

b. From outside the city limits to a location inside the city: Two hundred fifty dollars ($250.00) plus twenty-five dollars ($25.00) for each mile within the city in excess of five (5) miles.

c. For moving a building or structure through the city or from the city: Two hundred dollars ($200.00) plus twenty dollars ($20.00) for each mile within the city in excess of five (5) miles.

(9) Siding or residing structures including pre-inspection 100.00

Structural, electrical, mechanical and plumbing work required in conjunction with siding installation shall be permitted and fees charged in accordance with appropriate subsections of this chapter.

(10) Roofing, re-roofing:

a. Residential 100.00

Plus fifty ($50.00) for each additional; inspection in excess of two (2) inspections.

b. Commercial 140.00

Plus fifty ($50.00) for each additional; inspection in excess of two (2) inspections.

(11) Signs (including plan review):

a. Accessory 100.00

b. Non-accessory—Billboard-type signs, including pre-inspection 210.00

c. Temporary—Portable signs and banners 35.00

(12) Swimming pools/spas:

a. Residential 150.00

b. Commercial 300.00

Plus fifty ($50.00) for each inspection in excess of three (3).

(13) Minimum permit fee 50.00

(14) Penalty fee for work which commences prior to securing the appropriate permit or permits computed in accordance with section 7-14-6.

(b) *Electrical permit fees:*

(1) Temporary or construction pole service 50.00

(2) Minimum fee, per inspection unless noted otherwise 50.00

(3) Electrical service: (residential and commercial, including signs, generators, and service changes):

0—100 amperes 90.00

101—200 amperes 95.00

201—400 amperes 125.00

401—600 amperes 175.00

601—800 amperes 275.00

801—1,000 amperes 375.00

1,001—1,200 amperes 475.00

1,201—1,600 amperes 675.00

1,601—2,000 amperes 875.00

2,001—2,400 amperes 1,075.00

Over 2,401 amperes 1,275.00

Plus fifty cents ($0.50) per ampere over two thousand four hundred one (2,401)

(4) For new construction five cents ($0.05) per gross square foot. Group S (warehouse and storage buildings) shall be exempt from square foot computation with fee based upon service size.

(5) For sub-meters derived from main service, per meter 50.00

(6) For swimming pools, spas and hot tubs 100.00

(7) Commercial computer and communications systems including fire/security alarm systems ("system" defined as detection devices connected to a control panel), including alterations:

a. Base fee (includes two (2) inspections) 100.00

b. Each additional inspection 50.00

(8) Residential fire and security systems 50.00

(9) Penalty fee for work which commences prior to securing the appropriate permit or permits computed in accordance with section 7-14-6.

(c) *Gas installation permit fees:* The following fees shall be charged for both natural and liquid petroleum gas installations:

(1) Permit fee based upon number of inspections, per inspection 50.00

(2) Penalty fee for work which commences prior to securing the appropriate permit or permits computed in accordance with section 7-14-6.

(d) *Mechanical permit fees:*

(1) For heating, ventilation, air conditioning, and refrigeration systems: per inspection plus three dollars ($3.00) for each ton or fraction thereof in excess of fifteen (15) tons.

(2) All other mechanical work, including, but not limited to, installation, replacement or alteration of duct work, hydraulic lifts, pumps, air compressors, refrigeration equipment, high-pressure washers, medical gas systems, extractors, boilers, incinerators etc., for each inspection 50.00

(3) Penalty fee for work which commences prior to securing the appropriate permit or permits computed in accordance with section 7-14-6.

(e) *Fire protection/prevention permit fees:*

(1) Fire sprinkler systems (includes plan review):

a. Residential (one- or two-family dwelling 170.00

b. Commercial; small, six (6) heads or less 170.00

Large 500.00

(2) Fire suppression systems (includes plan review):

a. Small, single hazard area 35.00

b. Large 210.00

(3) Fire alarm systems (includes plan review):

a. New installation, one (1) pull 35.00

b. New installation, multi-pull 85.00

c. Fire alarm inspection; small, six (6) or fewer initiating devices 90.00

d. Fire alarm inspection; large 250.00

(4) Installation of pollutant/hazardous material storage tanks:

a. Aboveground 250.00

b. Underground 250.00

(5) Removal of pollutant/hazardous material storage tank 100.00

(6) Penalty fee for work which commences prior to securing the appropriate permit or permits computed in accordance with section 7-14-6.

(f) *Plumbing permit fees:*

(1) Base fee (includes final inspection) 50.00

Plus:

a. Additional fee for each outlet, fixture, floor drain or trap in excess of ten (10) 2.00

b. Each additional inspection 50.00

c. Sewer connection, in conjunction with new single-family dwelling 50.00

All others 50.00

(2) Plumbing permit fees for manufactured buildings/factory-built housing:

a. Base fee (including final inspection) 50.00

b. Sewer connection (each) 50.00

c. Rough-in for joining together of all components, including stack-out, for each inspection required 50.00

(3) Lawn sprinkler system installation fees:

a. Installation of valves, vacuum breakers and/or back-flow preventers and sprinkler heads to a maximum of fifty (50) 50.00

b. For each head in excess of fifty (50) add 2.00

c. Each additional inspection 50.00

(4) Solar heating system 50.00

(5) Penalty fee for work which commences prior to securing the appropriate permit or permits computed in accordance with section 7-14-6.

(Ord. No. 35-07, § 1, 7-12-07; Ord. No. 24-09, § 2, 7-9-09; Ord. No. 26-11, § 1, 9-22-11)

Sec. 7-14-3. - Renewal of expired permits.

(a) A permit once issued, expires if work is not commenced within one hundred eighty (180) days of issuance or if construction or work is suspended or abandoned for a period of one hundred eighty (180) days at any time after work is commenced. To avoid permit expiration, a progress report (showing progress toward the permit) needs to be submitted in writing or an extension request needs to be submitted in writing showing justifiable cause to extend the permit prior to one hundred eighty (180) days of inactivity, otherwise the permit will expire. Extensions may be granted for one hundred eighty (180) days. The fee for renewal of expired permits shall be seventy-five (75) percent of the original fee paid if the fee is paid within thirty (30) days of the expiration date. After thirty (30) days, the full original fee is due. Minimum renewal fee is sixty-six dollars ($66.00). Beginning with the second permit renewal and subsequent renewals a five hundred dollars ($500.00) penalty will be assessed in addition to permit fees due for renewal.

(Ord. No. 26-11, § 1, 9-22-11)

Sec. 7-14-4. - Construction board of appeals hearing fee.

(a) The following fees shall be paid by a hearing applicant at time of application for hearing, in advance of hearing date.

Construction board of appeals hearing $300.00

(b) Any fee paid pursuant to this section in order to appeal from an allegedly erroneous decision by ~~a member of the city staff~~ the mayor or his designee shall be refunded to the applicant in the event that the board determines that the applicant has prevailed in the appeal.

(Ord. No. 35-07, § 1, 7-12-07; Ord. No. 26-11, § 1, 9-22-11)

Sec. 7-14-5. - Field inspection fees.

(1) Reinspection fee $50.00

(2) Inspection for temporary power prior to final inspection (includes electrical and mechanical) 95.00

(3) Special inspection conducted outside of normal working hours 200.00

(4) Contractor assistance 50.00

(5) Reinspection of temporary and construction electrical services 50.00

(6) Pre-inspection survey service 50.00

(7) Partial certificate of occupancy inspection .....$100.00 for 30 day Temp C.O.

(8) Business certificate of occupancy inspection 100.00

(9) A fifty dollar ($50.00) permit fee shall be charged for tree removal and/or tree trimming in the public right-of-way or canopy road tree protection zones.

(10) Engineering "as-built" inspection fee four hundred dollars ($400.00) plus one hundred dollars ($100.00) per acre in the development site. Each fractional acre shall count as an acre. When an as-built inspection fails because improvements do not comply with approved engineering plans a re-inspection fee of one-half (½) the initial fee shall be paid. When an erosion control compliance inspection fails because erosion control measures do not comply with approved plans a re-inspection fee of two hundred fifty dollars ($250.00) shall be paid.

(11) Zoning compliance inspection fees:

(a) Zoning compliance inspection fee for one- and two-family dwellings shall be one hundred dollars ($100.00).

(b) Zoning compliance inspection fee for accessory structures and buildings and additions to existing single family dwellings shall be fifty dollars ($50.00).

(c) Zoning compliance inspection fee for all other developments shall be four hundred fifty dollars ($450.00) plus three hundred dollars ($300.00) per acre in the development site. Each fractional acre shall count as an acre.

(d) When a zoning compliance inspection of landscaping, signage, parking, building features, and similar improvements fails because improvements do not comply with approved plans a re-inspection fee of two hundred fifty dollars ($250.00) shall be paid.

(12) Overgrown lot inspection (to be added to lot cutting fee) $30.00

(Ord. No. 35-07, § 1, 7-12-07; Ord. No. 24-09, § 3, 7-9-09; Ord. No. 26-11, § 1, 9-22-11)

Sec. 7-14-6. - Penalty fees.

(1) For construction work which commences prior to securing the appropriate permit or permits:

(a) First occurrence: Four (4) times the permit fee.

(b) Second and repeat occurrence: Prosecution for Code violation.

(2) Fine for removing trees or limbs without permit: One hundred dollars ($100.00) per caliper inch of tree trunk or limb.

(3) Nothing contained herein shall be construed to prohibit the prosecution of any Code violations, regardless of the number of times such violation may have occurred, when any person continues to perform work after being warned that a permit for the work is required and has not been issued or when work continues after a stop work order has been issued. Nor shall this provision be construed to prohibit the city from seeking injunctive or other relief from Code violations.

(Ord. No. 35-07, § 1, 7-12-07; Ord. No. 26-11, § 1, 9-22-11)

Sec. 7-14-7. - Plan review fees for building code compliance.

(1) When construction plans are required, the plan review fee shall be one-half (½) the permit fee for the initial review and fifty dollars ($50.00) for

the second plan review. This fee applies to each structural, electrical, mechanical and plumbing permit. However, there shall be no electrical, mechanical or plumbing plan review fee for single-family or duplex residential plans. Subsequent reviews for revised plans shall be fifty dollars ($50.00) per discipline for review.

(2) When a permit application is denied for the third and any subsequent time because the plans submitted do not comply with city and/or state codes, a plan re-submittal review fee of one-half (½) the permit fee shall be paid.

(Ord. No. 35-07, § 1, 7-12-07; Ord. No. 26-11, § 1, 9-22-11)

Sec. 7-14-8. - Site plan review fees.

(1) *Zoning review fees:*

(a) Zoning review fee for one- and two-family dwellings shall be one hundred dollars ($100.00).

(b) Zoning review fee for accessory structures and buildings and additions to existing single-family dwellings shall be fifty dollars ($50.00).

(c) Zoning review fee for all other developments shall be four hundred fifty dollars ($450.00) plus three hundred dollars ($300.00) per acre in the development site. Each fractional acre shall count as an acre.

(d) When plans are denied because they do not comply with zoning requirements a plan re-submittal fee of one-half (½) the initial fee shall be paid.

(2) *[Engineering plan review fee.]* Engineering plan review fee shall be four hundred dollars ($400.00) plus one hundred dollars ($100.00) per acre in the development site. Each fractional acre shall count as an acre. When plans are denied because they do not comply with engineering requirements a plan re-submittal fee of one-half (½) the initial fee shall be paid.

(Ord. No. 35-07, § 1, 7-12-07; Ord. No. 26-11, § 1, 9-22-11)

Sec. 7-14-9. - Bayou Texar Shoreline and Escambia Bay Protection District Fees.

(1) Zoning review fee for one- and two-family dwellings located in the Bayou Texar Shoreline or Escambia Bay Protection Districts shall be three

hundred dollars ($300.00). When plans are denied because they do not comply with zoning requirements a plan re-submittal fee of one-half (½) the initial fee shall be paid.

(2) Engineering plan review fee for one- and two-family dwellings located in the Bayou Texar Shoreline or Escambia Bay Protection Districts shall be two hundred dollars ($200.00). When plans are denied because they do not comply with engineering requirements a plan re-submittal fee of one-half (½) the initial fee shall be paid.

(Ord. No. 35-07, § 1, 7-12-07)

Sec. 7-14-10. - Subdivision construction plan review and inspection fees.

(1) Engineering construction plan review fee shall be five hundred dollars ($500.00) plus fifty dollars ($50.00) per lot in the subdivision. When plans are denied because they do not comply with engineering requirements a plan re-submittal fee of one-half (½) the initial fee shall be paid.

(2) Engineering "as-built" inspection fee shall be five hundred dollars ($500.00) plus fifty dollars ($50.00) per lot in the subdivision. When inspection fails because improvements do not comply with approved engineering plans a re-inspection fee of one-half (½) the initial fee shall be paid.

(Ord. No. 35-07, § 1, 7-12-07)

Sec. 7-14-11. - Driveway curb-cut right-of-way permits.

(1) *Single-family and duplex residential curb-cuts:* Seventy-five dollars ($75.00) for each driveway curb-cut permitted.

(2) *Commercial and all other development curb-cuts:* Two hundred dollars ($200.00) plus one hundred dollars ($100.00) for each additional driveway curb-cut permitted.

(Ord. No. 35-07, § 1, 7-12-07)

Sec. 7-14-12. - Miscellaneous other fees.

(1) A three dollar ($3.00) fee shall be charged for each document notarized.

(Ord. No. 35-07, § 1, 7-12-07)

Sec. 7-14-13. - Refunds.

(1) All fees will be refunded if a permit is issued in error by the ~~inspection department~~ city. Otherwise, the maximum refund will exclude an amount equal to all plan review fees, an administrative fee of twenty dollars ($20.00), plus a thirty-five dollar ($35.00) fee for each completed inspection.

(2) There will be a ten (10) percent service charge on all materials such as maps which are returned in useable condition within five (5) working days of purchase. No refunds on materials after five (5) working days.

(3) Refunds will be made by check and will not be credited toward purchase of new permit or material.

(4) No refund will be made without a receipt.

(Ord. No. 35-07, § 1, 7-12-07)

TITLE VIII - OFFENSES

Chapters

TITLE VIII. - OFFENSES[1]

CHAPTERS

8-1.
GENERAL PROVISIONS

8-2.
REGISTRATION OF CRIMINALS

8-3.
OFFENSES UPON WATERS

Footnotes:

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Cross reference— Storing of refuse declared a nuisance, § 4-3-60.

CHAPTER 8-1. GENERAL PROVISIONS

Sec. 8-1-1. - Assessment by courts for criminal justice education and law enforcement training.

(a) *Assessments.* All courts created by Article V of the Constitution of the State of Florida situate in the city shall levy and the clerks of all those courts shall collect and remit to the ~~treasurer of the~~ city an assessment of two dollars ($2.00) against every person convicted for violation of a state penal or criminal statute or convicted for violation of a municipal or county ordinance (except statutes or ordinances relating to the parking of vehicles) and two dollars ($2.00) from every bond estreature or forfeited bail bond related to such statutes or ordinances. This section shall apply only to the state penal and criminal law violations and the county ordinances as arise within the jurisdiction of the city.

(b) *Criminal justice education and training fund.* All funds remitted to the ~~treasurer of the~~ city pursuant to subsection (a) herein shall be deposited in a separate fund and be expended solely for criminal justice education degree programs and training expenditure for city law

enforcement and correctional officers, part-time law enforcement officers, auxiliary officers and support personnel in conformance with the requirements of applicable law~~.~~ , pursuant to the provisions of F.S. § 918.15.

(Code 1968, § 2-10)

Sec. 8-1-2. - Misdemeanors under state law.

It shall be unlawful for any person to commit, within the corporate limits of the city, any act which is recognized by the laws of the state as a misdemeanor, and the commission of such acts is hereby forbidden.

(Code 1968, § 122-1)

Case Law annotation—A municipality may enact an ordinance which creates an offense against municipal law for the same act that constitutes an offense against state law. Jaramillo v. City of Homestead, 322 So. 2d 496 (Fla. 1975).

Similarly, a municipality by ordinance may adopt state misdemeanor statutes by specific reference or by the general reference contained in the ordinance. Id.

Such an adoption by general reference as contained in the ordinance permits subsequent amendments, revisions and repeals of the laws by the state legislature to apply to the municipal ordinances. Id.

State Law reference— Arrests, F.S. Ch. 901; notice in lieu of arrest, F.S. § 901.27 et seq.

Sec. 8-1-3. - Nuisances at common law, state law, city ordinances.

All nuisances at common law or under the laws of Florida, or defined by city ordinances, are hereby prohibited within the city, and it shall be unlawful for any person to create, cause, permit or suffer any such nuisance on any lot or premises owned, occupied or controlled by him, or on any street or public place, or to do any act or create, cause or permit the existence of anything calculated to endanger the safety of the city or the lives, health or comfort of the citizens.

(Code 1968, § 122-34)

Sec. 8-1-4. - Abatement of nuisances.

Whenever any nuisance as defined in section 8-1-3 shall be found to exist on any premises, and it shall be found necessary to have the same removed or abated, the ~~chief of police~~ mayor shall immediately notify the owner or occupant of the premises, or the person who causes, permits or suffers the nuisance to exist, to remove or abate same within a reasonable time to be specified in the notice as the nature of the case and as the public good may require, and any person who shall fail to remove or abate the nuisance within the time specified in the notice shall be punished as provided for in section 1-1-8.

(Code 1968, § 122-35)

Cross reference— Code enforcement, Title XIII.

Sec. 8-1-5. - Destroying or injuring city property.

It shall be unlawful for any person willfully or maliciously to destroy or injure any property belonging to or in the custody or control of the city.

(Code 1968, § 122-10)

Sec. 8-1-6. - Injuring trees or shrubs in public places.

It shall be unlawful to injure in any manner any tree or shrub growing in any public park or other public place.

(Code 1968, § 146-30)

Cross reference— Parks and recreation, Ch. 6-3.

Sec. 8-1-7. - Fences, enclosures or other obstructions on city property.

It shall be unlawful for any person to have, maintain, occupy or use, or cause to be maintained, occupied or used, any fence, enclosure, building, house, shed, tent or any structure or any obstruction whatsoever, on any street, park or other property, or any part or portion thereof, of the city, without the written permission of the mayor~~, authorized by resolution of the city council, first had and obtained.~~

(Code 1968, § 146-28; Ord. No. 16-10, § 122, 9-9-10)

Cross reference— Streets, sidewalks and other public places, Ch. 11-4.

Sec. 8-1-8. - Barbed wire fences unlawful without planks.

It shall be unlawful for any person to erect or maintain in the city any fence of barbed wire, or fence of which barbed wire forms any part, upon the exterior lines of any lot or enclosure, without a plank at the top of the posts and two (2) other planks between the top one and the ground.

(Code 1968, § 122-3)

Cross reference— Buildings and building regulations, Ch. 7-13.

Secs. 8-1-9, 8-1-10. - Reserved.

Editor's note— Ord. No. 41-90, § 1, adopted Sept. 13, 1990, repealed §§ 8-1-9 and 8-1-10. Prior to repeal, said sections pertained to registration of firearms and transfer or sale of firearms, and were derived from Code 1968, §§ 122-21, 122-22.

Sec. 8-1-11. - Reserved.

Editor's note— Ord. No. 27-11, § 3, adopted September 22, 2011, repealed § 8-1-11, which pertained to discharge of firearms, explosives and derived from § 122-23, of the 1968 Code; Ord. No. 16-10, § 123, 9-9-10.

Sec. 8-1-12. - Use of slingshots.

It shall be unlawful for any person to use within the limits of the city any slingshot.

(Code 1968, § 122-53; Ord. No. 27-11, § 4, 9-22-11)

Sec. 8-1-13. - Parades and processions—Permit required; exceptions.

No procession or parade excepting the forces of the United States Army or Navy, the military forces of this state and the forces of the ~~police and fire departments~~ city public safety or designated funeral procession, shall occupy, march or proceed along any street except in accordance with a

permit issued by the mayor and other regulations as are set forth herein which may apply.

(Code 1968, § 122-37; Ord. No. 16-10, § 124, 9-9-10; Ord. No. 16-10, § 125, 9-9-10; Ord. No. 16-10, § 124, 9-9-10)

Cross reference— Special events, Ch. 11-4, Art. VI.

Sec. 8-1-14. - Same—Interference.

It shall be unlawful for any person to willfully hinder, impede the progress of or interfere in any manner with the holding of any lawfully authorized parade held within the city.

(Code 1968, § 122-38)

Sec. 8-1-15. - False police and fire alarms.

(1) *Excessive false alarms ~~unlawful~~ prohibited:* It shall be ~~unlawful~~ a violation of this code for any person, firm, corporation, partnership or entity who owns, controls, or has custody of any police or fire alarm, as defined herein, to suffer or permit the existence of excessive false alarms by such devices, as defined herein.

(2) *Definitions:*

(a) *Alarm* or *alarm system* means any mechanical or electrical device that is arranged, designed, or used to signal the occurrence in the City of Pensacola of a burglary, robbery, or other criminal offense, fire emergency or other emergency requiring urgent attention, and to which ~~police or fire~~ public safety personnel are expected to respond. Alarm systems include those through which public safety personnel are notified directly of such signals through automatic recording devices or are notified indirectly by way of third persons who monitor the alarm systems and who report such signals to the ~~fire or police department~~ city. Alarm systems also include those designed to register a signal which is so audible, visible or in other ways perceptible outside a protected building, structure or facility as to notify persons in the neighborhood or vicinity beyond the signal location who in turn may notify the ~~police or fire department~~ appropriate city personnel of the signal. Alarm systems do not include those affixed to automobiles. Alarms in separate structures are to be

counted as separate systems even though owned or controlled by the same person or entity.

(b) *False alarm* means an alarm signal eliciting a response by the ~~police or fire department~~ public safety personnel when a situation requiring a response by the ~~police or fire department~~ public safety does not in fact exist. False alarm does not include an alarm signal caused by violent conditions of nature or other extraordinary circumstances not reasonably subject to control by the alarm operator or alarm user. Alarms resulting from the following conditions are not considered false alarms:

1. Criminal activity or unauthorized entry.
2. Earthquake or other natural occurrence causing structural damage to the protected premises.
3. High winds sufficient to activate motion detection systems or causing physical damage to the protected premises.
4. Flooding of the protected premises due to overflow of natural drainage.
5. Lightning bolt causing physical damage to the protected premises.
6. Telephone line malfunction verified in writing by a telephone company supervisor.
7. Electrical service interruption verified by the Gulf Power Company.
8. Communication to ~~the police or fire department~~ city public safety before a unit is dispatched to investigate clearly indicating that the alarm resulted from authorized entry, authorized system test, or other noncriminal cause.
9. An alarm caused on the reasonable but mistaken belief that a burglary, robbery, or other criminal offense, fire emergency, or other emergency is in progress.
10. The generation of a false alarm which is beyond the reasonable control of the system user.

(c) *Excessive false alarms* occur when any alarm system produces more than three (3) false alarms in any calendar year; however, persons installing a new alarm system or making substantial modifications to an existing system shall be entitled to a grace period during which alarms generated by such system shall be deemed nonfalse alarms,

provided further that this grace period shall cease thirty (30) days after installation of or modification to an alarm system; provided further that the ~~chief of the police or fire departments~~ mayor shall have the authority to grant an extended grace period for good cause shown upon request.

(3) *Response to alarms:*

(a) Whenever an alarm is activated in the City of Pensacola thereby requiring an emergency response to the location ~~by the police or fire department and the police or fire department does respond~~, the ~~police or fire department~~ responding personnel on the scene of the activated alarm system shall inspect the area protected by the system and shall determine whether the emergency response was in fact required as indicated by the alarm system or whether the alarm signal was a false alarm.

(b) If the ~~police or fire department~~ personnel at the scene of the activated alarm system determines the alarm to be false, ~~said officers~~ they shall make a report of the false alarm, a notification of which shall be mailed or delivered to the alarm user at the address of said alarm system installation location, advising the alarm user of the false alarm.

(c) The ~~chief of the police or fire department~~ mayor or his designee shall have the right to inspect any alarm system on the premises to which a response has been made, and he may cause an inspection of such system to be made at any reasonable time thereafter.

(4) *Penalty fee assessment:*

(a) If any alarm system produces three (3) false alarms in any calendar year, the ~~chief of the affected department~~ mayor shall provide written notice of the fact, which shall be given by certified mail or delivery to the alarm user asking the alarm user to take corrective action in regard to false alarms and informing the alarm user of the false alarm fee schedule provided herein.

(b) Upon any alarm system producing a fourth or additional false ~~police~~ alarm in a calendar year, a fee of fifty dollars ($50.00) per false alarm shall be charged to the user or owner.

~~(c) Upon any alarm system producing a fourth or additional false fire alarm in a calendar year, a fee of fifty dollars ($50.00) per false alarm shall be charged to the user or owner.~~

~~(d)~~ (c) False alarms occurring no later than six (6) months after installation of an alarm system shall not be counted in the penalty fee assessment procedure.

(5) *Appeal of false alarm:*

(a) Any owner or user who has been notified of a false alarm or assessed a false alarm fee may appeal to the mayor by giving written notice within three (3) days of the notification of a false alarm or assessment. Upon receipt of the appeal notice, a time certain, not to exceed thirty (30) days of receipt of the appeal, shall be established for a hearing.

(b) The appellant shall be given reasonable notice of such hearing date.

(c) The mayor or his designee shall serve as hearing officer, and the burden of proof shall be upon the appellant to show by a preponderance of the evidence that the alarm signal in question was not a false alarm as defined herein.

(d) After receipt of all relevant evidence, the ~~hearing officer~~ mayor shall, within three (3) days, render his decision. The decision of the ~~hearing officer~~ mayor shall be final.

(Ord. No. 14-87, § 1, 4-9-87; Ord. No. 45-89, §§ 1, 2, 9-21-89; Ord. No. 16-10, § 125, 9-9-10)

Sec. 8-1-16. - Regulation of noise.

(a) It shall be unlawful for any person to willfully make, continue or cause to be made or continued any loud and raucous noise which term shall mean any sound which, because of its volume level, duration, and character, annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the city.

(b) The following acts, among others, are declared to be loud and raucous noises in violation of this section 8-1-16, which enumeration shall not be deemed to be exclusive:

(1) *Horns and signaling devices.* The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place of the city, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; the sounding of any such device for an unnecessary

and unreasonable period of time; the use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such signaling device when traffic is for any reason held up. The use of sirens, except by authorized emergency vehicles, is prohibited.

(2) *Radios, phonographs and similar devices.* The using, operating or permitting to be played, used or operated, of any radio receiving set, television set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which the machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this paragraph.

(3) *Local vocal noises.* Vocal noises made in a loud and raucous manner between the hours of 11:00 p.m. and 7:00 a.m., so as to annoy or disturb the quiet, comfort, or repose of persons in any office or other place of business, or in any dwelling, hotel or other type of residence.

(4) *Animals and birds.* The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb the comfort or repose of persons in the vicinity.

(5) *Exhaust.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat, or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(6) *Defect in vehicle or load.* The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.

(7) *Construction or repairing of buildings.*

(i) The erection, including excavation, demolition, alteration or repair of any building other than between the hours of 6:00 a.m. and 7:00 p.m. on Monday through Saturday, except in case of urgent necessity in the interest of public health and safety, and then only

with a permit from the ~~director of inspections~~ mayor, which permit may be granted for a period not to exceed three (3) days while the emergency continues and which permit may be renewed for periods of three (3) days or less while the emergency continues. If the ~~director of inspections~~ mayor should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways within the hours of 7:00 p.m. and 6:00 a.m., and if he shall further determine that loss or inconvenience would result to any party in interest, he may grant permission for such work to be done within the hours of 7:00 p.m. and 6:00 a.m., including Sundays, upon application being made at the time the permit for work is awarded or during the progress of the work.

(ii) *Reserved.* At the request of the city this section has been removed.

(8) *Schools, courts, churches, hospitals, and other medical facilities.* No person, while on public or private grounds adjacent to any building in which a school, court, church, hospital, or other medical facility is in session or in use, shall willfully make or assist in the making of any noise which disturbs the peace or good order of such activity occurring within the building. The term "medical facility," as used in this paragraph, includes physicians' offices, walk-in medical centers, medical diagnostic testing centers, surgical centers and facilities which provide reproductive health services including the termination of pregnancy and/or counseling or referral services relating to the human reproductive system.

(9) *Construction equipment.*

~~(i)~~ The operation between the hours of 6:00 p.m. and 7:00 a.m. and at any time on Sundays of any pile driver, steam or power shovel, pneumatic hammer, derrick, steam or electric hoist or other appliance, the use of which is attended by loud or unusual noise.

~~(ii) The provisions of subsection (i), above, insofar as they pertain to the hours between 7:00 a.m. and 6:00 p.m. on Sundays are suspended and shall not be operative through December 31, 2006, in order to facilitate residential repair from damage caused by Hurricane Ivan.~~

(10) *Electronic sound amplification.* The use of electronic sound amplification equipment in such a manner as to produce a sound which is capable of being heard at a point in excess of fifty (50) feet between the hours of 11:00 p.m. and 7:00 a.m. is prohibited in the following zones: R-1AAAAA, R-1AAAA, R-1AAA, R-1AA, R-1A, R-ZL, R-2A, R-2, R-NC, HR-1, HR-2, HC-1, PR-1AAA, PR-2, ATZ-1 and ATZ-2.

(c) The provisions of section 8-1-16 are intended to be construed to secure for the people freedom from unwanted loud and raucous noise as described herein without violating any of the rights secured by the constitution to the people, and are not intended, nor shall they be construed, to regulate the usual and customary noise incidental to urban life.

(d) *Penalty.* Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and subject to the penalty provided by section 1-1-8 of the Code.

(e) *Additional remedy, injunction.* As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision hereof and which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health or peace of residents in an area shall be deemed, and is declared to be, a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

(Ord. No. 52-87, § 1, 12-10-87; Ord. No. 7-93, § 1, 4-8-93; Ord. No. 33-94, § 2, 9-18-94; Ord. No. 37-94, § 1, 10-13-94; Ord. No. 4-95, § 1, 1-26-95; Ord. No. 07-05, §§ 1, 2, 6-23-05)

Sec. 8-1-17. - Throwing certain objects at parades prohibited.

It shall be unlawful for any person, while participating in a parade or while on a parade route or in a parade staging area or in a parade disbanding area to throw, toss, distribute, possess, or have in his custody or control any fireworks not expressly permitted by Florida law; any life-threatening objects; any noxious substance or any liquid intended to be poured, tossed, handed out or otherwise distributed; or any throw containing sharp points, including but not limited to plastic spears or plastic, paper or silk flowers with wire stems, intended to be tossed; or to throw, toss or otherwise distribute, any

other object having a weight in excess of two (2) ounces; or to throw, toss or otherwise distribute any object in such a manner as to encourage spectators to enter the street or to closely approach vehicles, floats, horses or other conveyances.

(Ord. No. 19-90, § 1, 3-22-90)

Sec. 8-1-18. - Prohibition of residential picketing.

It shall be unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in the city. This prohibition shall be applied only when picketing occurs, with or without the carrying of signs or other forms of speech, and is directed toward or takes place solely in front of a particular residence, utilizing a public street, sidewalk, right-of-way, or other public area, when such activity occurs in the following zoning districts: R-1AAAAA, R-1AAAA, R-1AAA, R-1AA, R-1A, R-ZL, R-2A, R-2, R-NC, HR-1, HR-2, PR-1AAA, ~~WEHR-2~~, ATZ-1, and PR-2. The provisions of section 1-1-8 of the Code of the City of Pensacola, Florida, shall provide the penalty for violation of this section.

Commented [RS1]: Zoning category previously deleted.

(Ord. No. 29-94, § 2, 9-8-94)

Sec. 8-1-19. - Designated law enforcement areas.

(a) No person shall enter upon or obstruct or create any obstruction within a designated law enforcement area adjacent to an abortion clinic other than a law enforcement official. It shall not be a violation of this subsection for the owner, tenant, staff member, employee or invitee of an abortion clinic or other business served by a paved driveway to enter upon that portion of a designated law enforcement area which is a paved driveway solely as necessary for ingress and egress.

(b) *Definitions as used in this section:*

(1) *Designated law enforcement area* means an area eight (8) feet in width within a public right-of-way, immediately adjacent to the property line of land on which an abortion clinic is located. Such designated law enforcement area does not include paved sidewalks intended for pedestrian use.

(2) *Law enforcement official* means a sworn officer or authorized employee of the ~~Pensacola Police Department~~ city of Pensacola,

Escambia County Sheriff's Department, Florida Department of Law Enforcement, State Attorney's Office, or other state or federal law enforcement agency, whether in uniform or not.

(3) *Abortion clinic* means any facility in which the termination of pregnancies occurs, which facility is regulated by an agency or department of the State of Florida.

(c) *Penalties.* Any person violating subsection (a) shall be subject to the penalties provided in section 1-1-8 of the city code.

(Ord. No. 3-95, § 2, 1-26-95)

Editor's note— Ord. No. 3-95, § 2, adopted Jan. 26, 1995 created a new § 8-1-18. At the discretion of the editor said section has been redesignated as § 8-1-19 to prevent duplication of section numbering.

Sec. 8-1-20. - Public nudity.

(1) *Title.* This section shall be known as the "City of Pensacola Public Nudity Ordinance".

(2) *Intent.*

(a) It is the intent of this section to protect and preserve the good order, health, safety, welfare, and morals of the citizens of the city by prohibiting a person from intentionally or recklessly appearing or being nude, or causing another person to appear or be nude, in a public place or engaging in, simulating or permitting another person to engage in or to simulate certain sexual conduct in or at a public place within the city except as provided for in subsection (7).

(b) It is the further intention of this section to accomplish those intents and purposes expressed in the recitals ("whereas" clauses) of Ordinance No. 56-98, each of which are incorporated by reference in this subsection (2).

(3) *Definitions.*

(a) *Breast.* A portion of the human female mammary gland (commonly referred to as the female breast) including the nipple and areola (the darker colored area of the breast surrounding the nipple) and an outside area of such gland wherein such outside area is (i) reasonably compact and contiguous to the areola, and (ii) contains at least the

nipple and the areola and one-quarter (¼) of the outside surface area of such gland.

(b) *Entity.* Any proprietorship, partnership, corporation, association, business trust, joint venture, joint-stock company or other for-profit and/or not-for-profit organization.

(c) *Nude.* Any person insufficiently clothed in any manner or that any of the following body parts are not entirely covered with a fully opaque covering:

(1) The male or female genitals;

(2) The pubic area;

(3) The vulva;

(4) The penis;

(5) The female breast (each female person may determine which one-quarter(¼) of her breast surface area (see definition of breast) contiguous to and containing the nipple and the areola is to be covered);

(6) The anus;

(7) The anal cleft; or

(8) The anal cleavage.

(9) For the purposes of this subsection, bodypaint, tattoos, liquid latex, whether wet or dried, string and dental floss and similar substances shall not be considered an opaque covering.

(d) *Person.* Any live human being aged ten (10) years of age or older.

(e) *Places approved or set apart for nudity.* Enclosed single sex public restrooms, enclosed single sex functional shower, single sex locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospitals, the yard areas of private residences, and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein. This term shall not be deemed to include places where a person's conduct of being nude is used for his or her profit or where being nude is used for the promotion of business or is otherwise for commercial gain.

(f) *Public place.* Any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places include, but are not limited to, streets, sidewalks, parks, beaches, business and commercial establishments (whether for-profit or not-for-profit and whether open to the public at large or where entrance is limited by an admission or a cover charge or membership requirement or membership fee), bottle clubs, bars, pubs, hotels, motels, restaurants, night clubs, country clubs, cabarets, and meeting facilities utilized by any religious, social, fraternal or similar organization. Premises, or portions thereof, such as motel or hotel rooms, used solely as a private residence, whether permanent or temporary in nature, shall not be deemed to be a public place.

(4) *Findings.* In addition and supplemental to the findings and determinations contained in the recitals ("Whereas" clauses) of Ordinance No. 56-98 which are incorporated by reference into this subsection (4), it is the intent of the city to regulate the conduct of appearing nude in public places for the purpose of regulating nudity and other conduct, that considering what has happened in other communities, the acts prohibited in subsections (5) and (6) below, encourage or create the potential for the conduct of adverse secondary effects such as, but not limited to, neighborhood blight, lower property values, undesirable numbers of transients and the crimes of prostitution, rape, attempted rape, possession and sale of controlled substances and assault; that actual and simulated nudity and sexual conduct in public places, begets and has the potential for begetting undesirable and unlawful behavior; and that sexual, lewd, lascivious, and salacious conduct results in violation of law and creates dangers to the health, safety, morals, and welfare of the public and those who engage in such conduct.

(5) *Public sexual conduct prohibited.* No person in or at a public place shall engage in and no person or entity maintaining, owning or operating a public place shall encourage, allow or permit in or at such public place any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, lap dancing, straddle dancing, any sexual act which is prohibited by law, touching, caressing, or fondling of the breasts, anus or genitals or the simulation thereof.

(6) *Nudity prohibited in public places.* It shall be unlawful for any person to knowingly, intentionally, or recklessly appear, or cause another person to

appear nude, as defined in subsection (3)(c), except as provided in subsection (7), below. It shall also be unlawful for any person or entity maintaining, owning, or operating any public place to encourage, suffer or allow any person to appear nude in such public place, except as provided in subsection (7), below.

(7) *Existing nonconforming uses.* The provisions of this section shall be applied prospectively. Any adult entertainment establishment which permits as of the first reading of this section public nudity as defined herein and which would otherwise be in violation of this section may continue in existence as a nonconforming use; provided, however, that no establishment shall alter its method of business to permit any further form of public nudity than was in existence on October 29, 1998, and further provided that no such establishment may be enlarged or increased in size or be discontinued in use for a period of more than one hundred eighty (180) days.

(8) *Exemptions.* The prohibitions of subsections (5) and (6) of this section shall not apply:

(a) When a person appears nude in a place approved or set apart for nudity, as defined by this section, provided: (i) such person is nude for the sole purpose of performing the legal function(s) that is/are customarily intended to be performed within such place provided or set apart for nudity, and (ii) such person is not nude for the purpose of obtaining money or other financial gain for such person or for another person or entity.

(b) When the conduct of being nude cannot legally be prohibited by this section because: (i) it constitutes a part of a bona fide live communication, demonstration or performance by a person wherein such nudity is expressive conduct incidental to and necessary for the conveyance or communication of a genuine message or public expression and is not a mere guise or pretense utilized to exploit the conduct of being nude for profit or commercial gain, and as such is protected by the United States Constitution or Florida Constitution, or (ii) it is otherwise protected by the United States Constitution or Florida Constitution.

(c) A mother's breastfeeding of her baby does not under any circumstance violate the provisions of this section.

(9) *Enforcement and penalties.* Any person or entity violating any of the provisions of this section shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the state in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon conviction, shall be punished by a fine not exceeding five hundred dollars ($500.00) or imprisonment for a term not exceeding sixty (60) days or by both such fine and imprisonment. Each day any violation of any provision of this section shall continue shall constitute a separate offense.

(10) *Injunctive relief.* In addition to the procedures provided herein, persons and entities that are not in conformity with these requirements shall be subject to appropriate civil action in the court of appropriate jurisdiction for abatement.

(Ord. No. 56-98, §§ 1—10, 12-17-98)

Sec. 8-1-21. - Trespass in cemeteries.

A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any cemetery in the City of Pensacola, Florida, between the hours of sunset and sunrise of the following day commits the offense of trespass in a cemetery and shall be punished as provided for in section 1-1-8.

(Ord. No. 16-04, § 1, 8-19-04)

Sec. 8-1-22. - Camping prohibited; exceptions.

(1) For purposes of this section, "camping" is defined as:
    (a) Cooking over an open flame or fire out-of-doors; or
    (b) Bathing in public for purposes of personal hygiene; or
    (c) Sleeping out-of-doors under one of the following circumstances:
        (i) Adjacent to or inside a tent, or
        (ii) Inside some form of temporary shelter.

(2) Camping is prohibited on all public property, except as may be specifically authorized by the appropriate governmental authority.

(3) Camping is prohibited on all property in the city used for residential purposes; provided, however, that camping is permitted on such property with the permission and consent of the property owner.

(4) An individual in violation of this section who has no private shelter, shall be advised by a law enforcement officer charged with the enforcement of this ordinance of available shelter in the City of Pensacola or Escambia County, in addition to any penalties of law.

(Ord. No. 17-13, § 1, 5-23-13; Ord. No. 09-14, § 1, 2-27-14)

Secs. 8-1-23, 8-1-24. - Reserved.

Editor's note— Ord. No. 08-15, § 1, adopted April 9, 2015, repealed §§ 8-1-23, 8-1-24, which pertained to city restrooms—prohibited activities; public elimination prohibited. See Code Comparative Table for complete derivation.

Sec. 8-1-25. - Panhandling.

(1) *Legislative findings:* The City Council of the City of Pensacola, Florida, hereby makes the following findings:

(a) Aggressive soliciting, begging or panhandling warrants justifiable alarm or immediate concern for the safety of persons or property and can cause apprehension and fear in the intended target of the soliciting, begging or panhandling.

(b) Soliciting, begging or panhandling on the public roadways or rights-of-way creates a safety hazard for both pedestrians and those travelling upon the roadways and rights-of-way, and poses a disruption to the free flow of traffic.

(c) The City of Pensacola has a significant interest in protecting the health, safety and welfare of those peacefully moving about within the city.

(2) *Definitions.*

(a) *Arterial roadway* means a roadway providing service which is relatively continuous and of relatively high traffic volume, long trip length, and high operating speed. In addition, every Unites States numbered highway is an arterial road.

(b) *Begging* means, for purposes of this section only, the same as soliciting, below.

(c) *Community outreach services* means a public or private services provider that offers residential, rehabilitative, medical or social services assistance, including, but not limited to, mental health treatment, drug or alcohol rehabilitation or homeless assistance services for individuals in need thereof. One example of an entity that can help individuals access such services is ~~First Call For Help~~ United Way's "2-1-1" Program.

(d) *Community redevelopment areas* means those areas of the city the city council has found to be areas of slum and blight as set forth in F.S. §§ 163.330—163.463. ~~The city's community redevelopment area for the purposes of this act is the Urban Core Community Redevelopment Area described in Ordinance No. 13-84, bounded by the west by "A" Street; on the north by Cervantes Street; on the east by 17th Avenue, the L&N Railroad trestle and the mouth of Bayou Texar; and on the south by Pensacola Bay.~~ The city council may establish additional community redevelopment areas pursuant to F.S. §§ 163.330—163.463.

(e) *Panhandling* means, for purposes of this section only, the same as soliciting, below.

(f) *Soliciting* means, for purposes of this section only, any request made in person on a street, sidewalk or public place, asking for an immediate donation of money or other thing of value, including the purchase of an item or service for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is a donation. Soliciting shall not include passively standing or sitting with a sign or other indication that one is seeking donations without addressing the request to any specific person.

(3) *Soliciting prohibited in certain areas or under certain circumstances.* It shall be unlawful for any person to solicit, beg or panhandle in the city limits of the City of Pensacola in the following areas or under the following circumstances:

(a) On any day after sunset, or before sunrise; or

(b) When either the panhandler or the person being solicited is located at any of the following locations:

Commented [RS2]: The United Way has changed its program from "First Call For Help" to "2-1-1".

Commented [RS3]: Outdated definition.

1. At a bus stop.
2. In any public transportation vehicle.
3. In any public transportation facility.
4. In a vehicle which is parked or stopped on a public street or alley.
5. In a sidewalk cafe.
6. Within twenty (20) feet from any ATM machine or entrance to a financial institution.
7. Within twenty (20) feet of a public toilet facility.
8. From any operator of a motor vehicle that is in traffic on a public street; provided, however, that this prohibition shall not apply to services rendered in connection with emergency repairs requested by the owner or passengers of such vehicle; or

(c) In an aggressive manner, to include any of the following:

1. Touching the solicited person without the solicited person's consent.
2. Panhandling a person while such person is standing in line and/or waiting to be admitted to a commercial establishment.
3. Blocking, either individually or as part of a group of persons, the path of a person being solicited, or the entrance to any building or vehicle.
4. Following behind, ahead or alongside a person who walks away from the panhandler after being solicited.
5. Using profane or abusive language, either during the solicitation or following a refusal to make a donation, or making any statement, gesture, or other communication which would cause a reasonable person to be fearful or feel compelled.
6. Panhandling in a group of two (2) or more persons, or

(d) Within five hundred (500) feet of the intersection of two (2) arterial roads in the Urban Core Community Redevelopment Area (CRA):

Main Street and Palafox Street

Bayfront Parkway and 9th Avenue

Garden Street and North Palafox Street

Chase and North Palafox Street

Cervantes and North Palafox Street

East Cervantes Street and 9th Avenue

East Gregory Street and 9th Avenue

East Gregory Street and Bayfront Parkway

East Chase Street and 9th Avenue

East Chase Street and Bayfront Parkway

North Alcaniz Street and East Chase Street

North Alcaniz Street and East Cervantes Street

North Davis Highway and East Cervantes Street

(4) *Penalties.* Violation of this section shall be enforced by application of the penalties set forth in section 1-1-8 of the Code of the City of Pensacola, Florida.

In addition, the officer issuing a citation under this article may elect to contact community outreach services, such as United Way's ~~First Call For Help~~ "2-1-1", in order to determine whether a referral can be made or services offered to assist the individual cited. In the event the officer is unable to contact community outreach services at the time of the officer's contact with the person accused of violating this section, the officer may supply the person with information sufficient for the person to make such contact at a later time.

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(Ord. No. 20-13, § 1, 6-13-13)

Sec. 8-1-26. - Excessive generation of code complaints.

(1) *Repeated and excessive generation of code violations unlawful.* It shall be unlawful for any person, firm, corporation, partnership or entity who owns, controls, has custody of or responsibility for private property in the city limits of the City of Pensacola to allow the condition of the property to violate the provisions of the Code of Ordinances on more than four (4) occasions per calendar year, causing the investigation of such conditions and the preparation of notices of violations, regardless of whether the

property is subsequently brought into compliance by the owner, the city, or any other entity.

(2) *Penalty for violation.* If the owner or person or entity in control of or having responsibility for the maintenance of real property allows the property located in the city limits of the City of Pensacola to become in violation of the code so as to generate the issuance of more than four (4) notices of violation in a calendar year, the code enforcement authority shall charge and impose an additional fee in the amount of one hundred fifty dollars ($150.00) per violation for each subsequent notice of violation, independent of and notwithstanding any other fines, penalties or assessments.

(3) *Appeal of fines for repeated and excessive generation of code violations.* Any property owner or other entity who has received a fine pursuant to this section may appeal the imposition of the fine to the Special Magistrate. Such appeal must be made in writing to the code enforcement authority within fourteen (14) calendar days of actual receipt or acknowledged receipt of a mailed notice of the fine, and a hearing will be scheduled before the Special Magistrate within thirty (30) days thereafter. The burden of proof shall be upon the appellant to show by a preponderance of the evidence that the fine is not warranted. The decision of the Special Magistrate shall be final.

(Ord. No. 01-12, § 1, 2-9-12)

Note— Formerly § 8-1-24.

Sec. 8-1-27. - Regulation of vegetation barriers.

It shall be unlawful for any person who shall own, control or occupy any lot, parcel of land or premises in the city, to allow a barrier consisting of vegetation to cause damage to physical structures on adjacent property or to be kept in a manner which harbors rats or other similar creatures constituting a hazard to public health. This section may be enforced through the provisions of section 1-1-8 or section 13-2-2, herein.

(Ord. No. 05-14, § 1, 2-13-14)

Editor's note— Ord. No. 05-14, § 1, adopted February 13, 2014, set out provisions intended for use as § 8-1-26. For purposes of clarity, and at the editor's discretion, these provisions have been included as § 8-1-27.

CHAPTER 8-2. ~~REGISTRATION OF CRIMINALS~~[2] REPEAL

Commented [RS4]: Recommend repeal. F.S. § 775.13-15 requires felons to register with the sheriffs of the state and F.S. § 775.21 regulates the activities of sexual predators.

Footnotes:

--- (**2**) ---

State Law reference— Registration of convicted felons by the sheriff, F.S. § 775.13.

~~Sec. 8-2-1. - Purpose.~~

~~It is hereby declared by the council that by reason of the fact that many of the crimes herein enumerated are of great danger to this community and have been and are being committed by habitual and dangerous criminals traveling from place to place throughout the United States and the state, and because there is no means whereby the peace officers of the city may be apprised of the arrival into the city or of the presence in the city of such criminals until after a crime shall have been committed by them, and because the undisclosed presence of the criminals within the city will constitute a serious menace to the safety and welfare of the citizens of the city, it is the intention of this council, through the police powers of the city, to preserve by this chapter the public peace, welfare and safety of its citizens, and it is hereby declared that this chapter is an emergency measure passed for the purpose of suppressing and preventing crime.~~

~~(Code 1968, § 78-8)~~

~~Sec. 8-2-2. - Applicability of chapter.~~

~~This chapter shall apply to every person who has been convicted of a felony in any federal court or the court of any state prior to his arrival in the city.~~

~~(Code 1968, § 78-1)~~

~~Sec. 8-2-3. - Time allowed for registration; information to be given.~~

~~Any person convicted of a felony in any federal or state court, residing in or who comes into the city from any point outside of the city, whether in transit through the city or otherwise, shall report to the chief of police of the city~~

within forty-eight (48) hours after his arrival within the boundaries of the city, and shall furnish to the chief of police, in a written statement signed by himself, the following information: his true name and each other name or alias by which he is or has been known; a full and complete description of himself; the name of the felony of which he shall have been convicted, together with the name of the place where each crime was committed, the name under which he was convicted, and the date of the conviction therefor; the name, if any, and the location, of each correctional institution in which he shall have been confined; the location or address of his residence, stopping place or living quarters in the city, or the address or location of his intended residence, stopping place or living quarters in the city; the length of time he expects or intends to reside within the city; the occupation or employment in which the person is now engaged, the name of the employer, the business engaged in by the employer and the nature and character thereof.

(Code 1968, § 78-2)

Sec. 8-2-4. - Photographs, fingerprints.

At the time of furnishing such information as required by section 8-2-3, such person shall be photographed and fingerprinted by the chief of police, and the photograph and fingerprints shall be made a part of the permanent records of the police department of the city.

(Code 1968, § 78-3)

Sec. 8-2-5. - Change of address.

If any person specified in this chapter as being required to register shall change his place of residence, stopping place or living quarters to any new or different place within the city, other than the place last reported to the chief of police in the report as provided for in section 8-2-3, the person shall, within twenty-four (24) hours after removing himself from the place of abode first given, notify the chief of police in a written and signed statement of the change of address and shall furnish in the written statement to the chief of police his new address and each one thereinafter.

(Code 1968, § 78-4)

~~Sec. 8-2-6. - Giving false address or misleading information.~~

~~It shall be unlawful for any person required by any provision of this chapter to furnish a report; to furnish in any report any false or fictitious address or any address other than a true address or intended address, or to furnish in making the report any false, untrue or misleading information or statement relating to any information required by the provisions of this chapter to be made or furnished.~~

~~(Code 1968, § 78-5)~~

~~Sec. 8-2-7. - Failure to comply.~~

~~It shall be unlawful for any person required by any provision of this chapter to furnish any report or information, to fail, neglect or refuse to make the report or to furnish any information, or to fail, neglect or refuse to render or furnish the same within the time prescribed in this chapter.~~

~~(Code 1968, § 78-6)~~

~~Sec. 8-2-8. - Exclusions.~~

~~Nothing in this chapter shall be deemed or construed to apply to any person who has received a pardon for each crime he was convicted of under the laws of any state where he was convicted or incarcerated.~~

~~(Code 1968, § 78-7)~~

CHAPTER 8-3. OFFENSES UPON WATERS[3]

Footnotes:

--- (**3**) ---

Editor's note—Ord. No. 37-90, § 1, adopted Aug. 9, 1990, repealed Ord. No. 18-90, § 1, adopted March 22, 1990, from which former Ch. 8-3 was derived, and enacted a new Ch. 8-3 to read as herein set forth. Said former Ch. 8-3, §§ 8-3-1—8-3-3, pertained to similar subject matter.

Cross reference— Harbors and waterways, Ch. 10-3.

Sec. 8-3-1. - No-wake zones.

It shall be unlawful for any person to operate any vessel in or upon the waters of the city at a speed any greater than the minimum speed necessary to maintain steerageway in any no-wake zone designated by a sign reading "No Wake Zone" or "Idle Speed—No Wake" or similar or like warning.

(Ord. No. 37-90, § 1, 8-9-90)

Sec. 8-3-2. - Penalties.

(a) Any person cited for a violation of section 8-3-1 shall be deemed to be charged with a noncriminal infraction, shall be cited to appear before the county court. The civil penalty for any such infraction is thirty-five dollars ($35.00), except as otherwise provided in this section.

(b) Any person cited for an infraction under this section may:

(1) Post a bond, which shall be equal in amount to the applicable civil penalty; or

(2) Sign and accept a citation indicating a promise to appear.

The officer may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(c) Any person who willfully refuses to post a bond or accept and sign a summons is guilty of a misdemeanor of the second degree, punishable as provided in section 1-1-8 of this Code.

(d) Any person charged with a noncriminal infraction under this section may:

(1) Pay the civil penalty, either by mail or in person within ten (10) days of the date of receiving the citation; or,

(2) If he has posted bond, forfeit bond by not appearing at the designated time and location.

If the person cited follows either of the above procedures, he shall be deemed to have admitted the infraction and to have waived his right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceeding.

(e) Any person electing to appear before the county court or who is required so to appear shall be deemed to have waived the limitations on the civil penalty specified in subsection (a). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proved, the court may impose a civil penalty not to exceed five hundred dollars ($500.00).

(f) At a hearing under this chapter, the commission of a charged infraction must be proved beyond a reasonable doubt.

(g) If a person is found by the hearing official to have committed an infraction, he may appeal that finding to the circuit court.

(Ord. No. 37-90, § 1, 8-9-90)

Sec. 8-3-3. - No-wake zone—Bayou Texar.

That portion of the waters of Bayou Texar south of the Cervantes Street Bridge and north of Day Marker No. 4 is hereby designated as a no-wake zone and shall be posted in accordance with applicable regulations of the State of Florida Department of Natural Resources relating to uniform waterway markers.

(Ord. No. 37-90, § 1, 8-9-90)

TITLE IX - PERSONNEL

Chapters

CHAPTER 9-1. GENERAL PROVISIONS

(RESERVED)

CHAPTER 9-2. ~~DEPARTMENT OF HUMAN RESOURCES~~[2]

(RESERVED)

Footnotes:

--- (**2**) ---

Editor's note—Ord. No. 26-99, § 3, adopted Sept. 24, 2009 provided that references in the Code to "department employee services" be and the same are hereby amended to read "department human resources". Section 6 of Ord. No. 26-99, adopted July 22, 1999, changed the title of Ch. 9-2 from "Department of Human Resources" to "Department of Employee Services." It should also be noted that § 6 of Ord. No. 26-99 provided that references in the Code to "director of personnel" and "department of personnel" be amended to read "director of human resources" and "department of human resources," respectively. Ord. No. 32-09, § 3, adopted Sept. 24, 2009 changed the title from "Department of employee services" to "Department of human resources." See also the Code Comparative Table.

Cross reference— Employer-employee relations, Ch. 9-4; pensions and deferred compensation, Ch. 9-5; Social Security replacement benefit program, Ch. 9-6.

Sec. 9-2-1. - ~~Department, position of director established.~~ RESERVED

Commented [RS1]: Charter allocates organization of city and employment of employees to the mayor.

~~Subject to the provisions of subsection 1-1-1(c), there is hereby established by the city council a department of human resources. The head of the department shall be known as the director of human resources, and the position of director of human resources is hereby established.~~

~~(Code 1968, § 43-1(A); Ord. No. 26-90, § 2, 6-14-90; Ord. No. 26-99, § 6, 7-22-99; Ord. No. 32-09, § 2, 9-24-09; Ord. No. 16-10, § 126, 9-9-10)~~

Sec. 9-2-2. - ~~Duties of director.~~ RESERVED

~~Subject to the provisions of subsection 1-1-1(c), the director of human resources shall act for and under the direction of the mayor in all matters pertaining to the appointment, promotion, training and separation of employment of all civil service employees of the city, and in such other matters pertaining to human resources management as the mayor may from time to time direct; provided, however, in all his actions and duties department director shall comply with the civil service provisions set forth by law.~~

~~(Code 1968, § 43-1(B); Ord. No. 26-90, § 3, 6-14-90; Ord. No. 16-10, § 127, 9-9-10)~~

CHAPTER 9-3. EMPLOYEE BENEFITS AND COMPENSATION[3]

Footnotes:

--- (**3**) ---

Cross reference— Pensions and deferred compensation, Ch. 9-5; social security replacement benefit program, Ch. 9-6; group insurance, Ch. 9-7; general pension and retirement fund, Ch. 9-8.

ARTICLE I. - IN GENERAL

Secs. 9-3-1 – 9-3-5. - RESERVED

~~Sec. 9-3-1. -~~ ~~Purpose;~~ ~~administration~~

(a) ~~*Purpose.* The purpose of this article shall be to establish and maintain firm and fair policies governing the rights and privileges of employees of the city in regard to their working hours, holidays, overtime and leaves of absence, and in order to provide its employees the protection and security of continuing salary or wage payment during periods when vacation, illness, emergency or certain civic responsibilities may justify time away from the job.~~

Commented [RS2]: The provisions of Sec. 9-3-1 through Sec. 9-3-5 pertain to the mayor's employees and will be transferred to the mayor's employment policies and procedures.

(b) *Administration.* Subject to the provisions of subsection 1-1-1(c), the mayor shall establish procedures by which the director of human resources shall administer working hours, holidays, overtime and leaves of absence of city employees. The procedures shall conform to this article and shall take into consideration that the city seeks to provide adequate vacation time, suitable overtime compensation and other time off in situations where it is right and proper without impairing the operation of the city's function.

(Code 1968, § 42-1; Ord. No. 26-90, § 4, 6-14-90; Ord. No. 16-10, § 128, 9-9-10)

Sec. 9-3-2. - Working hours.

(a) *Generally.* Except for those members of the police and fire departments who are on duty in rotating shifts, all employees of the city shall work a forty-hour workweek. The regular workweek shall be from 12:00 midnight Sunday to 12:00 midnight the following Sunday except the mayor may establish a different workweek for certain groups of employees and notation of such shall be kept in the department of human resources.

(b) *Incentive work programs.* Department and division heads may establish incentive work programs, subject to the mayor's approval, whereby employees performing a specific function are allowed to complete a unit of work each shift rather than remain on duty for a specific number of hours.

(c) *Responsibility for additional work.* While the standard workweek is specified above for all divisions of the administration, there exists in every position specification an obligation to assist in times when emergency or unusual requirements may necessitate the appearance of persons with particular skills. For example, employees supervising the work of contractors shall be required to work such hours as necessary to accomplish their assignments properly. Continued failure to appear for assignments when ordered by the appointing authority, in the absence of adequate reason, shall be neglect of duty.

(Code 1968, § 42-2(A), (C), (D); Ord. No. 13-98, § 1, 3-26-98; Ord. No. 26-99, § 6, 7-22-99; Ord. No. 32-09, § 3, 9-24-09; Ord. No. 16-10, § 129, 9-9-10)

Sec. 9-3-3. - Holidays.

(a) *Official holidays.* The city shall observe the following official holidays: New Year's Day, Martin Luther King, Jr.'s Birthday, Memorial Day, the Fourth of July, Labor Day, Veteran's Day, Thanksgiving, the day after Thanksgiving, and Christmas. There shall be two (2) additional personal holidays, to be observed by each employee on a workday of the employee's choosing subject to advanced approval of the department director. The mayor is hereby authorized in his discretion to close non-essential city facilities on days adjacent to official holidays and to provide non-essential employees who are not subject to collective bargaining agreements with the flexibility of utilizing personal holidays, personal time off, or leave without pay on those dates. Employees who may elect to take leave without pay on dates adjacent to official holidays shall be able to take such official holidays without penalty.

(b) *Weekend observance.* Unless otherwise directed by the mayor, when the holiday falls on Saturday, the city's official observance will be on Friday, and when the holiday falls on Sunday, Monday will be the day of observance.

(c) *Qualification.* Except when on approved paid leave, as referred to in article II, section 9-3-28, employees must work the last fully scheduled day prior to the holiday and the first fully scheduled day immediately following the holiday in order to qualify for holiday benefits.

(d) *Additional holiday compensation.* Employees who are on rotating or permanent shifts, who may be scheduled for duty on an official holiday as designated in subsection (a) above, and who accrue additional personal time off (PTO) leave as provided in subsection 9-3-4(b)(4)b. shall not be granted any additional compensation in the form of overtime pay or compensatory time off, except for the holidays of Martin Luther King Jr.'s birthday and Veterans Day for which overtime shall be paid when applicable.

(e) *Additional leave compensation.* Except as provided in subsection (d) and (f) of this section, all employees who because of the nature of their work are regularly unable to observe city holidays shall be compensated as provided under subsection 9-3-4(b)(4)b.

(f) *Overtime compensation.* Except as provided in subsections (d) and (e) of this section, all employees who because of the nature of their work are occasionally unable to observe city holidays shall be compensated as provided by the city.

(g) *Personal holiday.* The personal holiday must be taken within the calendar year. It cannot be carried over to the next calendar year nor can the employee be compensated if the personal holiday is not taken.

(h) *Anniversary day.* Employees shall receive one day of leave at the completion of each five-year interval of service (i.e. 5, 10, 15, 20, etc.) The anniversary day must be taken within one (1) year of reaching the milestone anniversary or the day will be forfeited.

(Code 1968, § 42-3; Ord. No. 4-85, § 1, 2-13-85; Ord. No. 1-86, § 1, 1-16-86; Ord. No. 21-98, § 1, 7-9-98; Ord. No. 38-99, § 1, 9-23-99; Ord. No. 28-00, § 1, 5-11-00; Ord. No. 36-02, § 1, 11-21-02; Ord. No. 02-08, § 1, 1-17-08; Ord. No. 16-10, § 130, 9-9-10)

Note — Section 6 of Ord. No. 36-02 provided for an effective date of Jan. 1, 2003.

Sec. 9-3-4. - Leaves of absence.

(a) *General:*

(1) *Purpose.* The city seeks to provide for its employees the protection and security of continuing salary during periods when vacation, illness, emergency or certain civic responsibilities may require time away from the job. These periods, termed "leaves of absence," are to be considered as a privilege, not a right of employment.

(2) *Administration.* The mayor shall establish the procedure by which the employee services director shall administer leaves of absence. The leaves of absence shall be administered in keeping with the area practices and within the financial limits as set forth by the council.

(b) *Personal time off leave:*

(1) *Purpose.* Personal time off (PTO) is established for the purpose of providing employees leave for a variety of reasons such as vacation, personal business, illness, medical or dental appointments, and family. It replaces leave formerly known as sick and annual leave.

(2) *Employee responsibility.* Employees are required to arrange and obtain prior/advance approval of personal time off leave. In the case of illness, supervisors can consider same day request.

a. In any case of absence on account of illness, an employee may be required by his department to file a doctor's certificate with the

city clinic, and all absences due to illness or injury of more than three (3) days' duration shall require the employee to provide a doctor's certificate to the city clinic stating:

1. The nature of illness or injury;

2. That the employee was incapacitated for work for the duration of his absence;

3. The employee is physically able to return to work and perform his duties;

4. That the employee has no contagious disease, which would jeopardize the health of other employees.

b. If an employee is habitually or chronically absent, a supervisor may require medical evidence to be provided to the city clinic concerning any illness or injury beginning with the first day of absence.

c. If an employee is absent and an excuse is felt necessary, an activity head or department director may request the city nurse to verify the reason for absence.

(3) *Recordkeeping.* No employee will be granted personal time off leave unless the time requested has already accrued prior to the leave period. Personal time off leave request shall be for a period of not less that one (1) hour and shall be in increments of not less than one (1) hour.

(4) *Accrual of time.*

a. *Generally.* Each employee will be credited with sixteen (16) hours of personal time off (PTO) leave for each month of service.

b. *Exceptions.* Employees who because of the nature of their work are regularly unable to observe city holidays and who are not given compensation in the form of overtime pay or compensatory time off shall be credited with an additional four (4) hours of personal time off (PTO) leave a month in lieu of holidays.

Fire suppression employees who are on duty in rotating shifts shall be credited with thirty-eight (38) hours of personal time off (PTO) leave for each month of service.

Employees permanently assigned to public safety telecommunicator function as designated by the mayor shall be

credited with twenty-five and four tenths (25.4) hours of personal time off (PTO) leave for each month of service.

Professional, non-civil-service-appointed employees shall be credited with the amount of personal time off (PTO) leave as specified in their contract agreements with the mayor.

(5) *Personal time off (PTO) leave usage and payout.*

(a) Employees whose employment is covered by the provisions of a collective bargaining agreement shall have their leave accrual, usage and payout determined by the provisions of the collective bargaining agreement and application of law, as approved and ratified by the parties to the agreement.

(b) Employees who are not covered by the provisions of a collective bargaining agreement shall have their PTO usage and compensation determined as follows:

1. The maximum amount of PTO leave which may be carried by an employee from one calendar year to the next shall be five hundred (500) hours.

2. Upon the initial implementation of the five hundred-hour carryover maximum, employees with leave balances in excess of five hundred (500) hours shall be paid for one-half (½) of the balance between five hundred (500) hours and the prior maximum for which leave may be paid upon termination, and such payment for one-half of this balance shall be made by the city in April 2010. Such employees shall be paid for the second half of the balance of leave between five hundred (500) hours and the prior maximum for which compensation would be paid at the first pay period in January 2011.

3. Upon the initial implementation of the five hundred-hour maximum leave carryover, employees whose accumulated PTO exceeds the amount for which would have been paid upon termination prior to the five hundred-hour maximum shall have those excess hours credited to an auxiliary PTO account which may be used as PTO leave until such leave balance is exhausted, but in no event shall the employee be paid compensation for such leave balance.

4. Following the implementation of the five hundred-hour leave carryover maximum, employees who complete the end of a calendar year with more than five hundred (500) hours of PTO leave accrued shall have all hours in excess of five hundred (500) hours credited to a Family Medical Leave Act (FMLA) auxiliary leave account which shall be restricted for use as leave authorized and mandated by the FMLA.

(6) *Separation from service.* Employees who are separated from the service of the city in good standing by retirement, resignation, or layoff shall be paid the balance of their accrued PTO, but such pay out shall not exceed the maximum of five hundred (500) hours. In no case shall an employee be paid against whom disciplinary action is being taken or is otherwise leaving city employment not in good standing.

(7) *Leave sharing program.* A leave sharing program is hereby established for all classified civil service and administrative professional, non-civil-service-appointed employees. The mayor shall establish the procedure by which the leave-sharing program is administered. This leave-sharing program shall be administered in keeping with the area practices and within the financial limits as set forth by the council. Unless otherwise provided for by the council or by law, shared personal time off (PTO) leave of more than thirty (30) days shall be considered non-salaried supplement, and shall not be utilized in the calculation of pensions, deferred compensation(s), longevity and other benefits.

(8) *Entry into Florida Retirement System DROP.* Effective July 1, 2007, any employee who is a member of the Florida Retirement System (FRS), who elects to enter the FRS Deferred Retirement Option Program (DROP) may, at the time of entering FRS DROP, receive a leave payout for accumulated leave of up to five hundred (500) hours of accumulated leave, or such other, additional amount of accumulated leave as may be allowed by the Florida Retirement System, to be included in income for the purpose of calculating the retirement and DROP benefit under the FRS, but no more than the amount of the payout which the employee would be entitled to receive if the employee were to terminate employment. The amount of leave payout paid at the time of entry into the FRS DROP shall be deducted from the employee's accumulated leave balance at the time of payment, and shall not be utilized as leave or be compensated at any

time in the future. Employees who have entered the FRS DROP shall continue to accrue additional leave pursuant to city policy. When an employee terminates employment with the city, the employee shall receive his or her leave payout based upon the policy of payment for leave approved by the city council. In no event shall any employee exceed a maximum amount of compensation again for leave authorized by the city council.

(Code 1968, § 42-4; Ord. No. 26-90, § 4, 6-14-90; Ord. No. 48-90, § 1, 9-27-90; Ord. No. 49-91, § 1, 9-26-91; Ord. No. 13-95, § 1, 3-23-95; Ord. No. 35-99, § 1, 9-23-99; Ord. No. 17-01, § 2, 9-27-01; Ord. No. 19-01, § 1, 9-27-01; Ord. No. 36-02, § 1, 11-21-02; Ord. No. 30-07, § 1, 6-28-07; Ord. No. 32-09, § 3, 9-24-09; Ord. No. 10-10, §§ 1—4, 4-8-10; Ord. No. 16-10, § 131, 9-9-10; Ord. No. 14-10, § 1, 8-19-10; Ord. No. 16-10, § 131, 9-9-10)

Editor's note — Section 7 of Ord. No. 30-07 provided that this ordinance shall take effect immediately upon the effective date of the repeal of Chapter 99-474, Laws of Florida, as amended.

Note — Section 6 of Ord. No. 36-02 provided for an effective date of Jan. 1, 2003.

Sec. 9-3-5. - Policy and procedure for pretermination hearings.

The following policy and procedure is hereby set forth to be followed by all appropriate supervisory personnel of the city, and the mayor of the city is hereby authorized and directed to take whatever administrative procedures may be necessary to implement the policy and procedure set forth herein:

(1) No nonprobationary classified employee shall be suspended without pay in the absence of a good faith belief by the appointing authority that the employee is guilty of employee misconduct as defined under the Civil Service Act. If a recommendation for dismissal is to be made by the appointing authority against an employee, the following procedures must be observed prior to any suspension without pay:

a. Delivery of a written notice to the employee stating the reasons for suspension and recommendation for termination, setting out the right of the employee to respond to the charges in writing and notice of the time, place and date of an informal hearing to be held before the department head or supervisor charged with the responsibility of making the decision to suspend and recommend

dismissal. The written notice shall be delivered to the employee no less than three (3) calendar days prior to the time specified for the informal hearing. If the employee feels that additional time is necessary in order for him to prepare for the informal hearing, then he shall notify the supervisor in writing, setting forth the reasons why the employee feels that the additional time is necessary. The supervisor shall, in turn, notify the city attorney's office, which office shall review the circumstances and extend up to an additional five (5) days' notice to the employee upon good cause shown.

b. An informal hearing before the department head or supervisor at the date, time and place set forth in the notice which allows the employee the right to respond orally to the charges against him.

c. If, after complying with subparagraphs a. and b. above, the department head or supervisor still feels the need to suspend the employee and recommend dismissal, the department head shall proceed in the normal course established by the civil service board and civil service laws for disciplinary actions. Suspension with pay may be utilized in cases where there is an immediate need to suspend prior to completion of the procedure outlined above (when dismissal is to be recommended).

(2) If the civil service board determines that an employee was wrongfully suspended without pay, then the employee shall be entitled to receive full back pay for the period of time that he did not receive same because of the suspension.

(Code 1968, § 42-4.1; Ord. No. 16-10, § 132, 9-9-10)

Sec. 9-3-6. - Travel policy for officers and employees.

(a) *Purpose.* The purpose of this travel policy is to prescribe and authorize uniform rules and limitations for travel expenses applicable to all city officers and employees and to provide for reimbursement by the city for payment thereof.

The mayor shall authorize his or her own travel subject to same being for a public purpose authorized by law and in the best interest of the city within the limitations set forth in this section. The mayor shall authorize travel for all city employees.

(b) *Uniform report required.* The mayor shall provide a uniform travel expense report which shall be used by all travelers requesting reimbursement for travel expenses. The report should be submitted within ten (10) working days after completing the authorized travel. All requests for reimbursement for travel must be accompanied by appropriate documentation of reasonable expenditures. All costs of spouse and family travel must be borne by the officer or employee. The city will not prepay any such costs. Reimbursement is limited to the traveler.

(c) *Route and mode of travel; mileage of private vehicles.* All travel must be conducted by a normally traveled route. If a person travels by an indirect route for his own convenience, any extra costs shall be borne by the traveler, and reimbursement for expenses shall be based only on such expenses as would have been incurred by utilization of a normally traveled route. The method of travel will be designed by the person authorizing the travel, keeping in mind the best interest of the city, the nature of the business, the number of persons making the trip, the amount of equipment or material to be transported, the length of the trip, and other pertinent factors. Air travel shall be by tourist class. Travel by private vehicle will be reimbursed at the rate established in the city's administrative regulations on travel. City-owned vehicles may be used for traveling when authorized by the mayor. When travel is by public transportation, necessary taxi, limousine or car rental fares and parking fees are reimbursable, when substantiated by receipts.

(d) *Reimbursement for lodging and meals.* Reimbursement for lodging and meals is allowed for up to the amount set forth by the mayor in the rates established from time to time in the administrative regulations on travel. Said administrative regulations shall provide for reimbursement for lodging on the basis of actual cost of a single occupancy, or occupancy shared with another city employee. A double-occupancy rate will be reimbursed if no single room is available.

(e) *Registration fees.* Registration fees, including meals and other programmed affairs, are reimbursable upon presentation of receipts.

(f) *Miscellaneous expenses.* Any other reasonable and necessary expense not otherwise provided for, incurred for the benefit of the city, together with receipts and explanations therefor, should be claimed on an individual basis for approval by the mayor.

(g) *Implementation by mayor.* The mayor shall promulgate such administrative rules, regulations, forms, and procedures as are necessary and appropriate to implement the purposes and objectives of this travel policy.

(Ord. No. 40-89, §§ 1—8, 8-24-89; Ord. No. 16-10, § 133, 9-9-10)

Editor's note— Ord. No. 40-89, §§ 1—8, adopted August 24, 1989, being nonamendatory of the Code, has been included as § 9-3-6 herein, at the discretion of the editor.

Secs. 9-3-7—9-3-20. - Reserved.

ARTICLE II. - PAY PROGRAM FOR CITY EMPLOYEES[4]

Footnotes:

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Editor's note—Ord. No. 44-90, § 1, adopted Sept. 13, 1990, repealed Art. II of Ch. 9-3 and enacted a new Art. II to read as herein set forth. Said former Art. II, §§ 9-3-21—9-3-43, set forth similar subject matter and was derived from Code 1968, §§ 42-9—42-24, 42-26, 42-27, 42-32; Ord. No. 41-82, § 1, adopted March 11, 1982; Ord. No. 97-83, § 1, adopted July 28, 1983; Ord. No. 31-84, § 1, adopted July 26, 1984; Ord. No. 31-85, §§ 1, 2, adopted Sept. 26, 1985; Ord. No. 33-85, § 1, adopted Oct. 24, 1985; Ord. No. 36-85, § 1, adopted Nov. 14, 1985; Ord. No. 33-88, §§ 1, 2, adopted Sept. 8, 1988; Ord. No. 35-88, § 2, adopted Sept. 8, 1988; Ord. No. 43-88, §§ 1, 2, adopted Oct. 6, 1988; Ord. No. 52-88, § 1, adopted Dec. 15, 1988; and Ord. No. 5-89, § 1, adopted Jan. 26, 1989.

Sec. 9-3-21. - Pay plan on file in the office of city clerk.

(1) Except as hereinafter provided, all compensation to be paid to employees of the city shall be paid in accordance with the pay plan, as approved by the city council and on file in the office of the city clerk. Such pay plan may be modified from time to time upon approval by the city council by motion, resolution or ordinance.

(2) As approved by council by motion, resolution or ordinance, each class title and its respective pay range within the pay plan shall be designated. The classification schedule shall be on file in the office of the city clerk.

(3) Employees in the classified service shall be placed into their proper pay classification as determined and certified by the director of human resources.

(4) The minimum compensation and maximum compensation of each range within the classified service pay plan shall be adjusted effective October 1, 2003, and each biennial fiscal year thereafter. Each biennial adjustment shall have an effective date of October 1 and shall be applied to the full pay period that includes that effective date. All such adjustments shall be equal to the lesser of three (3) percent or the increase in the Consumer Price Index (U)(CPI) issued by the United States Department of Labor since the date of the last such increase. In the event the United States Department of Labor ceases to issue a CPI (U) the city council shall utilize a CPI index that is the functional equivalent. The period to be used for calculation of the CPI increase shall be April 1 of the last calendar year in which an increase was given to March 31 of the calendar year in which the increase is to be given. This provision shall not apply to employees covered by the terms of a collective bargaining agreement unless authorized by the terms of such an agreement. However, commencing October 1, 2009 and in each year thereafter, any increase in the minimum and maximum in each range accrued on or after that date shall be suspended unless approved by city council as part of the budget process.

(5) Any increase in salary or other compensation shall be applied for the full pay period that includes the effective date of the increase unless expressly provided otherwise by action of the city council when such increase is authorized.

(Ord. No. 17-01, § 1, 9-27-01; Ord. No. 25-06, § 2, 9-28-06; Ord. No. 32-09, § 3, 9-24-09; Ord. No. 28-09, 8-27-09)

Editor's note — Section 4 of Ord. No. 25-06 provided for an effective date of Oct. 1, 2006.

Secs. 9-3-22 – 9-3-39. - RESERVED

Sec. 9-3-22. - Starting salaries of new employees.

Commented [RS3]: The pay plan is incorporated into the city budget when approved by council.

Commented [RS4]: There is no more classified service since repeal of the Civil Service Act.

Commented [RS5]: This provision has not been used since 2009.

Commented [RS6]: Transferred to mayor's employment policy.

New employees in the classified service normally will be employed at the minimum pay of the range. However, where higher beginning pay is required in order to be competitive in the recruitment process, an employee may be employed at a higher pay within the range, not to exceed the maximum of the range. Payment of a higher rate of pay within the range must be approved by the mayor.

(Ord. No. 17-01, § 1, 9-27-01; Ord. No. 32-09, § 3, 9-24-09; Ord. No. 16-10, § 134, 9-9-10)

Sec. 9-3-23. - Reemployment.

A former employee shall return to city employment in the same manner as a new employee for purposes of compensation.

(Ord. No. 17-01, § 1, 9-27-01)

Sec. 9-3-24. - Rules governing employee progression and status.

(1) *Annual incremental adjustments.* Except as provided herein, each classified service employee shall receive an annual incremental adjustment in compensation. "Annual incremental adjustment" shall have the same meaning as "step" under the civil service act. An employee's annual incremental adjustment within his or her pay range will be five (5) percent, not to exceed the maximum of the range. If the maximum of the range will not allow a five (5) percent increase then the incremental adjustment will be the percentage required to meet the maximum of the range. Provided, however, effective October 1, 2008, the percentage of the annual incremental adjustment shall be recommended by the mayor as part of the budget process.

(a) The annual incremental adjustment will occur on the employee's incremental anniversary date on which the employee has served one (1) year at the lower rate within that range.

(b) The incremental anniversary date will be set by the date of entrance into that range.

(c) When the maximum pay for a range is increased pursuant to subsection 9-3-21(4), the incremental adjustment date for an employee who reached the maximum pay for the range prior to the date of such increase shall be adjusted as follows:

Commented [RS7]: Transferred to mayor's employment policy.

Commented [RS8]: Annual pay adjustments have not occurred since 2008.

1. If the last promotion or incremental adjustment occurred in the fiscal year prior to the increase pursuant to subsection 9-3-21(4), then the employee's next incremental adjustment date will be one (1) year following the date of the employee's last incremental adjustment.

2. If the last promotion or incremental adjustment did not occur in the fiscal year prior to the increase pursuant to subsection 9-3-21(4), then the employee's incremental adjustment date will be October 1 of the increase.

(d) The mayor may withhold an employee's automatic annual incremental adjustment, if there is documented evidence that the employee is performing consistently at a level below standard during the previous year.

(e) Annual incremental adjustments shall not be made during any fiscal year for which the city council does not appropriate funds for such adjustments. Nor shall there be any accrual of service during such year for future annual incremental adjustments. Accruals of periods of service for the purpose of determining seniority, longevity pay, pension benefits or any other employment benefit determined by a period of service shall not be affected by the provisions of this subsection.

(2) *Promotions.* A promotion in the classified service occurs when there is a change in an employee's title and the employee is elevated to a pay range for which the minimum pay is higher than the minimum pay in the range currently held. A promoted classified service employee will receive a ten (10) percent pay increase, not to exceed the maximum pay of the range. Provided that the maximum pay for the range is not exceeded, the mayor may grant a pay increase over ten (10) percent.

(3) *Demotions.* A classified service employee demoted or reduced to a lower class shall be placed in the hourly rate held prior to the promotion, or shall receive a ten (10) percent reduction in salary, whichever wage provides the higher salary. Any other reduction in pay will be upon the recommendation of the director of employee services and approved by the mayor. In any case the reduced salary is not to exceed the minimum or maximum of the class range.

(4) *Salary pay range adjustments.* Any employee in the classified service receiving an increase in salary due to an approved change in pay range

Commented [RS9]: Transferred to mayor's employment policy.

Commented [RS10]: Transferred to mayor's employment policy.

Commented [RS11]: Transferred to mayor's employment policy.

for the employee's class, occurring as a result other than the classified service promotional process, will receive an increase in salary equivalent to the annual increment adjustment and will not have a change of incremental anniversary date.

(5) *Salary adjustments:*

(a) If the minimum and maximum salaries of employees in the classified service in a range are increased by the city council following a benchmark salary survey, then each employee in the range will receive a five (5) percent pay increase, or such percentage that would bring the employee up to the minimum of the range, but not to exceed the maximum pay of the range. The employee's incremental anniversary date would stay the same and would not change due to this increase in salary.

(b) The mayor is authorized to increase an employee's pay in a range by an amount exceeding the annual incremental adjustment on the employee's incremental anniversary date but not to exceed the maximum pay of the range. No bonus shall be paid to any employee unless specifically authorized by council. Bonuses shall not be regarded as compensation or salary for computation of longevity, pensions, deferred compensation (except for the plans created by chapter 9-6, article I of the City Code) or other benefits except as may be required by federal or state law.

(c) This provision shall not apply to employees covered by the terms of a collective bargaining agreement unless authorized by the terms of such an agreement.

(Ord. No. 17-01, § 1, 9-27-01; Ord. No. 08-04, § 1, 2-12-04; Ord. No. 21-06, § 1, 9-14-06; Ord. No. 11-08, § 2, 2-13-08; Ord. No. 32-09, § 3, 9-24-09; Ord. No. 14-10, § 2, 8-19-10; Ord. No. 16-10, § 135, 9-9-10)

Sec. 9-3-25. - Employees working temporarily in higher class; differential pay.

Employees in the classified service working temporarily in a higher class for more than thirty-one (31) calendar days may be paid out-of-class differential pay. To qualify, an employee must be assuming the full and complete duties and responsibilities of the higher class. Said differential pay shall be applicable only when such vacancy has resulted from illness, an on-the-job injury or a job vacancy. Such differential pay shall begin only after the employee has performed the complete duties for thirty-one (31) consecutive calendar days and shall be paid only for time actually worked.

Commented [RS12]: Bonus Sec. 215.425 F.S.

Commented [RS13]: Transferred to mayor's employment policy.

~~Out-of-class differential pay shall apply only to the days worked after the thirty-one (31) consecutive calendar day period has been completed. The thirty-one (31) consecutive calendar days must be worked within the span of fifty-two (52) weeks from the first day of duties performed in the higher classification in order for the employee to be eligible for the differential pay. Out-of-class differential pay shall be the difference between the employee's regular wage and the amount to which the employee would initially be entitled should they be promoted to said higher class. Out-of-class differential shall be paid with the employee's regular compensation and subject to the same benefits as the regular compensation. Complete records of such out-of-class differential work shall be submitted to the department of human resources within two (2) weeks of having performed such work, on forms furnished by that department. Department directors shall be responsible for judicious observance of this section.~~

~~(Ord. No. 17-01, § 1, 9-27-01; Ord. No. 32-09, § 3, 9-24-09)~~

~~Sec. 9-3-26. - Supplemental compensation: shift differential pay, field training pay, certification pay, and specialized duties pay.~~

~~The mayor is hereby authorized to pay the supplemental compensation as outlined in this section. These payments shall be made bi-weekly and shall be considered a nonsalaried supplement, and will not be utilized in the calculation of pensions, deferred compensation or other fringe benefits. Department directors shall be responsible for judicious observance of this section. No pay hereunder shall be granted unless approved by the mayor.~~

~~(1) To employees who are assigned to work as field training officers an amount of pay equal to a five-percent increase.~~

~~(2) To employees who have attained professionally recognized certification in their job-related field an amount equal to a five-percent increase. Certifications eligible for this pay will require continuing education credits on an ongoing basis.~~

~~(3) To employees who are assigned specialized duties an amount equal to a five-percent increase.~~

~~(4) To employees assigned to work shifts as designated by the mayor an amount equal to a five-percent increase.~~

Commented [RS14]: Transferred to mayor's employment policy.

(Ord. No. 17-01, § 1, 9-27-01; Ord. No. 15-04, § 1, 8-19-04; Ord. No. 32-09, § 3, 9-24-09; Ord. No. 16-10, § 136, 9-9-10)

Sec. 9-3-27. - Other payroll payments.

(1) Unless otherwise provided for by city council or by law, the following pay shall be considered a non-salaried supplement, and shall not be utilized in the calculation of pensions, deferred compensation(s) and other benefits: educational incentive pay, pistol qualifications pay, clothing allowance, education benefit, specialized duty pay, certification pay, field training pay, shift differential pay, non-substantiated business expenses, non-cash benefit such as employer-provided vehicles or any other city provided benefit. All other payments process through city payroll shall be utilized in the calculation of pensions, deferred compensation(s) and other benefits.

(2) Unless otherwise provided for by city council or by law, severance pay and/or any similar lump sum payment made upon separation of service from the city shall not be considered as base compensation and shall be subject to calculation of the deferred compensation benefits described in chapter 9-6, article I and in chapter 9-5, article IV, division 1. Other benefits calculated on base compensation shall not apply.

(3) Any member of the classified or unclassified service whose compensation is or has been specifically approved by council by motion, resolution or ordinance may be paid such compensation.

(Ord. No. 17-01, § 1, 9-27-01)

Sec. 9-3-28. - Overtime pay; prerequisite; computation.

Employees for which the mayor does not claim a statutory exemption under the Fair Labor Standards Act (FLSA) shall be compensated for overtime as required by law. No employee not so covered shall receive overtime pay unless specifically requested in writing and approved by the mayor. Overtime shall not commence until the number of hours in the employee's regular work period as authorized by the FLSA has been worked. Time worked shall mean the time actually spent on the job; provided, however, that it shall also include approved personal time off (PTO) leave due to illness for all employees and holidays observed by the City of Pensacola for all employees except employees who otherwise receive

Commented [RS15]: Transferred to mayor's employment policy.

Commented [RS16]: Transferred to mayor's employment policy.

additional personal time off (PTO) leave in lieu of holidays. Time worked shall not include, personal time off (PTO) leave due to scheduled vacation, personal holiday, job injury, compensatory leave, other types of leave, or any other time not actually spent on the job. Leave without pay and time off because of inclement weather shall not be considered as time worked. Other compensatory plans may be allowed in departments where established by city council or by statute, or where an incentive system has been approved by the mayor. The overtime hours and pay shall be computed as defined by the FLSA. Department directors shall be responsible for seeing the minimal and judicious determinations of necessity for using employees on an overtime basis.

(Ord. No. 17-01, § 1, 9-27-01; Ord. No. 36-02, § 2, 11-21-02; Ord. No. 15-04, § 2, 8-19-04; Ord. No. 16-10, § 137, 9-9-10)

Note — Section 6 of Ord. No. 36-02 provided for an effective date of Jan. 1, 2003.

Section 3 of Ord. No. 36-02 provided that this ordinance shall not be implemented for employees who are currently members of a collective bargaining unit until such time as the Personal Time Off (PTO) Leave may be incorporated into an applicable collective bargaining agreement. Such employees shall be governed by the leave program in existence prior to the adoption of this ordinance or by an existing collective bargaining agreement, if applicable.

Additionally, Section 4 of Ord. No. 36-02 provided that this ordinance shall not be implemented for employees who are members of a proposed or established collective bargaining unit until such time as the collective bargaining unit is established and the Personal Time Off (PTO) leave may be incorporated into an applicable collective bargaining agreement. Such employees shall be governed by the leave program in existence prior to the adoption of this ordinance.

Sec. 9-3-29. - Extended leave without pay.

Extended leave without pay is defined as more than thirty (30) consecutive calendar days. Employees granted extended leave without pay, such a temporary disabilities leave and higher educational leave, shall upon their return be entitled to receive compensation at the range and placement within the range which they were receiving at the time of their beginning the leave. While on extended leave without pay, time accrual for leave, longevity,

Commented [RS17]: Transferred to mayor's employment policy.

pensions, and annual incremental adjustments (steps) purposes shall be suspended and shall resume as of the date of return from the leave.

(Ord. No. 44-90, § 1, 9-13-90; Ord. No. 17-01, § 1, 9-27-01)

Sec. 9-3-30. - Temporary employees.

Temporary employees shall be paid at a rate established by the mayor. They will be paid only for hours actually worked. They shall not be compensated for holidays.

Commented [RS18]: Transferred to mayor's employment policy.

(Ord. No. 44-90, § 1, 9-13-90; Ord. No. 17-01, § 1, 9-27-01; Ord. No. 32-09, § 3, 9-24-09; Ord. No. 16-10, § 138, 9-9-10)

Sec. 9-3-31. - Emergency payroll loan; procedural requirements

Only clear-cut emergencies brought about by hardship (such as death or serious illness, but excluding payment of debts) may an employee apply for an emergency payroll loan. Applications must be made to the employee's immediate supervisor, then approved through channels for final approval by the mayor. Details of this request and action must be recorded on a form to be furnished by the department of human resources.

Commented [RS19]: Transferred to mayor's employment policy.

(Ord. No. 17-01, § 1, 9-27-01; Ord. No. 32-09, § 3, 9-24-09; Ord. No. 16-10, § 139, 9-9-10)

Sec. 9-3-32. - Timing of pay periods.

Timing of pay periods and check dates, except where otherwise established by ordinance, shall be set by the director of finance.

Commented [RS20]: Transferred to mayor's employment policy.

(Ord. No. 17-01, § 1, 9-27-01)

Sec. 9-3-33. - Authority of mayor to transfer.

The mayor shall have the authority to transfer personnel and the applicable personal service funds from one division or department to another department, providing such transfer does not conflict with law.

(Ord. No. 17-01, § 1, 9-27-01; Ord. No. 16-10, § 140, 9-9-10)

Editor's note – Ord. No. 16-10, § 140, adopted Sept. 9, 2010, changed the title of § 9-3-33 from "authority of city manager to transfer" to "authority of mayor to transfer." See also the Code Comparative Table.

Commented [RS21]: Transferred to mayor's employment policy.

Sec. 9-3-34. - Authority of mayor to change class of vacant position.

Commented [RS22]: Transferred to mayor's employment policy.

The mayor shall have the authority to reduce a vacant position to a lower class or change it to an equal class.

(Ord. No. 17-01, § 1, 9-27-01; Ord. No. 16-10, § 141, 9-9-10)

Editor's note – Ord. No. 16-10, § 140, adopted Sept. 9, 2010, changed the title of § 9-3-33 from "authority of city manager to change class of vacant position" to "authority of mayor to change class of vacant position." See also the Code Comparative Table.

Sec. 9-3-35. - Military leave.

Any employee who leaves the city service to serve in the United States Armed Forces, and is granted military leave for such period, shall upon his or her return, be entitled to receive compensation as required by law.

Commented [RS23]: State and federal statutes prevail.

(Ord. No. 17-01, § 1, 9-27-01)

Sec. 9-3-36. - Administrative employee pay plan for professional, non-civil-service-appointed employees.

(1) An administrative employee pay plan is hereby established for all professional, non-civil-service-appointed employees of the city. The administrative employee pay plan shall be on file in the office of the city clerk.

(2) The mayor may recommend and council may approve, the assignment of specific range numbers to particular administrative employee positions, as well as any changes in spread of salary assigned to specific ranges.

Commented [RS24]: Transferred to mayor's employment policy.

(3) The mayor is hereby authorized and shall determine the amount to be paid to each employee filling an administrative employee position, making the determination, up or down, at such time as deemed advisable; this agreement is solely between the mayor and the employee

~~so long as the rate of pay is within the administrative employee position pay range as approved by the city council.~~

~~(Ord. No. 17-01, § 1, 9-27-01; Ord. No. 16-10, § 142, 9-9-10)~~

~~Secs. 9-3-37—9-3-39. - Reserved.~~

Editor's note— Ord. No. 17-01, § 1, adopted Sept. 27, 2001, repealed §§ 9-3-37—9-3-39 in their entirety. Formerly said sections pertained to authority of city manager to transfer; authority of city manager to change class of vacant positions, and administrative pay plan for professional, noncivil-service appointed employees, respectively. See the Code Comparative Table.

Sec. 9-3-40. - Deferred compensation pension plan for professional, non-civil-service-appointed employees.

(1) *Establishment.* Effective January 1, 1988, the city established the City of Pensacola Deferred Compensation Pension Plan for Professional, Non-Civil Service Appointed Employees (the "plan"), a money purchase pension plan intended to meet the applicable requirements of Section 401(a) of the Internal Revenue Code of 1986, as amended.

(2) *Purpose.* The plan is intended to allow certain non-civil service employees, pursuant to their employment contracts, to participate in the plan in which mandatory employer contributions will be made by the city on behalf of the employee in accordance with the formula set forth in the plan. Such contributions shall be invested at the discretion of and in a manner approved by the city, or as directed by the employee, until termination of employment, financial emergency or death of the participant. The terms of the plan shall be contained within the plan document which is available for public inspection at the city clerk's office.

~~(1) *Establishment of plan; limitations.* There is hereby established, effective January 1, 1988, a deferred compensation pension plan for all professional non-civil service employees of the city. The plan shall be maintained on file in the office of the city clerk. The purpose of the plan is to allow certain non-civil-service employees, pursuant to their employment contracts, to participate in a deferred compensation pension plan in which mandatory (nonelective) contributions will be made by the city on behalf of the employee in accordance with a formula set forth in~~

Commented [RS25]: Replaced by Ordinance 08-16, Sec. 1, 3/17/16.

Commented [RS26]: Replaced by Ordinance 08-16, Sec. 1, 3/17/16.

the plan. Such contributions will be invested at the discretion of and in the manner approved by the city, or as directed by the employee until termination of employment, financial hardship, disability or death of the employee. The plan is intended to qualify under Section 401(a) of the Internal Revenue Code. No employee hired after October 6, 1997, nor any former civil service employee changing status to non-civil service after said date shall participate in this plan. Nor shall any contribution be made to this plan after October 6, 1997, on behalf of any employee electing to participate in the general pension and retirement fund pursuant to section 9-8-2 of this Code. Nor shall any contribution be made by the city to this plan on behalf of an employee electing to participate in the Florida Retirement System after June 30, 2007. Notwithstanding any other provision contained in this plan, at the direction of the plan administrator, the vested interest of a participant in this plan may be transferred to another trust forming a part of a pension plan maintained by the city if such recipient plan meets the requirements of Section 401 of the Internal Revenue Code and provided that the recipient plan permits the transfer to be made.

(2) *Loans to participants.*

(a) The administrator may, in the administrator's discretion, make loans to participants under the following circumstances:

(1) Loans shall be made available to all participants on a reasonably equivalent basis;

(2) Loans shall not be made available to highly compensated employees, as defined in Section 414(q) of the Internal Revenue Code, in an amount greater than the amount made available to other participants;

(3) Loans shall bear a reasonable rate of interest;

(4) Loans shall be adequately secured; and

(5) Shall provide for repayment over a reasonable period of time.

The administrator may delegate to the investment manager, provided for in the plan, authority to make loans to participants in accordance with this subsection and the plan.

(b) Loans made pursuant to this section (when added to the outstanding balance of all other loans made by the plan to the participant) shall be limited to the lesser of:

(1) Fifty thousand dollars ($50,000.00) reduced by the excess (if any) of the highest outstanding balance of loans from the plan to the participant during the one year period ending on the day before the date on which such loan is made, over the outstanding balance of loans from the plan to the participant on the date on which such loan was made, or

(2) One-half (½) of the present value of the nonforfeitable accrued benefit of the participant under the plan.

(c) Loans shall provide for level amortization with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as a principal residence of the participant shall provide for periodic repayment over a reasonable period of time that may exceed five (5) years.

(d) Any loans granted or renewed shall be made pursuant to a participant loan program. Such loan program shall be established in writing by the administrator and must include, but need not be limited to, the following:

1. The identity of the person or positions authorized to administer the participant loan program;

2. A procedure for applying for loans;

3. The basis on which loans will be approved or denied;

4. Limitations, if any, on the types and amounts of loans offered;

5. The procedure under the program from determining a reasonable rate of interest;

6. The types of collateral which may secure a participant loan; and

7. The events constituting default and steps that will be taken to preserve plan assets.

Such participant loan program shall be contained in a separate written document which, when properly executed, is hereby incorporated by reference and made a part of the plan. Furthermore, such participant loan program may be modified or amended in writing from time to time without the necessity of amending this section.

(Ord. No. 44-90, § 1, 9-13-90; Ord. No. 44-96, § 2, 9-26-96; Ord. No. 29-97, § 3, 8-28-97; Ord. No. 14-98, § 1, 3-26-98; Ord. No. 10-99, § 1, 5-25-99; Ord. No. 30-02, § 2, 9-26-02; Ord. No. 16-07, § 2, 4-26-07)

Sec. 9-3-41 –9-3-82. - Reserved.

Editor's note — Ord. No. 17-01, § 1, adopted Sept. 27, 2001, renumbered § 9-3-41 as § 9-8-5. The user of this Code is directed to § 9-8-5 for provisions related to the treatment of certain contributions to general pension and retirement plan.

Sec. 9-3-42. - Reserved.

Editor's note — Ord. No. 17-01, § 1, adopted Sept. 27, 2001, repealed § 9-3-42 in its entirety. Formerly said section pertained to other payroll payments. See the Code Comparative Table.

Secs. 9-3-43—9-3-55. - Reserved.

ARTICLE III. - LONGEVITY COMPENSATION RESERVED

Commented [RS27]: Longevity pay terminated in 2009.

Secs. 9-3-56, 9-3-57. - Reserved.

Editor's note — Ord. No. 14-10, § 3, adopted Aug. 19, 2010, repealed § 9-3-56, which pertained to "Definition of 'longevity pay'" and repealed § 9-3-57 which pertained to "Schedule." See also the Code Comparative Table.

Sec. 9-3-58. - Computation; payment.

Commencing October 1, 2009, the accrual of longevity pay shall cease. Employees receiving a longevity pay additive as of October 1, 2009 shall have that longevity pay included in their base pay effective October 1, 2009.

Commented [RS28]: Longevity pay terminated in 2009.

(Code 1968, §§ 42-7, 42-30; Ord. No. 35-99, § 3, 9-23-99; Ord. No. 28-09, § 3, 8-27-09; Ord. No. 14-10, § 4, 8-19-10)

Secs. 9-3-59—9-3-75. - Reserved.

Editor's note — Ord. No. 14-10, § 5, adopted Aug. 19, 2010, repealed § 9-3-59, which pertained to "Broken service." See also the Code Comparative Table.

ARTICLE IV. - ~~FIREFIGHTERS' EDUCATIONAL SALARY INCENTIVE PROGRAM[5]~~
RESERVED

Footnotes:

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State Law reference— Firefighters; supplemental compensation from state, F.S. § 633.382.

~~Sec. 9-3-76. - Source of funding.~~

~~Educational salary incentive compensation for firefighters shall be paid from the general fund of the city.~~

Commented [RS29]: Firefighter education compensation provided in collective bargaining agreement.

~~(Code 1968, § 42-38)~~

~~Sec. 9-3-77. - Persons to whom funds payable.~~

~~Educational salary incentive compensation for firefighters shall be paid only to those uniformed active firefighters, and not to fire pensioners.~~

~~(Code 1968, § 42-39)~~

~~Sec. 9-3-78. - Fire education incentive board.~~

Commented [RS30]: Sec. 9-3-78 was repealed by Ordinance 26-16, 8/11/16.

~~A four-person fire education incentive board is hereby created:~~

~~(1) The fire education incentive board shall be composed of the city personnel director, the city fire chief, or their designees, and two (2) members appointed by the city council, one of which is a representative from the academic community.~~

~~(2) This four-person board shall have final authority on decisions related to applicable courses in fire science for approval.~~

~~(Code 1968, § 42-40; Ord. No. 34-85, § 1, 10-24-85)~~

~~Sec. 9-3-79. - Amounts of payments.~~

A firefighter may receive up to one hundred thirty dollars ($130.00) monthly through the educational salary incentive program as follows:

(1) *Basic certifications.*

a. Twenty-five dollars ($25.00) monthly allowance payable after one (1) year on the job and full certification.

b. Certification indicates that the individual has successfully completed the state requirements for fire as delineated by the Florida Firefighters Standards and Training Council.

(2) *Career development.*

a. Twenty dollars ($20.00) monthly allowance payable for each eighty (80) hours completed of approved courses.

b. Career development is defined as courses that may be taken which are generally not considered purely academic in nature. The amount indicated does not include the basic twenty-five dollars ($25.00) monthly allowance for basic certification.

c. There are three (3) levels within the career development track:

1. *Level I.* The maximum any Firefighter I or Firefighter II may obtain by completing the approved courses is forty dollars ($40.00) monthly; provided, further, that he has never been listed on the city's civil service roster for promotion within the fire department of the city.

2. *Level II.* The maximum any Firefighter I or Firefighter II may obtain by completing the approved courses is sixty dollars ($60.00) monthly; provided, further, that he has become eligible and has appeared on the city's civil service roster for fire driver or above within the fire department of the city and has completed approved midmanagement courses. Successful completion of midmanagement courses without being on or having appeared on the city's civil service roster for appointment to fire driver or above will not qualify an individual for this level.

3. *Level III.* Maximum allowed for fire driver or above who has completed approved midmanagement courses is eighty dollars ($80.00) monthly.

(3) *Academic development.*

a. Academic development denotes the amount paid for an approved associate's degree, bachelor's degree or equivalent. No payment is made if an applicant is hired with one (1) of these degrees until one (1) full year on the job. No payment is allowed until the degree is completed or sixty (60) approved equivalent semester hours are accumulated and presented for certification to the fire education incentive board. The amount indicated does not include the basic twenty-five dollars ($25.00) monthly allowance for basic certification.

b. Thirty dollars ($30.00) monthly allowance payable for approved A.A. or A.S. degree, or sixty (60) equivalent and approved hours.

c. Eighty dollars ($80.00) monthly allowance payable for approved B.A. or B.S. degree. The eighty dollars ($80.00) is inclusive of the thirty dollars ($30.00) previously described under subsection (3)b. herein.

(Code 1968, § 42-41)

Sec. 9-3-80. - Maximum monthly payment under academic development.

The most payable monthly under academic development without any career development courses is:

(1) Associate's degree or equivalent, thirty dollars ($30.00) plus twenty-five dollars ($25.00), equals fifty-five dollars ($55.00).

(2) Bachelor's or higher degree, eighty dollars ($80.00) plus twenty-five dollars ($25.00) equals one hundred five dollars ($105.00). The eighty dollars ($80.00) is inclusive of the thirty dollars ($30.00) paid for the associate's degree or equivalent.

(Code 1968, § 42-42)

Sec. 9-3-81. - Maximum monthly payment.

The maximum monthly payment is one hundred thirty dollars ($130.00). This can only be achieved after one full year of service to the city within the fire department as a uniformed firefighter, state recognized certification as a firefighter and a combination of career development courses as approved by the fire educational incentive board, and at least a two-year college degree.

~~(Code 1968, § 42-43)~~

~~Sec. 9-3-82. - Compensation offset by state compensation.~~

~~Any compensation provided for pursuant to this article shall be offset by the amount of any supplemental compensation received from the state pursuant to F.S. § 633.382.~~

~~(Ord. No. 27-82, § 1, 2-11-82)~~

CHAPTER 9-5. PENSIONS AND DEFERRED COMPENSATION[7]

Footnotes:

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Cross reference— Social security replacement benefit program, Ch. 9-6; employer-employee relations, Ch. 9-4; general pension and retirement fund, Ch. 9-8.

Related law cross references—Firefighters pension plan, (Laws of Fla. 1941, Ch. 21483, as amended) Related Special Acts, Part I, Subpart B, Article VI; investment of pension funds, (Laws of Fla., Ch. 61-1469, as amended) Related Special Acts, Part I, Subpart B, Article VIII.

State Law reference— Actuarial soundness of retirement systems, F.S. § 112.60 et seq.

ARTICLE I. - IN GENERAL

Secs. 9-5-1 – 9-5-15. - RESERVED

~~Sec. 9-5-1. - Increase effective October 1, 1957; minimum pension.~~

Commented [RS31]: No longer applicable.

~~(a) Effective October 1, 1957, all pensions now provided for and authorized and paid from and out of the funds in the general fund of the city are hereby increased ten (10) percent in addition to the amount now being paid pensioners. Provided, however, no pensioner shall receive a~~

monthly pension of less than one hundred twenty-five dollars ($125.00) per month.

(b) Such pensions now authorized and payable from the general fund of the city shall remain in full force and effect and payable monthly except as provided in paragraph (a).

(Code 1968, § 40-1)

Sec. 9-5-2. - Pension increase effective October 1, 1958.

Commented [RS32]: No longer applicable.

(a) *Application to designated pensioners.* Effective October 1, 1958, all pensions now provided for and authorized and paid to pensioners retired before November 1, 1957, be and the same are hereby increased five (5) percent in addition to the amount now being paid the pensioners.

(b) *Supplemental pension fund established.* There is hereby created and established a special fund to be known as the supplemental pension fund, which shall be maintained by the state Department of administration and finance for the payment of the increase above set forth and also for the increased payments authorized by Ordinance No. 54-57, passed September 12, 1957 (section 9-5-1).

(c) *Appropriations from general fund of City.* There is hereby appropriated by the Council, payable from the general fund of the city, a sufficient amount each year to maintain the supplemental pension fund in such balance as is necessary to pay yearly the increase of five (5) percent hereby authorized and also to pay all supplemental payments authorized by Ordinance No. 54-57, passed September 12, 1957 (section 9-5-1).

(d) *Effect on Charter law.* Nothing in this section shall act to amend or reduce the payments made from the general pension and Retirement Fund established by Laws of Florida 1949, Chapter 26141, as amended by Laws of Florida 1955, Chapter 31160 and Laws of Florida, Chapter 57-2073.

(Code 1968, § 40-2)

Secs. 9-5-3—9-5-15. - Reserved.

ARTICLE II. - POLICE OFFICERS' RETIREMENT FUND[8]

Footnotes:

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Editor's note—Ord. No. 15-97, adopted April 24, 1997, amended in its entirety former §§ 9-5-16—9-5-45, relative to Police Officers' retirement fund, and set out §§ 9-5-16—9-5-45 to read as herein. The provisions of former §§ 9-5-16—9-5-34 derived from Ord. No. 8-88, § 1, adopted March 10, 1988; Ord. No. 1-89, §§ 1, 2, adopted January 12, 1989; Ord. No. 38-89, §§ 1—3, 5—9, 11—18, adopted August 10, 1989; Ord. No. 20-90, § 1, adopted April 12, 1990; Ord. No. 10-94, § 1, adopted March 10, 1994; Ord. No. 26-94, §§ 1—3, adopted July 15, 1994; Ord. No. 36-94, § 1, adopted October 13, 1994; Ord. No. 18-96, § 1, adopted April 25, 1996.

State Law reference— Municipal police officer's pension plan, F.S. § 185.35.

Sec. 9-5-16. - Establishment of plan and definitions.

(a) *Establishment of Police Officers' Retirement Fund.* There is hereby created for the Police Officers of the City of Pensacola, Florida, a fund to be known as the "Police Officers' Retirement Fund", a defined benefit pension plan intended to meet the applicable requirements of Section 401(a) of the Code which provides for retirement, disability and death benefits for such police officers. The Police Officers' Retirement Fund is a "governmental plan" within the meaning of Section 414(d) of the Code and as such, is exempt from the Employee Retirement Income Security Act of 1974, as amended. The Police Officers' Retirement Fund shall be administered and distributions made therefrom as provided in this article.

Irrespective of anything contained herein, as now expressed or hereafter amended, the trust fund shall be used for the exclusive benefit of members or their beneficiaries at all times and for the satisfaction of all rights and liabilities with respect to members or their beneficiaries hereunder and costs and expenses of operating the fund.

Pursuant to the provisions of F.S. § 185.38, effective at midnight on January 1, 2013, the City of Pensacola Police Officers' Retirement Fund shall be closed to new participants, and current officers employed on that date shall be provided an election to remain in the Police Officers' Retirement Fund and

shall continue to accrue benefits as provided herein or transfer to the Florida Retirement System. Officers hired on or after January 2, 2013 shall participate in the Florida Retirement System. For participants of the Pensacola Police Officers' Retirement Fund electing to remain participants of that plan, the City of Pensacola shall continue to take all steps necessary and required to receive state premium tax moneys for the use and benefit of the Police Officers' Retirement Fund until such plan is fully funded within the meaning of law. The Police Officers' Retirement Fund shall remain in effect until the final benefit payment has been made to the last remaining participant or beneficiary as required by law, and shall then be terminated.

The mayor is hereby authorized and directed to execute all necessary agreements and amendments thereto with the Administrator of the Florida Retirement System for the purpose of extending benefits provided by the Florida Retirement System to the police officers of the city, as provided herein, which agreement shall provide for such methods of administration of the plan by the city as are found by the Administrator of the Florida Retirement System to be necessary and proper, and shall be effective with respect to any employment covered by such agreements for services performed on and after midnight on the 1st day of January, 2013.

(b) *Definitions.* The following words and phrases as used in this article shall have the following meanings unless a different meaning is plainly required by the context:

(1) *Accrued benefit* means the monthly benefit payable at normal retirement date, as determined under the Police Officers' Retirement Fund's formula.

(2) *Actuarial equivalent* (or any synonymous term contained herein) means the equality in value of the aggregate amounts expected to be received under optional forms of benefit payments which, except as provided in section 9-5-22, will be based upon the RP 2000 Static Table with blended rates 80% male/20% female mortality table and utilizing a 7.00% interest rate.

(3) *Actuary* means the person, firm or corporation, one (1) of whose officers shall be members of the Society of Actuaries or The American Academy of Actuaries and an Enrolled Actuary (as defined by Subtitle C of Title III of the Employee Retirement Income Security Act of 1974), appointed by the board of trustees of the fund to render actuarial services to the fund.

(4) *Article* means chapter 9-5, article II, of the Code of the City of Pensacola, Florida.

(5) *Average final compensation* means one-twelfth (1/12) of the average annual compensation of the two (2) best years of the last five (5) years of credited/creditable service prior to retirement, termination or death for those with twenty (20) or more years of creditable service on January 1, 2013. Effective January 1, 2013 for those with less than twenty (20) years of creditable service, average final compensation means one-sixtieth (1/60) of the average annual compensation of the last five (5) years of credited/creditable service prior to retirement, termination or death.

(6) *Beneficiary.* Any person so designated by a police officer under section 9-5-27 below who may become entitled to receive retirement benefits upon the death of a police officer to the extent provided in section 9-5-27

(7) *Board of trustees* or *board* means the board of trustees provided for in this article.

(8) *City* means the City of Pensacola, Florida.

(9) *City council* means the City Council of the City of Pensacola.

(10) *Code* means the Internal Revenue Code of 1986, as amended from time to time.

(11) *Compensation* means for purposes of determining a police officer's average final compensation, for any period, the total of:

(a) A police officer's total cash compensation paid to a police officer by the city for services rendered before all pre-tax, salary deferral or salary reduction contributions made to the Police Officers' Retirement Fund and any Section 457 and Section 125 plan of the city on behalf of a police officer (including any contributions made under Section 414(h)(2) of the Code); less.

(b) Any educational incentive pay, court pay, automobile and/or meals and uniform expense, accumulated sick leave at retirement and vacation pay at retirement, special duty pay, shift differential pay, or special bonuses (for example, suggestion awards); and less.

(c) Solely for a police officer whose employment date is on or after October 1, 1996, compensation for any plan year shall not exceed

the annual compensation limit under Section 401(a)(17) of the Code, as in effect on the first day of the plan year. This limit shall be adjusted by the Secretary of the Treasury to reflect increases in the cost of living, as provided in Section 401(a)(17)(B) of the Code; provided, however, that the dollar increase in effect on January 1 of any calendar year is effective for plan years beginning in such calendar year. If a plan determines compensation over a plan year that contains fewer than twelve (12) calendar months (a "short plan year"), then the compensation limit for such "short plan year" is equal to the compensation limit for the calendar year in which the "short plan year" begins multiplied by the ratio obtained by dividing the number of full months in the "short plan year."

(d) Effective January 1, 2013, compensation shall be limited to an officer's base pay and senior officer pay exclusive of overtime for earnings on or after January 1, 2013, but shall include overtime which had been earned as of December 21, 2012.

(12) *Credited service* or *creditable service* means the aggregate number of years of service and fractional parts of years of service of any police officer, omitting intervening years and fractional parts of years when such police officer may not have been employed by the city subject to the following conditions:

(a) No police officer will receive credit for years or fractional parts of years of service if he or she has withdrawn his or her contributions to the fund for those years or fractional parts of years of service, unless the police officer repays into the fund the amount he or she has withdrawn, plus interest as determined by the board. The member shall have six (6) months after his or her reemployment to make repayment.

(b) A police officer may voluntarily leave his or her contributions in the fund for a period of five (5) years after leaving the employ of the police department, pending the possibility of his or her being rehired by the city, without losing credit for the time he or she has participated actively as a police officer. If he or she is not reemployed as a police officer of the city within five (5) years, his or her contributions shall be returned to him or her without interest.

(c) Credited service shall be provided only for service as a police officer or for military service, as provided in paragraph (12)(d) below, and shall not include credit for any other type of service.

(d) In determining the creditable service of any police officer, credit for up to five (5) years of the time spent in the military service of the Armed Forces of the United States shall be added to the years of actual service, if:

1. The police officer is in the active employ of the city prior to such service and leaves a position, other than a temporary position, for the purpose of voluntary or involuntary service in the Armed Forces of the United States.
2. The police officer is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act.
3. The police officer returns to his or her employment as a police officer of the city within one (1) year from the date of his or her release from such active service.

(e) In addition to service credits awarded for military service leave under subsection (d) above, any member of the plan who served in the Armed Forces of the United States or was employed as a police officer by any other law enforcement agency prior to employment by the city, as described under Chapter 2009 - 97, Laws of Florida, shall be entitled to purchase service credits for such service or employment by contributing as provided in (e)(2) below an amount which is assumed to be the full actuarial cost of the service credits purchased. Once the member is vested but not yet retired or entered into DROP, the member may purchase a maximum of five (5) years of any combination of the afore mentioned qualifying non-city service.

1. The contribution required of the employee to purchase service credits for prior military service or prior employment as a police officer, may be made in one lump sum installment or by rollover from a qualified plan.
2. The contribution is calculated as twenty (20) percent of the employee's pensionable current annual compensation at the time of the buy back for each year purchased.

A member who is receiving or will receive a pension benefit for military or prior police service in any other pension plan supported by public funds, excluding a military pension, may not use or buy back credited service for the City of Pensacola Police Officers Pension Fund.

Credited service or creditable service also includes periods of "leave of absence," as defined in subsection 9-5-16(b)(21) below. Solely for the purposes of avoiding a one-year break in service, to the extent required under the Family and Medical Leave Act of 1993 and the regulations thereunder, a police officer shall be deemed to be performing credited service or creditable service for the city during any period the police officer is granted leave under such act for:

(i) The birth of a child;

(ii) The placement with the police officer of a child for adoption;

(iii) To care for a spouse, child or parent of the police officer with a serious health condition; or

(iv) For a serious health condition that makes the police officer unable to perform the functions of his or her job.

(13) *Deferred Retirement Option Plan* or *DROP* means a retirement option, in which a police officer may elect to participate, under which a police officer may retire for all purposes from the Police Officers' Retirement Fund and defer receipt of retirement benefits into a DROP account while continuing employment with the city. Notwithstanding any other provision to the contrary, the Police Officers' Retirement Fund shall comply with the DROP provisions of chapter 9-9 of title IX of the Code of Ordinances of the City of Pensacola.

(14) *Department* means the police department of the city.

(15) *Distributee police officer* means a police officer or former police officer, who is entitled to receive any distribution from the Police Officer's Retirement Fund. Distributee police officer shall also mean, solely for purposes of determining who is entitled to payment from the Police Officers' Retirement Fund, the police officer's surviving spouse, and the police officer's spouse or former spouse who is the alternate payee under a court order.

Effective for plan years beginning on and after January 1, 2007, a non-spouse beneficiary, may elect to directly rollover an eligible distribution to an IRA, a Roth IRA or an individual retirement annuity

under Section 408(b) of the Code that is established on behalf of the designated beneficiary as an inherited IRA, pursuant to the provisions of Section 402(c)(11) of the Code. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of "eligible rollover distribution". In addition, the determination of any required minimum distribution under Section 401(a)(9) of the Code that is ineligible for rollover shall be made in accordance with IRS guidance.

(16) *Eligible rollover distribution* is any distribution of all or any portion of the police officer's benefit, 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 police officer or the joint lives (or joint life expectancies) of the distributee police officer and the distributee police officer's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; 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); and any distribution made to satisfy Section 415 of the Code.

(17) *Eligible retirement fund* means 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 police officer'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.

(18) *Eligible retirement plan* means an IRA 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, an eligible plan under Section 457 of the Code that agrees to separately account for such transferred amounts and which is maintained by a state, political subdivision of a state or an agency or instrumentality of a state or political subdivision of a state or a

qualified trust described in Section 401(a) of the Code that accepts the distributee police officer's "eligible rollover distribution". For distributions made after December 31, 2007, an eligible retirement plan shall include a Roth IRA as defined under Section 408A of the Code.

(19) *Full year* means a twelve (12) consecutive calendar month period commencing on a police officer's employment date and on the anniversary date of such employment thereafter.

(20) *Full year of credited service* means a full year wherein a police officer was employed by the department for more than six (6) months and he or she has not withdrawn his or her contribution to the Police Officers' Retirement Fund for such year.

(21) *Leave of absence* means:

(a) Any leave of absence or vacation authorized by the city or department.

(b) Any service in the armed forces of the United States required to be recognized by the Uniformed Services Employment and Reemployment Rights Act of 1994, provided the police officer was employed at the city other than in a temporary position, immediately prior to entry into such armed forces, and further provided the police officer returns to employment with the city within one year from the date of his/her release from such active service.

The above-named absences shall be authorized on a nondiscriminatory basis, and all police officers in similar circumstances will receive uniform and consistent treatment.

(22) *Limitation year* means the twelve-month period ending on September 30, which period shall be the "limitation year" for purposes of Code Section 415.

(23) *Line of duty* means within the scope of employment as a police officer during such time or times he or she was rendering services to the city as a police officer and at such other times when a police officer is vested with authority to make arrests in accordance with the laws of the State of Florida.

(24) *Normal retirement date* means the first day of the month coincident with or next following the date on which the police officer

has completed twelve (12) or more years of credited service and attained age fifty-five (55).

(25) *Plan* means the Police Officers' Retirement Fund.

(26) *Plan year* means the twelve-month period ending on September 30.

(27) *Police officer* means any person hired prior to January 1, 2013 who is elected, appointed, or employed full time by the city, who is certified or required to be certified as a law enforcement officer in compliance with 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, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in F.S. §§ 943.10(6) and (8), respectively. The police chief shall have an option to participate, or not, in the plan. Any police officer employed on or after October 1, 1979, participating in this plan shall not be eligible to participate in any other defined benefit pension plan of the city. No police officer employed prior to October 1, 1979, shall be permitted to participate in both this plan and another defined benefit pension plan of the city unless such police officer has done so continuously since prior to said date.

(28) *Police Officers' Retirement Fund* means the special fund created exclusively for the purposes provided in this article.

(29) *Total and permanent disability* means both total disability and permanent disability. Total disability means physical and/mental disability of a police officer for a period of more than sixty (60) calendar days and who is forever thereafter wholly prevented from rendering useful and efficient service as a police officer in the sole discretion of the board of trustees. Permanent disability means a police officer is likely to remain forever totally disabled continuously and permanently in the sole discretion of the board of trustees. Total and permanent disability shall not include disability resulting from injuries or conditions resulting from a police officer's:

(i) Excessive and habitual use of alcohol, drugs or narcotics;

(ii) Injury or disease from an intentionally self-inflicted injury;

(iii) Willful and illegal participation in fights, riots, civil insurrections or while committing a crime;

(iv) Injury or disease after his employment has terminated.

The board of trustees shall determine if the above conditions have been met. Its decision shall be final and binding.

The definitions in this section shall not be construed to prohibit employees of the police department other than police officers who have participated in the Police Officers' Retirement Fund prior to the adoption of this article from continuing to participate in the fund.

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 1-99, § 1, 1-14-99; Ord. No. 41-99, § 1, 10-14-99; Ord. No. 20-00, § 1, 4-27-00; Ord. No. 03-11, § 1, 1-27-11; Ord. No. 11-11, § 1, 7-21-11; Ord. No. 18-11, § 1, 9-8-11; Ord. No. 07-13, §§ 1, 2, 2-28-13; Ord. No. 26-13, § 1, 9-26-13)

Sec. 9-5-17. - Board of trustees.

(a) *Creation.* There is hereby created in and for the city a board of trustees of the Police Officers' Retirement Fund, which shall be responsible for the sole and exclusive administration of, and for the proper operation of the Police Officers' Retirement Fund.

(b) *Composition.* The board of trustees shall consist of five (5) members, as follows:

(1) Two (2) legal residents of the city, who shall be appointed by the city council. Each resident-trustee shall serve as a trustee for a period of two (2) years, unless sooner replaced by the City Council, at whose pleasure he or she shall serve, and may succeed himself or herself as a trustee.

(2) Two (2) Police Officers who shall be elected by a majority of the Police Officers who are members of the Police Officers' Retirement Fund. Elections shall be held under such reasonable rules and regulations as the board of trustees shall adopt from time to time. Each police officer shall serve as a trustee for a period of two (2) years, unless he or she sooner ceases to be a police officer in the employ of the Department. His or her successors shall be elected by a majority of

Police Officers who are members of the fund except as provided in section 9-5-17(c) herein. Each Police Officer-trustee of the fund may succeed himself or herself as a trustee.

(3) A fifth trustee, who shall be chosen by a majority of the other four trustees. This fifth person's name shall be submitted to the city council, who shall, as a ministerial duty, appoint such person to the board as a fifth trustee. The fifth person shall serve as trustee for a period of two (2) years, and may succeed himself or herself as a trustee.

(c) *Board vacancy; how filled.* In the event a Police Officer-trustee provided for in subsection (b)(2) ceases to be a police officer in the employ of the Department, he or she shall be considered to have resigned from the board of trustees. In the event a Police Officer-trustee resigns, is removed, or becomes ineligible to serve as a trustee, the board shall, by resolution, declare the office of trustee vacated as of the date of adoption of said resolution. If such a vacancy occurs in the office of trustee within ninety (90) days of the next succeeding election for Police Officer-trustees, the vacancy shall be filled at the next regular election for the unexpired portion of the term; otherwise the vacancy shall be filled for the unexpired portion of the term, as provided in subsection (b)(2).

In the event a member-trustee provided for in subsection (b)(1) or (b)(3) resigns, is removed or becomes ineligible to serve as a trustee, the board shall, by resolution, declare the office of trustee vacated as of the date of adoption of said resolution. His or her successor for the unexpired portion of his or her term shall be chosen in the same manner as an original appointment.

(d) *Board meetings; quorum; procedures.* The board of trustees shall hold meetings regularly, at least one (1) in each quarter year, and shall designate the time and place thereof. At any meeting of such board, any and all acts and decisions shall be effectuated by a vote of the majority of the members of the Board. Each Trustee shall be entitled to one (1) vote on each question before the board and any and all acts and decisions shall be effectuated by a vote of the majority of the members of the Board. The board of trustees shall adopt its own rules of procedure and shall keep a record of its proceedings. All public records of such board shall be open to the public and shall be held as required by law.

(e) *Board chairman.* The board of trustees shall, by majority vote, elect from among its members a chairman.

(f) *Board secretary.* The board of trustees shall, by majority vote, elect from among its members a secretary. The secretary shall keep a complete minute book of the actions, proceedings and hearings of the board. And, the Secretary of the board of trustees shall keep a record of all persons receiving retirement payments and shall note the time when the pension is allowed and when the pension shall cease to be paid. In this record, the Secretary shall keep a list of all Police Officers employed by the municipality. The record shall show the name, address, and time of employment of such police officer and when he or she ceases to be employed by the municipality.

(g) *Compensation.* The board of trustees shall not receive any Compensation for their services as such, but may receive expenses and per diem as provided by law and the per diem policy promulgated by the city from time to time.

(h) *Disclosure.* The members of the board of trustees shall make and complete all public reports and disclosures required by federal and state law for members in similar positions.

(i) *Attorney.* The city attorney shall advise the board of trustees in all matters pertaining to their duties in the administration of the Police Officers' Retirement Fund and shall represent and defend said board in all suits and actions at law or in equity that may be brought against it, and he or she shall bring all suits and actions in its behalf. However, if the board of trustees so elects, it may employ independent legal counsel at the Police Officers' Retirement Fund's expense for the purposes contained within this article.

(j) *Professional, technical or other services.* The board of trustees shall have the authority to employ such professional, technical or other advisors as are required to carry out the provisions of this article.

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 1-99, §§ 2, 3, 1-14-99)

Sec. 9-5-18. - Powers and authority of board of trustees.

(a) *Nondiscriminatory.* In the exercise of any power or discretion under the fund, the board of trustees shall not take any action in respect to any of the rights, benefits, or obligations of a member under the fund which would be discriminatory in favor of some members over others in substantially similar situations or under substantially similar sets of facts.

Nor shall the plan discriminate in its benefit formula based on color, national origin, sex or marital status.

(b) *Investments.* The board of trustees shall have the power and authority to invest and reinvest the assets of the Police Officers' Retirement Fund in the manner authorized by general law. Additionally, there shall be no limit on the authority of the board of trustees to invest the fund's assets in equity investments except that the aggregate market value of the fund's equity investments shall not exceed seventy (70) percent of the aggregate market value of all assets of the fund, shall not invest more than five (5) percent of the fund's assets in common stock or capital stock of any one (1) issuing company, nor shall the aggregate investment in any one (1) issuing company exceed five (5) percent of the outstanding capital stock of the issuing company.

Furthermore, notwithstanding F.S. § 185.06(1)(b), the board of trustees may, upon recommendation by the Board of Trustee's investment consultant and as long as the city remains the fund administrator:

(i) Invest the assets of the Police Officers' Retirement Fund in any lawful investment, real or personal, as provided in F.S. § 215.47; and

(ii) Invest no more than twenty (20) percent of the assets of the Police Officers' Retirement Fund, at fair market value, in any single group trust meeting the requirement of Internal Revenue Service Revenue Ruling 81-100 or successor rulings or guidance of similar import.

(c) *Professional money manager.* The board of trustees shall have the power and authority to:

(1) Contract with any professional money manager to act as agent and corporate trustee of the Police Officers' Retirement Fund. Such professional money manager shall have full investment powers over said fund subject to the provisions of subsection 9-5-18(b) which limit the nature and extent of investments of such fund.

(2) In order to accomplish the purpose outlined in subsection (c)(1), the said trustees may direct the mayor to act as their agent in all matters relating to retention and contracting with said professional money manager. The mayor shall report the nature, extent and return of the investments made by said professional money manager on a quarterly basis. The board of trustees shall review such report and shall give instructions and directions to the mayor regarding the continued investment of the Police Officers' Retirement Fund and the

retention of said professional money manager. The mayor shall provide for periodic review of said investment funds and make annual reports with recommendations to the city council.

(d) *Administration.* The board of trustees shall have the power and authority to:

(1) Appoint a person to serve as fund administrator who shall be the chief administrative officer of the fund and who shall perform the administrative duties of the fund. Said fund administrator shall keep a separate and complete minute book of proceedings of the board in reference to the business and affairs relating to the Police Officers' Retirement Fund. Said minute book shall at all times be kept in the office of the fund administrator and be open to the public for inspection. It shall be the duty of the trustees of the Police Officers' Retirement Fund through its secretary and fund administrator, to promptly make all reports required by any general or special law, to the state treasurer or insurance commissioner, relating to the status of the Police Officers' Retirement Fund.

The duties of the fund administrator shall include, but not be limited to the following:

(a) *Information to actuary.* The fund administrator shall furnish the actuary such information as he or she may require to properly perform his or her duties, those duties include regularly determining estimated contribution levels to properly fund the fund's benefit liabilities, determining disclosure information for the financial statements, and may include certifying the retirement and termination benefits payable under the fund.

(b) *Maintenance of records.* The fund administrator shall keep all records required to reflect the status of each police officer properly, and make available to each police officer the records of his or her status in the fund.

(c) *Direct benefit payments.* The fund administrator shall direct the custodian bank to make retirement and termination benefit payments as required by the provisions of the fund, after approval by the board of trustees.

(2) Issue drafts upon the Police Officers' Retirement Fund pursuant to the rules and regulations prescribed by the board of trustees. All drafts shall be consecutively numbered and be signed by the chairman and

the secretary or those designated by the board from time to time and shall state upon their face the purposes for which the drafts were drawn. The ~~director of finance of the city or other depository~~ plan administrator shall retain the drafts when paid, as permanent vouchers for disbursements made, and no money shall otherwise be drawn from the fund;

(3) Finally decide all claims to relief under the board rules and regulations;

(4) Convert into cash any securities of the fund;

(5) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings, said records shall at all times be kept in the office of the fund administrator and be open to the public for inspection in accordance with the provisions of subsection 9-5-18(d)(1);

(6) Promptly and timely make all reports required by any general or specific law, to the State of Florida, relating to the Police Officers' Retirement Fund;

(7) Retain an independent consultant professionally qualified to evaluate and monitor the performance of the professional money manager. The independent consultant shall report its evaluation of the professional money manager to the board of trustees on a quarterly basis, or as often as the board may request. In all events, the independent consultant shall make its report not less than once every six (6) months;

(8) Keep in convenient form such data as shall be necessary for an actuarial valuation of the Police Officers' Retirement Fund and for checking the actual experience of the Police Officers' Retirement Fund;

(9) Attend at the cost of the Police Officers' Retirement Fund seminars, meetings, conferences and other events and functions relating to public retirement systems as approved by the board;

(10) Adopt uniform and nondiscriminatory regulations and procedures and any emergency rules necessary for the effective administration of the Police Officers' Retirement Fund;

(11) Deposit with the ~~director of finance~~ plan administrator from time to time all, or a portion of, the funds and securities of the Police

Officers' Retirement Fund. Any such funds and securities so deposited with such ~~director of finance~~ plan administrator shall be kept in separate investment accounts clearly identified as funds and securities of the Police Officers' Retirement Fund. The board of trustees may appoint such ~~director of finance~~ plan administrator to direct the investment and reinvestment of any such investment accounts. The ~~director of finance~~ plan administrator so appointed shall invest and reinvest such accounts with the same power the trustees have but shall only invest and reinvest in the following:

a. Time and savings accounts of a national bank, a state bank insured by the Bank Insurance Fund (BIF) or a savings and loan association insured by the Savings Association Insurance Fund (SAIF) so long as the cumulative deposits with any one such bank or savings and loan does not exceed the applicable BIF and SAIF insurance limits from time to time. Investments in time and savings accounts of any one such bank or savings and loan in excess of applicable BIF and SAIF limits shall be secured and collateralized upon the terms and conditions approved by the board or so secured or collateralized in accordance with the written rules and regulations adopted by the board from time to time.

b. Obligations of the United States or obligations guaranteed as to principal by the United States.

c. Bonds or other evidence of indebtedness issued by the State of Florida.

Such ~~director of finance~~ plan administrator shall report the nature, extent and return of the investments made by said director of finance on a monthly basis. The ~~director of finance~~ plan administrator shall discharge his or her duties solely in the interest of the Police Officers participating in the Police Officers' Retirement Fund and their beneficiaries for the exclusive purpose of providing benefits to such Police Officers and beneficiaries and defraying reasonable expenses of administering the fund and shall be liable therefor as provided by law;

(12) The board of trustees shall submit such information to the State of Florida as is required under F.S. § 185.221(2), in order for the fund to receive a share of State funds for the current calendar year; when any of these items would be identical with the corresponding item

submitted for a previous year it will not be necessary to submit duplicate information but to make reference to the item in such previous year's report.

The secretary of the board of trustees shall keep a record of all persons enjoying a pension under the provisions of the fund, in which shall be noted the time when the pension is allowed and when the same shall cease to be paid. The secretary shall keep a record of all Police Officers employed by the city and a record shall be kept in such manner as to show the name, address, and time of employment of such Police Officers and when such Police Officers cease to be employed by the city.

(13) Cause subpoenas to be issued and require the attendance of witnesses and the production of documents for the purpose of determining or redetermining at any time and from time to time the eligibility, right, or entitlement to any pension, benefit, or other payment provided under this article.

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 47-98, § 1, 9-24-98; Ord. No. 1-99, §§ 4, 5, 1-14-99; Ord. No. 41-99, § 2, 10-14-99; Ord. No. 45-00, §§ 1, 2, 10-12-00; Ord. No. 27-02, § 1, 9-26-02; Ord. No. 10-08, § 1, 1-31-08; Ord. No. 16-10, § 143, 9-9-10; Ord. No. 11-11, § 2, 7-21-11)

Sec. 9-5-19. - Liability of board of trustees.

No member of the board nor the fund administrator (for purposes of this section 9-5-19, references to "the board" shall be deemed to include the fund administrator) shall be directly or indirectly responsible or under any liability by reason of any action or default by him or her as a member of the board, or the exercise of or failure to exercise any power or discretion as such member, except for his own fraud or willful misconduct; and no member of the board shall be liable in any way for the acts or defaults of any other member of the board or any of its advisors, agents, or representatives. Without limitation or restriction upon any other indemnification right at law or otherwise, the city shall indemnify and save harmless each member or former member of the board against any and all expenses and liabilities arising out of his membership on the board, except expenses and liabilities arising out of his own fraud or willful misconduct. The fact that any member of the board is an officer, or police officer of the city, or a police officer included in the fund, shall not disqualify him or her from doing any act or

thing which the fund authorizes or requires him or her to do as a member of such board (except as otherwise provided in for herein with respect to a member who is a police officer included in the fund).

(Ord. No. 15-97, § 1, 4-24-97)

Sec. 9-5-20. - Information.

(a) *Employment.* The City shall furnish to the board, in writing, such information as the board may reasonably request in the exercise of its powers and duties in the administration of the fund. Such information may include, but shall not be limited to, the names of employees, their Compensation and dates of birth, employment, termination of employment, retirement, or death. Such information shall be conclusive for all the purposes of the plan and the board shall be entitled to rely thereon; provided, however, that the board may correct any errors discovered in any such information.

(b) *Examination by Police Officers.* The board shall make available to each police officer for examination by him or her, at the principal office of the city, a copy of the ordinance and such of its records or copies thereof as may pertain to any benefits of such police officer under the fund.

(Ord. No. 15-97, § 1, 4-24-97)

Sec. 9-5-21. - Contributions and funding.

(a) The contributions to be credited to the Police Officers' Retirement Fund shall consist of, but shall not be limited to, the following sources of revenue:

(1) (a) Prior to January 2, 2013, the net proceeds of any excise or license tax under F.S. § 185.08, as amended, imposed by the city or the State of Florida upon certain casualty insurance companies on their gross receipts of premiums from holders of policies, which policies cover property within the corporate limits of the city. Such revenue shall first be used to fund the benefit increase provided in subsection 9-5-23(a)(ii)(a) and (b), and then any remaining revenue shall be used for the remaining benefits of the plan. If the receipt of this revenue is not sufficient to pay all benefits of the plan, nevertheless, all benefits of the plan shall be paid;

(b) Effective January 2, 2013, the imposition of excise or license taxes under F.S. § 185.08, an amended, imposed by the city upon certain casualty insurance companies on their gross receipts of premiums from holders of policies, shall cease; provided however, that in the event state law is altered or amended to allow the continuation of such funding source for this plan, then such tax shall be imposed and such revenue shall be made available as a funding source for the plan.

(2) Effective, February 1, 2004, five and one-half (5.5) percent [three (3) percent for police officers described in subsection 9-5-23(g) who did not elect to participate in the retirement benefit increase provided for in subsection 9-5-23(a)(ii)(b)] of the compensation of each police officer to be deducted by the city from each installment of compensation paid to the police officer and designated contributions by the city for purposes of Section 414(h) of the Internal Revenue Code of 1986, as amended. Effective October 1, 2004, the percentage for all police officers shall change to two and one-half (2.5) percent; and shall change to one-half (0.5) percent effective October 1, 2005. Such contributions, however, shall be considered contributions by a police officer subject to refund under subsection 9-5-26(a) and section 9-5-28, and this article. Such contributions are being paid by the city in lieu of contributions by a police officer and the police officer shall not have the option of choosing to receive the contributed amounts directly instead of having the same paid by the city to the Police Officers' Retirement Fund;

(3) Effective January 1, 2013, one and one-half (1.5) percent of the compensation of each police officer participating in the Police Officers' Retirement Fund to be deducted by the city from each installment of compensation paid to the police officer and designated contributions by the city for purposes of Section 414(h) of the Internal Revenue Code of 1986, as amended. Effective October 1, 2013, the police officers' contribution shall increase to three and one-half (3.5) percent of compensation; and effective October 1, 2014, the police officers' contribution shall again increase to five and two-tenths (5.2) percent of compensation. Such contributions, however, shall be considered contributions by a police officer subject to refund under subsection 9-5-26(a) and section 9-5-28, and this article. Such contributions are being paid by the city in lieu of contributions by a

police officer subject to refund under subsections 9-25-(b), 9-5-26(a) and this article;

(4) Payment of the city, or other sources, of a sum equal to the normal cost and amount required to fund over a forty-year period any actuarial deficiency shown by a triennial actuarial valuation, or as often as otherwise may be required by Florida law. For purposes of determining when a triennial actuarial valuation must be performed, the first of such valuations was conducted for the calendar year ending December, 1963;

(5) All gifts, bequests and devises when donated to the Police Officers' Retirement Fund;

(6) All accretions to the Police Officers' Retirement Fund by way of interest or dividends on bank deposits or otherwise; and

(7) All other sources of income now or hereafter authorized by law for the augmentation of the Police Officers' Retirement Fund.

(8) When authorized to fund prior service credit for police officers, transfers of assets from qualified plans (under Section 401(a) of the Internal Revenue Code) and from eligible governmental plans (under Section 457 of the Internal Revenue Code).

(b) All state and other funds received by the city under the provision of this article and chapter 185, Florida Statutes shall be deposited immediately with the board of trustees. Under no circumstances shall such deposit be made more than five (5) calendar days after receipt by the city. The eight and one-half (8.5) percent [three (3) percent for Police Officers described in subsection 9-5-23(g) who did not elect to participate in the retirement benefit increase provided for in subsection 9-5-23(a)(ii)(b)] contribution provided in subsection 9-5-21(a)(2) shall be paid over to the board of trustees by the city immediately after each pay period. All other funds received by the city and designated for or made payable to the Police Officers' Retirement Fund shall be paid to the board of trustees within five (5) calendar days after receipt by City.

(c) A police officer employed prior to October 18, 1999, in a department of the city other than the police department may irrevocably elect on or before December 10, 1999, whether or not to participate in this plan, and if his or her election is to participate in this plan then such police officer also shall irrevocably elect whether or not to include his or her prior service as a permanent sworn law enforcement officer of the city as

credited service under this plan. If the police officer elects to so include such prior service he or she shall within thirty (30) days of making such election contribute five and one-half (5.5) percent of his or her compensation during such prior service period to the Police Officers' Retirement Fund as a condition of including such prior service as credited service and shall thereafter contribute to the fund in the amount set forth in subsection 9-5-21(a)(2).

Prior to providing for any further increase in police pension benefits, any increase in insurance premium tax proceeds received by the Police Officers' Retirement Fund shall first be used to credit the fund for those portions of the costs necessitated by this section to provide the minimum benefits set forth in F.S. ch. 185.

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 41-99, §§ 3, 12, 10-14-99; Ord. No. 27-02, § 2, 9-26-02; Ord. No. 11-04, § 1, 4-22-04; Ord. No. 07-13, § 3, 2-28-13)

Editor's note— Section 9-5-21(a)(2) shall take effect retroactively to September 26, 2002.

Sec. 9-5-22. - Lump sum transfers.

All police officers who were eligible to participate in the Police Officers' Retirement Fund (the "Plan") on or before April 1, 2013, and elected to participate in the Florida Retirement System, thereby revoking their participation in the benefits under F.S. ch. 185 and foregoing any future benefits from the Plan, shall have the lump sum present value of their vested accrued benefit (expressed in the form of a single life annuity) transferred to the Section 401(a) Social Security Replacement Plan in which the police officer is currently a participant. The lump sum present value shall be calculated as of May 1, 2013 utilizing the RP 2000 Static Table with blended rates 80% male/20% female mortality tables with an interest rate of 7.75% per annum and factoring a post-retirement COLA of 2.5%.

(Ord. No. 15-13, § 1, 5-9-13)

Editor's note— Ord. No. 07-13, § 4, adopted February 28, 2013, repealed § 9-5-22, which pertained to participation and benefit claims procedure and derived from Ord. No. 15-97, § 1, 4-24-97.

Sec. 9-5-23. - Retirement.

(a) *Normal retirement.* Any police officer who is participating in the Police Officers' Retirement Fund, and who retires after having reached the normal retirement date or who completes twenty-five (25) years credited service regardless of age is eligible for normal retirement benefits. Such police officer will become one hundred (100) percent vested in his accrued benefit at normal retirement date. In that event, payment of retirement benefits shall be made in accordance with the following provisions:

(i) *Benefit commencement.* The monthly retirement income payable in the event of normal retirement shall commence on the later of (1) the police officer's normal retirement date or (2) the first day of the month coincident with or next following his or her actual retirement, continue to be paid for his or her life and thereafter be paid to his or her beneficiary in accordance with section 9-5-27.

(ii) *Normal retirement benefit.* The monthly retirement benefit payable to a police officer who retires on or after his or her normal retirement date shall be determined as follows:

(a) For a police officer hired on or after September 30, 2002, the amount of three (3) percent of average final compensation per total of his or her full years of credited service.

(b) For a police officer retiring on or after September 30, 2002, who was hired on or after October 1, 1979, and prior to September 30, 2002, and who made the election provided for in subsection (g) of this section, the amount of three (3) percent of average final compensation for credited service on or after October 1, 1997, and two (2) percent of average final compensation for the period of credited service prior to October 1, 1997, except as provided in subsection (h) of this section.

(c) For a police officer retiring after December 31, 1996, the amount of two (2) percent of average final compensation per total of his or her full years of credited service.

(d) For a police officer retiring on or after April 1, 1996, the amount shall be one and 85/100 (1.85) percent of average final compensation per total of his or her full years of credited service.

(e) For a police officer retiring on or after July 1, 1994, and before April 1, 1996, the amount shall be the greater of the following:

i. Seventeen dollars ($17.00) per year for each full year of service; or

ii. One and 65/100 (1.65) percent of average final compensation per full year of total credited service.

(f) For a police officer retiring on or after April 1, 1990, and before July 1, 1994, the amount shall be the greater of the following:

i. Seventeen dollars ($17.00) per year for each full year of service; or

ii. One and 45/100 (1.45) percent of average final compensation per full year of total credited service.

(g) For a police officer retiring on or after December 31, 1986, and before April 1, 1990, the amount shall be the greater of the following:

i. Seventeen dollars ($17.00) per year for each full year of service; or

ii. One and one-quarter (1.25) percent of average final compensation per full year of total credited service.

(h) For a police officer retired on or after May 17, 1983, and before December 31, 1986, the amount shall be the greater of the following:

i. Seventeen dollars ($17.00) per year for each full year of service; or

ii. One hundred dollars ($100.00); or

iii. One-twelfth (1/12) of one (1) percent of the police officer's total earnings during the period of credited service.

(i) For a police officer retired on or after December 10, 1981, and before May 17, 1983, the amount shall be the greater of the following:

i. Fourteen dollars ($14.00) per year for each full year of service; or

ii. One hundred dollars ($100.00); or

iii. One-twelfth (1/12) of one (1) percent of the police officer's total earnings during the period of credited service.

(j) For a police officer retired before December 10, 1981, the amount shall be the greater of the following:

i. Twelve dollars ($12.00) per year for each full year of service; or

ii. One hundred dollars ($100.00); or

iii. One-twelfth (1/12) of one (1) percent of the police officer's total earnings during the period of credited service.

(b) *Early retirement.* Early retirement is retirement from the service of the city, as of the first day of any calendar month which is prior to the police officer's normal retirement date but subsequent to the date as of which the police officer has both attained the age of fifty (50) years and completed twelve (12) years of credited service.

(i) *Early retirement benefit.* A police officer eligible for early retirement shall receive monthly retirement income in accordance with the provisions of subsection 9-5-23(a) reduced by three (3) percent for each year by which the police officer's age is less than fifty-five (55).

Retirement Factors

Age at Retirement (Years)	Factor
55	1.00
54	0.97
53	0.94
52	0.91
51	0.88
50	0.85

(ii) *Benefit commencement.* The monthly retirement income payable in the event of early retirement shall commence on the police officer's early retirement date.

(c) *Delayed retirement.* In the event a police officer continues in the service of the city beyond his or her normal retirement date, or completes more than twenty-five (25) years of credited service regardless of age, as provided in subsection 9-5-23(a), he or she shall be eligible for retirement upon his or her actual retirement.

(i) Delayed retirement benefit. A police officer eligible for delayed retirement shall receive monthly retirement income computed in accordance with the provisions of subsection 9-5-23(a)(ii) upon his actual retirement.

(ii) Benefit commencement. Such monthly retirement income benefit shall commence on the first day of the month coincident with or following the police officer's actual retirement date and be paid on the first day of each month thereafter.

(d) *Optional forms of retirement income.* A police officer is entitled to optional forms of retirement income as provided in chapter 185, Florida Statutes.

(e) *Other benefit.* Notwithstanding the above, if any police officer shall after serving for a period of less than twelve (12) credited years of service, cease to be an employee of the city for any cause, such police officer is entitled to a refund of his or her contributions less any benefits paid. If a police officer shall after serving a period of at least twelve (12) years of credited service, and shall not ever make a withdrawal of funds from the Police Officers' Retirement Fund, he or she shall be eligible to receive normal retirement benefits computed in accordance with subsection 9-5-23(a)(ii) in the manner set forth section 9-5-23 above.

(f) *Benefit forfeiture.* A police officer shall forfeit all benefits provided under this article to the extent provided by the Constitution of the State of Florida and F.S. § 112.3173, as amended.

(g) *Elective benefit increase.* A police officer hired on or after October 1, 1979, and before September 30, 2002, may irrevocably elect prior to July 1, 2004, to participate in the retirement benefit increase provided for in subsection (a)(ii)(b) of this section. Upon such election, contributions on behalf of such police officer to the defined contribution benefit plan provided for in section 9-5-93 of this Code shall cease. Each police officer making such election to participate shall be credited with all years of

service as a permanent full-time police officer. Provided, however, any police officer who shall have had a break in service and withdrawn any employee contributions to the Police Officers' Retirement Fund, such police officer shall comply with section 9-5-31 in order to be credited with the period of service for which such police officer withdrew employee contributions.

(h) *Funding of prior service credit.* Funding the prior service credit granted by this section shall be made in accordance with section 9-5-21. The Police Officer's Retirement Fund shall transfer or distribute without interest to the source from which it was received any monies previously paid or transferred to the Police Officer's Retirement Fund to fund prior service credit pursuant to the version of this subsection adopted by Ordinance No. 27-02.

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 41-99, § 4, 10-14-99; Ord. No. 27-02, § 3, 9-26-02; Ord. No. 11-04, § 2, 4-22-04; Ord. No. 03-11, § 2, 1-27-11; Ord. No. 07-13, § 5, 2-28-13)

Editor's note— Sections 9-5-23(g), (h) shall take effect retroactively to September 26, 2002.

Sec. 9-5-24. - Disability benefits.

(a) A police officer having twelve (12) or more years of credited service, or a police officer who becomes totally and permanently disabled in the line of duty, regardless of length of service, may retire from the service of the city under the plan if he or she becomes totally and permanently disabled as defined in subsection (b) by reason of any cause other than a cause set out in subsection (c) on or after the effective date of the plan. Such retirement shall herein be referred to as disability retirement.

(b) A police officer will be considered totally disabled if, in the opinion of the board of trustees, he or she is wholly prevented from rendering useful and efficient service as a Police Officer; and a police officer will be considered permanently disabled if, in the opinion of the board of trustees, such police officer is likely to remain so disabled continuously and permanently from a cause other than as specified in subsection (c).

(c) A police officer will not be entitled to receive any line of duty disability retirement income if the disability is a result of: the circumstances in paragraphs (3) or (5) or any disability retirement if the disability is the

result of the circumstances described in paragraphs (1), (2), (4), or (6) to wit:

(1) Excessive and habitual use by the police officer of drugs, alcohol or narcotics;

(2) Injury or disease sustained by the police officer while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime;

(3) Injury or disease sustained by the police officer while serving in any armed forces;

(4) Injury or disease sustained by the police officer after employment has terminated;

(5) Injury or disease sustained by the police officer while working for anyone other than the city and arising out of such employment. If while so working the police officer commences the exercise of police powers and thence becomes disabled, the disability shall be deemed to be in the line of duty.

(6) Injury or disease from an intentionally self-inflicted injury.

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

(e) The benefit payable to a police officer who retires from the service of the city with a total and permanent disability as a result of a disability occurred in the line of duty, his or her monthly benefit shall be determined by the provisions of subsection 9-5-23(a)(ii) but shall not be less than forty-two (42) percent of his or her average monthly compensation as of the police officer's disability retirement date. If a police officer becomes totally and permanently disabled other than in the line of duty after twelve (12) or more years of credited service, the police officer's monthly benefit shall be determined in accordance with subsection 9-5-23(a)(ii), but shall not be less than twenty-five (25) percent of his or her average monthly compensation as of the police officer's disability retirement date.

(f) The monthly retirement income to which a police officer is entitled in the event of his or her disability retirement shall be payable on the first day of the first month after the board of trustees determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determines such entitlement, and any portion due for a partial month shall be paid together with the first payment.

The last payment will be, if the police officer recovers from the disability, the payment due next preceding the date of such recovery or, if the police officer dies without recovering from his or her disability, the payment due next preceding death or the 120th monthly payment, whichever is later. In lieu of the benefit payment as provided in this subsection, a police officer may select an optional form as provided in F.S. § 185.161, subject to the approval of the board of trustees.

Any monthly retirement income payments due after the death of a disabled police officer shall be paid to the police officer's designated beneficiary (or beneficiaries) as provided in section 9-5-27.

(g) If the board of trustees finds that a police officer who is receiving a disability retirement income is no longer disabled, as provided herein, the board of trustees shall direct that the disability retirement income be discontinued. "Recovery from disability," as used in this section, shall mean a police officer has reached maximum medical improvement as certified by a duly qualified physician or surgeon selected by the board and is able to render useful and efficient service as a police officer for the city or is capable of performing other employment with the city for remuneration equal to or greater than the compensation he or she last received as a police officer in the sole discretion of the board.

(h) If the police officer recovers from disability and reenters the service of the city as a Police Officer, his or her service will be deemed to have been continuous, but the period beginning with the first month for which the police officer received a disability retirement income payment and ending with the date he or she reentered the service of the city may not be considered as credited service for the purposes of the plan.

(i) Upon the termination of disability retirement benefits because of a recovery from disability, a police officer shall reenter the fund as a member provided he or she commences active employment with the police department of the city within thirty (30) calendar days of such benefit termination. The police officer's credited service earned prior to

his or her disability shall be joined with all post-disability credited service for purposes of computing any other benefits under this fund. No credited service shall be given for the period of a police officer's disability.

(j) If a police officer who recovers from a disability shall not return to active employment with the police department of the city, his or her membership in the fund shall cease on the day of the board's confirmation of a police officer's recovery from disability.

(k) Cost of examinations. The cost of any medical examinations under this section shall be paid by the Police Officers' retirement fund.

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 41-99, § 4, 10-14-99; Ord. No. 07-13, § 6, 2-28-13)

Sec. 9-5-25. - Optional forms of retirement.

(a) (1)

In lieu of the amount and form of retirement income payable in the event of normal or early retirement, a police officer, upon written request to the board of trustees and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

(a) A retirement income of larger monthly amount, payable to the police officer for his or her lifetime only.

(b) A retirement income of a modified monthly amount, payable to the police officer during the joint lifetime of the police officer and a joint pensioner designated by the police officer, and following the death of either of them, one hundred (100) percent, seventy-five (75) percent, sixty-six and two-thirds (662/3) percent, or fifty (50) percent of such monthly amount payable to the survivor for the lifetime of the survivor.

(c) Such other amount and form of retirement payments or benefit as, in the opinion of the board of trustees, will best meet the circumstances of the retiring police officer.

(d) For officers retiring on or after January 1, 2013 who do not have twenty (20) or more years of service under the plan on January 1, 2013, a retirement benefit calculated using the provisions of subsection 9-5-25(a)(1)(b) to benefit the police officer and his or her spouse.

(2) The police officer upon electing any option of this section will designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the Police Officers' Retirement Fund in the event of the police officer's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one (1) or more primary beneficiaries where applicable. Notwithstanding any provisions of Police Officers' Retirement Fund to the contrary, a retired police officer may change his or her designation of joint annuitant or beneficiary (or beneficiaries) up to two times as provided in F.S. § 185.341, without the approval of the board of trustees or the current joint annuitant or beneficiary (or beneficiaries). The retiree is not required to provide proof of the good health of the joint annuitant or beneficiary (or beneficiaries) being removed, and the joint annuitant or beneficiary (or beneficiaries) being removed need not be living. If a police officer's benefits have commenced and he or she is requesting their third (or more) designation of joint pensioner or beneficiary change, such change must be approved by the board of trustees. The board of trustees may request: evidence of the good health of the joint pensioner that is being removed, as it may require; and the amount of the retirement income payable to the police office upon the designation of a new joint pensioner as actuarially redetermined taking into account the ages and sex of the former joint pensioner, the new joint pensioner, and the police officer. Each such designation will be made in writing on a form prepared by the board of trustees, and upon completion, will be filed with the board of trustees. In the event that no designated beneficiary survives the police officer, such benefits as are payable in the event of the death of the police officer subsequent to his or her retirement, shall be paid by the board of trustees to the estate of such deceased police officer, provided that in any of such cases the board of trustees, in its discretion, may direct that the commuted value of the remaining monthly income payments be paid in a lump sum. Any payment made to any person pursuant to this subsection shall operate as a complete discharge of all obligations under the plan with regard to such deceased police officer and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons ever interested hereunder.

(b) Effective January 1, 2013, the spousal benefits for police officers who have less than twenty (20) or more years of service on January 1, 2013, shall be equal to such benefit payment options as provided by the Florida Retirement System for the Special Risk Class on January 1, 2013, elected as follows:

(1) A monthly benefit payment to the member for the member's lifetime only.

(2) A decreased monthly benefit to the member for the member's lifetime. If the member dies prior to receiving the benefit for ten (10) years, the beneficiary will receive the same monthly benefit for the remaining of the ten (10) years.

(3) A decreased monthly benefit during the joint lifetime of both the member and his or her joint annuitant and which after the death or either, shall continue during the lifetime of the survivor in the same amount.

(4) A decreased monthly benefit payable during the joint lifetime of the member and his or her joint annuitant and which, after the death of either, shall continue during the lifetime of the survivor in an amount equal to sixty-six and two-thirds (662/3) percent of the amount that was payable during the joint lifetime of the member and his or her joint annuitant.

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 police officer dies prior to his or her normal retirement date or early retirement date, whichever first occurs, no benefit will be payable under the option to any person, but the benefits, if any, will be determined under F.S. § 185.21.

(2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the police officer's retirement under the plan, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the police officer upon his or her 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 police officer prior to his or her retirement and within ninety (90) days after the death of the beneficiary.

(3) If both the retired police officer and the designated beneficiary (or beneficiaries) die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subparagraph (a)(1)c., the board of trustees may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 9-5-27

(4) If a police officer continues beyond his or her normal retirement date and dies prior to 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 (or beneficiaries) designated by the police officer in the amount or amounts computed as if the police officer had retired under the option on the date on which death occurred.

(c) No police officer may make any change in his or her retirement option after the date of cashing or depositing his or her first retirement check.

(d) In the event a mandatory distribution is greater than one thousand dollars ($1,000.00), and a distributee police officer fails to elect to have such distribution paid directly to an eligible retirement plan specified by the distributee police officer in a direct rollover or to receive the distribution directly, then the board will pay the distribution in a direct rollover to an individual retirement account ("IRA") designated by the board. For purpose of the preceding sentence, a mandatory distribution is a distribution that constitutes an "eligible rollover distribution" (as defined in section 9-5-16(b)(16)) that is made without the police officers' consent. See sections 9-5-25(b)(3), 9-5-28 and 9-5-35 for examples of potential mandatory distributions.

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 41-99, § 6, 10-14-99; Ord. No. 15-10, § 1, 8-19-10; Ord. No. 03-11, § 4, 1-27-11; Ord. No. 07-13, § 7, 2-28-13)

Sec. 9-5-26. - Death benefits.

(a) *Death prior to twelve (12) years of service.* If any police officer who is a participant in the police officers' retirement fund dies before having twelve (12) years of service, the heirs, legatees, beneficiaries or personal representative of the deceased police officer shall be entitled to a refund of one hundred (100) percent, without interest, of the decedent police

officer's contributions made through salary reductions pursuant to subsection 9-5-21(a)(2).

(b) *Death after twelve (12) years of service.* If any police officer who is a participant in the Police Officers' Retirement Fund and has twelve (12) years or more of service dies before reaching and/or attaining his or her normal retirement date, his beneficiary shall be entitled to receive a monthly retirement benefit as provided in subsection 9-5-24(a) in the manner and extent provided in section 9-5-27.

(c) *Death in line of duty.* If any police officer who is a participant in the Police Officers' Retirement Fund dies as a result of an injury received in the line of duty, his or her beneficiary shall be entitled to receive a monthly retirement benefit as provided in subsection 9-5-24(b) in the manner and extent provided in section 9-5-27.

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 41-99, § 7, 10-14-99; Ord. No. 07-13, § 8, 2-28-13)

Sec. 9-5-27. - Payments to beneficiary and alternative beneficiary.

In the event any payment under sections 9-3-23, 9-5-24, and subsections 9-5-26(b) and (c) are to be paid to the police officer's beneficiary, such payment shall be made as follows:

(a) Each police officer may, on a form, provided for that purpose, signed and filed with the board of trustees, designate a choice of one or more persons, named sequentially or jointly, as his or her beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of the police officer's death, and each designation may be revoked by such police officer by signing and filing with the board of trustees a new designation or beneficiary form. If a police officer designates more than one beneficiary the benefits paid shall be divided equally among beneficiaries so long as more than one beneficiary remains eligible for such payments.

(b) If no beneficiary is named in the manner provided by subsection (a), or if no beneficiary designated by the member survives him or her, the death benefit, if any, which may be payable under the plan with respect to such deceased police officer shall be paid by the board of trustees to the estate of such deceased police officer, provided that in any of such cases the board of trustees, in its discretion, may direct

that the commuted value of the remaining monthly income payments be paid in a lump sum. Any payment made to any person pursuant to this subsection shall operate as a complete discharge of all obligations under the plan with regard to such deceased police officer and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons ever interested hereunder.

(c) If the police officer's spouse is the designated beneficiary, the surviving spouse's monthly benefit payment shall be for life. Provided, however, such benefit shall cease upon the remarriage of the surviving spouse except the surviving spouse of a police officer killed in the line of duty shall not lose survivor retirement benefits if the spouse remarries. The surviving spouse of a deceased police officer killed in the line of duty whose benefit terminated because of remarriage shall have the benefit reinstated as of July 1, 1994, at an amount that would have been payable had such benefit not been terminated. Effective October 1, 1999, if the police officer's spouse is the designated beneficiary and if the surviving spouse should remarry, the surviving spouse of the deceased member of the plan shall continue to be entitled to the pension benefit provided for herein. Notwithstanding this provision, unless otherwise required by law, if a surviving spouse should become a surviving spouse of more than one deceased member of the plan, the surviving spouse shall receive only the greater dependent benefit. Unless required by law, the surviving spouse shall not receive benefits from more than one (1) deceased member of the plan.

(d) If a police officer dies before being eligible to retire, the heirs, legatees, beneficiaries or personal representatives of such deceased police officer shall be entitled to a refund of one hundred (100) percent, without interest, of the contributions made to the Police Officers' Retirement Fund by such deceased police officer or, in the event an annuity or life insurance contract has been purchased by the board on such police officer, then to the death benefits available under such life insurance or annuity contract, subject to the limitations on such death benefit set forth in F.S. § 185.061, whichever amount is greater.

(e) If a police officer having at least twelve (12) years of credited service dies prior to retirement, his or her beneficiary is entitled to the benefits

otherwise payable to the police officer at early or normal retirement age.

(f) If a police officer has designated his or her spouse as beneficiary and the police officer and spouse both die prior to the completion of one hundred twenty (120) monthly payments or (ii) a police officer dies and his or her spouse, who has been designated as beneficiary, remarries prior to the completion of one hundred twenty (120) monthly payments then:

(1) Such payments shall be made to the police officer's surviving children until the payments to the police officer, his or her spouse and children shall total one hundred twenty (120) payments. Provided, however, if a surviving child of the police officer is under the age of eighteen (18) at the time such payments total one hundred twenty (120), the payments, or portions received by such child shall continue until such child, attains age eighteen (18).

(2) If a police officer has no surviving children, payments shall be made to the beneficiary designated by the police officer from time to time in a written notice to the board until payments to the police officer, his or her spouse and designated beneficiary shall total one hundred twenty (120) payments.

(g) No spouse or spouse predeceased. If a police officer has no spouse or his or her spouse does not survive him or her, payments shall be made to the surviving children of the police officer until the payments to the police officer and his or her children shall total one hundred twenty (120) payments unless the police officer has designated a beneficiary other than his or her spouse or children. Provided, however, if a surviving child of the police officer is under the age of eighteen (18) at the time such payments total one hundred twenty (120), the payments, or portions received by such child shall continue until such child attains age eighteen (18).

(h) Payments shall be made to any other beneficiary designated by the police officer from time to time in a written notice to the board until the payments to the police officer and his or her designated beneficiary shall total one hundred twenty (120) payments.

(i) Beneficiary designation. The written notice designating a beneficiary of a police officer shall be made in accordance with the rules and regulations promulgated by the board of trustees from time to time. In

the event no beneficiary notice is given by a police officer or such beneficiary predeceases the police officer, the police officer's benefits shall be payable to the personal representative of the police officer's estate.

(j) Alternate beneficiary. The board of trustees may refuse to make payment to any person who is, in its judgment, incapable for any reason of personally receiving and giving a valid receipt for such payment, and, unless and until claim shall have been made by a duly-appointed guardian, conservator or committee for such person, may make such payment, or any part thereto, to any other person, institution or agency then, in the judgment of the board, contributing toward or providing for the care and maintenance of such person; and to the extent of amounts so paid the board shall be completely discharged.

(k) Payments to minors. In the event a distribution is to be made to a minor, the board may direct that such distribution be paid to the legal guardian, or if none, to a parent of such beneficiary or a responsible adult with whom the beneficiary maintains his residence, or to the custodian of such beneficiary under the Uniform Gift to Minors Act or, if such is permitted by the law of the state in which said beneficiary resides, such a payment to the legal guardian, custodian or parent of a minor beneficiary shall fully discharge the board from further liability on account thereof.

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 1-99, § 6, 1-14-99; Ord. No. 41-99, § 8, 10-14-99; Ord. No. 20-00, § 2, 4-27-00; Ord. No. 07-13, § 9, 2-28-13)

Sec. 9-5-28. - Refunds of contributions.

Should any police officer who is participating in the Police Officers' Retirement Fund leave the services of the city before being eligible to retire under the provisions of this fund, the police officer shall be entitled to a refund of all of his or her contributions made to the Police Officers' Retirement Fund, without interest, less any benefits paid to him or her.

(Ord. No. 15-97, § 1, 4-24-97)

Sec. 9-5-29. - Cost of living increase.

(a) For police officers who have retired or entered the DROP prior to January 1, 2013, the board of trustees shall have the authority to grant increased pension benefits equal to the corresponding increase in the United States Department of Labor Consumer Price Index for All Urban Consumers, U.S. City Average, but not to exceed three (3) percent per year. The increase in the cost of living index shall be calculated as of each September 30 for the prior twelve-month period; and any increase shall be effective January 1 of the following year.

(b) For police officers who retire or enter the DROP on or after January 1, 2013, the board of trustees shall have the authority to grant increased pension benefits equal to the corresponding increase in the United States Department of Labor Consumer Price Index for All Urban Consumers, U.S. City Average, but not to exceed three (3) percent per year for the first ten (10) years of benefit payments and not to exceed two (2) percent for each year thereafter. The increase in the cost of living index shall be calculated as of each September 30 for the prior twelve month period; and any increase shall be effective January 1 of the following year.

(c) However, effective for Police Officers' Retirement Fund participants entering DROP on or after January 1, 2013, any cost of living increase provided by the Fund shall not apply to the DROP participants.

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 16-98, § 1, 5-14-98; Ord. No. 07-13, § 10, 2-28-13)

Sec. 9-5-30. - Residence.

Any retired police officer now receiving a pension from the city shall continue to receive such pension of the same amount now paid, payable from the source from which such pension is now paid, and any retired police officer now or hereafter receiving a pension under this act may reside in any place of his or her choosing and continue to receive his or her pension as provided by this article, and it shall be the duty of the pension board to forward such pensioners the amount of such payment to the last and best address of such Police Officer.

(Ord. No. 15-97, § 1, 4-24-97)

Sec. 9-5-31. - Reinstatement rights.

Whenever it is now provided by law that a duly-appointed and enrolled police officer shall be required to have some designated period of continuous service to establish entitlement to or the amount of pension for himself or herself, his or her spouse, dependent, or other person, it shall be sufficient that he or she has served as such police officer whether continuously or discontinuously, for the required total period, and he or she shall be entitled to add together such periods of discontinuous service to secure the benefits now granted for continuous service of a like period; provided, however, that before such police officer may take advantage of this provision, if he or she shall have withdrawn the contributions or any part thereof theretofore paid by him or her into the Police Officers' retirement fund he or she shall repay into the fund the amount he or she has withdrawn, plus interest as determined by the board, within a period of six (6) months next succeeding the beginning of his or her last period of employment.

In addition, those certain Police Officers certified by the plan administrator from time to time who otherwise meet the requirements for participation in the fund and who are in their last period of employment with the city, whom, for whatever reason other than an affirmative election not to participate in the fund, have been erroneously excluded from the fund shall become members of the fund upon the payment to the fund of the total subsection 9-5-21(a)(2) contributions such police officer would have contributed to the fund if a member from the date of his or her last employment date to the date of entry into the fund, plus interest, as determined by the board. The reinstatements rights granted by this paragraph of this section (and no other paragraph or section) shall expire six (6) months after the date of written notice to the police officer of his or her entitlement to exercise the reinstatement rights granted herein. Those Police Officers declining to exercise the reinstatement rights under this paragraph of this section shall be deemed to have irrevocably elected to not participate in the fund during this period of their employment with the city. The plan administrator shall give written notice to Police Officers not exercising their reinstatement rights that they have forever forfeited those rights and are ineligible to participate in the fund for the involved period of his or her employment with the city.

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 41-99, § 9, 10-14-99)

Sec. 9-5-32. - Coordination of benefits.

Effective September 30, 2002, the total of the retirement benefits provided by this chapter and workers' compensation benefits, not to include benefits provided as a reimbursement of medical costs incurred as the result of a compensable injury, shall not exceed one hundred (100) percent of a police officer's average monthly salary. Should the total of the benefits exceed one hundred percent (100%) of the average monthly salary, the pension benefit shall be reduced so as not to cause the total pension and workers' compensation benefit to exceed one hundred (100) percent. In the event a police officer eligible for benefits under the workers' compensation law receives a lump-sum settlement of a workers' compensation disability claim, the benefits received shall be prorated over a ten-year projected period for the purposes of the offset of any benefit in excess of one hundred (100) percent. For the purpose of this section, workers' compensation disability benefits are primary and the retirement benefits from the Police Officer's Retirement Fund are secondary. Since retirement benefits are secondary, the retirement benefits shall be reduced in order to observe the cap. No reduction of benefits shall be implemented until a police officer eligible for the benefits under this chapter realizes the other benefit sources, including workers' compensation disability benefits. The police officer eligible for benefits must advise the fund administrator of the receipt of any benefits from a primary source, workers' compensation disability benefits, within three (3) days after the incipient receipt of the benefits. Any cost-of-living adjustment provided by Florida workers' compensation laws and by this chapter shall be calculated on the full benefit, prior to the offset. Notwithstanding the foregoing, no benefits paid hereunder shall be less than the minimum amounts required by Chapter 185, Florida Statutes.

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 27-02, § 4, 9-26-02)

Sec. 9-5-33. - Maximum benefits.

Notwithstanding any provision of the article. the maximum benefit paid to a police officer shall not exceed the limitations, if any, set forth in F.S. § 112.65, as amended.

The benefits otherwise payable to a police officer or a beneficiary under the Police Officers' Retirement Fund, and, where relevant, the benefits of a police officer, shall be limited to the extent required by the provisions of section 415 of the Code. To the extent applicable, the provisions of Section 415 of the Code, are incorporated by reference into the Police Officers'

Retirement Fund. For this purpose, the limitation year is set forth is section 9-5-16(b)(22).

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 16-98, § 2, 5-14-98; Ord. No. 41-99, § 10, 10-14-99; Ord. No. 03-11, § 5, 1-27-11)

Sec. 9-5-34. - Eligible Rollover Distributions.

This section applies to any distributions from the Police Officers' Retirement Fund made on or after January 1, 1993. Notwithstanding any provision of the fund to the contrary that would otherwise limit a distributee police officer's election under this section, a distributee police officer may elect, at the time and in the manner prescribed by rule and regulations prescribed by the board of trustees, to have any portion of an eligible retirement fund specified by the distributee police officer in a direct rollover.

(Ord. No. 15-97, § 1, 4-24-97)

Sec. 9-5-35. - Unclaimed benefits.

In the event a police officer or beneficiary becomes entitled to benefits under this fund and the board of trustees and fund administrator are unable to locate the police officer or beneficiary (after sending a letter, return receipt requested, to the police officer's or beneficiary's last known address, and after such further diligent efforts as the board in its sole discretion deems appropriate) within sixty (60) calendar days from the date upon which such letter is sent, the board shall direct that the benefits be paid to an eligible beneficiary of the police officer or beneficiary until such police officer or beneficiary is located or until such benefits have been paid in full. If the board has not received a request for payment of such benefits from a police officer or beneficiary within the applicable period of limitations, then the benefits shall be paid pursuant to the direction of a court of applicable jurisdiction.

(Ord. No. 15-97, § 1, 4-24-97)

Sec. 9-5-36. - Recovery of mistaken payments.

If any benefit is paid to a police officer or beneficiary in an amount that is greater than the amount payable under the terms of the fund, the fund shall recover the excess benefit amount by eliminating or reducing the police officer's or beneficiary's future benefit payments, if any; provided, no one

benefit payment shall be reduced pursuant to this section by more than twenty-five (25) percent. If no further benefits are payable to the police officer or beneficiary under the fund, the board, in its discretion, may employ such means as are available under applicable law to recover the excess benefit amount from the police officer or beneficiary.

(Ord. No. 15-97, § 1, 4-24-97)

Sec. 9-5-37. - Amendment and termination of fund.

(a) *Amendment of fund.* The city shall have the right, by action of the city council, in their sole and final discretion, to amend the fund from time to time, to any extent which the city council may deem advisable; provided, however, that no amendment (other than an amendment required by the Internal Revenue Service as a condition of its approval of the fund and trust as qualifying under Sections 401(a) and 501(a) of the Internal Revenue Code shall retroactively decrease the benefits accrued to any police officer or increase the duties or responsibilities of the board without their written consent. In addition, no amendment may cause or permit any portion of the assets held under the Plan to revert to or become property of the city, except as otherwise permitted in section 9-5-37(c) below or otherwise permitted by law.

A certified copy of the ordinance of the city council making such amendment shall be delivered to the board of trustees; the fund shall be amended in the manner and effective as of the date set forth in such ordinance; and police officers, beneficiaries, trustees, and all others having any interest under the fund shall be bound thereby.

(b) *Termination of the plan.* The city shall have the right, by action of city council, in their sole and final discretion, to terminate the fund at any time subject to the provisions of F.S. § 185.37. A certified copy of the ordinance of the city council shall be delivered to the board of trustees, and the fund shall be terminated as of the date of termination specified in such ordinance. Notwithstanding any other provision of this ordinance, pursuant to section 411(d)(3) of the Code, upon termination of this Police Officers' Retirement Fund, the benefits to which each police officer or beneficiary is entitled shall become one hundred (100) percent vested to the extent funded.

(c) *Repayment to employer.* After the satisfaction of all liabilities under the fund, any over payment made by the city into the trust fund as a result of erroneous actuarial computations shall be repaid to the city.

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 41-99, § 11, 10-14-99; Ord. No. 03-11, § 6, 1-27-11; Ord. No. 26-13, § 2, 9-26-13)

Sec. 9-5-38. - Limitation of member rights and fund obligations.

Neither the establishment and maintenance of the fund or trust, nor any provision or amendment thereof, nor the purchase of any insurance or annuity contract, nor any act or omission under or resulting from the operation of the fund shall be construed:

(1) As conferring upon any police officer, participant, beneficiary, or any other person, firm, corporation, or association whomsoever, any right or claim against the city, or board, except to the extent that such right or claim shall be specifically and expressly provided in the plan or trust agreement.

(2) As an agreement, consideration, or inducement of employment, or as affecting in any manner or to any extent whatsoever the rights or obligations of the city or any police officer to continue or terminate the employment relationship at any time.

(Ord. No. 15-97, § 1, 4-24-97)

Sec. 9-5-39. - Nonassignability.

No benefit, contributions, or refund under the fund shall be liable for any debt, liability, contract, engagement, or tort of any member or his beneficiary, nor be subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment, execution, or other voluntary or involuntary alienation or other legal or equitable process, nor transferability by operation of law. Should any attempt be made to so affect any such benefit, it shall ipso facto pass to such person or persons as may be appointed by the board from among the following persons appointed in the following order of priority: (a) the spouse, (b) children, (c) parents, or (d) brothers and sisters, of the member or beneficiary; provided, however, that the board of trustees, in its sole discretion, may reappoint the member or beneficiary to receive any such benefit thereafter becoming due either in whole or in part. Any such appointment or reappointment made by the board

of trustees hereunder may be revoked by the board of trustees at any time, and a further appointment or reappointment made by it.

(Ord. No. 15-97, § 1, 4-24-97)

Sec. 9-5-40. - Written communications required.

(a) *Fund administrator.* Any notice, request, instruction, or other communication required to be given or made hereunder shall be made in writing, and either personally delivered to the addressee, or deposited in the United States mail or overnight courier or delivery service fully postpaid and duly addressed to such addressee at the last address for notice shown on the records of the board of trustees.

(b) *Police Officer.* Each member shall at all times be responsible for notifying the fund administrator of any change in his name or address to which his benefit checks and other communications are to be mailed.

(c) *Disappearance of member or beneficiary.* In the event that any member or Beneficiary receiving or entitled to receive benefits under the fund should disappear and fail to respond within sixty (60) days to a written notice sent by the fund administrator by registered or certified mail, informing him or her of his entitlement to receive benefits under the fund, the board of trustees may pay such benefits or any portion thereof which the board of trustees determines to be appropriate to the dependents of the member or beneficiary, whichever is applicable, having regard to the needs of such dependents, until such member or beneficiary is located or until such benefits have been paid in full, whichever event shall first occur.

If the board of trustees has received no request for payment of such benefits from the member or beneficiary and has made no such payments to dependents thereof within the applicable period of limitation of actions after the same became payable, then benefits under the fund shall be paid pursuant to the direction of a court of applicable jurisdiction.

(Ord. No. 15-97, § 1, 4-24-97)

Sec. 9-5-41. - Qualified military service.

Notwithstanding any other provision of the plan to the contrary, contributions, benefits, and service credit with respect to qualified military

service, as defined in Section 414(u) of the Code, shall be provided in accordance with Section 414(u) of the Code, the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") and the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act") and shall be effective as of the dates indicated in USERRA and the HEART Act. If a police officer dies on or after January 1, 2007, while performing qualified military service, such police officer's beneficiaries are entitled to any additional benefits the police officer would have received had the police officer resumed employment and then died while employed.

(Ord. No. 03-11, § 7, 1-27-11; Ord. No. 04-16, § 1, 1-14-16)

Sec. 9-5-42. - Forfeitures.

(a) A police officer of the Police Officers' Retirement Fund shall forfeit all benefits provided by the Police Officers' Retirement Fund to the extent provided by the State Constitution and F.S. § 112.3173 except for the return of his or her contributions as of the date of termination.

(b) Forfeitures arising from any cause whatsoever under the Police Officers' Retirement Fund shall not be applied to increase the benefits to any police officer who would otherwise receive under the Police Officers' Retirement Fund at any time prior to the termination of the Police Officers' Retirement Fund or the complete discontinuance of contributions hereunder. Forfeitures shall be applied to reduce the contributions under the Police Officers' Retirement Fund in the then current or subsequent years.

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 03-11, § 8, 1-27-11)

Sec. 9-5-43. - Construction and law governing.

(a) The fund and this chapter shall be construed, enforced, and administered, and the validity determined in accordance with the law of the State of Florida.

(b) Words used herein in the masculine or feminine gender shall be construed as the feminine or masculine gender, respectively, where appropriate.

(c) Words used herein in the singular or plural shall be construed as the plural or singular, respectively, where appropriate.

(d) The city council's purpose in adopting this ordinance is to give effect to and implement the ratified agreement between the city and the police employees' collective bargaining representative. The board of trustees shall construe the provisions of this ordinance in accordance with the ratified agreement.

(e) Notwithstanding any provision herein to the contrary, any member of the Plan as in effect of January 1, 2013, who has vested benefits under the Plan as of that date shall not receive a benefit under the Plan less than the member's accrued benefit as of January 1, 2013, regardless of the date such member (or his or her beneficiary) begins receiving a pension or benefits under the Plan.

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 07-13, § 11, 2-28-13; Ord. No. 26-13, § 3, 9-26-13)

Sec. 9-5-44. - Offset for indebtedness to City.

Notwithstanding anything else herein to the contrary, the amount of accumulated police officer contributions, accrued retirement benefit and any other benefit or payment to which a member or beneficiaries may otherwise be entitled to under the fund shall be subject to and shall be reduced by the amount of any indebtedness of the member or beneficiaries to the city that is unpaid and outstanding at the time any payment is to be made to the member or beneficiaries under the terms of the fund.

(Ord. No. 15-97, § 1, 4-24-97)

Sec. 9-5-45. - Incidental and minimum benefit rules.

Required minimum distributions. Notwithstanding anything in the Police Officers' Retirement Fund to the contrary, all distributions under the Police Officers' Retirement Fund shall comply with Section 401(a)(9) of the Code and the Regulations thereunder, as prescribed by the Commissioner in Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin, to the extent that said provisions apply to governmental plans under section 414(d) of the Code, and shall be made in accordance with the following requirements:

(1) Time and manner of distribution.

(a) *Required beginning date.* The police officer's entire interest will be distributed, or begin to be distributed, to the police officer no later than the police officer's required beginning date.

(b) *Death of police officer before distributions begin.* If the police officer dies before distributions begin, the police officer's entire interest will be distributed, or begin to be distributed, no later than as follows:

(i) If the police officer's surviving spouse is the police officer's sole designated beneficiary, then, except as provided in the Police Officers' Retirement Fund, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the police officer died, or by December 31 of the calendar year in which the police officer would have attained age 70½, if later.

(ii) If the police officer's surviving spouse is not the police officer's sole designated beneficiary, then, except as provided in the Police Officers' Retirement Fund, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the police officer died.

(iii) If there is no designated beneficiary as of September 30 of the year following the year of the police officer's death, the police officer's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the police officer's death.

(iv) If the police officer's surviving spouse is the police officer's sole designated beneficiary and the surviving spouse dies after the police officer but before distributions to the surviving spouse begin, this subsection (1)(b), other than subsection (1)(b)(i), will apply as if the surviving spouse were the police officer.

For purposes of this section 9-5-133(1) and (4), distributions are considered to begin on the police officer's required beginning date (or, if section (1)(b)(iv) applies, the date distributions are required to begin to the surviving spouse under subsection (1)(b)(i)). If annuity payments irrevocably commence to the police officer before the police officer's required beginning date (or to the police officer's surviving

spouse before the date distributions are required to begin to the surviving spouse under subsection (1)(b)(i), the date distributions are considered to begin is the date distributions actually commence.

(c) *Form of distribution.* Unless the police officer'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 subsections (2), (3), and (4) of this section 9-5-45. If the police officer'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.

(2) Determination of amount to be distributed each year.

(a) *General annuity requirements.* If the interest is paid in the form of annuity distributions under the Police Officers' Retirement Fund, payments under the annuity will satisfy the following requirements:

(i) The annuity distributions will be paid in periodic payments made at intervals not longer than one (1) year;

(ii) The distribution period will be over a life (or lives) or over a period certain not longer than the period described in subsection (3) or (4);

(iii) 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; and

(iv) Payments will either be nonincreasing or increase only as follows:

(1) 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;

(2) To the extent of the reduction in the amount of the police officer'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 described in subsection (3) dies or is no longer the police officer's beneficiary

pursuant to a qualified domestic relations order within the meaning of section 414(p) of the Code;

(3) To provide cash refunds of police officer contributions upon the police officer's death; or

(4) To pay increased benefits that result from a Police Officers' Retirement Fund amendment.

(b) *Amount required to be distributed by required beginning date.* The amount that must be distributed on or before the police officer's required beginning date (or, if the police officer dies before distributions begin, the date distributions are required to begin under subsection (1)(b)(i) or (1)(b)(ii)) 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 police officer'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 police officer's required beginning date.

(c) *Additional accruals after first distribution calendar year.* Any additional benefits accruing to the police officer 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.

(3) Requirements for annuity distributions that commence during the police officer's lifetime.

(a) *Joint life annuities where the beneficiary is not the police officer's spouse.* If the police officer's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the police officer and a nonspouse beneficiary, annuity payments to be made on or after the police officer's required beginning date to the designated beneficiary after the police officer'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 police officer using the table set forth in Q&A-2 of section 1.401(a)(9)-6T of the

Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the police officer and a nonspouse 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 police officer'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 police officer's lifetime may not exceed the applicable distribution period for the police officer 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 police officer reaches age 70, the applicable distribution period for the police officer 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 police officer as of the police officer's birthday in the year that contains the annuity starting date. If the police officer's spouse is the police officer'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 police officer's applicable distribution period, as determined under this section (3)(b), or the joint life and last survivor expectancy of the police officer and the police officer'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 police officer's and spouse's attained ages as of the police officer's and spouse's birthdays in the calendar year that contains the annuity starting date.

(4) Requirements for minimum distributions where the police officer dies before date distributions begin.

(a) *Police officer survived by designated beneficiary.* Except as provided in the Police Officers' Retirement Fund, if the police officer dies before the date distribution of his or her interest begins and there is a designated beneficiary, the police officer's entire interest will be distributed, beginning no later than the time

described in section (1)(b)(i) or (1)(b)(ii), 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 police officer'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.

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

(c) *Death of surviving spouse before distributions to surviving spouse begin.* If the police officer dies before the date distribution of his or her interest begins, the police officer's surviving spouse is the police officer's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this subsection (4) will apply as if the surviving spouse were the police officer, except that the time by which distributions must begin will be determined without regard to subsection (1)(b)(i).

5. *Definitions.*

(a) *Designated beneficiary.* The individual who is designated as the beneficiary in accordance with the Police Officers' Retirement Fund and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(b) *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the police officer's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the police officer's required beginning date. For

distributions beginning after the police officer's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to subsection (1)(b).

(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) *Required beginning date.* The term "required beginning date" means April 1 of the calendar year following the later of: the calendar year in which the police officer attains age 70½; or the calendar year in which the police officer retires from employment with the City of Pensacola.

(Ord. No. 15-97, § 1, 4-24-97; Ord. No. 03-11, § 9, 1-27-11)

ARTICLE III. - PENSION SUPPLEMENT PROGRAM

Sec. 9-5-46. - ~~Paid from general fund.~~ RESERVED

Commented [RS33]: All benefits are now paid from pension plan funds.

~~All pension supplements shall be paid from the general fund of the city.~~

~~(Code 1968, § 40-16)~~

Sec. 9-5-47. - Eligible persons.

Pension supplements provided hereinafter shall be paid only to those persons who are members of the City of Pensacola General Pension and Retirement Fund system on or before February 27, 1975, by virtue of full-time service or to the unremarried widows of the members.

(Code 1968, § 40-17)

Sec. 9-5-48. - Payments.

The City shall pay to the members of the general pension and retirement fund system and widows of the members a monthly pension supplement, as hereinafter described, in addition to the general pension and retirement fund benefits presently paid to the persons:

(1) Members having twenty (20) or more years of full-time active service and presently receiving general pension and retirement fund benefits in the amount of two hundred dollars ($200.00) per month or less shall receive a pension supplement in the amount of the greater of the following two (2) sums:

   a. The difference between the amount of the general pension and retirement fund benefits the person is presently receiving and the sum of two hundred dollars ($200.00);

   b. Ten (10) percent of the present monthly general pension and retirement fund benefit that the person is receiving.

(2) Members having less than twenty (20) years of full-time active service and presently receiving general pension and retirement fund benefits of two hundred dollars ($200.00) a month or less shall receive a pension supplement in the amount of ten (10) percent of the amount of the present monthly general pension and retirement fund benefit.

(3) Unremarried widows receiving general pension and retirement fund benefits in the amount of two hundred dollars ($200.00) per month or less shall receive a pension supplement in the amount of five (5) percent of their present monthly general pension and retirement fund benefit.

(4) Members presently receiving general pension and retirement fund benefits greater than two hundred dollars ($200.00) per month and up to and including three hundred fifty dollars ($350.00) per month shall receive a pension supplement in the amount of five (5) percent of their present monthly general pension and retirement fund benefit; unremarried widows presently receiving general pension and retirement fund benefits greater than two hundred dollars ($200.00) per month and up to and including three hundred fifty dollars ($350.00) per month shall receive a pension supplement equal to three (3) percent of their present monthly general pension and retirement fund benefit.

(5) Members presently receiving general pension and retirement fund benefits greater than three hundred fifty dollars ($350.00) per month up to and including four hundred fifty dollars ($450.00) per month along with the unremarried widows of members receiving a similar amount of benefits shall receive a pension supplement in the amount

of three (3) percent of their present monthly general pension and retirement fund benefit.

(6) The ~~wives~~ spouses of those pension system members who are entitled to the pension supplements set forth in this section who become widowed after February 27, 1975, and remain unmarried shall be entitled to a widow's pension supplement as set forth herein.

(7) All pension supplements, except those supplements paid to pension system members having twenty (20) years or more of full-time service, shall be reduced by five (5) percent of the amount of the supplement for each full year or fraction thereof that the pension system member served less than twenty (20) years.

(8) Members presently receiving general pension and retirement fund benefits greater than four hundred fifty dollars ($450.00) per month along with the unremarried widows of members receiving a similar amount of said benefits shall receive a pension supplement in the amount of three (3) percent of their present monthly general pension and retirement fund benefit.

(9) The ~~wives~~ spouses of those pension system members who are entitled to the pension supplements set forth in this section who become widowed after February 27, 1975, and remain unmarried shall be entitled to a widow's pension supplement as set forth herein.

(Code 1968, § 40-18)

Sec. 9-5-49. - Current benefits.

Pension benefits now authorized and payable from the City of Pensacola General Pension and Retirement Fund shall remain in full force and effect and payable according to law.

(Code 1968, § 40-19)

Secs. 9-5-50—9-5-65. - Reserved.

ARTICLE IV. - DEFERRED COMPENSATION PLANS

DIVISION 1. - FOR NON-SOCIAL SECURITY PARTICIPANTS EMPLOYED SINCE JANUARY 1, 1960, FOR CERTAIN EMPLOYEES COVERED BY COLLECTIVE

BARGAINING AGREEMENTS AND FOR PARTICIPANTS IN THE FLORIDA RETIREMENT SYSTEM[9]

Footnotes:

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Editor's note—Section 3 of Ord. No. 16-07 renamed div. 1 to read as herein set out.

Sec. 9-5-66. - ~~Introduction, purpose.~~ Establishment and Purpose.

Commented [RS34]: Replaced by Ordinance 08-16, Sec. 2, 3/17/16.

(a) *Establishment.* Effective December 8, 1983, the city established the City of Pensacola Deferred Compensation Plan for Non-Social Security Participants Employed Since January 1, 1960, for Certain Employees Covered by Collective Bargaining Agreements and for Participants in the Florida Retirement System (the "plan") which has been amended from time to time, and which is intended to qualify as an "eligible state deferred compensation plan" under Section 457 of the Internal Revenue Code of 1986, as amended.

(b) *Purpose.* The plan is intended to allow certain employees to designate a portion of their compensation to be deferred and invested at the discretion of and in a manner approved by the city until termination of employment, financial emergency or death of the participant. The terms of the Plan shall be contained within the plan document which is available for public inspection at the city clerk's office.

~~(a) *Establishment of plan.* The city, as employer, by execution of the adoption agreement on file in the office of the city clerk, hereby establishes this deferred compensation plan which shall become effective on a date chosen by the employer. The plan is intended to qualify as an eligible state deferred compensation plan under section 457 of the U.S. Internal Revenue Code.~~

~~(b) *Purpose of plan.* The purpose of this plan is to allow certain employees to designate a portion of their compensation to be deferred and invested at the discretion of and in a manner approved by the employer until~~

termination of employment, financial emergency or death of the employee. Any compensation deferred by employees may be invested by the employer, but there is no requirement to do so. Participation in this plan shall not be construed to establish or create an employment contract between the employee and the employer.

(Ord. No. 122-83, § 1, 12-8-83)

Secs. 9-5-67 – 9-5-80. - RESERVED

Sec. 9-5-67. - Definitions and rules of construction.

Whenever used in the plan, the following terms shall have the meanings as set forth below unless otherwise expressly provided:

Accounting date. The date on which an investment fund is valued and earnings and/or losses are allocated to participants' deferred compensation accounts. There shall be an accounting date at least once a month on the last business day of the month and, if practical, more frequent accounting dates to reflect, as closely as possible, the earnings and/or losses with respect to a deferred compensation account from the time compensation is deferred and invested in various investment funds until it is eventually distributed according to the plan.

Administrator. The person appointed by the employer to administer this plan.

Adoption agreement. The form used by the employer to establish or amend this plan. The terms of and information included in the adoption agreement are incorporated by reference as part of the plan.

Beneficiary. The person, persons or legal entity to receive any undistributed deferred compensation which becomes payable in the event of the participant's death, as designated by the participant or provided for in accordance with subsection 9-5-70(g). The term beneficiary may also include an alternate payee under a qualified domestic relations order.

Code means the Internal Revenue Code of 1986, as amended.

Committee. The committee established in accordance with subsection 9-5-69(b).

Compensation. The gross annual salary including basic salary, longevity pay, overtime, bonuses and such unused annual and sick leave for which

the participant may be entitled to payment (but excluding any and all incentive payments, court attendance payments, expenses allowance payments or any other payments made to the participant) which would be payable to a participant by the employer for a taxable year if no agreement were in effect to defer compensation under this plan or under Section 403(b) of the code.

Deferred compensation. That portion of the participant's compensation which the participant and employer mutually agree to defer under this plan.

Employee. Any person who holds an appointment to a position within the classified service of the city as defined in the civil service act of the city.

Employer. The city, a Florida municipal corporation which has adopted this plan by completing the adoption agreement.

Gender and *number.* Except when otherwise indicated by the context, any masculine terminology in this article shall also include the feminine and neuter and vice-versa, and the definition of any terms in this article in the singular may also include the plural.

Includible compensation. The includible compensation of a participant means, with respect to a taxable year, the participant's compensation, as defined in Section 415(c)(3) of the Internal Revenue Code paid for services performed for the Employer. The amount of Includible Compensation is determined without regard to community property laws.

Normal retirement age. Age seventy (70) years, unless the participant has elected an alternate normal retirement age by written instrument delivered to the administrator prior to termination of service. A participant's normal retirement age determines (a) the latest time when benefits may commence under this plan (unless the participant continues employment after normal retirement age), and (b) the period during which a participant may utilize the three-year catch-up provision of subsection 9-5-68(d)(2). Once a participant has to any extent utilized the catch-up provisions of subsection 9-5-68(d)(2), his normal retirement age may not be changed. A participant's alternate normal retirement age may not be earlier than the earliest date that the participant will become eligible to retire and receive unreduced retirement benefits under the employee's basic retirement plan covering that participant and may not be later than the date the participant attains age seventy (70) years. If a participant continues employment after attaining age seventy (70) years, not having previously elected an alternative normal retirement age, the participant's alternative normal retirement age

shall not be later than the mandatory retirement age, if any, established by the employer, or the age at which the participant actually separates from service if the employer has no mandatory retirement age. If the participant will not become eligible to receive benefits under a basic retirement plan maintained by the employer, the participant's alternate normal retirement age may not be earlier than attainment of age fifty-five (55) years and may not be later than attainment of age seventy (70) years.

Participant. Any employee who has enrolled in this plan as provided in subsection 9-5-68(b) and has not had a complete distribution of his deferred compensation account.

Pay Period. A regular accounting period established by the employer for measuring and paying compensation earned by employees. A pay period can be monthly, semimonthly or biweekly.

Plan. The city deferred compensation plan as set forth in this article and the adoption agreement and as it may be amended from time to time.

Prior plan. Any deferred compensation plan which is an eligible state deferred compensation plan as defined in Section 457 of the code which this plan amends and restates, as designated in the adoption agreement.

Retirement. The first date upon which both of the following shall have occurred with respect to a participant: Termination of service and attainment of normal retirement age.

Termination of service. The permanent severance of the participant's employment relationship with the employer by means of retirement; discharge; resignation, provided seniority or continuous service is interrupted; permanent layoff, provided the employee's reemployment rights from layoff have lapsed; expiration or nonrenewal of appointment or term of office; nonreelection; or such other form of permanent severance as may be provided by appropriate law, contract, rules or regulations. For purposes of this definition, neither a break in service with the employer for a period of less than thirty (30) days nor transfers among various branches or divisions shall be considered a termination of service.

(Ord. No. 122-83, § 2, 12-8-83; Ord. No. 7-91, § 1, 2-28-91; Ord. No. 5-98, § 1, 3-12-98; Ord. No. 35-02, § 1, 10-24-02)

Sec. 9-5-68. - Participation.

(a) *Eligibility.* Eligibility to participate in this plan shall be limited solely to current employees of the employer who have been employed by the employer continuously since January 1, 1960, and who elected in 1960 pursuant to Ordinance No. 66-59 or Ordinance No. 67-59 not to participate in the social security system, or employees covered by the terms of a collective bargaining agreement as authorized by the terms of such an agreement, or employees who become members of the Florida Retirement System on or after July 1, 2007.

(b) *Enrollment.* Any employee eligible to participate in accordance with subsection (a) of this section may become a participant by agreeing in writing, on a form to be provided by the administrator, to a deferment of his or her compensation in accordance with subsections (c) and (d) of this section. The deferment will commence with the first pay period beginning on or after the first day of the month following the date the enrollment form is properly completed by the employee and accepted by the administrator.

(c) *Minimum deferment.* Each employee who becomes a participant must agree to defer a minimum per investment fund of ten dollars ($10.00) per pay period. The minimum deferment provisions described herein shall not apply to the extent that the minimum deferments would result in a deferment exceeding the maximum deferment described in (d) below.

(d) *Maximum deferment.*

(1) *Normal limitation.* Except as provided in paragraphs (2) and (3) of this subsection, the annual deferral amount for a taxable year (the plan ceiling) may not exceed the lesser of (a) the applicable dollar amount specified in Section 457(e)(15) of the code (Eleven thousand dollars ($11,000.00) for 2002; twelve thousand dollars ($12,000.00) for 2003; thirteen thousand dollars ($13,000.00) for 2004; fourteen thousand dollars ($14,000.00) for 2005; and fifteen thousand dollars ($15,000.00) for 2006 and thereafter; after 2006, the $15,000 amount shall be adjusted for cost of living adjustments); or (b) One hundred (100) percent of the participant's Includible Compensation for the taxable year.

For purposes of determining the plan ceiling, the annual deferral amount does not include any rollover amounts received by the plan, but employer contributions shall be included in deferrals in determining the annual deferral amount.

(2) *Age 50 catch-up.* A participant who has attained the age of 50 years by the end of the plan year (hereinafter the "age requirement") may make additional elective deferrals to the plan for each plan year after the participant satisfies the age requirement so long as such deferrals do not exceed the catch-up limit under Section 414(v)(2) of the code for the taxable year. (The maximum amount of age 50 catch-up contributions for a taxable year under Section 414(v) is as follows: One thousand dollars ($1,000.00) for 2002; two thousand dollars ($2,000.00) for 2003; three thousand dollars ($3,000.00) for 2004; four thousand dollars ($4,000.00) for 2005; and five thousand dollars ($5,000.00) for 2006 and thereafter; after 2006, the five thousand dollar ($5,000.00) amount is adjusted for cost of living adjustments). Notwithstanding the foregoing, the age fifty (50) catch-up described in this paragraph does not apply for any taxable year for which a higher limitation applies under the special Section 457 catch-up under paragraph (3) of this subsection (d).

(3) *Special section 457 catch-up.* Except as provided in paragraph (2) of this subsection (d) for one or more of the participant's last three taxable years ending before the participant attains normal retirement age, the plan ceiling is an amount equal to the lesser of (a) twice the dollar amount in effect under paragraph (1) of this subsection (d), or (b) the under-utilized limitation described in this paragraph (3). The under-utilized limitation amount is the sum of (i) the plan ceiling established under paragraph (1) of this section (d) for the taxable year; plus (ii) the plan ceiling established under subparagraph (1) of this section (d) (or under section 457(b)(2) of the code for years before the plan year beginning after December 31, 2001) for any prior taxable year or years less the amount of annual deferrals under the plan for such prior taxable year or years (disregarding any annual deferrals under the plan permitted under the age fifty (50) catch-up under paragraph (2) of this subsection (d)). The under-utilized amount shall be determined under regulations implementing Section 457(b)(3) of the code.

(4) *Excess deferrals.* If a participant's deferrals to this plan for any tax year exceed the limitations of paragraphs (1) through (3) of this subsection (d), the amount of such excess deferrals with applicable net income shall be distributed to the deferring participant as soon as administratively practicable after the plan administrator determines that the amount is an excess deferral. For purposes of determining

whether there is an excess deferral under this paragraph, all section 457 plans of the employer are treated as a single plan.

(e) *No employer contribution.* The employer shall not make any contribution to the deferred compensation account of any participant under this plan.

(f) *Modifications to amount deferred.* The employer shall adjust the participant's total annual compensation, on a pay period basis, by the deferred compensation amount indicated on the participant's election to defer. That amount, subject to the limits of subsections (c) and (d) of this section, may be increased or decreased only by proper application to the administrator. The change shall take effect as soon as administratively practical but not earlier than the first pay period of the month following receipt and approval of the application by the administrator. Modifications are subject to the limitations specified in the adoption agreement.

(g) *Revocation of deferral.* Upon proper application to the administrator, a participant may revoke further deferrals under the plan. The revocation shall take place as soon as administratively practicable but not sooner than the first pay period of the month following receipt and approval of the application by the administrator. A participant who revokes deferral shall not be permitted later to resume making deferrals.

(h) *Duration of election to defer compensation.* Once an election to have compensation deferred has been made by the participant, the election shall continue in effect until the participant's termination of service, unless the participant modifies the amount in accordance with subsection (f) of this section or revokes the deferral in accordance with subsection (g) of this section.

(i) *Plan-to-plan transfers.* This plan may accept transfers from another eligible governmental plan or make a transfer to another eligible governmental plan. Amounts so transferred shall be credited to the participant's deferred compensation account. Provided, however, transfers from or to another eligible governmental plan are permitted only if the following conditions are met:

(i) The transferor plan provides for transfers;

(ii) The recipient plan provides for the receipt of transfers.

(iii) The participant or beneficiary whose amounts are being transferred will have an amount deferred immediately after the transfer at least

equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and

(iv) The participant or beneficiary whose amounts deferred are being transferred has had a severance from employment with the transferring employer and is performing services for the employer; provided, however, the severance from employment requirement is not required to be satisfied if (a) all of the assets held by the eligible governmental plan are transferred; (b) the transfer is to another eligible governmental plan maintained by an eligible employer that is a state entity within the same state as this plan; and (c) the participants whose deferred amounts are being transferred are not eligible for additional annual deferrals in the receiving plan unless they perform services for the employer.

In addition, if the requirements described below are satisfied, the amounts deferred under this plan by participant or beneficiary may be transferred to a qualified plan (under section 401(a) of the code) maintained by a governmental entity. The requirements for a transfer to a qualified plan are satisfied if either (a) the transfer is for the purchase of permissive past service credit (as defined in section 415(n)(3)(Λ) of the code) under the receiving defined benefit governmental plan, or (b) the purpose of the transfer is a repayment to which section 415 of the code does not apply as a result of section 415(k)(3).

(Ord. No. 122-83, § 3, 12-8-83; Ord. No. 28-91, § 1, 6-13-91; Ord. No. 5-98, § 2, 3-12-98; Ord. No. 35-02, § 2, 10-24-02; Ord. No. 07-06, § 1, 3-23-06; Ord. No. 16-07, § 4, 4-26-07; Ord. No. 30-07, § 2, 6-28-07)

Editor's note — Section 7 of Ord. No. 30-07 provided that this ordinance shall take effect immediately upon the effective date of the repeal of Chapter 99-474, Laws of Florida, as amended.

Sec. 9-5-69. - Administration.

(a) *Responsibilities of administrator.*

(1) Subject to the general supervision of the committee as provided in subsection (b) of this section, the administrator has the full power and authority to administer the plan and promulgate, adopt, amend or

revoke internal management procedures which are consistent with and necessary to implement and maintain this plan.

(2) The administrator, on behalf of the employer, shall enter into a written agreement with each participant, which shall set forth the obligations contained in this plan, the amounts of compensation to be deferred and such other information as the administrator deems necessary to administer the plan.

(3) The administrator may contract with individuals or corporations to perform any duties under this article to the extent allowed by the laws of the state and any local ordinances or laws.

(b) *Responsibilities of committee.*

(1) A committee shall be formed which shall be responsible for determining whether any participant has suffered an unforeseeable emergency and is entitled to a distribution under subsection 9-5-70(f). The committee also has the responsibility for general supervision of the plan which shall include, but not be limited to, establishment of the plan; approving or disapproving any proposed changes in the plan; obtaining Internal Revenue Service approval for the plan or any amendments thereto, if deemed necessary by the committee; and reviewing any and all proposed investment offerings, each of which must be determined acceptable by the committee prior to being utilized for the investment of deferred compensation. The committee may delegate to the person performing accounting and administrative services for the plan the responsibility to determine whether an unforeseeable emergency exists for purposes of the distribution described in Subsection (f) of Section 9-5-70.

(2) Members of this committee shall be appointed by the employer. Members of this committee, if they are employees, shall be entitled to defer compensation; however, no member of the committee shall make any determination with respect to any interest that he may have under the plan.

(Ord. No. 122-83, § 4, 12-8-83; Ord. No. 35-02, § 3, 10-24-02)

Sec. 9-5-70. - Participant's accounts, investments, distributions.

(a) *Deferred compensation accounts.* The employer shall establish a deferred compensation account for each participant which shall be the

basis for any distributions payable to the participants under subsection (e) of this section. Each participant's deferred compensation account shall be credited with the amount of any compensation deferred and any amounts transferred pursuant to subsection 9-5-68(i) and shall be further credited or debited, as applicable, with (1) any increase or decrease resulting from investments made by the employer pursuant to subsection (c) of this section, (2) any applicable expenses incurred by the employer in maintaining and administering this plan, (3) debited for the amount of any distribution, (4) credited initially with the value on the effective date of this plan of any bookkeeping account maintained under the prior plan, and (5) debited in an amount equivalent to the present value of any annuity option selected in accordance with subsection (e)(1)c. of this section, and the value of such a participant's deferred compensation account shall thereafter be determined in accordance with the terms of the annuity options.

(1) *Crediting of accounts.* A participant's deferred compensation account, shall reflect the amount and value of the investments or other property obtained by the employer through the investment of the participant's deferred compensation. It is anticipated that the employer's investments with respect to a participant will conform to the investment preference specified by the participant pursuant to subsection (a)(4) of this section, but nothing in this article shall be construed to require the employer to make any particular investment of a participant's deferred compensation.

(2) *Accounting dates and investment fund valuation.* Any investment fund under the plan is to be valued as of each accounting date. Any investment fund is to be valued at the fair market value as of each accounting date on a reasonable and consistent basis. Any withdrawals or distribution made under this plan shall be made in cash. The amount paid upon the withdrawal or distribution shall be based upon the participant's account as of the accounting date.

(3) *Administrative costs.* Any administrative expenses not assumed by the investment fund may be either paid by the employer or borne by the participants, as elected in the adoption agreement. The method of charging any expenses and the amount of the expenses shall be determined by the administrator subject to the approval of the committee.

(4) *Method of making investment requests.* A participant shall, at the time of enrollment, make an investment request on a form provided for that purpose by the administrator. Once made, an investment request shall continue for any deferments unless later changed by the participant. A participant may, subject to any nondiscriminatory limitations imposed by the administrator, change his investment request with respect to amounts previously deferred. A change in investment request shall be effective as soon as practical following receipt of the request by the administrator. A participant may, subject to any limitations in the adoption agreement, change his investment request with respect to future amounts of deferred compensation. A change in investment request shall be effective with respect to compensation to be deferred as soon as practicable following receipt of the request by the administrator.

(5) *Participant statements.* Each participant shall be provided at least annually with an accounting of his deferred compensation account including, but not limited to, the amount deferred during the plan year and any amounts credited or debited up to the most recent accounting date. Such accounting shall be made not later than forty-five (45) days after the end of the plan year. A participant may request an interim statement of account, providing the same information, once a year.

(b) *Assets held in trust.* All assets of the plan, including deferred amounts, property, and rights purchased with deferred amounts and all income attributable to such deferred amounts and all income attributable to such deferred amounts, property or rights shall be held in trust for the exclusive benefit of participants and their beneficiaries. The trustee named by the committee (in the absence of the naming of a trustee by the committee, the administrator of the plan shall be the trustee of such trust) shall hold the assets in a separate trust in accordance with the provisions of this plan. The trustee shall assure that no part of the assets of the trust or the income therefrom is used for, or diverted to, purposes other than the exclusive benefit of participants and their beneficiaries. Additional terms of such trust may be described in a separate document which shall be incorporated herein by reference. The trust described herein shall satisfy the requirements of Section 457 of the code and the implementing regulations.

(c) *Investment funds.* The employer may establish investment funds for investment of deferred compensation. The committee is specifically

authorized to invest in any fund on behalf of the employer. The committee also has the authority to eliminate any or all of the investment funds created by the plan, provided that in such event, the administrator shall notify all plan participants of the change. Any such participant shall then have the opportunity to change his investment request pursuant to subsection (a)(4) of this section, regardless of any other provision of this plan.

(d) *Distribution events.*

(1) *Normal distributions.* Except as otherwise provided herein with respect to (i) distributions on account of an unforeseeable emergency, (ii) distributions of small accounts, or (iii) distributions related to domestic relations orders, distributions to a participant or beneficiary shall not be made before the participant has a severance from employment with the employer. A participant has a severance of employment with the employer if the participant dies, retires, or otherwise has a severance of employment from the employer. When a participant has a severance from employment, the participant's entitlement under the plan will be distributed to the participant at the participant's election. Provided, however, the distribution of a participant's benefit under this plan shall be made in accordance with the following requirements and shall otherwise comply with Section 401(a)(9) of the code and the regulations thereunder (including Regulation Section 1.401(a)(9)-2), the provisions of which are incorporated herein by reference:

• A participant's benefit shall be distributed or must begin to be distributed not later than April 1 of the calendar year following the later of (i) the calendar year in which the participant attains age seventy and one-half (70½); or (ii) the calendar year in which the participant retires.

(2) *Death prior to commencement of benefits.* Should a participant die before he has begun to receive the retirement benefits provided by subsection (d)(1) of this section, a death benefit equal to the value of the participant's deferred compensation account shall be paid to the beneficiary. The death benefit shall be paid in a lump sum unless the beneficiary elects a different payment option within thirty (30) days of the participant's death. A death benefit pursuant to this subsection shall be payable no earlier than thirty (30) days after receipt of satisfactory proof of death by the administrator and, if the participant's

death occurs before his attainment of normal retirement age, the payment shall commence no later than sixty (60) days after the close of the plan year in which the participant would have attained normal retirement age. Payments to a beneficiary pursuant to this subsection must satisfy the requirements of the last sentence of subsection (e) of this section.

(3) (a) *Other distribution events.* All or a portion of a participant's deferred compensation account may be distributed in the event an unforeseeable emergency, as provided in subsection (f) of this section.

(b) In service distribution not to exceed the dollar limit under Section 411(a)(11)(A) of the Internal Revenue Code: If the total amount payable to the participant under the plan does not exceed the dollar limit under Section 411(a)(11)(A) of the Internal Revenue Code (five thousand dollars ($5,000.00) for plan years beginning after August 5, 1997) as adjusted from time to time, the participant may elect to receive such amount before separation of service (or the plan may distribute such amount without the participant's consent) if: (a) no amount has been deferred under the plan with respect to such participant during the two-year period ending on the date of distribution, and (b) there has been no prior distribution under the plan to such participant to which this section applied.

(e) *Election of method of distribution.*

(1) Upon severance of employment, the participant or the participant's beneficiary may elect a distribution in any of the following forms:

a. A lump sum cash payment of all or a portion of the balance.

b. Installments over a period of years not longer than the life expectancy of the participant or, if married, the joint life expectancy of the participant and his spouse, determined at the time the distributions are to commence according to the applicable Internal Revenue Service tables. The installments may be made in monthly or other regular increments. Any portion of the deferred compensation account which has not been distributed shall continue to be credited and/or debited according to the provisions of subsection (a) of this section.

c. In a series of payments on an annuity basis as if an annuity contract were purchased based on the life of the participant or

beneficiary (if applicable). The annuity payments shall be based on one of the following methods:

1. The life of the participant.

2. The life of the participant or a period certain, whichever is greater.

3. The joint and last survivor life of the participant and another named person.

Once payments have commenced on an annuity basis, any future payments to a beneficiary will depend on the terms of the annuity payments agreed to by the participant and the employer. If a participant dies prior to a period certain any remaining distribution will be paid to the beneficiary determined under subsection (g) of this section. If annuity payments have commenced on a joint and last survivor basis, any payments due after the death of the participant will be due only to the other person on which the annuity payments have been based and not to any other beneficiary. If, in fact, an annuity contract is purchased, the owner and named beneficiary shall be the employer. Any rights of participants or beneficiaries are derived solely from this plan.

d. Notwithstanding any provision of the plan that would otherwise limit a "distributee's" election under this subsection (e), a "distributee" may elect at the time and in the manner prescribed by the administrator to have any portion of any eligible rollover distribution (that is at least five hundred dollars ($500.00)) paid directly to an "eligible retirement plan" specified by the "distributee" in a "direct rollover." For purposes of this subparagraph, the following definitions apply:

1. 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 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 any portion of any other distribution that is not includible in gross income.

2. 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 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.

3. A "distributee" includes an employee or a 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 an alternate payee under a 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.

4. A "direct rollover" is a payment by the plan to the eligible retirement plan specified by the distributee.

In any case in which a participant has a separation from service with the employer in order to commence employment with another employer within the same state, than, provided that conditions 1. and 2. above are satisfied and that the employee has elected in the adoption agreement to allow transfer to other plans, the transfer will automatically be made without the participant's consent and no distribution will be made by reason of the participant's termination of service with the employer.

(2) No payment option may be selected by a participant under this article unless the present value of the payments to the participant, determined as of the date benefits commence, exceeds fifty (50) percent of the value of the participant's deferred compensation account as of the date benefits commence. Present value determinations under this section shall be made by the administrator in accordance with the expected return multiples set forth in Section 1.72-9 of the Federal Income Tax Regulations (or any successor provision to such regulations).

(3) Notwithstanding anything to the contrary, if a deferred compensation account of either a participant or a beneficiary is equal to or less than one thousand dollars ($1,000.00) on the date distributions are to commence, the account shall be distributed in a lump sum immediately or held until a delayed distribution date not exceeding one (1) year from the date the participant was first entitled to begin distributions.

(4) If the participant dies before the entire amount is paid to the participant, the entire amount deferred or the remaining part of the deferrals (if payment thereof has commenced) must be distributed to a beneficiary in a manner that complies with section 401(a)(9) of the code and the regulations implementing section 401(a)(9).

(f) *Unforeseeable emergency.*

(1) A distribution of all or a portion of a participant's deferred compensation account shall be permitted if the participant experiences an unforeseeable emergency. An unforeseeable emergency is a severe financial hardship to the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse, or the participant's or beneficiary's dependent (as defined in section 152(a) of the code); loss of the participant's or beneficiary's property due to casualty, or similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary. Distributions may not be made to the extent that the hardship is or may be relieved:

a. Through reimbursement or compensation by insurance or otherwise;

b. By liquidation of the participant's assets to the extent the liquidation of the assets would not itself cause severe financial hardship; or

c. By cessation of deferrals under the plan.

(2) For purposes of this section, a beneficiary whose interest has vested in accordance with subsection (g) of this section, shall have all rights of a participant to request a distribution or a change in method of distribution in the event of an unforeseeable emergency.

(3) A participant desiring a distribution by reason of serious financial hardship must apply to the committee and demonstrate that the circumstances being experienced qualifies as an unforeseeable emergency. The committee shall have the authority to require such medical or other evidence as it may need to determine the necessity for participant's withdrawal request.

(4) If an application for unforeseeable emergency distribution is approved, the distribution shall be limited to an amount sufficient only to meet the emergency and shall in no event exceed the amount of his deferred compensation account as of the accounting date next preceding or coincident with the withdrawal.

(5) The allowed distribution shall be payable in a method determined by the committee and commence as soon as possible but not later than thirty (30) days after notice to the participant and the administrator of approval by the committee.

(6) The committee may delegate to the person performing accounting and administrative services for the plan the responsibility to determine whether an unforeseeable emergency exists and the extent of the distribution necessary to meet the emergency.

(g) *Designation of beneficiary.* A participant may designate a beneficiary who will receive any balance in the participant's deferred compensation account in the event of his death in accordance with the following:

(1) A designation of a beneficiary shall be effective when actually received by the administrator and made on a form approved by the administrator for that purpose which has been signed by the participant.

(2) No beneficiary shall have any rights under this plan until the death of the participant who has designated him. A participant may, at any time, change his beneficiary in accordance with subsection (g)(1) of this section.

(3) Participants may designate primary and contingent beneficiaries. A contingent beneficiary and/or beneficiaries will become effective only after the death of any and all primary beneficiaries.

(4) If more than one beneficiary is named in either category, benefits will be paid according to the following rules:

a. Beneficiaries can be designated to share equally or to receive specific percentages.

b. If a beneficiary dies before the participant, only the surviving beneficiaries will be eligible to receive any benefits in the event of death of the participant. If more than two (2) beneficiaries are originally named to receive different percentages of the benefits, surviving beneficiaries will share in the same proportion to each other as indicated in the original designation.

(5) A person, trust, estate or other legal entity may be designated as a beneficiary.

(6) If a beneficiary has not been designated, or a designation is ineffective due to the death of any and all beneficiaries prior to the death of the participant, or the designation is ineffective for any reason, the estate of the participant shall be the beneficiary.

(7) Upon the death of the participant, any beneficiary entitled to the value of the deferred compensation account under the provisions of this section shall become a vested beneficiary and have all the rights of the participant with the except of making any deferrals, including the right to designate a beneficiary.

(8) In the event of a conflict between the provisions of this section and the terms of an annuity distribution which has commenced under subsection (e)(1)3 of this section, the latter shall prevail.

(h) *Qualified domestic relations order/distribution to alternate payee.* All rights and benefits, including elections, provided to a participant in this plan shall be subject to the rights afforded to any "alternate payee" under a "qualified domestic relations order." Furthermore, a distribution from this plan to an "alternate payee" shall be permitted if such distribution is authorized by a "qualified domestic relations order" even if the affected participant is not eligible to receive a distribution from the plan because the participant has not severed employment with the employer or experienced an unforeseeable emergency. For purposes of this section (h), "alternate payee" and "qualified domestic relations order" shall have the meaning set forth in section 414(p) of the code. The employer shall develop a qualified domestic relations order procedure to be used as guidance when a court issues a domestic relations order affecting a participant's interest in the plan.

(i) *Leave of absence.* Any participant who is granted a leave of absence by the employer may continue to participate in this plan as long as the leave of absence is approved by the employer. If an approved leave of absence is terminated by the employer or employee without the resumption of the employment relationship, the participant shall be treated as having a termination of service under this plan, as of the date of determination of the leave.

(Ord. No. 122-83, § 5, 12-8-83; Ord. No. 7-91, § 2, 2-28-91; Ord. No. 5-98, §§ 3—6, 3-12-98; Ord. No. 35-02, § 4, 10-24-02)

Sec. 9-5-71. - Miscellaneous.

(a) *Nonassignability.*

(1) *The contract entered into between the employer and a participant through this plan and the benefits, proceeds or payments thereunder cannot be sold, assigned, pledged, commuted, transferred or otherwise conveyed by any employee, participant or beneficiary. Any attempt to assign or transfer shall not be recognized and shall impose no liability upon the employer.*

(2) *Except as otherwise required by law, any deferred compensation monies withheld pursuant to this plan shall not be subject to attachment, garnishment or execution or to transfer by operation of law in the event of bankruptcy or insolvency of the participant or otherwise.*

(b) *Payments to minors and incompetents.* If the administrator shall receive evidence satisfactory to it that a participant or beneficiary entitled to receive any benefit under this plan is, at the time when the benefit becomes payable, a minor, or, as adjudicated by a court of law, is mentally incompetent to receive such benefit and to give a valid release therefor and that another person or an institution is then maintaining or has custody of the participant or beneficiary, and that no guardian of the person or other representative of the estate of the participant or beneficiary shall have been duly appointed, the administrator may authorize payment of the benefit such other person or institution, including a custodian under any state gifts to minors act (who shall be an adult, a guardian of the minor or a trust company) or to a court of law for distribution pursuant to that court's order, and the release of such other

person or institution shall be a valid and complete discharge for the payment of the benefit.

(c) *Headings and subheadings.* The headings and subheadings in this plan are inserted for the convenience of reference only and are to be ignored in any construction of the provisions hereof.

(d) *Severability.* If any provision of this plan shall be for any reason invalid or unenforceable, the remaining provisions shall nevertheless continue in effect and shall not be invalidated thereby.

(e) *Plan year.* The plan year shall be the fiscal year beginning October 1 and ending September 30, unless a different plan year is designated into the adoption agreement.

(f) *Days and dates.* Whenever a time limit is expressed in terms of number of days, they shall be consecutive calendar days, including weekends and holidays, provided, however, that if the last day of a period of days would occur on a weekend or a holiday recognized by the employer, the last day of the period shall be the next business day following.

(g) *Conflicts.* If any form or other document used in administering the plan, including but not limited to, enrollment forms and designation of beneficiary forms, conflicts with the terms of the plan, the terms of the plan shall prevail. The adoption agreement, however, may be used to modify the terms of the plan and any provisions of the adoption agreement shall prevail over the plan.

(h) *Loans to participants.*

(1) The trustee/administrator may, in the trustee/administrator's discretion, make loans to participants and beneficiaries under the following circumstances:

(i) Loans shall be made available to all participants and beneficiaries on a uniform and nondiscriminatory basis;

(ii) Loans shall be at a reasonable rate of interest;

(iii) Loans shall be adequately secured; and

(iv) Loans shall provide for periodic repayment over a reasonable period of time.

(2) Loans made pursuant to this subsection (when added to the outstanding balance of all other loans made by the plan to the

participant) may, in accordance with a uniform and nondiscriminatory policy established by the administrator, be limited to the lesser of:

(i) Fifty thousand dollars ($50,000.00) reduced by the excess (if any) of the highest outstanding balance of loans from the plan to the participant during the one year period ending on the day before the day on which the loan is made, over the outstanding balance of loans from the plan to the participant on the date on which such loan is made; or

(ii) One-half (½) of the present value of the participant's vested interest under the plan.

For the purpose of this limit, all plans of employer shall be considered one plan.

(3) Loans shall provide for level amortization with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as a "principal residence" of the participant shall provide for periodic repayment over a reasonable period of time that may exceed five (5) years. For this purpose, a "principal residence" has the same meaning as a "principal residence" under Section 1034 of the code. Any loans granted or renewed shall be made pursuant to a participant loan program. Such loan program shall be established in writing and must include, but need not be limited to, the following:

(i) The identity of the person or positions authorized to administer the participant loan program;

(ii) A procedure for applying for a loan;

(iii) The basis on which loans will be approved or denied;

(iv) Limitations, if any, on the types and amounts of loans offered;

(v) The procedure under the program for determining a reasonable rate of interest;

(vi) The types of collateral which may secure a participant loan; and

(vii) The events constituting a default and the steps that will be taken to preserve plan assets.

Such participant loan program shall be contained in a separate written document which, when properly adopted, is hereby

incorporated by reference and made a part of the plan. Furthermore, such participant loan program may be modified or amended in writing from time to time without the necessity of amending this subsection.

(4) Notwithstanding anything in this plan to the contrary, if a participant or beneficiary defaults on a loan made pursuant to this section, then the loan default will be a distributable event to the extent permitted by the code and regulations.

(5) The administrator may delegate to the investment manager, provided for in the plan, authority to make loans to participants in accordance with this subsection and the plan.

(Ord. No. 122-83, § 6, 12-8-83; Ord. No. 35-02, § 5, 10-24-02)

Sec. 9-5-72. - Amendment or termination of plan.

(a) *Amendment of plan.* The administrator shall have the authority to propose amendments to this plan from time to time by submitting them in writing to the committee for approval. No amendment or modification shall adversely affect the rights of participants or their beneficiaries to the receipt of compensation deferred prior to the amendment or modification unless required by state or federal law to maintain the tax status of the plan and any compensation previously deferred.

(b) *Termination of plan.* The committee shall have the authority to terminate this plan or to substitute a new plan. Upon termination of the plan, each participant shall be deemed to have withdrawn from the plan as of the date of the termination, and the participant's full compensation will be restored to a nondeferred basis. The plan will otherwise continue in effect until all deferred compensation accounts have been distributed in accordance with the plan.

(c) *Merger with prior plan.* If designated in the adoption agreement, this plan constitutes an amendment and restatement of such plan or plans. All participants and any compensation deferred under the prior plan are, from the effective date of the plan, governed by the terms of this plan subject to the following provisions:

(1) All deferrals elected under the prior plan shall continue without further action so long as they do not exceed the limits in subsection 9-5-68(d).

(2) Any election of the method of distribution of benefits made through the prior plan shall be void, and a participant or beneficiary may elect the form of distribution in accordance with section 9-5-70. If benefits have commenced to be distributed in accordance with an election made pursuant to the prior plan, such election shall be considered void with respect to any undistributed amount of the participant's deferred compensation account for twenty-five (25) days after the effective date of this plan. If the participant or beneficiary elects a method of distribution in accordance with those provided by subsection 9-5-70(e) before the expiration of the twenty-five (25) days, such method shall become the method of distribution. Otherwise the method elected under the prior plan shall be reinstated under this plan.

(Ord. No. 122-83, § 7, 12-8-83)

Sec. 9-5-73. - Applicable law.

This plan shall be construed, administered, and governed in all respects under and by the laws of the state and the code.

(Ord. No. 122-83, § 8, 12-8-83)

Sec. 9-5-74. - Execution of adoption agreement.

The mayor is authorized and directed to execute an adoption agreement in a form substantially as set forth in Exhibit A hereto, a copy of which is on file in the office of the city clerk.

(Ord. No. 122-83, § 9, 12-8-83; Ord. No. 16-10, § 144, 9-9-10)

Secs. 9-5-75—9-5-80. - Reserved.

DIVISION 2. - RESERVED

Secs. 9-5-81—9-5-89. - Reserved.

Editor's note— Ord. No. 29-97, § 6, adopted Aug. 28, 1997, repealed the provisions of former §§ 9-5-81—9-5-89, which pertained to employees hired on or

after October 1, 1979, as derived from Code 1968, §§ 40-20—40-28; Ord. No. 79-83, §§ 1—6, adopted June 9, 1983; Ord. No. 7-91, §§ 3, 4, adopted Feb. 28, 1991.

Sec. 9-5-90. - Reserved.

DIVISION 3. - FOR EMPLOYEES NOT PARTICIPATING IN A CITY-DEFINED BENEFIT PLAN

Sec. 9-5-91. - Introduction and purpose of plan.

(a) *Establishment.* Effective October 1, 1979, the city established the City of Pensacola Deferred Compensation Plan for Employees Not Participating in a City-Defined Benefit Plan (the "plan") which has been amended from time to time, and is intended to qualify as an "eligible state deferred compensation plan" under Section 457 of the Internal Revenue Code of 1986 as amended.

(b) *Purpose.* The plan is intended to allow certain employees to designate a portion of their compensation to be deferred and invested at the discretion of and in a manner approved by the city until termination of employment, financial emergency or death of the participant. As a retirement vehicle for employees of the city, participation with mandatory minimum deferral contributions is required by employees, together with employer contributions as prescribed in the plan. The terms of the plan shall be contained within the plan document which is available for public inspection at the city clerk's office.

~~(a) *Establishment.* The City of Pensacola, as employer, by execution of the adoption agreement hereby establishes this deferred compensation plan which shall become effective on a date chosen by the employer. The plan is intended to qualify as an "eligible state deferred compensation plan" under Section 457 of the U.S. Internal Revenue Code.~~

~~(b) *Purpose.* The purpose of this plan is to allow employees to designate a portion of their compensation to be deferred and invested at the discretion of and in a manner approved by the employer until termination of employment, financial hardship or death of the employee. As a retirement vehicle for employees of the city, participation with mandatory minimum deferral is required for designated employees, together with~~

Commented [RS35]: Replaced by Ordinance 08-16, Sec. 4, 3/17/16.

employer contributions as prescribed in the plan. Any compensation deferred by employees shall be invested in accordance with the investment policies and procedures for this plan. Participation in this plan shall not be construed to establish or create an employment contract between the employee and the employer.

(Ord. No. 29-97, § 1, 8-28-97)

Secs. 9-5-92 – 9-5-100. - RESERVED

Sec. 9-5-92. - Definitions.

Whenever used in the plan, the following terms shall have the meanings as set forth below unless otherwise expressly provided:

Accounting date means the date on which an investment fund is valued and earnings and/or losses are allocated to participants' deferred compensation accounts. There shall be an accounting date at least once a quarter on the last business day of the quarter and, if practical, more frequent accounting dates to reflect, as closely as possible, the earnings and/or losses with respect to a deferred compensation account from the time compensation is deferred and invested in various investment funds until it is eventually distributed according to the plan.

Administrator means the person appointed by the employer to administer this plan.

Adoption agreement means the form used by the employer to establish or amend this plan. The terms of and information included in the adoption agreement are incorporated by reference as part of the plan.

Beneficiary. The person, persons or legal entity to receive any undistributed deferred compensation which becomes payable in the event of the participant's death, as designated by the participant or provided for in accordance with subsection 9-5-95(g) of this division. The term beneficiary may also include an alternate payee under a qualified domestic relations order.

Code means the Internal Revenue Code of 1986, as amended.

Committee means the committee established in accordance with subsection 9-5-94(b) of this division.

Compensation means the gross annual salary including basic salary, longevity pay, overtime, and bonuses (but excluding any and all incentive payments, court attendance payments, expenses allowance payments, unused annual and sick leave payouts upon termination, or any other payments made to the participant) which would be payable to a participant by the employer for a taxable year if no agreement were in effect to defer compensation under this plan or under Section 403(b) of the Code.

Deferred compensation means that portion of the participant's compensation which the participant and employer mutually agree to defer under this plan.

Employee means any person who holds an appointment to a position within:

(a) Classified service of the City of Pensacola as defined in the Civil Service Act of the City of Pensacola; or

(b) Unclassified service of the City of Pensacola hired on or after October 1, 1979, and prior to October 6, 1997, in the classified service who elected not to participate in the general pension and retirement fund pursuant to section 9-8-2 of this Code, who was active at the time the general pension plan was reopened and subsequently, after October 6, 1997, and without a break in service, became a member of the unclassified service. However, in no case shall an unclassified employee participating in a City of Pensacola defined benefit plan be eligible to participate in this plan.

Employer means the City of Pensacola, a Florida municipal corporation which has adopted this plan by completing the adoption agreement.

Includible compensation. The includible compensation of a participant means, with respect to a taxable year, the participant's compensation, as defined in Section 415(c)(3) of the Internal Revenue Code paid for services performed for the Employer. The amount of Includible Compensation is determined without regard to community property laws.

Normal retirement age means age seventy (70), unless the participant has elected an alternate normal retirement age by written instrument delivered to the administrator prior to termination of service. A participant's normal retirement age determines:

(a) The latest time when benefits may commence under this plan (unless the participant continues employment after normal retirement age); and

(b) The period during which a participant may utilize the three-year catch-up provision of subsection 9-5-93(d)(2) of this division.

Once a participant has to any extent utilized the catch-up provision of subsection 9-5-93(d)(2) of this division, his normal retirement age may not be changed.

A participant's alternate normal retirement age may not be earlier than the earliest date that the participant will become eligible to retire and receive unreduced retirement benefits under the employer's basic retirement plan covering that participant and may not be later than the date the participant attains age seventy (70). If a participant continues employment after attaining age seventy (70), not having previously elected an alternative normal retirement age, the participant's alternative normal retirement age shall not be later than the mandatory retirement age, if any, established by the employer, or the age at which the participant actually separates from service if the employer has no mandatory retirement age. If the participant will not become eligible to receive benefits under a basic retirement plan maintained by the employer the participant's alternate normal retirement age may not be earlier than attainment of age fifty-five (55) and may not be later than attainment of age seventy (70).

Participant means any employee who has enrolled in this plan as provided in section 9-5-93 and has not had a complete distribution of his deferred compensation account.

Pay period means a regular accounting period established by the employer for measuring and paying compensation earned by employees. A pay period can be monthly, semimonthly or biweekly.

Plan means the City of Pensacola Deferred Compensation Plan as set forth herein and the adoption agreement and as it may be amended from time to time.

Prior plan means any deferred compensation plan which is an eligible state deferred compensation plan as defined in Section 457 of the Code which this plan amends and restates, as designated in the adoption agreement.

Retirement means the first date upon which both of the following shall have occurred with respect to a participant: Termination of service and attainment of normal retirement age.

Termination of service means the permanent severance of the participant's employment relationship with the employer by means of: retirement; discharge; resignation (provided seniority or continuous service is interrupted); permanent layoff (provided the employee's reemployment rights from layoff have lapsed); expiration or nonrenewal of appointment or term of office; nonreelection; or, such other form of permanent severance as may be provided by appropriate law, contract, rules or regulations. For purposes of this definition, neither a break in service with the employer for a period of less than thirty (30) days nor transfers among various branches or divisions shall be considered a termination of service.

Gender and number. Except when otherwise indicated by the context, any masculine terminology herein shall also include the feminine and neuter and vice-versa, and the definition of any terms herein in the singular may also include the plural.

(Ord. No. 29-97, § 1, 8-28-97; Ord. No. 6-98, § 1, 3-12-98; Ord. No. 11-99, § 1, 3-25-99; Ord. No. 35-02, § 6, 10-24-02)

Sec. 9-5-93. - Participation in the plan.

(a) *Eligibility.* Any employee who is not a member of a category excluded and who is receiving compensation on or after the date the plan becomes effective shall be eligible to become a participant in accordance with subsection (b).

(b) *Enrollment.* Any employee eligible to participate in accordance with subsection (a) shall become a participant and shall agree in writing, on a form to be provided by the administrator, to a deferment of his or her compensation in accordance with subsections (c) and (d). The deferment will commence with the first pay period beginning on or after the first day of the month following the date the enrollment form is properly completed by the employee and accepted by the administrator. (a) All classified employees eligible for membership in the police pension plan, (b) public safety cadets in the police and fire departments and (c) all other classified employees hired on or after October 1, 1979 and prior to October 6, 1997,who elect not to participate in the general pension and retirement fund pursuant to section 9-8-2 of this Code, who were active at the time

the general pension plan was reopened shall become enrolled in the plan to the exclusion of membership in the general pension and retirement fund. No participant in the plan shall be entitled to any rights or benefit under either the general pension and retirement fund or the firemens' relief and pension fund of the city. Persons who are participating in the Police Officers' Retirement Fund hired on or after September 30, 2002, shall not be eligible to participate in this plan. Persons participating in the Police Officers' Retirement Fund who were hired on or after October 1, 1979, and who made the election provided for in subsection 9-5-23(g) shall not be eligible to participate in this plan.

(c) *Minimum deferment.* Each employee who becomes a participant must agree to defer a minimum per investment fund of ten dollars ($10.00) per pay period or twenty dollars ($20.00) per month or five and one-half (5½) percent of compensation per pay period, whichever is greater. The minimum deferment provisions described herein shall not apply to the extent that the minimum deferments would result in a deferment exceeding the maximum deferment described in (d) below.

(d) *Maximum deferment.*

(1) *Normal limitation.* Except as provided in paragraphs (2) and (3) of this subsection, the annual deferral amount for a taxable year (the plan ceiling) may not exceed the lesser of (a) the applicable dollar amount specified in Section 457(e)(15) of the code (Eleven thousand dollars ($11,000.00) for 2002; twelve thousand dollars ($12,000.00) for 2003; thirteen thousand dollars ($13,000.00) for 2004; fourteen thousand dollars ($14,000.00) for 2005; and fifteen thousand dollars ($15,000.00) for 2006 and thereafter; after 2006, the fifteen thousand dollar ($15,000.00) amount shall be adjusted for cost of living adjustments); or (b) one hundred (100) percent of the participant's Includible Compensation for the taxable year.

For purposes of determining the plan ceiling, the annual deferral amount does not include any rollover amounts received by the plan, but employer contributions shall be included in deferrals in determining the annual deferral amount.

(2) *Age fifty (50) catch-up.* A participant who has attained the age of fifty (50) years by the end of the plan year (hereinafter the "age requirement") may make additional elective deferrals to the plan for each plan year after the participant satisfies the age requirement so

long as such deferrals do not exceed the catch-up limit under Section 414(v)(2) of the code for the taxable year. (The maximum amount of age fifty (50) catch-up contributions for a taxable year under Section 414(v) is as follows: One thousand dollars ($1,000.00) for 2002; two thousand dollars ($2,000.00) for 2003; three thousand dollars ($3,000.00) for 2004; four thousand dollars ($4,000.00) for 2005; and five thousand dollars ($5,000.00) for 2006 and thereafter; after 2006, the five thousand dollar ($5,000.00) amount is adjusted for cost of living adjustments). Notwithstanding the foregoing, the age 50 catch-up described in this paragraph does not apply for any taxable year for which a higher limitation applies under the special Section 457 catch-up under paragraph (3) of this subsection (d).

(3) *Special section 457 catch-up.* Except as provided in paragraph (2) of this subsection (d) for one or more of the participant's last three taxable years ending before the participant attains normal retirement age, the plan ceiling is an amount equal to the lesser of (a) twice the dollar amount in effect under paragraph (1) of this subsection (d), or (b) the under-utilized limitation described in this paragraph (3). The under-utilized limitation amount is the sum of (i) the plan ceiling established under paragraph (1) of this section (d) for the taxable year; plus (ii) the plan ceiling established under subparagraph (1) of this section (d) (or under section 457(b)(2) of the code for years before the plan year beginning after December 31, 2001) for any prior taxable year or years less the amount of annual deferrals under the plan for such prior taxable year or years (disregarding any annual deferrals under the plan permitted under the age 50 catch-up under paragraph (2) of this subsection (d)). The under-utilized amount shall be determined under regulations implementing Section 457(b)(3) of the code.

(4) *Excess deferrals.* If a participant's deferrals to this plan for any tax year exceed the limitations of paragraphs (1) through (3) of this subsection (d), the amount of such excess deferrals with applicable net income shall be distributed to the deferring participant as soon as administratively practicable after the plan administrator determines that the amount is an excess deferral. For purposes of determining whether there is an excess deferral under this paragraph, all section 457 plans of the employer are treated as a single plan.

(e) *Employer contribution.* The employer shall contribute to the deferred compensation account of each participant an amount in addition to compensation deferred by the participant according to the following schedule:

Years of employment	0—5	5—10	10 and thereafter
Employer contribution (percent of compensation)	1.5%	2.5%	6.5%

Employer contributions shall be made each pay period. Increases in employer contributions as provided in this section shall be effective with the first pay period after five (5) years and ten (10) years actual service of each participant.

(f) *Modifications to amount deferred.* The employer shall adjust the participant's total annual compensation, on a pay period basis, by the deferred compensation amount indicated on the participant's election to defer. That amount, subject to the limits of subsections (c) and (d), may be increased or decreased only by proper application to the administrator. The change shall take effect as soon as administratively practical following receipt and approval of the application by the administrator, but no sooner than the first pay period beginning on or after the first day of the month following the receipt of the application by the Administrator. Modifications are subject to the limitations specified in the adoption agreement.

(g) *Revocation of deferral.* Revocation of deferral shall not be permitted. Participants shall maintain a minimum deferment in accordance with subsection (c) as a condition of employment.

(h) *Duration of election to defer compensation.* All participants shall maintain a minimum deferment in accordance with subsection (c) as a condition of employment. Once an election to have compensation deferred has been made by the participant, the election shall continue in effect until the participant's termination of service, unless the participant modifies the amount in accordance with subsection (f).

(i) *Plan-to-plan transfers.* This plan may accept transfers from another eligible governmental plan or make a transfer to another eligible governmental plan. Amounts so transferred shall be credited to the participant's deferred compensation account. Provided, however, transfers from or to another eligible governmental plan are permitted only if the following conditions are met:

(i) The transferor plan provides for transfers;

(ii) The recipient plan provides for the receipt of transfers.

(iii) The participant or beneficiary whose amounts are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and

(iv) The participant or beneficiary whose amounts deferred are being transferred has had a severance from employment with the transferring employer and is performing services for the employer; provided, however, the severance from employment requirement is not required to be satisfied if (a) all of the assets held by the eligible governmental plan are transferred; (b) the transfer is to another eligible governmental plan maintained by an eligible employer that is a state entity within the same state as this plan; and (c) the participants whose deferred amounts are being transferred are not eligible for additional annual deferrals in the receiving plan unless they perform services for the employer.

In addition, if the requirements described below are satisfied, the amounts deferred under this plan by participant or beneficiary may be transferred to a qualified plan (under section 401(a) of the code) maintained by a governmental entity. The requirements for a transfer to a qualified plan are satisfied if either (a) the transfer is for the purchase of permissive past service credit (as defined in section 415(n)(3)(A) of the code) under the receiving defined benefit governmental plan, or (b) the purpose of the transfer is a repayment to which section 415 of the code does not apply as a result of section 415(k)(3).

(j) *Special provisions pertaining to certain Police Officers.* Upon election by a police officer pursuant to subsection 9-5-23(g) of this code to participate in the benefit enhancement provided for in section 9-5-23(a)(ii)(b) of this Code, all contributions on behalf of such police officer to this plan shall

cease. City contributions made to this plan on behalf of such police officer between October 6, 2002 and July 1, 2004 shall be refunded to the city without interest.

(k) Notwithstanding any provision in this section, no employee or city contributions shall be made to this plan on or after July 1, 2007, for any employee who elects to participate in the Florida Retirement System.

(Ord. No. 29-97, § 1, 8-28-97; Ord. No. 6-98, § 2, 3-12-98; Ord. No. 27-02, § 5, 9-26-02; Ord. No. 35-02, § 7, 10-24-02; Ord. No. 11-04, § 3, 4-22-04; Ord. No. 16-07, § 5, 4-26-07)

Editor's note — Section 9-5-93(j) shall take effect retroactively to September 26, 2002.

Sec. 9-5-94. - Administration.

(a) *Responsibilities of the administrator.* Subject to the general supervision of the committee as provided in subsection (b), the administrator has the full power and authority to administer the plan and promulgate, adopt, amend or revoke internal management procedures which are consistent with, and necessary to implement and maintain, this plan.

The administrator, on behalf of the employer, shall enter into a written agreement with each participant, which shall set forth the obligations contained in this plan, the amounts of compensation to be deferred, and such other information as the administrator deems necessary to administer the plan.

The administrator may contract with individuals or corporations to perform any duties hereunder to the extent allowed by the laws of the state and any local ordinances or laws.

(b) *Responsibilities of the committee.* A committee shall be formed which shall be responsible for determining whether any participant has suffered an unforeseeable emergency and is entitled to a distribution under section 9-5-95(f). The committee also has the responsibility for general supervision of the plan which shall include, but not be limited to: establishment of the plan; approving or disapproving any proposed changes in the plan; and reviewing any and all proposed investment offerings, each of which must be determined acceptable by the committee prior to being utilized for the investment of deferred compensation. The committee may delegate to the person performing

accounting and administrative services for the plan the responsibility to determine whether an unforeseeable emergency exists for purposes of the distribution described in subsection (f) of Section 9-5-95.

Members of this committee shall be appointed by the employer. Members of this committee, if they are employees, shall be entitled to defer compensation; however, no member of the committee shall make any determination with respect to any interest that he may have under the plan.

(Ord. No. 29-97, § 1, 8-28-97; Ord. No. 35-02, § 8, 10-24-02)

Sec. 9-5-95. - Participant's accounts, investments and distributions.

(a) *Deferred compensation accounts.* The employer shall establish a "deferred compensation account" for each participant which shall be the basis for any distributions payable to the participants under subsection (e) of this section. Each participant's deferred compensation account shall be credited with the amount of any compensation deferred and any amounts transferred pursuant to section 9-5-93(i) and shall be further credited or debited, as applicable, with (i) any increase or decrease resulting from investments made by the employer pursuant to subsection (c) of this section, (ii) any applicable expenses incurred by the employer in maintaining and administering this plan, (iii) debited for the amount of any distribution, (iv) credited initially with the value on the effective date of this plan of any bookkeeping account maintained under the prior plan, and (v) debited in an amount equivalent to the present value of any annuity option selected in accordance with subsection (e)(3) of this section, and the value of such a participant's deferred compensation account shall thereafter be determined in accordance with the terms of such annuity options.

(1) *Crediting of accounts.* A participant's deferred compensation account, shall reflect the amount and value of the investments or other property obtained by the employer through the investment of the participant's deferred compensation. It is anticipated that the employer's investments with respect to a participant will conform to the investment preference specified by the participant pursuant to paragraph (4), but nothing herein shall be construed to require the employer to make any particular investment of a participant's deferred compensation.

(2) *Accounting dates and investment fund valuation.* Any investment fund under the plan is to be valued as of each accounting date. Any investment fund is to be valued at fair market value as of each accounting date on a reasonable and consistent basis. Any withdrawals or distribution made under this plan shall be made in cash. The amount paid upon such withdrawal or distribution shall be based upon the participant's account as of the accounting date.

(3) *Administrative costs.* Any administrative expenses not assumed by the investment fund(s) may be either paid by the employer or borne by the participants, as elected in accordance with policies established by the plan administrator. The method of charging any expenses and the amount of such expenses shall be determined by the administrator subject to the approval of the committee.

(4) *Method of making investment requests.* A participant shall, at the time of enrollment, make an investment request on a form provided for that purpose by the administrator. Once made, an investment request shall continue for any deferments unless later changed by the participant. A participant may, subject to any nondiscriminatory limitations imposed by the administrator, change his investment request with respect to amounts previously deferred. A change in investment request shall be effective as soon as practical following receipt of the request by the administrator.

A participant may, subject to any limitations in the adoption agreement, change his investment request with respect to future amounts of deferred compensation. A change in investment request shall be effective with respect to compensation to be deferred as soon as practicable following receipt of the request by the administrator.

(5) *Participant statements.* Each participant shall be provided at least annually with an accounting of his deferred compensation account including, but not limited to, the amount deferred during the plan year and any amounts credited or debited up to the most recent accounting date. Such accounting shall be made not later than forty-five (45) days after the end of the plan year. A participant may request an interim statement of account, providing the same information, once a year.

(b) *Assets held in trust.* All assets of the plan, including deferred amounts, property, and rights purchased with deferred amounts and all income attributable to such deferred amounts and all income attributable to such

deferred amounts, property or rights shall be held in trust for the exclusive benefit of participants and their beneficiaries. The trustee named by the committee (in the absence of the naming of a trustee by the committee, the administrator of the plan shall be the trustee of such trust) shall hold the assets in a separate trust in accordance with the provisions of this plan. The trustee shall assure that no part of the assets of the trust or the income therefrom is used for, or diverted to, purposes other than the exclusive benefit of participants and their beneficiaries. Additional terms of such trust may be described in a separate document which shall be incorporated herein by reference. The trust described herein shall satisfy the requirements of Section 457 of the code and the implementing regulations.

(c) *Investment funds.* The employer may establish investment funds for investment of deferred compensation. The committee is specifically authorized to invest in any fund on behalf of the employer. The committee also has the authority to eliminate any or all of the investment funds created by the plan, provided that in such event, the administrator shall notify all plan participants of the change. Any such participant shall then have the opportunity to change his investment request pursuant to subsection (a)(4) of this section, regardless of any other provision of this plan.

(d) *Distribution events.*

(1) *Normal distributions.* Except as otherwise provided herein with respect to (i) distributions on account of an unforeseeable emergency, (ii) distributions of small accounts, or (iii) distributions related to domestic relations orders, distributions to a participant or beneficiary shall not be made before the participant has a severance from employment with the employer. A participant has a severance of employment with the employer if the participant dies, retires, or otherwise has a severance of employment from the employer. When a participant has a severance from employment, the participant's entitlement under the plan will be distributed to the participant at the participant's election. Provided, however, the distribution of a participant's benefit under this plan shall be made in accordance with the following requirements and shall otherwise comply with Section 401(a)(9) of the code and the regulations thereunder (including Regulation Section 1.401(a)(9)-2), the provisions of which are incorporated herein by reference:

• A participant's benefit shall be distributed or must begin to be distributed not later than April 1 of the calendar year following the later of (i) the calendar year in which the participant attains age seventy and one-half (70½); or (ii) the calendar year in which the participant retires.

(2) *Death prior to commencement of benefits.* Should a participant die before he has begun to receive the retirement benefits provided by subparagraph (1), a death benefit equal to the value of the participant's deferred compensation account shall be paid to the beneficiary. Such death benefit shall be paid in a lump sum unless the beneficiary elects a different payment option within thirty (30) days of the participant's death. A death benefit pursuant to this subparagraph shall be payable no earlier than thirty (30) days after receipt of satisfactory proof of death by the administrator and, if the participant's death occurs before his attainment of normal retirement age, the payment shall commence no later than sixty (60) days after the close of the plan year in which the participant would have attained normal retirement age. Payments to a beneficiary pursuant to this subparagraph must satisfy the requirements of the last sentence of subsection (e) of this section.

(3) Other distribution events. (a) All or a portion of a participant's deferred compensation account may be distributed in the event of an unforeseeable emergency, as provided in subsection (f) of this section. (b) In service distribution not to exceed the dollar limit under Section 411(a)(11)(A) of the Code: If the total amount payable to the participant under the plan does not exceed the dollar limit under Section 411(a)(11)(A) of the Code (five thousand dollars ($5,000.00) for plan years beginning after August 5, 1997) as adjusted from time to time, the participant may elect to receive such amount before separation of service (or the plan may distribute such amount without the participant's consent) if (a) no amount has been deferred under the plan with respect to such participant during the two-year period ending on the date of distribution, and (b) there has been no prior distribution under the plan to such participant to which this section applied.

(4) In-service distribution. A participant in the year in which he or she attains the age of seventy and one-half (70-½) years or any year thereafter may elect to receive an in-service distribution, provided,

however, any employee electing to receive such a distribution would be allowed only to continue employment no longer than five (5) years from the effective date of the in-service distribution.

(e) *Election of method of distribution.* Upon severance of employment, the participant or the participant's beneficiary may elect a distribution in any of the following forms:

(1) A lump sum cash payment of all or a portion of the balance.

(2) Installments over a period of years not longer than the life expectancy of the participant or, if married, the joint life expectancy of the participant and his spouse, determined at the time the distributions are to commence according to any applicable Internal Revenue Service Tables. The installments may be made in monthly or other regular increments. Any portion of the deferred compensation account which has not been distributed shall continue to be credited and/or debited according to the provisions of subsection (a) of this section.

(3) In a series of payments on an annuity basis as if an annuity contract was purchased based on the life of the participant or beneficiary (if applicable). The annuity payments shall be based on one of the following methods:

a. The life of the participant.

b. The life of the participant or a period certain, whichever is greater.

c. The joint and last survivor life of the participant and another named person.

Once payments have commenced on an annuity basis, any future payments to a beneficiary will depend on the terms of the annuity payments agreed to by the participant and the employer. If a participant dies prior to a period certain, any remaining distribution will be paid to the beneficiary(ies) determined under subsection (g) of this section. If annuity payments have commenced on a joint and last survivor basis, any payments due after the death of the participant will be due only to the other person on which the annuity payments have been based and not to any other beneficiary(ies).

If, in fact, an annuity contract is purchased, the owner and named beneficiary shall be the employer. Any rights of participants or beneficiaries are derived solely from this plan.

(4) Notwithstanding any provision of the plan that would otherwise limit a "distributee's" election under this subsection (e), a "distributee" may elect at the time and in the manner prescribed by the administrator to have any portion of any eligible rollover distribution (that is at least five hundred dollars ($500.00)) paid directly to an "eligible retirement plan" specified by the "distributee" in a "direct rollover." For purposes of this subparagraph, the following definitions apply:

1. 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 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 any portion of any other distribution that is not includible in gross income.

2. 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 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.

3. A "distributee" includes an employee or a 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 an alternate payee under a 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.

4. A "direct rollover" is a payment by the plan to the eligible retirement plan specified by the distributee.

No payment option may be selected by a participant hereunder unless the present value of the payments to the participant, determined as of the date benefits commence, exceeds fifty (50) percent of the value of the participant's deferred compensation account as of the date benefits commence. Present value

determinations under this section shall be made by the administrator in accordance with the expected return multiples set forth in Section 1.72-9 of the Federal Income Tax Regulations (or any successor provision to such regulations).

Notwithstanding anything to the contrary, if a deferred compensation account of either a participant or a beneficiary is equal to or less than one thousand dollars ($1,000.00) on the date distributions are to commence, the account shall be distributed in a lump sum immediately or held until a delayed distribution date not exceeding one year from the date the participant was first entitled to begin distributions.

If the participant dies before the entire amount is paid to the participant, the entire amount deferred or the remaining part of the deferrals (if payment thereof has commenced) must be distributed to a beneficiary in a manner that complies with section 401(a)(9) of the code and the regulations implementing section 401(a)(9).

(f) *Unforeseeable emergency.* A distribution of all or a portion of a participant's deferred compensation account shall be permitted in the event the participant experiences an unforeseeable emergency. An unforeseeable emergency is a severe financial hardship to the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse, or the participant's or beneficiary's dependent (as defined in section 152(a) of the code); loss of the participant's or beneficiary's property due to casualty, or similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary. Distributions may not be made to the extent that such hardship is or may be relieved: (i) through reimbursement or compensation by insurance or otherwise; (ii) by liquidation of the participant's assets to the extent the liquidation of such assets would not itself cause severe financial hardship; or (iii) by cessation of deferrals under the plan. For purposes of this section, a beneficiary whose interest has "vested" in accordance with subsection (g)(7) of this section, shall have all rights of a participant to request a distribution or a change in method of distribution in the event of an unforeseeable emergency.

A participant desiring a distribution by reason of serious financial hardship must apply to the committee and demonstrate that the

circumstances being experienced qualify as an unforeseeable emergency. The committee shall have the authority to require such medical or other evidence as it may need to determine the necessity for participant's withdrawal request.

If an application for unforeseeable emergency distribution is approved, the distribution shall be limited to an amount sufficient only to meet the emergency and shall in no event exceed the amount of his deferred compensation account as of the accounting date next preceding or coincident with such withdrawal.

The allowed distribution shall be payable in a method determined by the committee and commence as soon as possible but not later than thirty (30) days after notice to the participant and the administrator of approval by the committee.

The committee may delegate to the person performing accounting and administrative services for the plan the responsibility to determine whether an unforeseeable emergency exists and the extent of the distribution necessary to meet the emergency.

(g) *Designation of beneficiary.* A participant may designate a beneficiary or beneficiaries who will receive any balance in the participant's deferred compensation account in the event of his death in accordance with following:

(1) A designation of a beneficiary shall be effective when actually received by the administrator and made on a form approved by the administrator for that purpose which has been signed by the participant.

(2) No beneficiary shall have any rights under this plan until the death of the participant who has designated him. A participant may, at any time, change his beneficiary(ies) in accordance with subsection (g)(1) of this section.

(3) Participants may designate primary and contingent beneficiaries. A contingent beneficiary and/or beneficiaries will become effective only after the death of any and all primary beneficiaries.

(4) If more than one (1) beneficiary is named in either category, benefits will be paid according to the following rules:

a. Beneficiaries can be designated to share equally or to receive specific percentages.

b. If a beneficiary dies before the participant, only the surviving beneficiaries will be eligible to receive any benefits in the event of death of the participant. If more than two (2) beneficiaries are originally named to receive different percentages of the benefits, surviving beneficiaries will share in the same proportion to each other as indicated in the original designation.

(5) A person, trust, estate, or other legal entity may be designated as a beneficiary.

(6) If a beneficiary has not been designated, or a designation is ineffective due to the death of any and all beneficiaries prior to the death of the participant, or the designation is ineffective for any reason, the estate of the participant shall be the beneficiary.

(7) Upon the death of the participant, any beneficiary entitled to the value of the deferred compensation account under the provisions of this section shall become a "vested beneficiary" and have all the rights of the participant (with the exception of making any deferrals), including the right to designate a beneficiary(ies).

(8) In the event of a conflict between the provisions of this section and the terms of an annuity distribution which has commenced under subsection (e)(3) of this section, the latter shall prevail.

(h) *Qualified domestic relations order/distribution to alternate payee.* All rights and benefits, including elections, provided to a participant in this plan shall be subject to the rights afforded to any "alternate payee" under a "qualified domestic relations order." Furthermore, a distribution from this plan to an "alternate payee" shall be permitted if such distribution is authorized by a "qualified domestic relations order" even if the affected participant is not eligible to receive a distribution from the plan because the participant has not severed employment with the employer or experienced an unforeseeable emergency. For purposes of this section (h), "alternate payee" and "qualified domestic relations order" shall have the meaning set forth in section 414(p) of the code. The employer shall develop a qualified domestic relations order procedure to be used as guidance when a court issues a domestic relations order affecting a participant's interest in the plan.

(i) *Leave of absence.* Any participant who is granted a leave of absence by the employer may continue to participate in this plan as long as the leave of absence is approved by the employer. If an approved leave of absence

is terminated by the employer or employee without the resumption of the employment relationship, the participant shall be treated as having a termination of service under this plan, as of the date of termination of such leave.

(j) *Loans to participants.*

(1) The trustee/administrator may, in the trustee/administrator's discretion, make loans to participants and beneficiaries under the following circumstances:

(i) Loans shall be made available to all participants and beneficiaries on a uniform and nondiscriminatory basis;

(ii) Loans shall be at a reasonable rate of interest;

(iii) Loans shall be adequately secured; and

(iv) Loans shall provide for periodic repayment over a reasonable period of time.

(2) Loans made pursuant to this subsection (when added to the outstanding balance of all other loans made by the plan to the participant) may, in accordance with a uniform and nondiscriminatory policy established by the administrator, be limited to the lesser of:

(i) Fifty thousand dollars ($50,000.00) reduced by the excess (if any) of the highest outstanding balance of loans from the plan to the participant during the one year period ending on the day before the day on which the loan is made, over the outstanding balance of loans from the plan to the participant on the date on which such loan is made; or

(ii) One-half of the present value of the participant's vested interest under the plan.

For the purpose of this limit, all plans of employer shall be considered one plan.

(3) Loans shall provide for level amortization with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as a "principal residence" of the participant shall provide for periodic repayment over a reasonable period of time that may exceed five (5) years. For this purpose, a "principal residence" has the same

meaning as a "principal residence" under Section 1034 of the code. Any loans granted or renewed shall be made pursuant to a participant loan program. Such loan program shall be established in writing and must include, but need not be limited to, the following:

(i) The identity of the person or positions authorized to administer the participant loan program;

(ii) A procedure for applying for a loan;

(iii) The basis on which loans will be approved or denied;

(iv) Limitations, if any, on the types and amounts of loans offered;

(v) The procedure under the program for determining a reasonable rate of interest;

(vi) The types of collateral which may secure a participant loan; and

(vii) The events constituting a default and the steps that will be taken to preserve plan assets.

Such participant loan program shall be contained in a separate written document which, when properly adopted, is hereby incorporated by reference and made a part of the plan. Furthermore, such participant loan program may be modified or amended in writing from time to time without the necessity of amending this subsection.

(4) Notwithstanding anything in this plan to the contrary, if a participant or beneficiary defaults on a loan made pursuant to this section, then the loan default will be a distributable event to the extent permitted by the code and regulations.

(5) The administrator may delegate to the investment manager, provided for in the plan, authority to make loans to participants in accordance with this subsection and the plan.

(Ord. No. 29-97, § 1, 8-28-97; Ord. No. 6-98, §§ 3—6, 3-12-98; Ord. No. 35-02, § 9, 10-24-02; Ord. No. 16-07, § 6, 4-26-07)

Sec. 9-5-96. - Miscellaneous.

(a) *Nonassignability.* The contract entered into between the employer and a participant through this plan and the benefits, proceeds or payments thereunder cannot be sold, assigned, pledged, commuted, transferred or

otherwise conveyed by any employee, participant or beneficiary. Any attempt to assign or transfer shall not be recognized and shall impose no liability upon the employer.

Except as otherwise required by law, any deferred compensation monies withheld pursuant to this plan shall be not subject to attachment, garnishment or execution, or to transfer by operation of law in the event of bankruptcy or insolvency of the participant or otherwise.

(b) *Payments to minors and incompetents.* If the administrator shall receive evidence satisfactory that a participant or beneficiary entitled to receive any benefit under this plan is, at the time when such benefit becomes payable, a minor, or, as adjudicated by a court of law, is mentally incompetent to receive such benefit and to give a valid release therefore and that another person or an institution is then maintaining or has custody of such participant or beneficiary, and that no guardian of the person or other representative of the estate of such participant or beneficiary shall have been duly appointed, the administrator may authorize payment of such benefit to such other person or institution, including a custodian under any state gifts to minors act (who shall be an adult, a guardian of the minor or a trust company), or to a court of law for distribution pursuant to that court's order, and the release of such other person or institution shall be a valid and complete discharge for the payment of such benefit.

(c) *Headings and subheadings.* The headings and subheadings in this plan are inserted for the convenience of reference only and are to be ignored in any construction of the provisions hereof.

(d) *Severability.* If any provision of this plan shall be for any reason invalid or unenforceable, the remaining provisions shall nevertheless continue in effect and shall not be invalidated thereby.

(e) *Plan year.* The plan year shall be the fiscal year beginning October first and ending September thirtieth, unless a different plan year is designated into the adoption agreement.

(f) *Days and dates.* Whenever a time limit is expressed in terms of number of days, they shall be consecutive calendar days, including weekends and holidays, provided however, that if the last day of a period of days would occur on a weekend or a holiday recognized by the employer, the last day of the period shall be the next business day following.

(g) *Conflicts.* In the event any form or other document used in administering the plan, including, but not limited to, enrollment forms and designation of beneficiary forms, conflicts with the terms of the plan, the terms of the plan shall prevail. The adoption agreement, however, may be used to modify the terms of the plan and any provisions of the adoption agreement shall prevail over the plan.

(Ord. No. 29-97, § 1, 8-28-97)

Sec. 9-5-97. Amendment or termination of plan.

(a) *Amendment.* The administrator shall have the authority to propose amendments to this plan from time to time by submitting them in writing to the committee for approval. No amendment or modification shall adversely affect the rights of participants or their beneficiaries to the receipt of compensation deferred prior to such amendment or modification unless required by state or federal law to maintain the tax status of the plan and any compensation previously deferred.

(b) *Termination.* The committee shall have the authority to terminate this plan, or to substitute a new plan. Upon termination of the plan, each participant shall be deemed to have withdrawn from the plan as of the date of such termination, and the participant's full compensation will be restored to a nondeferred basis. The plan will otherwise continue in effect until all deferred compensation accounts have been distributed in accordance with the plan.

(c) *Merger with prior plan.* If designated in the adoption agreement, this plan constitutes an amendment and restatement of such plan or plans. All participants and any compensation deferred under the prior plan are, from the effective date of this plan, governed by the terms of this plan subject to the following provisions:

(1) All deferrals elected under the prior plan shall continue without further action so long as they do not exceed the limits in section 9-5-93(d).

(2) Any election of the method of distribution of benefits made through the prior plan shall be void, and a participant or beneficiary may elect the form of distribution in accordance with section 9-5-95 of this plan.

If benefits have commenced to be distributed in accordance with an election made pursuant to the prior plan, such election shall be considered void with respect to any undistributed amount of the participant's deferred

~~compensation account for twenty-five (25) days after the effective date of this plan. If the participant or beneficiary elects a method of distribution in accordance with those provided by subsection 9-5-95(e) before the expiration of the twenty-five (25) days, such method shall become the method of distribution. Otherwise, the method elected under the prior plan shall be reinstated under this plan.~~

~~(Ord. No. 29-97, § 1, 8-28-97)~~

~~Sec. 9-5-98. - Applicable law.~~

~~This plan shall be construed, administered and governed in all respects under and by the laws of the state and the code.~~

~~(Ord. No. 29-97, § 1, 8-28-97)~~

~~Secs. 9-5-99, 9-5-100. - Reserved.~~

ARTICLE V. - GENERAL PENSION AND RETIREMENT FUND

Sec. 9-5-101. - Establishment of the general pension and retirement fund.

(1) There is hereby created for the general employees of the City of Pensacola, Florida, a fund to be entitled the "General Pension and Retirement Fund", a defined benefit pension plan intended to meet the applicable requirements of Section 401(a) of the Code, which provides for retirement, disability, and death benefits for such general employees. The General Pension and Retirement Fund is a "governmental plan" within the meaning of Section 414(d) of the Code, and as such, is exempt from the Employee Retirement Income Security Act of 1974, as amended. The General Pension and Retirement Fund shall be administered and distributions made therefrom as provided in this ordinance.

(2) Irrespective of anything contained herein, as now expressed or hereafter amended, the General Pension and Retirement Fund will not be used for or diverted to, a purpose other than the exclusive benefit of the members of the General Pension and Retirement Fund, their dependents, or their beneficiaries at all times and for the satisfaction of all rights and liabilities

with respect to members of the General Pension and Retirement Fund, their dependents, or their beneficiaries hereunder and for costs and expenses of operating the fund. In addition, an amendment may not cause or permit any portion of the assets held under the General Pension and Retirement Fund to revert to or become property of the city, except as otherwise permitted under the Plan or otherwise permitted by law.

(3) The General Pension and Retirement Fund shall continue to exist exclusively for the purposes provided by this ordinance and related legislation and shall be operated on a plan year basis (i.e., the consecutive twelve-month period ending every September 30).

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 01-11, § 1, 1-27-11; Ord. No. 27-13, § 1, 9-26-13)

Sec. 9-5-102. - Definitions.

The words and phrases as used in this ordinance shall have the following meanings unless a different meaning is plainly required by the context:

(1) *Act.* The General Pension and Retirement Fund Special Act.

(2) *Actuary.* The person, firm, or corporation, one of whose officers shall be a member of the Society of Actuaries and an enrolled actuary, as defined by the Employee Retirement Income Security Act of 1974, authorized by the board of trustees of the fund to render actuarial services to the fund.

(3) *Actuarial equivalent* (or any synonymous term contained herein) means the equality in value of the aggregate amount expected to be received under optional forms of benefit payments which, unless otherwise specified herein, will be based upon the RP 2000 Combined Healthy Mortality set forward five (5) years for males, with no change for females and utilizing a 8.00% interest rate.

(4) *Average monthly salary.* For retirement prior to October 1, 2012, one twenty-fourth (1/24) of the salary of the two (2) highest years of the last five (5) years of credited service prior to retirement or death. For retirements on or after October 1, 2012, one sixtieth (1/60) of the salary of the last five (5) years of credited service prior to retirement or death.

(5) *Beneficiary.* Person so designated in writing by a member of the general pension plan who may become entitled to receive a refund of contributions made by a member of the plan.

(6) *Best two (2) years.* Two (2) separate periods of three hundred sixty-five (365) consecutive days.

(7) *Board of trustees, the board,* or *the general pension board.* The pension board, consisting of six (6) members as provided in the plan.

(8) *City.* The City of Pensacola.

(9) *City council.* The City Council of the City of Pensacola.

(10) *Code.* Internal Revenue Code of 1986, as amended.

(11) *Credited service years or credited years of service.* A period of service years credited to a member of the plan in which the member has contributed an amount to the General Pension and Retirement Fund, as provided in this plan. Credited service years or credited years of service shall not include any period of service for which an employee is credited by the Florida Retirement System.

(12) *Dependent.* The spouse or dependent children under the age of eighteen (18) of a member of the plan.

(13) *Dependent children.* A son or daughter under eighteen (18) years of age who is born in wedlock to a member of the plan; and/or a child under eighteen (18) years of age adopted by a member of the plan; and/or a child under eighteen (18) years of age dependent upon a member of the plan for support whose dependency is proven to the satisfaction of the board or, in the alternative, whose dependency has been established by a final court order.

(14) *Disability.* Physical or mental impairment which renders an employee partially and permanently or totally and permanently unable to perform the duties of his or her employment or unable to perform any substantial gainful employment.

(15) *ECUA.* The Emerald Coast Utilities Authority.

(16) *General pension and retirement fund, general pension plan, or the plan.* The special fund created exclusively for the purposes provided in this ordinance.

(17) *IRA.* An individual retirement account.

(18) *Limitation year.* The limitation year is the plan year.

(19) *Line of duty.* Within the scope of employment as an employee of the city during such times as such employee was rendering services to the city.

(20) *Major fraction of a year.* For calculation of benefits in this ordinance, six (6) months and one (1) day.

(21) *Member of the plan.* An individual who has been credited with a period of service under the plan and has contributed an amount to the plan, as provided in this ordinance.

(22) *Nonemployment.* Any period of time an individual is not employed in any capacity by the City of Pensacola.

(23) *Normal retirement and early retirement.* Any retirement not based upon a disability, illness, or injury.

(24) *Plan.* The General Pension and Retirement Fund.

(25) *Plan administrator.* The ~~Director of Finance~~ Chief Financial Officer of the City of Pensacola.

(26) *Plan year.* The twelve-month period ending on September 30.

(27) *Pensioner.* A member of the plan who has drawn or is drawing a pension under the provisions of the plan.

(28) *Permanent full-time employee.* An individual employed by the city, working an established work period as set forth by city policy, and not employed on a part-time, temporary, or specified timeframe basis, as defined in the books and records of the city.

(29) *Professional money manager.* An investment management firm that is registered as an investment advisor with the Securities and Exchange Commission pursuant to the Investment Advisors Act of 1940, which firm shall acknowledge in writing its fiduciary duty to the board of trustees.

(30) *Refund of contributions.* The distribution of funds contributed by a member of the plan.

(31) *Retiree.* A member of the plan, or a dependent of a member, who has drawn or is drawing a pension benefit under the provisions of this plan.

(32) *Salary.* The total cash remuneration paid to the member of the plan by the city for services rendered before all pretax, salary deferral, or salary reduction contributions made to the General Pension and

Retirement Fund on behalf of the general pension plan members under Section 414(h)(2) of the Code and any Section 457 plan and Section 125 plan of the city. Unless otherwise provided by the city council, "salary" shall exclude any educational incentive pay, field training pay, certificate pay, specialized duty pay, pistol qualifications pay, clothing allowance, education benefit, accumulated sick leave pay at retirement, Personal Time Off (PTO) pay at retirement, shift differential pay, nonsubstantiated business expenses, noncash benefits such as employer-provided vehicles, or any other city-provided benefit, severance pay, or similar lump-sum payment made upon separation of service, and any other pay excluded by the city council. Prior to October 1, 2012, "Salary" also shall exclude compensation for more than three hundred (300) hours per fiscal year of overtime pay and pay at non-overtime rates for over forty (40) hours per week (commonly known as additional regular pay), provided that any such compensation earned prior to June 1, 2008, shall be deemed to be "salary." For retirement on or after October 1, 2012, "Salary" shall exclude compensation for more than two hundred (200) hours per fiscal year of overtime pay and pay at non-overtime rates for over forty (40) hours per week (commonly known as additional regular pay).

Salary for any plan year shall not exceed the annual compensation limit under Section 401(a)(17) of the Code, as in effect on the first day of the plan year. This limit shall be adjusted by the Secretary of the Treasury (as defined by the Code) to reflect increases in the cost of living, as provided in Section 401(a)(17)(B) of the Code; provided, however, that the dollar increase in effect on January 1 of any calendar year is effective for plan years beginning in such calendar year. If a plan determines salary over a plan year that contains fewer than twelve (12) calendar months (a "short plan year"), then the compensation limit for such "short plan year" is equal to the compensation limit for the calendar year in which the "short plan year" begins multiplied by the ratio obtained by dividing the number of full months in the "short plan year".

(33) *Service under the plan.* A period of service years credited to a member of the plan, during which the member has contributed an amount to the General Pension and Retirement Fund, as provided in this plan.

(34) *Spouse.* The legally married husband or wife of the member of the plan (including an individual of the same sex of the member if such individuals are lawfully married). Legally married includes a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex; however, legally married does not include individuals (whether of the opposite sex or same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as marriage under the law of that state.

(35) *Surviving spouse.* The legally married, as defined in this plan, husband or wife (including an individual of the same sex) of a member of the plan who outlives the member of the plan.

(36) *Treasury regulations.* The regulations promulgated by the United States Department of the Treasury.

(37) *Vested member* or *vesting right.* A member of the plan who has a right, or the right itself, to future pension benefits as provided in this plan.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 16-07, § 7, 4-26-07; Ord. No. 03-08, § 1, 1-17-08; Ord. No. 24-08, § 1, 4-24-08; Ord. No. 01-11, § 2, 1-27-11; Ord. No. 23-12, § 1, 9-27-12; Ord. No. 27-13, § 2, 9-26-13; Ord. No. 36-14, § 1, 9-25-14)

Sec. 9-5-103. - Pension board.

(1) There is hereby created a Pension Board of the City of Pensacola, consisting of six (6) members.

(a) Three (3) members shall be residents of Escambia County who are freeholders of the city and shall be appointed by the city council for a term of six (6) years or until their successors are appointed and qualified. Each appointment shall be for a term of six (6) years, with one (1) appointment being made every two (2) years, which appointment shall be made not later than the second regular meeting of the council held in July of each odd-numbered year hereafter.

(b) The remaining three (3) members shall consist of the current presiding council president of the city, or his appointed representative, who shall serve at the pleasure of the council president, and two (2) current employee members of the General Pension and Retirement

Fund, who shall be elected by a plurality vote of current employee members. Each elected member shall take office upon election and shall serve for a term of two (2) years or until the member's successor is elected and qualified. Such election shall occur not later than thirty (30) days prior to the expiration of the two-year term. Should a vacancy occur in the position of elected member, an election will be held to elect an employee member to the board for the remainder of such two-year term within thirty (30) days of such vacancy occurring.

(2) The pension board is vested with the responsibility for the administration and proper operation of the fund and for compliance with the provisions of all related laws and regulations.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 16-07, § 8, 4-26-07; Ord. No. 16-10, § 145, 9-9-10; Ord. No. 27-13, § 3, 9-26-13)

Sec. 9-5-104. - Oath of office; meetings; quorum.

Before entering upon the duties as a member of the pension board, each member shall take and subscribe to the oath of office required by the City Charter, which oath shall be filed with the city clerk. The board shall elect one (1) of its members chairperson, who shall be a voting member of the board. The ~~Director of Finance~~ Chief Financial Officer shall serve as plan administrator and shall be the chief administrative officer of the General Pension and Retirement Fund and shall keep the minutes of the board. The board shall meet as often as is necessary, upon the request of the chairperson or the plan administrator. A majority of the board shall constitute a quorum for the transaction of any business.

(Ord. No. 09-07, § 1, 2-8-07)

Sec. 9-5-105. - Powers of the board.

The pension board shall have the power and authority to:

(1) Adopt rules and regulations, not inconsistent with the provisions of this ordinance, governing its activities and providing for the certification of the moneys to be paid from the General Pension and Retirement Fund.

(2) Perform all the duties and enjoy all the rights and powers vested by law or ordinance. The city attorney of the city may give advice and

legal assistance to the pension board in all matters pertaining to the performance of its duties, whenever requested, and may prosecute and defend all suits which may be instituted by or against the board. However, if in the opinion of the city attorney or in the opinion of the pension board, a conflict of interest exists as to a particular matter, the pension board may, in its discretion, employ independent legal counsel for such purposes, the expense of such employment to be paid from the General Pension and Retirement Fund.

(3) Cause subpoenas to be issued and require the attendance of witnesses and the production of documents for the purpose of determining or redetermining at any time and from time to time the eligibility, right, or entitlement to any pension, benefit, or other payment provided under this ordinance.

(4) Employ its own secretary, clerks, stenographers, or other personnel as required, who shall be paid such compensation, from the General Pension and Retirement Fund only, as fixed by the pension board. Nothing herein shall be construed to authorize or empower the board to incur such expense or obligation to be borne by the City of Pensacola.

(Ord. No. 09-07, § 1, 2-8-07)

Sec. 9-5-106. - Membership requirements and exclusions.

All permanent full-time employees of the city automatically become, upon employment, members of the General Pension and Retirement Fund of the city, except that the city may by ordinance amend or revise the foregoing membership criteria in the General Pension and Retirement Fund, provided, however, that in no event shall the following be permitted to participate in the General Pension and Retirement Fund:

(1) Employees of the city who are eligible to participate in the Firefighters' Relief and Pension Fund.

(2) Any officer or employee of the police department hired on or after October 1, 1979, who is eligible to participate in the Police Officers' Retirement Fund of the city.

(3) City public safety cadets.

(4) All permanent full-time employees of the city hired prior to October 6, 1997, making an election not to participate in the plan and having continuous service from October 6, 1997, until retirement.

(5) Any individual who is drawing a normal retirement or early retirement benefit and who is subsequently reemployed by the city. Such individual shall not be eligible for current participation in the plan and shall continue to draw a pension benefit from the plan.

(6) Elected officials of the city.

(7) Any employee hired on or after October 18, 1999, who is eligible for membership in another of the city's defined benefit pension plans.

(8) All employees who participate in another of the city's defined benefit pension plans except for employees hired prior to October 1, 1979, who have continuously participated in this plan and the Police Officers' Retirement Fund.

(9) All employees hired after July 1, 2007, enrolled as participants in the Florida Retirement System or at any such date the city may choose to make participation effective.

(10) All employees hired on or before June 30, 2007, who participate in the Florida Retirement System or at any such date the city may choose to make participation effective.

(Ord. No. 09-07, § 1, 2-8-07)

Sec. 9-5-107. - Emerald Coast Utilities authority provisions.

(1) Individuals who transferred to the ECUA when established in 1981 and who chose to continue participation in the General Pension and Retirement Fund shall be members of the plan and governed by all provisions of this plan. When administering this plan on behalf of ECUA members of the plan, the phrase "City of Pensacola" shall be interpreted as ECUA, where applicable.

(2) Notwithstanding any provision of this plan, disability determinations concerning ECUA employees shall be made by the general pension board, but shall not be effective unless and until the personnel appeals board of ECUA, utilizing the criteria set forth in section 9-5-113, concurs in such determinations.

(3) The ECUA, through its proper officers, shall deduct 5.5 percent (5.5%) from the salary of the members of the plan and shall pay the same to the General Pension and Retirement Fund. Such moneys shall be deposited in a special account by the city to be designated "General Pension and Retirement Fund" and no employee shall have any right to said moneys paid into the fund except as otherwise provided in this plan.

(4) The ECUA shall make a payment of a sum equal to the actuarially required funding amount shown by an annual actuarial valuation, as approved by the general pension board for the ECUA members of the plan.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 01-11, § 3, 1-27-11)

Sec. 9-5-108. Community Redevelopment Agency provisions.

(1) Effective October 1, 2016, individuals participating in this plan as full time employees of the City of Pensacola who transfer full time employment to the City of Pensacola's Community Redevelopment Agency shall be members of the plan and be governed by all provisions of this plan. When administering this plan on behalf of Community Redevelopment Agency members of the plan, the phrase "City of Pensacola" shall be interpreted as Community Redevelopment Agency, where applicable.

(2) The Community Redevelopment Agency shall pay to the plan or reimburse the City the contributions required to be made by the City for the employees who continue their participation in the General Pension and Retirement Fund.

Editor's note— Ord. No. 01-11, § 4, adopted January 27, 2011, repealed § 9-5-108, which pertained to multiple plan participant and derived from Ord. No. 09-07, § 1, 2-8-07.; Ord. No. 42-16, Sec. 1, 9/15/16.

Sec. 9-5-109. - Eligible rollover distributions.

Notwithstanding any other provision of the General Pension and Retirement Fund to the contrary, a "distributee" may elect, at the time and in the manner prescribed by the plan administrator, to have any portion or all of an "eligible rollover distribution" paid directly to an "eligible retirement plan" specified by the "distributee" in a direct rollover. For purposes of this section, the following definitions shall apply:

(a) *Distributee* means a member or former member, the member's surviving spouse, and the member's spouse or former spouse who is the alternate payee under a court order, who is entitled to receive a portion of the member's benefit.

Effective for plan years beginning on and after January 1, 2007, a non-spouse beneficiary, may elect to directly rollover an eligible distribution to an IRA, a Roth IRA or an individual retirement annuity under section 408(b) of the Code that is established on behalf of the designated beneficiary as an inherited IRA, pursuant to the provisions of section 402(c)(11) of the Code. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of "eligible rollover distribution". In addition, the determination of any required minimum distribution under section 401(a)(9) of the Code that is ineligible for rollover shall be made in accordance with IRS guidance.

(b) *Eligible retirement plan.* An eligible retirement plan is an IRA 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, an eligible plan under section 457 of the Code that agrees to separately account for such transferred amounts and which is maintained by a state, political subdivision of a state or an agency or instrumentality of a state or political subdivision of a state or a qualified trust described in section 401(a) of the Code that accepts the distributee's "eligible rollover distribution." For distributions made after December 31, 2007, an eligible retirement plan shall include a Roth IRA as defined under section 408A of the Code. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a court order.

(c) *Eligible rollover distribution.* An eligible rollover distribution is any distribution of all or any portion of the member's benefit, 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 (10) years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), any distribution made to satisfy section 415 of the Code; and any distribution that is reasonably expected to total less than two hundred dollars ($200.00), during the year.

(d) *Direct rollover.* A direct rollover is a payment by the General Pension and Retirement Fund to the eligible retirement plan specified by the distributee.

(e) In the event a mandatory distribution is greater than one thousand dollars ($1,000.00), and a distributee fails to elect to have such distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover or to receive the distribution directly, then the board will pay the distribution in a direct rollover to an IRA designated by the board. For purpose of the preceding sentence, a mandatory distribution is a distribution that constitutes an "eligible rollover distribution" (as defined in subparagraph (c) above) that is made without the member's consent. See section 9-5-118, section 9-5-119(5)(b), and section 9-5-121(5)(b) for examples of potential mandatory distributions.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 01-11, § 5, 1-27-11)

Sec. 9-5-110. - Designation of employee contributions.

For the purposes of section 414(h) of the Internal Revenue Code, the contributions made by each employee to the General Pension and Retirement Fund shall be designated as "employer contributions." However, such designation is contingent upon the contributions being excluded from the employee's gross income for federal income tax purposes. Such contributions shall, nevertheless, be subject to refund or return to the employee upon termination of employment, or otherwise as provided in this ordinance.

(Ord. No. 09-07, § 1, 2-8-07)

Sec. 9-5-111. - Separation from service and reemployment.

Former members of the plan. Any employee who has separated from employment with the city, hereinafter referred to as "nonemployment," shall, upon reemployment, become a participant in the Florida Retirement System provided such participation does not violate the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA). If any such employee is reemployed, the employee shall be entitled to receive any pension benefits accrued under this chapter prior to such employee's separation from employment. For all other employee benefit purposes, such employee shall be deemed to be a newly-hired employee. The employee shall not be entitled to buy back periods of nonemployment except as provided by section 9-5-113.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 16-07, § 9, 4-26-07)

Sec. 9-5-112. - Military service.

Notwithstanding any other provision of the General Pension and Retirement Fund to the contrary, contributions, benefits, and service credit with respect to qualified military service, as defined in Section 414(u) of the Code, shall be provided in accordance with Section 414(u) of the Code, the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") and the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act") and shall be effective as of the dates indicated in USERRA and the HEART Act. However, if a member of the General Pension and Retirement Fund has withdrawn the contributions or any part thereof paid by the member into the fund, the member shall return such moneys to the fund. In addition, such member shall pay into the fund, within the time required by applicable federal or state law, all contributions the member would have been required to pay during the term the member was actively serving in the military. If a member dies on or after January 1, 2007, while performing qualified military service, such member's beneficiaries are entitled to any additional benefits the member would have received had the member resumed employment and then died while employed.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 01-11, § 6, 1-27-11; Ord. No. 02-16, § 1, 1-14-16)

Sec. 9-5-113. - Disability.

A pension for injury or illness, whether incurred in the line of duty or not in the line of duty, as provided in this ordinance, shall be awarded only upon determination of the disability. The City of Pensacola adheres to the Americans with Disabilities Act of 1990 as may be amended, and reasonable accommodation for disabilities shall be evaluated on a case-by-case basis. Application, determinations, awards, and reevaluation of disability pensions shall be governed by the following:

(1) An employee, or the employer on behalf of the employee, must make application for a disability pension, complete with medical and other evidentiary material as prescribed by the board.

(2) Upon receipt of an application for a disability pension, the board shall make a determination of the disability, which determination shall be final. The board may employ the services of one (1) or more independent third-party agents, such as, but not limited to, a physician or a health and disability claims adjusting firm, to evaluate the case and to make a report containing recommended findings and conclusions, which may be approved, disapproved, or modified in the determination of the board.

(3) In the case of determination of disability, the board shall award a disability pension in an amount computed as a percentage equal to the percentage of the employee's disability times the full disability pension award as provided in this ordinance. At any time after an employee is awarded a disability pension, the City of Pensacola may offer its former employee employment for which his or her disability does not prevent performance. At such time as the former employee returns to active service, or at such time as the former employee fails to accept said offer of employment, all disability payments shall cease.

(4) The board, through its third-party agents, shall periodically reevaluate disability pensioners to determine if the condition of the disability persists.

    (a) A disabled pensioner's percentage of disability may be reclassified upon reevaluation by the board.

    (b) If the pensioner has recovered sufficiently, as determined by the board, so that he or she is no longer disabled, and such determination is made within one (1) year after the effective date of the award of the pension, said pensioner shall be reinstated to

active service in the same rank he or she occupied prior to the award of the pension. If such determination is made more than one (1) year after the effective date of the award of the pension, the pensioner shall be placed on an eligible list to be reinstated to his or her position upon the first vacancy in that position. At such time as a pensioner resumes active service, or at such time as the pensioner fails to accept reinstatement to active service, the payment of pension benefits shall cease.

(Ord. No. 09-07, § 1, 2-8-07)

Sec. 9-5-114. - Florida Retirement System participation.

If any vested member of the plan elects to participate in the Florida Retirement System on the date the city joins the Florida Retirement System and elects either to vest his or her benefit in this plan or to enter the deferred retirement option program provided for in Chapter 9-9, the member shall become eligible to receive the vested benefits under the following circumstances. Such member may receive such benefits upon termination of employment in accordance with the plan. Or such member may receive such benefits while remaining currently employed upon meeting the requirements of normal retirement as defined in section 9-5-102, in which event such member must terminate employment no later than five (5) years following the commencement of receipt of such benefits. Or such member may receive such benefits while remaining currently employed upon receiving an in-service distribution as provided in section 9-5-137, in which event such member must terminate employment no later than five (5) years following the commencement of receipt of such in-service distribution. Or such member who elected to enter said deferred retirement option program and who later meets the requirements of either of the last two (2) preceding sentences may, upon the occurrence of one of such circumstances, receive such benefits while remaining currently employed provided that such member must terminate employment no later than five (5) years following the member's entry in said deferred retirement option program.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 16-07, § 10, 4-26-07)

Sec. 9-5-115. - Normal retirement with twenty or more years of credited service under the plan.

(1) All members of the plan who have attained the age of fifty-five (55) years who have at least twenty (20) credited service years under the plan or, effective October 1, 1999, who regardless of age have thirty (30) credited service years, or effective May 1, 2007, who have attained the age of fifty-five (55) years and who have at least thirty (30) credited service years may apply for and be entitled to benefits under the provisions of this ordinance. In calculating the years of service under the plan, a major fraction of a year shall be computed as a whole year. A member of the plan must be separated from the employment of the city to receive a pension under the plan pursuant to this section, except as otherwise provided for in sections 9-5-114 or 9-5-125.

(2) If any member of the plan has not attained the age of fifty-five (55) years after a period of twenty (20) credited service years under the plan and does not make withdrawal of funds from the General Pension and Retirement Fund, such employee shall be eligible to receive a pension after attaining the age of fifty-five (55) years. It is the intent of this provision that said member shall have a vested right to said pension. A major fraction of a year of credited service shall be computed as a whole year for the purpose of vesting rights.

(3) For the purpose of determining the monthly pension of an employee:

(a) The General Pension and Retirement Fund of the city shall pay to each member of the plan retired hereafter, whose credited service years under the plan are not less than twenty (20) years and who has attained the age of fifty-five (55) years or, effective October 1, 1999, who regardless of age has thirty (30) credited service years, a pension which has as its basis for calculation the average monthly salary of such member. Based upon such average monthly salary, a pension shall be paid according to the following table:

75% upon the first $200.00

50% upon the next 100.00

40% upon all in excess thereof; and

(b) Any employee who has attained twenty (20) credited years of service under the plan and who elects to remain employed after reaching fifty-five (55) years of age shall upon retirement be entitled to all of the rights and benefits provided for in this ordinance, and, in addition, the monthly pension shall be increased by one (1) percent for each year

of credited service between the age of fifty-five (55) years and the actual age of retirement, but not for any year beyond the age of seventy (70); or

(c) The monthly pension for a member of the plan who retires on or after July 1, 1988 and prior to July 1, 2000, shall be equal to two (2) percent of the average monthly salary times the number of years of credited service under the plan not in excess of thirty (30) credited service years, unless the payments would be greater if calculated by the applicable formulas set forth above in this subsection; or

(d) The monthly pension for a member of the plan who retires on or after July 1, 2000, and prior to October 1, 2012 shall be equal to 2.1 percent of the average monthly salary times the number of years of credited service under the plan not in excess of thirty (30) credited service years, unless the payments would be greater if calculated by the applicable formulas set forth above in this section, or

(e) The monthly pension for a member of the plan who retires on or after October 1, 2012, shall be equal to 2.1 percent of the average monthly salary times the number of years of credited service prior to October 1, 2012 and 1.75 percent of the average monthly salary times the number of years of credited service under the plan on or after October 1, 2012 not in excess of thirty (30) credited service years, unless the payments would be greater if calculated by the applicable formulas set forth above in this section.

(4) The monthly pension shall in no event be less than twenty-five dollars ($25.00) for each year of credited service under the plan not in excess of twenty (20) years.

(5) Each age and service condition required by this section 9-5-115 for entitlement to receive normal retirement benefits is referred to as "normal retirement age". Each member/employee will become one hundred (100) percent vested in his normal retirement benefit at normal retirement age.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 16-07, § 11, 4-26-07; Ord. No. 03-08, § 2, 1-17-08; Ord. No. 01-11, § 7, 1-27-11; Ord. No. 23-12, § 2, 9-27-12)

Sec. 9-5-116. - Early retirement at 25 years of credited service.

(1) (a) Any member of the plan who has twenty-five (25) credited service years under the plan prior to attaining the age of fifty-five (55) years

may retire at any time and receive a reduced pension, which shall have as its basis for calculation the member's average monthly salary. A major fraction of a year of credited service under the plan shall be computed as a whole year. A member of the plan must be separated from the employment of the city to receive a pension under the plan pursuant to this section, except as otherwise provided for in sections 9-5-114 or 9-5-125. Based upon such average monthly salary, a pension shall be paid according to the following table:

75% upon the first $200.00

50% upon the next 100.00

40% upon all in excess thereof; or

(b) The monthly pension for a member of the plan who retires on or after July 1, 1988, shall be equal to two (2) percent of the average monthly salary times the number of years of credited service under the plan not in excess of thirty (30) years, unless the payments would be greater if calculated by the formula set forth above.

(2) After said amount has been determined, the sum payable shall be adjusted by the following factors for early retirement as may be applicable to the member's age at the time of retirement:

Retirement Factors	
Age at Retirement	Factor
55	1.000
54	.928
53	.856
52	.784
51	.730
50	.676

49	.622
48	.586
47	.550
46	.514
45	.478

(3) The monthly pension shall in no event be less than twenty-five dollars ($25.00) for each year of credited service not in excess of twenty (20) years.

(4) (a) Notwithstanding subsections (1)(b) and (2), effective July 1, 2000, the monthly pension for a member of the plan who retires on or after July 1, 2000 and prior to October 1, 2012, shall be equal to 2.1 percent of the average monthly salary times the number of years of credited service under the plan not in excess of thirty (30) credited service years, unless the payments would be greater if calculated by the applicable formulas set forth above in this section.

(b) After said amount has been determined, the sum payable shall be adjusted by the following factors for early retirement as may be applicable to the member's age at the time of retirement if less than the age of fifty-five (55), or the member's years of credited service if less than thirty (30) years but greater than twenty-five (25) years, whichever will provide the greater benefit:

Retirement Factors	
Age at Retirement	Factor
55	1.00

54	.97
53	.94
52	.91
51	.88
50	.85
49	.82
48	.79
47	.76
46	.73
45	.70
44	.67
43	.64
42	.61
41	.58

Retirement Factors	
Years of Service	Factor

30	1.00
29	.97
28	.94
27	.91
26	.88
25	.85

(5) (a) Notwithstanding subsections (1)(b) and (2), effective October 1, 2012, the monthly pension for a member of the plan who retires on or after October 1, 2012, shall be equal to 2.1 percent of the average monthly salary times the number of years of credited service prior to October 1, 2012 and 1.75 percent of the average monthly times the number of years of credited service under the plan on or after October 1, 2012 not in excess of thirty (30) credited service years, unless the payments would be greater if calculated by the applicable formulas set forth above in this section.

(b) After said amount has been determined, the sum payable shall be adjusted by the following factors for early retirement as may be applicable to the member's age at the time of retirement if less than the age of fifty-five (55), or the member's years of credited service if less than thirty (30) years but greater than twenty-five (25) years, whichever will provide the greater benefit:

Retirement Factors	
Age at Retirement	Factor
55	1.00

54	.97
53	.94
52	.91
51	.88
50	.85
49	.82
48	.79
47	.76
46	.73
45	.70
44	.67
43	.64
42	.61
41	.58

Retirement Factors	
Years of Service	Factor

30	1.00
29	.97
28	.94
27	.91
26	.88
25	.85

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 16-07, § 12, 4-26-07; Ord. No. 23-12, § 3, 9-27-12)

Sec. 9-5-117. - Normal retirement with less than twenty years of credited service under the plan.

After a period of six (6) credited years of service under the plan, any member of the plan not having made withdrawal of funds from the General Pension and Retirement Fund shall be eligible to receive a pension upon attaining the age of sixty (60) years. Said member of the plan shall have a vested right to said pension. However, any member of the plan leaving employment must have a period of not less than six (6) credited service years under the plan in order to obtain a vested interest and right to pension benefits. A major fraction of a year of credited service shall not be computed as a whole year for the purpose of vesting rights. A member of the plan must be separated from the employment of the city to receive a pension under the plan pursuant to this section, except as otherwise provided for in sections 9-5-114 or 9-5-125.

(1) (a) The General Pension and Retirement Fund of the city shall pay to those members of the plan with less than twenty (20) credited service years under the plan a pension which shall have as its basis for calculation the average monthly salary of such member. A major fraction of a year of credited service under the plan shall be computed

as a whole year. Based upon such average monthly salary, a pension shall be paid according to the following table:

75% upon the first $200.00

50% upon the next 100.00

40% upon all in excess thereof; and

(b) After said amount has been determined, the sum payable shall be reduced to the percentage set opposite the number of years of credited service shown in the following schedule:

Years of Service	Percentage
6	48
7	51
8	54
9	57
10	60
11	63
12	66
13	69
14	72
15	75
16	80
17	85

18	90
19	95

(2) The monthly pension shall in no event be less than twenty-five ($25.00) for each year of credited service under the plan not in excess of twenty (20) years.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 16-07, § 13, 4-26-07; Ord. No. 23-12, § 4, 9-27-12)

Sec. 9-5-118. - Refund of contributions with less than six credited years of service, except for disability or death in the line of duty.

(1) In the event any member of the plan with less than six (6) credited years of service separates from service, except for disability or death in the line of duty, such member or the decedent's dependent or beneficiary shall receive a refund of the member's contributions to the plan.

(a) The maximum amount of a refund of contributions shall equal the amount of contributions by the member of the plan less any amount of pension benefit received by the member of the plan and/or the member's dependents.

(b) Distribution election and distribution of a refund of contributions shall be made within ninety (90) days after eligibility. If no election is made, distribution shall be in a lump-sum payment.

(c) Any refund of the member's contributions under this ordinance shall be in full satisfaction of any and all claims by any person against the General Pension and Retirement Fund.

(2) The service years shall be computed on the basis of the total credited service years under the plan, either continuous or by totaling separate or discontinuous periods for the required total period. A major fraction of a year of credited service shall not be computed as a whole year for the purpose of vesting rights.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 16-07, § 14, 4-26-07)

Sec. 9-5-119. - Disability injury or illness in line of duty.

If any member of the plan, due to injury or illness in the line of duty, makes application for retirement and is entitled to the benefits under this ordinance, the General Pension and Retirement Fund of the city shall pay according to the following schedule:

(1) (a) The General Pension and Retirement Fund of the city shall pay to each member of the plan retired hereafter because of injury or illness in the line of duty, whose period of credited service under the plan is not less than twenty (20) years, a pension which has as its basis for calculation the average monthly salary of such member. Based upon such average monthly salary, a pension shall be paid according to the following table:

75% upon the first $200.00

50% upon the next 100.00

40% upon all in excess thereof; and

(b) Any employee who has attained twenty (20) years of credited service under the plan and who elects to remain employed after reaching fifty-five (55) years of age shall upon disability retirement be entitled to all of the rights and benefits provided for in this ordinance, and, in addition, the monthly pension shall be increased by one (1) percent for each year of service between the age of fifty-five (55) years and the actual age of disability retirement, but not for any year beyond the age of seventy (70); or

(c) The monthly pension for a member of the plan who retires on or after July 1, 1988, shall be equal to two (2) percent of the average monthly salary times the number of years of credited service under the plan not in excess of thirty (30) years, unless the payments would be greater if calculated by the applicable formulas set forth above in this section; or

(d) The monthly pension for a member of the plan who retires on or after July 1, 2000, and before October 1, 2012 shall be equal to 2.1 percent of the average monthly salary times the number of years of credited service under the plan prior to October 1, 2012 not in excess of thirty (30) credited service years, unless the

payments would be greater if calculated by the applicable formulas set forth above in this section; or

(e) The monthly pension for a member of the plan who retires on or after October 1, 2012, shall be equal to 2.1 percent of the average monthly salary times the number of years of credited service prior to October 1, 2012 and 1.75 percent of the average monthly salary times the number of years of credited service under the plan on or after October 1, 2012 not in excess of thirty (30) credited service years, unless the payments would be greater if calculated by the applicable formulas set forth above in this section; or

(2) (a) The General Pension and Retirement Fund of the city shall pay to those members of the plan retired hereafter because of injury or illness in the line of duty, whose period of credited service under the plan is less than twenty (20) years, a pension which has as its basis for calculation the average monthly salary of such member. Based upon such average monthly salary, a pension shall be paid according to the following table:

75% upon the first $200.00

50% upon the next 100.00

40% upon all in excess thereof; and

(b) After said amount has been determined, the sum payable shall be reduced to the percentage set opposite the number of years of credited service shown in the following schedule:

Years of Service	Percentage
Less than 1	60
1	62
2	64
3	66
4	68

5	70
6	72
7	74
8	76
9	78
10	80
11	82
12	84
13	86
14	88
15	90
16	92
17	94
18	96
19	98

(3) The monthly pension shall in no event be less than twenty-five dollars ($25.00) for each year of credited service not in excess of twenty (20) years.

(4) In computing the number of years of credited service under the plan, a major fraction of a year shall be computed as a whole. The disability benefits provided for herein shall be in addition to any other benefits payable.

(5) In the event any member of the plan becomes disabled in the line of duty while employed, such member shall receive a pension benefit as provided in this section or, upon request, in lieu of a pension benefit, shall receive a refund of the member's contributions to the General Pension and Retirement Fund.

(a) The maximum amount of a refund of contributions shall equal the amount of contributions by the member of the plan less any amount of pension benefit received by the member of the plan.

(b) Distribution election and distribution of a refund of contributions shall be made within ninety (90) days after eligibility. If no election is made, distribution shall be in a lump-sum payment.

(c) Any refund of the member's contributions under this ordinance shall be in full satisfaction of any and all claims by any person against the General Pension and Retirement Fund.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 09-07, § 1, 2-8-07; Ord. No. 23-12, § 5, 9-27-12)

Sec. 9-5-120. - Death in the line of duty.

In the event any member of the plan dies in the line of duty while employed, the deceased member's dependents or beneficiaries shall be eligible to receive benefits as provided for in sections 9-5-119 and 9-5-122 of this ordinance.

(Ord. No. 09-07, § 1, 2-8-07)

Sec. 9-5-121. - Disability injury or illness not in the line of duty.

(1) If any member of the plan who, due to injuries or illness not in the line of duty, makes application for disability retirement and is entitled to the benefits under this ordinance, the General Pension and Retirement Fund of the City of Pensacola shall pay according to the following schedule. In computing the number of years of credited service under the plan, a

major fraction of a year shall be computed as a whole. The disability benefits provided for shall be in addition to any other benefits payable.

(2) (a) The General Pension and Retirement Fund of the city shall pay to each member of the plan retired hereafter because of injuries or illness not in the line of duty, whose period of credited service is not less than twenty (20) years, a pension which has as its basis for calculation the average monthly salary of such member. Based upon such average monthly salary, a pension shall be paid according to the following table:

75% upon the first $200.00

50% upon the next 100.00

40% upon all in excess thereof; and

(b) Any employee who has attained twenty (20) years of credited service under the plan and who elects to remain employed after reaching fifty-five (55) years of age shall upon retirement be entitled to all of the rights and benefits provided in this ordinance, and, in addition, the monthly pension shall be increased by one (1) percent for each year of credited service between the age of fifty-five (55) years and the actual age of retirement, but not for any year beyond the age of seventy (70); or

(c) The monthly pension for a member of the plan who retires on or after July 1, 1988, shall be equal to two (2) percent of the average monthly salary times the number of years of credited service under the plan not in excess of thirty (30) years, unless the payments would be greater if calculated by the applicable formulas set forth above in this section; or

(d) The monthly pension for a member of the plan who retires on or after July 1, 2000, and before October 1, 2012 shall be equal to 2.1 percent of the average monthly salary times the number of years of credited service under the plan prior to October 2, 2012 not in excess of thirty (30) credited service years, unless the payments would be greater if calculated by the applicable formulas set forth above in this section; or

(e) The monthly pension for a member of the plan who retires on or after October 1, 2012, shall be equal to 2.1 percent of the average times the number of years of credited service prior to October 1, 2012 and

1.75 percent of the average monthly salary times the number of years of credited service under the plan on or after October 1, 2012 not in excess of thirty (30) credited service years, unless the payments would be greater if calculated by the applicable formulas set forth above in this section.

(3) (a) The General Pension and Retirement Fund of the city shall pay to those members of the plan retired hereafter because of injury or illness not in the line of duty, whose period of credited service under the plan is less than twenty (20) years, a pension which has as its basis for calculation the average monthly salary of such member. Based upon such average monthly salary, a pension shall be paid according to the following table:

75% upon the first $200.00

50% upon the next 100.00

40% upon all in excess thereof; and

(b) After said amount has been determined, the sum payable shall be reduced to the percentage set opposite the number of years of credited service shown in the following schedule:

Years of Service	Percentage
6	48
7	51
8	54
9	57
10	60
11	63
12	66

13	69
14	72
15	75
16	80
17	85
18	90
19	95

(4) The monthly pension shall in no event be less than twenty-five dollars ($25.00) for each year of credited service under the plan not in excess of twenty (20) years.

(5) In the event any member of the plan with less than six (6) years of credited service under the plan becomes totally or partially disabled not in the line of duty and such member is disabled to such an extent that he or she cannot properly discharge the duties of his or her employment, such member shall receive, in lieu of a pension, a refund of the total amount of his or her contributions to the General Pension and Retirement Fund. A major fraction of a year of credited service shall not be computed as a whole year for the purpose of vesting rights.

(a) The maximum amount of a refund of contributions shall equal the amount of contributions by the member of the plan less any amount of pension benefit received by the member of the plan.

(b) Distribution election and distribution of a refund of contributions shall be made within ninety (90) days after eligibility. If no election is made, distribution shall be in a lump-sum payment.

(c) Any refund of the member's contributions under this ordinance shall be in full satisfaction of any and all claims by any person against the General Pension and Retirement Fund.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 16-07, § 15, 4-26-07; Ord. No. 09-07, § 1, 2-8-07; Ord. No. 16-07, § 15, 4-26-07; Ord. No. 23-12, § 6, 9-27-12)

Sec. 9-5-122. - Other benefit provisions.

(1) The order of eligibility for a pension benefit or a refund of contributions under this ordinance shall be first to the member of the plan, next to dependents if the member of the plan dies, then to the beneficiaries if there are no eligible dependents, and finally to the estate of the decedent if a beneficiary has not been named.

(2) In the event of the death of an individual retired prior to October 1, 2012 under this ordinance, his or her dependents or beneficiaries shall become immediately entitled to the benefits herein provided.

(a) Dependents eligible to receive a pension shall be paid in the following order:

1. a. To the surviving spouse, a monthly pension equal to one-twelfth (1/12) of eighty (80) percent of the annual pension which the deceased pensioner was receiving or to which the decedent would have been entitled in the event of retirement as of the date of death.

b. Effective on or after passage of this ordinance, if the surviving spouse should remarry, the surviving spouse of the deceased member of the plan shall continue to be entitled to the pension benefit provided for herein. Notwithstanding this provision, if a surviving spouse should become a surviving spouse of more than one (1) deceased member of the plan, the surviving spouse shall receive only the greater dependent benefit. In no case shall the surviving spouse receive benefits from more than one (1) deceased member of the plan.

2. If such decedent is not survived by a spouse but has dependent children under the age of eighteen (18) years or, if such decedent is survived by a spouse and dependent children under the age of eighteen (18) years and the spouse dies before the youngest of said dependent children attains the age of eighteen (18) years,

the dependent children of said decedent shall receive an amount equal to the benefit to which a surviving spouse would have been entitled under subparagraph 1., in equal shares among the dependent children and not exceeding in total the surviving spouse benefit. If any dependent child under this subparagraph ceases to be eligible for benefits for any reason, the benefits shall be recalculated to provide for equal shares to the remaining eligible dependent children.

(b) If there is no surviving spouse or eligible dependent children, then the member's beneficiary, if any, shall be entitled only to a refund of the contributions of the deceased member of the plan.

1. The maximum amount of a refund of contributions shall equal the amount of contributions by the member of the plan less any amount of pension benefit received by the member of the plan and/or the member's dependents.
2. Distribution election and distribution of a refund of contributions shall be made within ninety (90) days after eligibility. If no election is made, distribution shall be in a lump-sum payment.
3. Any refund of the member's contributions under this ordinance shall be in full satisfaction of any and all claims by any person against the general pension and retirement fund.

(c) Except as provided in subsection (4) of this section, in the event of the death of an individual retired after September 30, 2012, his or her dependents or beneficiaries shall not be entitled to any additional or further benefits hereunder unless an alternate form of benefit under subsection (3) of this section was elected by the retiree.

(3) (a) For retirements on or after October 1, 2012 the following alternative forms of benefits applies:

1. In lieu of the amount and form of retirement income payable in the event of normal or early retirement, a member, upon written request to the board of trustees and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:
    a. A retirement income of a modified monthly amount, payable to the member during the joint lifetime of the member and the

member's spouse, or if no surviving spouse, minor children until age 18, and following the death of the member, one hundred (100) percent, seventy-five (75) percent, sixty-six and two-thirds (662/3) percent, or fifty (50) percent of such monthly amount payable to the spouse for their lifetime or the minor until age 18.

b. No member may make any change in his or her retirement option after the date of cashing or depositing his or her first retirement check.

c. In the event a mandatory distribution is greater than one thousand dollars ($1,000.00), and a distributee member fails to elect to have such distribution paid directly to an eligible retirement plan specified by the distributee member in a direct rollover or to receive the distribution directly, then the board will pay the distribution in a direct rollover to an individual retirement account ("IRA") designated by the board. For purpose of the preceding sentence, a mandatory distribution is a distribution that constitutes an "eligible rollover distribution" (as defined in section 9-5-109) that is made without the member's consent.

(4) In the event any member of the plan with six (6) or more credited service years under the plan dies or otherwise separates from service of the city, such member or the deceased member's dependent shall, upon request, receive a refund of the member's contributions to the general pension and retirement fund in lieu of a pension benefit.

(a) The maximum amount of a refund of contributions shall equal the amount of contributions by the member of the plan less any amount of pension benefit received by the member of the plan and/or the member's dependents.

(b) Distribution election and distribution of a refund of contributions shall be made within ninety (90) days after eligibility. If no election is made, distribution shall be in a lump-sum payment.

(c) Any refund of the member's contributions under this ordinance shall be in full satisfaction of any and all claims by any person against the general pension and retirement fund.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 16-07, § 16, 4-26-07; Ord. No. 23-12, § 7, 9-27-12)

Sec. 9-5-123. - Misconduct charges; hearings, forfeiture.

(1) No member of the plan shall at any time be retired under this or any other section of this ordinance while any charges of misconduct are pending before the civil service board against such member, but such charge shall be heard and determined, and no application for retirement shall be made or acted upon until thirty (30) days subsequent to the final determination.

(2) A member of the plan shall forfeit all benefits provided by this ordinance to the extent provided by the State Constitution and F.S. § 112.3173.

(Ord. No. 09-07, § 1, 2-8-07)

Sec. 9-5-124. - Cost-of-living increases.

(a) A cost-of-living increase in benefits paid pursuant to this ordinance shall be given effective July 1, 1999, and shall be paid biennially thereafter. Each biennial increase shall have an effective date of July 1. All such increases shall be equal to, but no greater than, the increase in the Consumer Price Index (U) (CPI) issued by the United States Department of Labor since the date of the last cost-of-living increase which was granted pursuant to this section, and in no event shall such increase be greater than three (3) percent. In the event the United States Department of Labor ceases to issue a CPI (U) the board may utilize a CPI index that is the functional equivalent. The period to be used for calculation of any CPI increase shall be April 1 of the last year in which an increase was given to March 31 of the year in which the increase is to be given.

(b) Effective for retirement on or after July 1, 2008 and prior to October 1, 2012, the cost-of-living increase in benefits pursuant to subsection (a) shall be paid annually provided that such increase shall be no greater than one and one-half (1.5) percent. The period to be used for calculation of any CPI increase shall be from April 1 of the preceding year to March 31 of the year in which the increase is to be given.

(c) Effective for retirements on or after October 1, 2012, the cost-of-living increase in benefits pursuant to subsection (a) shall be paid annually provided that such increase shall be no greater than one (1.0) percent. The period to be used for calculation of any CPI increase shall be from

April 1 of the preceding year to March 31 of the year in which the increase is to be given.

(d) Members entering the Deferred Retirement Option Plan (DROP) after September 30, 2012 shall not be paid any cost-of-living increase granted to retirees while the member is participating in DROP. Once the member terminates his or her DROP participation, the member shall receive cost-of-living increases as provided in (c) above.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 30-07, § 3, 6-28-07; Ord. No. 23-12, § 8, 9-27-12)

Sec. 9-5-125. - Deferred retirement option plan.

The City of Pensacola, by ordinance, may permit members of the General Pension and Retirement Fund who are eligible to retire and to receive retirement benefits to remain in the active service of the city until a contractually fixed termination date and to have accumulated for the employee's account from the date the contract is made all benefits which the employee would be eligible to begin receiving on that date and to have those accumulated benefits held for the benefit of the employee until the employee separates from active service. Such ordinance may provide for forfeiture of the accumulated benefits or other penalty if the employee does not comply with the contract. However, if the employee complies in all respects with the terms of the contract, the employee shall receive all retirement benefits the employee would be entitled to under this ordinance upon the employee's actual retirement from the active service of the city.

(Ord. No. 09-07, § 1, 2-8-07)

Sec. 9-5-126. - Benefits under other statutes to remain unchanged.

Nothing in this ordinance shall operate to increase or diminish or in any way alter the amount of any pension now being paid by the City of Pensacola or any retirement benefits under the provisions of chapter 20061, Laws of Florida, 1939, and chapter 61-2655, Laws of Florida, as amended, or otherwise.

(Ord. No. 09-07, § 1, 2-8-07)

Sec. 9-5-127. - General pension benefits to be unaffected by other benefit payments.

If any employee of the City of Pensacola who is participating in the benefits provided by this ordinance is entitled to any social security benefits and/or deferred compensation benefits as a city employee, the amount of such benefits received shall not be deducted from the amount to which the employee is entitled under the provisions of this ordinance.

(Ord. No. 09-07, § 1, 2-8-07)

Sec. 9-5-128. - Maximum benefits and compensation limits.

(1) Notwithstanding any provision of the plan, the maximum benefit to be paid to any member of the General Pension and Retirement Fund shall not exceed the limitations, if any, provided in F.S. § 112.65.

(2) The benefits otherwise payable to a member or a beneficiary under the General Pension and Retirement Fund, and, where relevant, the accrued benefit of a member, shall be limited to the extent required by the applicable provisions of section 415 of the Code. To the extent applicable, the provisions of section 415 of the Code, are incorporated by reference into the General Pension and Retirement Fund. For purposes of the applicable limits of section 415 of the Code, the limitation year is set forth in section 9-5-102.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 01-11, § 8, 1-27-11)

Sec. 9-5-129. - Election of members to participate in other defined benefit pension plans.

(a) On or after October 18, 1999, if a member of this plan elects to participate in another of the city's defined benefit pension plans or participates in the Florida Retirement System, contributions to this plan required under sections 9-5-130 and 9-5-131 shall cease. If such an election is made, nonvested members of the plan shall receive a refund of their contributions. Vested members may receive a refund of contributions in lieu of a future pension benefit or they may leave their contributions in the plan with their pension commencing as otherwise provided for herein. In such case, the pension benefit shall be calculated at the time contributions cease and further benefits shall not accrue.

(b) Notwithstanding any other provision contained in this plan, at the direction of the plan administrator, the contributions of the member (without interest) shall be transferred to another trust forming a part of the pension plan maintained by the city if such recipient plan meets the requirements of Section 401(a) of the Internal Revenue Code and provided that the recipient plan permits the transfer to be made.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 16-07, § 17, 4-26-07)

Sec. 9-5-130. - Continuance of existing fund sources of revenue.

There is hereby continued in the City of Pensacola the fund heretofore established and known as the General Pension and Retirement Fund, to be maintained in the following manner:

(1) All sums of money now in the existing fund, designated "General Pension and Retirement Fund," shall remain therein.

(2) The City of Pensacola, through its proper officers, shall deduct 5.5 percent from the salary of members of the general pension plan and shall pay the same to the pension board herein created. Such payments shall be deposited in a special account by the City of Pensacola to be designated "General Pension and Retirement Fund," and no employee shall have any right to any moneys paid into the fund except as otherwise provided in this ordinance.

(3) By all gifts, bequests, and devices when donated to said fund and all other sources of income now or hereafter authorized by law for its augmentation.

(4) By all accretions to the fund by way of interest, profit, or otherwise.

(5) By mandatory payment by the City of Pensacola of a sum equal to the actuarially required funding amount shown by an actuary's annual valuation as approved by the general pension board.

(6) This provision supersedes the provisions contained in chapter 18777, Laws of Florida, 1937, as amended, chapter 24804, Laws of Florida, 1947, as amended, or any other applicable law, and no other revenue or funding source shall be utilized to maintain the fund other than as is provided for in subsections (1) through (5).

(7) Upon the payment or provision for payment of all benefits, liabilities and other obligations of the General Pension and Retirement Fund,

the remaining assets of the fund shall be transferred to and become the property of the City of Pensacola.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 24-08, § 2, 4-24-08)

Sec. 9-5-131. - Maintenance of sufficient funds to meet liabilities.

It is the duty of the pension board to at all times maintain the general pension fund at an amount sufficient to meet its current liabilities and, should there be an excess, the pension board may request the city council to authorize the abatement of the 5.5 percent employee contributions deducted under subsection (2) of section 9-5-130 proportionately to such amount as will maintain the fund as nearly as possible without increase or diminution; however, should the current income of the fund become insufficient to meet its current liabilities after the provision has been set apart for accumulations as above specified, the pension board shall so certify to the mayor and council president, and it is the mandatory duty of the city and all of the officers thereof to provide from any source of revenue available, budgeted or unbudgeted or from any fund, whether earmarked by ordinance or statute for other purposes, except that designated interest and sinking fund, a sufficient sum to meet such current liabilities without default. It is the mandatory duty of the city and its officers to fully fund from any source of revenue available any unfunded actuarially accrued liabilities arising under the General Pension and Retirement Fund as a result of pension benefits earned by city employees while actively employed by the city.

Notwithstanding any provision in this chapter to the contrary, if authorized by the City of Pensacola, there shall be transferred from the fund to the Florida Retirement System sufficient moneys to purchase prior service credit for members of the plan who elect to become participants in the Florida Retirement System and who elect to apply part of their prior service credit in the plan to service in the Florida Retirement System.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 16-10, § 146, 9-9-10)

Sec. 9-5-132. - Retiree health insurance premium assistance.

The General Pension and Retirement Fund shall provide premium assistance for each covered general retiree participating in the city group health insurance plan in the amount of fifty-six dollars ($56.00) per month. The General Pension and Retirement Fund shall make payments to the City

of Pensacola no less often than monthly to provide such premium assistance. Upon recommendation of the board of trustees, the city council may authorize a change in the monthly premium assistance paid to the City of Pensacola. No later than December 31, 1999, all amounts held in the City of Pensacola's General Pension Medical Account allocated for such premium assistance payments shall be transferred to the General Pension and Retirement Fund.

(Ord. No. 09-07, § 1, 2-8-07)

Sec. 9-5-133. - Minimum distribution requirement.

Required minimum distributions. Notwithstanding anything in the plan to the contrary, all distributions under the plan shall comply with section 401(a)(9) of the Code and the Treasury regulations, as prescribed by the Commissioner in Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin, to the extent that said provisions apply to governmental plans under section 414(d) of the Code, and shall be made in accordance with the following requirements:

(1) Time and manner of distribution.

(a) *Required beginning date.* The member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date.

(b) *Death of member before distributions begin.* If the member dies before distributions begin, the member's entire interest will be distributed, or begin to be distributed, no later than as follows:

(i) If the member's surviving spouse is the member's sole designated beneficiary, then, except as provided in the plan, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained age 70½, if later.

(ii) If the member's surviving spouse is not the member's sole designated beneficiary, then, except as provided in the plan, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died.

(iii) If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(iv) If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this section (1)(b), other than section (1)(b)(i), will apply as if the surviving spouse were the member.

(v) For purposes of this section 9-5-133(1) and (4), distributions are considered to begin on the member's required beginning date (or, if section 9-5-133(1)(b)(iv) applies, the date distributions are required to begin to the surviving spouse under section 9-5-133(1)(b)(i)). If annuity payments irrevocably commence to the member before the member's required beginning date (or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under section 9-5-133(1)(b)(i)), the date distributions are considered to begin is the date distributions actually commence.

(c) *Form of distribution.* Unless the member'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 subsections (2), (3), and (4) of this section 9-5-133. If the member'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.

(2) Determination of amount to be distributed each year.

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

(i) The annuity distributions will be paid in periodic payments made at intervals not longer than one (1) year;

(ii) The distribution period will be over a life (or lives) or over a period certain not longer than the period described in section 9-5-133(3) or (4);

(iii) 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; and

(iv) Payments will either be nonincreasing or increase only as follows:

(1) 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;

(2) To the extent of the reduction in the amount of the member'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 described in section 9-5-133(3) dies or is no longer the member's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p) of the Code;

(3) To provide cash refunds of member contributions upon the member's death; or

(4) 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 member's required beginning date (or, if the member dies before distributions begin, the date distributions are required to begin under subsection 9-5-133(1)(b)(i) or (1)(b)(ii)) 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 member'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 member's required beginning date.

(c) *Additional accruals after first distribution calendar year.* Any additional benefits accruing to the member 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.

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

(a) *Joint life annuities where the beneficiary is not the member's spouse.* If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member'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 member using the table set forth in Q&A-2 of section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a nonspouse 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 member'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 member's lifetime may not exceed the applicable distribution period for the member 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 member reaches age 70, the applicable distribution period for the member 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 member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member'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 member's applicable distribution period, as determined under this section 9-5-133(3)(b), or the joint life and last survivor expectancy of the member and the member'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 member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

(4) Requirements for minimum distributions where member dies before date distributions begin.

(a) *Member survived by designated beneficiary.* Except as provided in this plan, if the member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the member's entire interest will be distributed, beginning no later than the time described in section 9-5-133(1)(b)(i) or (1)(b)(ii), 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 member'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.

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

(c) *Death of surviving spouse before distributions to surviving spouse begin.* If the member dies before the date distribution of his or her interest begins, the member's surviving spouse is the member's sole designated beneficiary, and the surviving spouse dies before

distributions to the surviving spouse begin, this section 9-5-133(4) will apply as if the surviving spouse were the member, except that the time by which distributions must begin will be determined without regard to section 9-5-133(1)(b)(i).

(5) Definitions. For the purposes of section 9-5-133, the following definitions shall apply:

(a) *Designated beneficiary.* The individual who is designated as the beneficiary in accordance with the plan and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(b) *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section 9-5-133(1)(b).

(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) *Required beginning date.* The term "required beginning date" means April 1 of the calendar year following the later of: the calendar year in which the member attains age 70½; or the calendar year in which the member retires from employment with the city.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 01-11, § 9, 1-27-11)

Sec. 9-5-134. - Investing funds; custodian of securities, contracts with professional money managers.

(1) The pension board shall have the power and authority to invest and reinvest the assets of the General Pension and Retirement Fund in:

(a) Time or savings accounts of a national bank, a state bank insured by the Federal Deposit Insurance Corporation, or a savings and loan

association insured by the Federal Savings and Loan Insurance Corporation.

(b) Obligations of the United States Government or obligations guaranteed as to principal and interest by the United States Government.

(c) Obligations of municipal authority issued pursuant to the laws of this state; however, that:

(i) Except for obligations issued by the City of Pensacola to fund or prepay it obligations to make deposits to the General Pension and Retirement Fund. For each of the five (5) years next preceding the date of investment, the income of such authority available for fixed charges shall have been not less than one and one-half (1½) times its average annual fixed-charges requirement over the life of its obligations, and

(ii) Marketable securities carrying an investment grade rating by either Fitch, Standard and Poors, issued by the City of Pensacola to fund or prepay its obligations to make deposits to the General Pension and Retirement Fund need not comply with clause (c)(i) of this subsection (1), or any other restriction upon the character, tenor or quality of investment otherwise applicable to investment provided herein.

(d) Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia; however, the board shall not invest more than five (5) percent of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five (5) percent of the outstanding capital stock of the company, nor shall the aggregate market value of the fund's investments in common stocks exceed seventy-five (75) percent of the assets of the fund, nor shall the aggregate market value of the fund's investments in all corporate securities exceed eighty (80) percent of the assets of the fund.

(e) Commingled bank and insurance company temporary investment, stock, and bond funds without regard to the quality restrictions for individual securities contained in subsection (d).

(f) Commingled bank and insurance company real estate funds up to the maximum of fifteen (15) percent of assets at market value. Direct ownership and operation of real estate properties are prohibited.

(g) Guaranteed insurance contracts.

(h) Foreign securities, provided that the aggregate market value of such investments does not exceed twenty-five (25) percent of the assets of the fund.

(i) Master limited partnerships not to exceed ten (10) percent of the assets of the fund at market value.

(2) The pension board is hereby authorized to contract with one (1) or more professional money managers to act as agents of all or any portion of the assets of the fund. Such professional money manager or managers shall have full investment powers with respect to said assets subject to the provisions of subsection (1) which limit the types of investments which may be made, and subject to such further restrictions as may be imposed by the board.

(3) In order to accomplish the purpose outlined in subsection (2), the pension board may direct the plan administrator of the city to act as the board's agent in handling the administrative details concerning contracting with any professional money manager or managers; however, the plan administrator or his or her designee shall report the status of the pension funds to the pension board on a quarterly basis or with greater frequency as requested by the board, and the pension board shall review same and give directions to the plan administrator with respect to the continued contract status of the professional money manager or managers.

(Ord. No. 09-07, § 1, 2-8-07; Ord. No. 24-08, § 3, 4-24-08; Ord. No. 28-10, § 1, 12-16-10; Ord. No. 08-14, § 1, 2-27-14)

Sec. 9-5-135. - Reserved.

Editor's note— Ord. No. 23-12, § 9, adopted September 27, 2012, repealed § 9-5-135, which pertained to additional benefits and derived from Ord. No. 09-07, § 1, 2-8-07.

Sec. 9-5-136. - Severability.

If any section, clause, or portion of this ordinance is for any reason held or declared to be unconstitutional, invalid, inoperative, or void, such unconstitutionality or invalidity shall not affect the remaining provisions of this division, and it shall be construed to have been the legislative intent to pass this ordinance without such unconstitutional, invalid, or inoperative portion or portions, and the remaining provisions of the act shall be deemed valid as if such excluded portion or portions had not been included therein.

(Ord. No. 09-07, § 1, 2-8-07)

Sec. 9-5-137. - In-service distributions.

Notwithstanding any other provision in this chapter, a participant, upon attaining eligibility to receive a benefit but no earlier than age 55 or any time thereafter, may elect to receive an in-service distribution, provided however, any employee electing to receive such a distribution shall terminate employment within five (5) years from the effective date of the in-service distribution. Employees participating in the city's deferred retirement option plan (DROP) under Chapter 9-9 who elect an in-service distribution shall cease participation in DROP and start receiving benefit payments and continue employment until their original DROP termination date (for a maximum of five (5) years total).

(Ord. No. 16-07, § 18, 4-26-07; Ord. No. 03-08, § 3, 1-17-08)

Sec. 9-5-138. - Continued service upon conclusion of DROP.

Notwithstanding any other provision in the Code of the City of Pensacola, Florida, to the contrary, employees holding unclassified positions pursuant to authorized employment contracts with the mayor may continue to render such service to the city upon the conclusion of their participation in the deferred retirement option plan (DROP) of the General Pension and Retirement Fund, subject to the approval of the mayor as reflected in a written contract providing for same. Such contracts may be amended, modified or terminated from time to time at the discretion of the mayor.

(Ord. No. 30-07, § 4, 6-28-07; Ord. No. 16-10, § 147, 9-9-10)

Editor's note— Section 7 of Ord. No. 30-07 provided that this ordinance shall take effect immediately upon the effective date of the repeal of Chapter 99-474, Laws of Florida, as amended.

Sec. 9-5-139. - Termination.

Notwithstanding any other provision of this ordinance, upon termination of the General Pension and Retirement Fund for any reason, or upon the complete discontinuance of contributions, the rights of all members to benefits accrued to the date of such termination or discontinuance, including any amounts credited to a member's account, if applicable, are nonforfeitable, to the extent then funded. Upon termination of the General Pension and Retirement Fund, the city council, by ordinance, shall provide for the allocation and disposition of the asset thereof in a manner complying with applicable law.

(Ord. No. 01-11, § 10, 1-27-11)

Sec. 9-5-140. - Forfeitures.

(a) A member of the General Pension and Retirement Fund shall forfeit all benefits provided by the General Pension and Retirement Fund to the extent provided by the Florida Constitution and F.S. § 112.3173.

(b) Forfeitures arising from any cause whatsoever under this fund shall not be applied to increase the benefits any member would otherwise receive under the fund at any time prior to the termination of the fund or the complete discontinuance of contributions hereunder. Forfeitures shall be applied to reduce the contributions under the fund in the current or subsequent years.

(Ord. No. 01-11, § 11, 1-27-11)

Sec. 9-5-141. - Applicability of Ordinance 23-12 to read as follows.

Ordinance 23-12 and the changes to the plan made by such ordinance shall be effective on the later of enactment or October 1, 2012. Further, notwithstanding anything herein to the contrary, any member of the plan as in effect on September 30, 2012 who has vested benefits under the plan as of that date shall not receive a benefit under the plan less than the member's accrued benefit as of September 30, 2012 regardless of the date such member (or his or her beneficiary) begins receiving a pension or benefits under the plan.

(Ord. No. 23-12, § 10, 9-27-12)

CHAPTER 9-6. SOCIAL SECURITY REPLACEMENT BENEFIT PROGRAM[10]

Footnotes:

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Cross reference— Administration, Title II; department of human resources, Ch. 9-2; employee benefits and compensation, Ch. 9-3; pensions and deferred compensation, Ch. 9-5; general pension replacement benefit plan, § 9-5-81 et seq.

ARTICLE I. - SOCIAL SECURITY REPLACEMENT PROGRAM[11]

Footnotes:

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Editor's note—Ord. No. 10-01, § 1, adopted March 8, 2001, amended the title of Article I and §§ 9-6-1—9-6-6 in their entirety. Formerly, this article was titled elected officers and regular employees and said former sections pertained to similar subject matter as set out herein. See the Code Comparative Table.

DIVISION 1. - GENERALLY

Sec. 9-6-1. - Established.

The city established this social security replacement program which became effective January 1, 1982. This program is intended to provide replacement benefits in the areas of retirement, disability and survivor coverage for those employees of the city who were covered under social security as city employees on December 31, 1981, and all future employees of the city who would have been covered under social security as city employees, according to federal law in effect on December 31, 1981, had the city not withdrawn from social security. The social security replacement program has three (3) plans:

Commented [RS36]: Replaced by Ordinance 08-16, Sec. 6, 3/17/16.

(1) *Disability and survivor plan.* A disability and survivor plan to provide disability and survivor coverage as described in section 9-6-5. The city established the replacement benefit program disability and survivor plan which became effective January 1, 1982.

(2) *Deferred compensation plan*. A deferred compensation plan set forth in Section 9-6-6 of this Article which is paired with the City of Pensacola 401(a) Match set forth in Section 9-6-7, to allow participants an opportunity to save for retirement. This deferred compensation plan is intended to qualify as an "eligible deferred compensation plan" under Section 457 of the Internal Revenue Code of 1986, as amended.

(3) *A defined contribution pension plan.* A profit sharing plan set forth in Section 9-6-7 of this Article which is paired with the City of Pensacola 457 Deferred Compensation Plan set forth in section 9-6-6 to provide for matching contributions for those participants who defer in the City of Pensacola 457 Deferred Compensation Plan. This profit sharing plan is intended to meet the applicable requirements of Section 401(a) of the Internal Revenue Code of 1986, as amended.

~~The city hereby establishes this social security replacement program which shall become effective January 1, 1982. This program is intended to provide replacement benefits in the areas of retirement, disability and survivor coverage for those employees of the city who were covered under social security as city employees on December 31, 1981, and all future employees of the city who would have been covered under social security as city employees, according to federal law in effect on December 31, 1981, had the city not withdrawn from social security. The social security replacement program has three (3) plans:~~

~~(1) *Disability and survivor plan.* A disability and survivor plan to provide disability and survivor coverage as described in section 9-6-5. The city hereby establishes the replacement benefit program disability and survivor plan which shall become effective January 1, 1982.~~

~~(2) *Deferred compensation plan.* A deferred compensation plan to provide retirement benefits as described in subsection 9-6-6 below. The city, as employer, by execution of the adoption agreement, which is on file in the clerk's office, hereby establishes this replacement benefit program deferred compensation plan which shall become effective January 1, 1982. The plan is intended to qualify as an~~

~~"eligible state deferred compensation plan" under Section 457 of the Internal Revenue Code 1986, as amended.~~

~~(3) A defined contribution pension plan set forth in Division 4 of this article which is intended to qualify under Section 401(a) of the Internal Revenue Code.~~

~~(Code 1968, § 49-1(B); Ord. No. 7-98, § 2, 3-12-98; Ord. No. 10-01, § 1, 3-8-01)~~

Sec. 9-6-2. - Definitions.

Except as otherwise provided with respect to the deferred compensation plan described in Section 9-6-6 below or the defined contribution pension plan set forth in Division 4 of this article, whenever used in this Article, the following terms have the meanings set forth below (where there is a conflict between these definitions and the definitions set forth in the provisions concerning the deferred compensation plan or the defined contribution pension plan, then the provisions of the particular plan shall prevail over these general definitions).

Compensation. Any remuneration payable to an employee for employment or contractual services rendered to the employer which is reportable as taxable income for purposes of the Internal Revenue Code of 1986 ("IRC"), as amended, except, however, that amounts deferred by an employee (which are not reportable as taxable income) under this or any other deferred compensation plan of the employer (other than a plan qualified under IRC Section 401) shall be included in the annual compensation for the purpose of determining disability and survivor benefits. Provided, however, compensation shall not include any of the following: educational incentive pay, pistol qualifications pay, clothing allowance, education benefit, special duty pay, certification pay, field training pay, shift differential pay, non-substantiated business expenses, non-cash benefits such as employer-provided vehicles or any other city provided benefit.

Employee. Any person who, on or after December 31, 1981, holds an appointment to a position within the administrative service of the city as defined in the civil service act of the city and any person who holds an appointment to a full-time administrative or clerical position with either the civil service board or the community redevelopment agency of the city, but excluding those persons in a class or category designated below:

(1) Part-time employees who do not work more than thirty (30) hours per week;

(2) Seasonal employees who do not work more than nine (9) months per year;

(3) Employees covered under a collective bargaining agreement unless expressly provided under the terms of the collective bargaining agreement;

(4) Independent contractors;

(5) Employees who are members of the firemen's relief and pension fund of the city;

(6) Officers elected by the people and persons appointed to serve on any board or commission of the city.

(7) Employees who are members of the Florida Retirement System hired on or after July 1, 2007.

Employer. The City of Pensacola, a Florida municipal corporation.

Social security. The system of old age and survivors insurance as authorized by the Federal Social Security Act and amendments thereto.

Except when otherwise indicated by the context, any masculine terminology herein shall also include the feminine and neuter and vice-versa, and the definition of any terms herein in the singular may also include the plural.

(Code 1968, § 49-1(C); Ord. No. 7-98, § 2, 3-12-98; Ord. No. 10-01, § 1, 3-8-01; Ord. No. 16-07, § 19, 4-26-07; Ord. No. 16-07, § 19, 4-26-07)

Sec. 9-6-3. - Eligibility.

All current employees of the city who were paying Federal Insurance Contribution Act (FICA) taxes to the social security administration as city employees as of December 31, 1981, and all employees hired subsequent to December 31, 1981, within the meaning of this article who would have paid FICA taxes to the social security administration as city employees, according to federal law in effect on December 31, 1981, had the city not withdrawn from social security, shall be eligible for participation in the social security replacement program.

(Code 1968, § 49-1(D); Ord. No. 10-01, § 1, 3-8-01)

Sec. 9-6-4. - Funding.

(a) The replacement social security program shall be funded with contributions of both the city and the employee in the following manner:

(1) The employee shall contribute a mandatory amount equal to four and seven-tenths (4.7) percent of his compensation.

(2) The city shall contribute a mandatory amount equal to four and seven-tenths (4.7) percent of compensation for each employee.

(3) The employee may contribute an additional amount on a voluntary basis up to the maximum amount allowed by law in accordance with subsection 9-6-6(c)(4).

(4) The city shall contribute an additional amount equal to the amount of the voluntary contribution of each employee up to but not exceeding two (2) percent of compensation.

(b) The contributions to fund the social security replacement program shall be distributed in the following manner:

(1) Each employee's contribution, both the four and seven-tenths (4.7) percent of compensation mandatory contribution and the up to two (2) percent of compensation additional voluntary contribution, shall be deposited in the replacement benefit program deferred compensation account for each employee in accordance with section 9-6-6

(2) The first one (1.0) percent of the city's four and seven-tenths (4.7) percent of compensation mandatory contribution shall be used to fund first the social security replacement program disability and survivor plan, provided for in Division 2 of this chapter, on behalf of all employees; the remaining city contributions after funding the social security replacement program disability and survivor plan shall be deposited in the social security replacement program defined contribution pension plan account of employees provided for in Division 4 of this article.

(3) The city's contribution of up to an additional two (2) percent of compensation to match employee's voluntary contribution of up to an additional two (2) percent of compensation shall be deposited in the social security replacement program defined contribution pension plan account of employees provided for in Division 4 of this chapter.

(4) City contributions to an employee's social security replacement program defined benefit pension plan account shall cease during any calendar year at the time employee contributions to that account cease.

(c) On July 1, 2007, contributions to this fund by the city and the employee shall cease for any employee who is a member of the Florida Retirement System.

(d) Effective January 1, 2013, at midnight contributions to this fund by members of the Police Officers' Retirement Fund shall be optional and there is no minimum contribution requirement.

(Code 1968, § 49-1(E); Ord. No. 10-01, § 1, 3-8-01; Ord. No. 16-07, § 20, 4-26-07; Ord. No. 06-13, § 1, 2-28-13)

DIVISION 2. - DISABILITY AND SURVIVOR PLAN

Sec. 9-6-5. - Disability and survivor plan.

(a) *Design.* The purpose of the social security replacement program disability and survivor plan is to provide protection for employees and their families in the event of a disabling impairment which prevents the employee from performing any gainful employment, or in the event of the death of the employee. This protection is designed to be similar to, but does not attempt to duplicate, coverage provided for disability and death under social security. The social security replacement program disability and survivor plan shall be administered for determination of disability through an insurance carrier or other independent third-party agent. The mayor of the city is hereby authorized to enter into one (1) or more contracts with an insurance company and/or other third-party agent as necessary to provide at minimum the coverage outlined in subsections (b) and (c) and to amend, modify and/or terminate said contract, and to adopt subsequent contract as necessary to provide at minimum the coverage outlined in subsections (b) and (c). The city, at its option, may choose to self-insure all or a portion of the disability and survivor plan, provided that all administration of the disability and survivor plan for determination of disability shall be provided through an insurance carrier or other independent third-party agent.

(b) *Outline of disability coverage.* The social security replacement program disability and survivor plan shall provide for disability protection according to the following general plan outline. The provisions of the social security replacement program disability and survivor plan shall be governed in the specific by the contractual agreement entered into as authorized in subsection (a):

(1) *Amount of benefit.* The amount of monthly benefit shall be equal to sixty (60) percent of current monthly compensation less any benefit from social security, the general pension fund, the Police Officer's Retirement Fund, or other government pension benefit.

(2) *Minimum benefit.* A minimum benefit of fifty dollars ($50.00) per month shall be paid regardless of the amount of offsets.

(3) *Duration of benefits.* The disability benefit shall be payable until recovery or age sixty-five (65), whichever occurs first.

(4) *Contributions to defined contribution pension plan account.* The city shall continue to contribute each year an amount equal to four (4) percent of the disabled employee's current annual compensation as of the date of disability to his social security replacement program defined contribution pension plan account provided for in Division 4 of this article until the employee reaches age sixty-five (65), or until such time as distribution of the account commences, whichever event occurs first, and such contributions shall not cease because of a distribution for an unforeseeable emergency made pursuant to subsection 9-6-6(e)(6).

(5) *Definition of disability.* Disability shall be defined as the inability to perform any gainful employment and is further restricted by the specific definition of disability to be found in the contractual agreement governing the disability and survivor plan, and shall be administered by a third-party.

(c) *Outline of survivor coverage.* The replacement benefit program disability and survivor plan shall provide for survivor coverage in the event of the death of an employee according to the following general plan outline. The provisions of the replacement benefit program disability and survivor plan shall be governed in the specific by the contractual agreement entered into as authorized in subsection (a).

(1) *Amount of benefit.* The amount of monthly benefit shall be equal to twenty (20) percent of current annual compensation payable to the

first survivor as designated by the employee; plus ten (10) percent of compensation to the next two (2) survivors as designated by the employee, for a maximum benefit of forty (40) percent of compensation. Eligible survivors are the employee's spouse and dependent, unmarried children.

(2) *Benefit for employee without survivor.* Employees who die without a survivor shall be entitled to a one-time benefit equal to current annual compensation payable to the deceased employee's designated beneficiary.

(3) *Duration of benefits.* The survivor benefits shall continue until the spouse reaches age sixty-five (65) or remarries, whichever occurs first, and the children's benefits shall continue until the child reaches age eighteen (18), or to age twenty-three (23) if continuously a full-time student.

(Code 1968, § 49-2; Ord. No. 5-90, § 1, 1-4-90; Ord. No. 7-98, § 1, 3-12-98; Ord. No. 10-01, § 1, 3-8-01; Ord. No. 16-10, § 148, 9-9-10)

DIVISION 3. - DEFERRED COMPENSATION PLAN

Sec. 9-6-6. - Deferred compensation plan.

Effective January 1, 1982, the city established the City of Pensacola 457 Deferred Compensation Plan (the "plan"), which has been amended from time to time, and which is intended to allow certain employees the ability to designate a portion of their compensation to be deferred and invested at the discretion of and in a manner approved by the city until termination of employment, financial emergency or death of the participant. Participation with a mandatory minimum deferral is required for designated employees. The city provides for mandatory employer matching contributions as prescribed in the City of Pensacola 401(a) Matching Plan for employees who defer into this plan. Participation in this plan shall not be construed to establish or create an employment contract between the employee and the city. The terms of the plan shall be contained within the plan document which is available for public inspection at the city clerk's office.

~~(a) *Design.* The purpose of the social security replacement program deferred compensation plan is to allow employees to designate a portion of their~~

Commented [RS37]: Replaced by Ordinance 08-16, Sec. 7, 3/17/16.

compensation to be deferred each pay period and invested at the discretion of and in a manner approved by the employer until termination of employment, financial hardship or death of the employee. As a retirement benefit program to replace social security retirement benefits, participation with a mandatory minimum deferral is required for designated employees, together with mandatory employer contributions as prescribed in the plan. Any compensation deferred by employees may be invested by the employer, but there is no requirement to do so. Participation in this plan shall not be construed to establish or create an employment contract between the employee and the employer.

(b) *Definitions.* Whenever used in this section, the following terms shall have the meanings as set forth below unless otherwise expressly provided:

(1) *Accounting date.* The date on which an investment fund is valued and earnings and/or losses are allocated to participants' deferred compensation accounts. There shall be an accounting date at least once a month on the last business day of the month and, if practicable, more frequent accounting dates to reflect, as closely as possible, the earnings and/or losses with respect to a deferred compensation account from the time compensation is deferred and invested in various investment funds until it is eventually distributed according to the plan.

(2) *Administrator.* The person appointed by the employer to administer this plan.

(3) *Adoption agreement.* The form used by the employer to establish or amend this plan. The terms of and information included in the adoption agreement are incorporated by reference as part of the plan.

(4) *Beneficiary.* The person, persons or legal entity to receive any undistributed deferred compensation which becomes payable in the event of the participant's death, as designated by the participant or provided for in accordance with subsection (e)(7). The term beneficiary may also include an alternate payee under a qualified domestic relations order.

(4.1) *Code.* The Internal Revenue Code of 1986, as amended.

(5) *Committee.* The committee established in accordance with subsection (d)(2).

(6) *Compensation.* The gross annual salary including basic salary, longevity pay, overtime, bonuses and such unused annual and sick leave for which the participant may be entitled to payment (but excluding any and all incentive payments, court attendance payments, expenses allowance payments or any other payments made to the participant) which would be payable to a participant by the employer for a taxable year if no agreement were in effect to defer compensation under this plan or under Section 403(b) of the Internal Revenue Code of 1986, as amended), but not including: educational incentive pay, pistol qualifications pay, clothing allowance, education benefit, special duty pay, certification pay, field training pay, shift differential pay, non-substantiated business expenses, non-cash benefits such as employer-provided vehicles or any other city provided benefit. All other payments processed through city payroll shall be utilized in the determination of compensation.

(7) *Deferred compensation.* That portion of the participant's compensation which the participant and the employer mutually agree to defer under this plan.

(8) *Employee.* Any person who, on or after December 31, 1981, holds an appointment to a position within the administrative service of the city as defined in the civil service act of the city and any person who holds an appointment to a full-time administrative and clerical position of the civil service board and the community redevelopment agency of the city, but excluding those persons in a class or category designated below:

a. Part-time employees who do not work more than thirty (30) hours per week;

b. Seasonal employees who do not work more than nine (9) months per year;

c. Employees covered under a collective bargaining agreement unless expressly provided under the terms of the collective bargaining agreement;

d. Independent contractors;

e. Employees who are members of the firemen's relief and pension fund of the city.

f. Employees who are members of the Florida Retirement System.

(9) *Employer.* The City of Pensacola, a Florida municipal corporation, which has adopted this plan by completing the adoption agreement.

(10) *Includible compensation.* The includible compensation of a participant means, with respect to a taxable year, the participant's compensation, as defined in Section 415(c)(3) of the Internal Revenue Code paid for services performed for the Employer. The amount of Includible Compensation is determined without regard to community property laws.

(11) *Normal retirement age.* Age seventy (70), unless the participant has elected an alternate normal retirement age by written instrument delivered to the administrator prior to termination of service. A participant's normal retirement age determines the latest time when benefits may commence under this plan (unless the participant continues employment after normal retirement age) and the period during which a participant may utilize the three-year catch-up provision of subsection (c)(4)b. Once a participant has to any extent utilized the catch-up provision of subsection (c)(4) b., his normal retirement age may not be changed. A participant's alternate normal retirement age may not be earlier than the earliest date that the participant will become eligible to retire and receive unreduced retirement benefits under the employee's basic retirement plan covering that participant and may not be later than the date the participant attains age seventy (70). If a participant continues employment after attaining age seventy (70), not having previously elected an alternative normal retirement age, the participant's alternative normal retirement age shall not be later than the mandatory retirement age, if any, established by the employer, or the age at which the participant actually separates from service if the employer has no mandatory retirement age. If the participant will not become eligible to receive benefits under a basic retirement plan maintained by the employer, the participant's alternate normal retirement age may not be earlier than attainment of age fifty-five (55) and may not be later than attainment of age seventy (70).

(12) *Participant.* Any employee who has enrolled in this plan as provided in this section and has not had a complete distribution of his or her deferred compensation account.

(13) *Pay period.* A regular accounting period established by the employer for measuring and paying compensation earned by employees. A pay period can be monthly, semimonthly or biweekly.

(14) *Plan.* The city deferred compensation plan as set forth herein and the adoption agreement and as it may be amended from time to time.

(15) *Prior plan.* Any deferred compensation plan which this plan amends and restates, as designated in the adoption agreement.

(16) *Retirement.* The first date upon which both of the following shall have occurred with respect to a participant: termination of service and attainment of normal retirement age.

(17) *Termination of service.* The permanent severance of the participant's employment relationship with the employer by means of retirement, discharge, resignation (provided seniority or continuous service is interrupted), permanent layoff (provided the employee's reemployment rights from layoff have lapsed), expiration or nonrenewal of appointment or term of office, nonreelection or such other form of permanent severance as may be provided by appropriate law, contract, rules or regulations. For purposes of this definition, neither a break in service with the employer for a period of less than thirty (30) days nor transfers among various branches or divisions shall be considered a termination of service.

Except when otherwise indicated by the context, any masculine terminology herein shall also include the feminine and neuter and vice-versa, and the definition of any terms herein in the singular may also include the plural.

(c) *Participation in the plan.*

(1) *Eligibility.* All employees who are not members of a category excluded in the adoption agreement and who are receiving compensation on or after the date the plan becomes effective shall be eligible to become participants in accordance with subsection (c)(2), including employees who are members of the committee. However, no member of the committee shall exercise any discretion with regard to distribution of his or her account as a result of a financial hardship. All eligible employees shall become participants in the plan and shall become enrolled in accordance with subsection (c)(2).

(2) *Enrollment.* Any employee eligible to participate in accordance with subsection (c)(1), may become a participant by agreeing in writing, on a form to be provided by the administrator, to a deferment of his or her compensation in accordance with subsections (c)(3) and (4). The deferment will commence with the first pay period beginning on or after the first day of the month following the date the enrollment form is properly completed by the employee and accepted by the administrator, but in no case prior to January 1, 1982.

(3) *Minimum deferment.* Each employee who becomes a participant must agree to defer a minimum of ten dollars ($10.00) per pay period or twenty dollars ($20.00) per month or four and seven-tenths (4.7) percent of compensation per pay period, whichever is greater, unless a higher minimum is designated in the adoption agreement. The minimum deferment provisions described herein shall not apply to the extent that the minimum deferments would result in a deferment exceeding the maximum deferment described in (d) below. Effective January 1, 2013, at midnight members of the Police Officer's Retirement Fund may elect not to participate in the plan or may elect an alternate contribution amount.

(4) *Maximum deferment.*

a. *Normal limitation.* Except as provided in subparagraphs b. and c. of this paragraph (4), the annual deferral amount for a taxable year (the plan ceiling) may not exceed the lesser of (a) the applicable dollar amount specified in Section 457(e)(15) of the code (Eleven thousand dollars ($11,000.00) for 2002; twelve thousand dollars ($12,000.00) for 2003; thirteen thousand dollars ($13,000.00) for 2004; fourteen thousand dollars ($14,000.00) for 2005; and fifteen thousand dollars ($15,000.00) for 2006 and thereafter; after 2006, the $15,000 amount shall be adjusted for cost of living adjustments); or (b) one hundred (100) percent of the participant's Includible Compensation for the taxable year.

For purposes of determining the plan ceiling, the annual deferral amount does not include any rollover amounts received by the plan but employer contributions shall be included in deferrals in determining the annual deferral amount.

b. *Age fifty (50) catch-up.* A participant who has attained the age of 50 years by the end of the plan year (hereinafter the "age

requirement") may make additional elective deferrals to the plan for each plan year after the participant satisfies the age requirement so long as such deferrals do not exceed the catch-up limit under Section 414(v)(2) of the code for the taxable year. (The maximum amount of age 50 catch-up contributions for a taxable year under Section 414(v) is as follows: One thousand dollars ($1,000.00) for 2002; two thousand dollars ($2,000.00) for 2003; three thousand dollars ($3,000.00) for 2004; four thousand dollars ($4,000.00) for 2005; and five thousand dollars ($5,000.00) for 2006 and thereafter; after 2006, the five thousand dollar ($5,000.00) amount is adjusted for cost of living adjustments). Notwithstanding the foregoing, the age fifty (50) catch-up described in this paragraph does not apply for any taxable year for which a higher limitation applies under the special Section 457 catch-up under subparagraph b. of this paragraph (4).

c. *Special section 457 catch-up.* Except as provided in subparagraph b. of this paragraph (4) for one (1) or more of the participant's last three (3) taxable years ending before the participant attains normal retirement age, the plan ceiling is an amount equal to the lesser of (a) twice the dollar amount in effect under subparagraph a. of this paragraph (4), or (b) the under-utilized limitation described in this subparagraph c. The under-utilized limitation amount is the sum of (i) the plan ceiling established under subparagraph a. of this section (4) for the taxable year; plus (ii) the plan ceiling established under subparagraph a. of this paragraph (4) (or under section 457(b)(2) of the code for years before the plan year beginning after December 31, 2001) for any prior taxable year or years less the amount of annual deferrals under the plan for such prior taxable year or years (disregarding any annual deferrals under the plan permitted under the age fifty (50) catch-up under subparagraph b. of this paragraph (4)). The under-utilized amount shall be determined under regulations implementing Section 457(b)(3) of the code.

d. *Excess deferrals.* If a participant's deferrals to this plan for any tax year exceed the limitations of subparagraphs a. through c. of this paragraph (4), the amount of such excess deferrals with applicable net income shall be distributed to the deferring participant as soon as administratively practicable after the plan administrator determines that the amount is an excess deferral.

For purposes of determining whether there is an excess deferral under this subparagraph paragraph, all section 457 plans of the employer are treated as a single plan.

(5) *Reserved.*

(6) *Modifications to amount deferred.* The employer shall adjust the participant's total annual compensation, on a pay period basis, by the deferred compensation amount indicated on the participant's election to defer. That amount, subject to the limits of subsections (c)(3) and (4), may be increased or decreased only by proper application to the administrator. The change shall take effect as soon as administratively practical but not earlier than the first pay period of the month following receipt and approval of the application by the administrator. Modifications are subject to the limitations specified in the adoption agreement.

(7) *Revocation of deferral.* Revocation of minimum deferral shall not be permitted for participants. All participants shall maintain a minimum deferment in accordance with subsection (c)(3) as a condition of employment.

(8) *Duration of election to defer compensation.* Once an election to have compensation deferred has been made by the participant, the election shall continue in effect until the participant's termination of service, unless the participant modifies the amount in accordance with subsection (c)(6).

(9) *Plan-to-plan transfers.* This plan may accept transfers from another eligible governmental plan or make a transfer to another governmental plan. Amounts so transferred shall be credited to the participant's deferred compensation account. Provided, however, transfers from or to another eligible governmental plan are permitted only if the following conditions are met:

(i) The transferor plan provides for transfers;

(ii) The recipient plan provides for the receipt of transfers.

(iii) The participant or beneficiary whose amounts are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and

(iv) The participant or beneficiary whose amounts deferred are being transferred has had a severance from employment with the transferring employer and is performing services for the employer; provided, however, the severance from employment requirement is not required to be satisfied if (a) all of the assets held by the eligible governmental plan are transferred; (b) the transfer is to another eligible governmental plan maintained by an eligible employer that is a state entity within the same state as this plan; and (c) the participants whose deferred amounts are being transferred are not eligible for additional annual deferrals in the receiving plan unless they perform services for the employer.

In addition, if the requirements described below are satisfied, the amounts deferred under this plan by participant or beneficiary may be transferred to a qualified plan (under section 401(a) of the code) maintained by a governmental entity. The requirements for a transfer to a qualified plan are satisfied if either (a) the transfer is for the purchase of permissive past service credit (as defined in section 415(n)(3)(A) of the code) under the receiving defined benefit governmental plan, or (b) the purpose of the transfer is a repayment to which section 415 of the code does not apply as a result of section 415(k)(3).

(d) *Administration.*

(1) *Responsibilities of the administrator.*

a. Subject to the general supervision of the committee as provided in subsection (d)(2), the administrator has the full power and authority to administer the plan and promulgate, adopt, amend or revoke internal management procedures which are consistent with, and necessary to implement and maintain, this plan.

b. The administrator, on behalf of the employer, shall enter into a written agreement with each participant, which shall set forth the obligations contained in this plan, the amounts of compensation to be deferred, and other information as the administrator deems necessary to administer the plan.

c. The administrator may contract with individuals or corporations to perform any duties hereunder to the extent allowed by the laws of the state and any local ordinances or laws.

(2) *Responsibilities of the committee.*

a. A committee shall be formed which shall be responsible for determining whether any participant has suffered an unforeseeable emergency and is entitled to a distribution under subsection (e)(6) of this article. The committee also has the responsibility for general supervision of the plan which shall include, but not be limited to, establishment of the plan, approving or disapproving any proposed changes in the plan, obtaining Internal Revenue Service approval for the plan or any amendments thereto (if deemed necessary by the committee) and reviewing any and all proposed investment offerings, each of which must be determined acceptable by the committee prior to being utilized for the investment of deferred compensation. The committee may delegate to the person performing accounting and administrative services for the plan the responsibility to determine whether an unforeseeable emergency exists for purposes of the distribution described in subsection (f) of Section 9-5-70.

b. Members of this committee shall be appointed by the employer. Members of this committee, if they are employees, shall be entitled to defer compensation; however, no member of the committee shall make any determination with respect to any interest that he may have under the plan.

(e) *Participant's accounts, investments and distributions.*

(1) *Deferred compensation accounts, valuation and investment request.*

a. Deferred compensation accounts. The employer shall establish a deferred compensation account for each participant which shall be the basis for any distributions payable to the participants under subsection (e)(5). Each participant's deferred compensation account shall be credited with the amount of any compensation deferred and shall be further credited or debited, as applicable, with:

1. Any increase or decrease resulting from investments made by the employer pursuant to subsection (e)(3);

2. Any applicable expenses incurred by the employer in maintaining and administering this plan;

3. Debited for the amount of any distribution;

4. Credited initially with the value on the effective date of this plan of any bookkeeping account maintained under the prior plan;

5. Debited in an amount equivalent to the present value of any annuity option selected in accordance with subsection (e)(5)c., and the value of a participant's deferred compensation account shall thereafter be determined in accordance with the terms of the annuity options.

b. Allocation of investment earnings or losses. To the extent that investment funds are made available by the employer, deferred compensation accounts shall be credited or debited as if they were invested according to investment requests in effect on behalf of the participants. Any earnings or losses shall be based on the actual investment experience of any applicable investment fund. Earnings and losses will be measured from the accounting date coincident with or immediately preceding the date on which any deferred compensation is invested in any investment fund to the accounting date coincident with or immediately preceding the date any deferred compensation is withdrawn from any investment fund. The allocation to each deferred compensation account shall reflect the proportion a participant's deferred compensation account bears to all other deferred compensation account which have requested a particular investment fund.

c. Accounting dates and investment fund valuation. Any investment fund under the plan is to be valued as of each accounting date. Any investment fund is to be valued at fair market value as of each accounting date on a reasonable and consistent basis. Any withdrawals or distributions made under this plan shall be made in cash. The amount paid upon such withdrawal or distribution shall be based upon the participant's account as of the accounting date.

d. Administrative costs. Any administrative expenses not assumed by the investment fund may be either paid by the employer or borne by the participants, as elected in the adoption agreement. The method of charging any expenses and the amount of the expense shall be determined by the administrator subject to the approval of the committee.

e. Method of making investment requests. A participant shall, at the time of enrollment, make an investment request on a form

provided for that purpose by the administrator. Once made, an investment request shall continue for any deferments unless later changed by the participant. A participant may, subject to any nondiscriminatory limitations imposed by the administrator, change his investment request with respect to amounts previously deferred. A change in investment request shall be effective as soon as practical following receipt of the request by the administrator. A participant may, subject to any limitations in the adoption agreement, change his investment request with respect to future amounts of deferred compensation. A change in investment request shall be effective with respect to compensation to be deferred as soon as practicable following receipt of the request by the administrator.

f. Participant statements. Each participant shall be provided at least quarterly with an accounting of his or her deferred compensation account including, but not limited to, the amount deferred during the preceding year and any amounts credited or debited up to the most recent accounting date. The accounting shall be made not later than forty-five (45) days after the end of each quarter.

(2) *Assets held in trust.* All assets of the plan, including deferred amounts, property, and rights purchased with deferred amounts and all income attributable to such deferred amounts and all income attributable to such deferred amounts, property or rights shall be held in trust for the exclusive benefit of participants and their beneficiaries. The trustee named by the committee (in the absence of the naming of a trustee by the committee, the administrator of the plan shall be the trustee of such trust) shall hold the assets in a separate trust in accordance with the provisions of this plan. The trustee shall assure that no part of the assets of the trust or the income therefrom is used for, or diverted to, purposes other than the exclusive benefit of participants and their beneficiaries. Additional terms of such trust may be described in a separate document which shall be incorporated herein by reference. The trust described herein shall satisfy the requirements of Section 457 of the code and the implementing regulations.

(3) *Investment funds.* The employer may establish funds for investment of deferred compensation. The committee is specifically authorized to invest any fund on behalf of the employer. The committee also has

the authority to eliminate any or all of the investment funds created by the plan, provided that in that event, the administrator shall notify all plan participants of the change. Any participant shall then have the opportunity to change his or her investment request regardless of any other provision of this plan.

(4) *Distribution events.*

a. *Normal distributions.* Except as otherwise provided herein with respect to (i) distributions on account of an unforeseeable emergency, (ii) distributions of small accounts, or (iii) distributions related to domestic relations orders, distributions to a participant or beneficiary shall not be made before the participant has a severance from employment with the employer. A participant has a severance of employment with the employer if the participant dies, retires, or otherwise has a severance of employment from the employer. When a participant has a severance from employment, the participant's entitlement under the plan will be distributed to the participant at the participant's election. Provided, however, the distribution of a participant's benefit under this plan shall be made in accordance with the following requirements and shall otherwise comply with Section 401(a)(9) of the code and the regulations thereunder (including Regulation Section 1.401(a)(9)-2), the provisions of which are incorporated herein by reference:

• A participant's benefit shall be distributed or must begin to be distributed not later than April 1 of the calendar year following the later of (i) the calendar year in which the participant attains age seventy and one-half (70½); or (ii) the calendar year in which the participant retires.

b. *Death prior to commencement of benefits.* Should a participant die before he has begun to receive the retirement benefits provided by subparagraph a. above, a death benefit equal to the value of the participant's deferred compensation account shall be paid to the beneficiary. The death benefit shall be paid in a lump sum unless the beneficiary elects a different payment option within thirty (30) days of the participant's death. A death benefit pursuant to this subparagraph shall be payable no earlier than thirty (30) days after receipt of satisfactory proof of death by the administrator and, if the participant's death occurs before his attainment of normal retirement age, the payment shall

commence no later than sixty (60) days after the close of the plan year in which the participant would have attained normal retirement age. Payments to a beneficiary pursuant to this subparagraph must satisfy the requirements of the last sentence of subsection (5) of this section.

c. *Other distribution events.*

(a) All or a portion of a participant's deferred compensation account may be distributed in the event of an unforeseeable emergency, as provided in paragraph (6) of this subsection.

(b) In service distribution not to exceed the dollar limit under Section 411(a)(11)(A) of the Internal Revenue Code: If the total amount payable to the participant under the plan does not exceed the dollar limit under Section 411(a)(11)(A) of the Internal Revenue Code (five thousand dollars ($5,000.00) for plan years beginning after August 5, 1997) as adjusted from time to time, the participant may elect to receive such amount before separation of service (or the plan may distribute such amount without the participant's consent) if (a) no amount has been deferred under the plan with respect to such participant during the two-year period ending on the date of distribution, and (b) there has been no prior distribution under the plan to such participant to which this section applied.

(c) All or any portion of a participant's deferred compensation account may be distributed in the year in which the participant attains the age of seventy and one-half (70 ½) years or any year thereafter; provided, however, a participant electing such distribution will be allowed only to continue employment for up to five (5) years from the effective date of the distribution.

(5) *Election of method of distribution.* Upon severance of employment, the participant may elect a distribution in any of the following forms:

a. A lump sum cash payment of all or a portion of the balance.

b. Installments over a period of years not longer than the life expectancy of the participant or, if married, the joint life expectancy of the participant and his spouse, determined at the time the distributions are to commence according to any applicable Internal Revenue Service tables. The installments may be made in monthly or other regular increments. Any portion of

the deferred compensation account which has not been distributed shall continue to be credited and/or debited according to the provisions of subsection (e)(1) of this section.

c. In a series of payments on an annuity basis as if an annuity contract was purchased based on the life of the participant or beneficiary (if applicable). The annuity payments shall be based on one of the following methods:

1. The life of the participant;

2. The life of the participant or a period certain, whichever is greater;

3. The joint and last survivor life of the participant and another named person.

d. Once payments have commenced on an annuity basis, any future payments to a beneficiary will depend on the terms of the annuity payments agreed to by the participant and the employer. If a participant dies prior to a period certain, any remaining distribution will be paid to the beneficiary determined under paragraph (7) of this subsection. If annuity payments have commenced on a joint and last survivor basis, any payments due after the death of the participant will be due only to the other person on which the annuity payments have been based and not to any other beneficiary.

e. If, in fact, an annuity contract is purchased, the owner and named beneficiary shall be the employer. Any rights of participants or beneficiaries are derived solely from this plan.

f. Notwithstanding anything to the contrary, if a deferred compensation account of either a participant or a beneficiary is equal to or less than one thousand dollars ($1,000.00) on the date distributions are to commence, the account shall be distributed in a lump sum immediately or held until a delayed distribution date not exceeding one (1) year from the date the participant was first entitled to begin distributions.

g. If a method of distribution is not elected by the participant the deferred compensation account may be distributed in a lump sum.

h. No payment option may be selected by a participant hereunder unless the present value of the payments to the participant,

determined as of the date benefits commence, exceeds fifty (50) percent of the value of the participant's deferred compensation account as of the date benefits commence. Present value determinations under this section shall be made by the administrator in accordance with the expected return multiples set forth in Section 1.72-9 of the Federal Income Tax Regulations (or any successor provision to such regulations).

i. If the participant dies before the entire amount deferred is paid to the participant, the entire amount deferred, or the remaining part of the deferrals (if payment thereof has commenced) must be paid to a beneficiary over:

1. The life of the beneficiary (or any short period), if the beneficiary is the participant's surviving spouse; or

2. A period not in excess of fifteen (15) years, if the beneficiary is not the participant's surviving spouse.

j. Notwithstanding any provision of the plan that would otherwise limit a "distributee's" election under this subsection (e), a "distributee" may elect at the time and in the manner prescribed by the administrator to have any portion of any eligible rollover distribution (that is at least five hundred dollars ($500.00)) paid directly to an "eligible retirement plan" specified by the "distributee" in a "direct rollover." For purposes of this subparagraph, the following definitions apply:

1. 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 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 any portion of any other distribution that is not includible in gross income.

2. 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 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.

3. A "distributee" includes an employee or a 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 an alternate payee under a 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.

4. A "direct rollover" is a payment by the plan to the eligible retirement plan specified by the distributee.

If the participant dies before the entire amount is paid to the participant, the entire amount deferred or the remaining part of the deferrals (if payment thereof has commenced) must be distributed to a beneficiary in a manner that complies with section 401(a)(9) of the code and the regulations implementing section 401(a)(9).

(6) *Unforeseeable emergency.*

a. A distribution of all or a portion of a participant's deferred compensation account shall be permitted in the event the participant experiences an unforeseeable emergency. An unforeseeable emergency is a severe financial hardship to the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse, or the participant's or beneficiary's dependent (as defined in section 152(a) of the code); loss of the participant's or beneficiary's property due to casualty, or similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary. Distributions may not be made to the extent that such hardship is or may be relieved:

1. Through reimbursement or compensation by insurance or otherwise;

2. By liquidation of the participant's assets to the extent the liquidation of such assets would not itself cause severe financial hardship; or

3. By cessation of deferrals under the plan.

b. For purposes of this section, a beneficiary whose interest has vested in accordance with subparagraph (7)g. of this subsection shall have all the rights of a participant to request a distribution or a change in method of distribution in the event of an unforeseeable emergency.

c. A participant desiring a distribution by reason of serious financial hardship must apply to the committee and demonstrate that the circumstances being experienced qualifies as an unforeseeable emergency. The committee shall have the authority to require medical or other evidence as it may need to determine the necessity for participant's withdrawal request.

d. If an application for unforeseeable emergency distribution is approved, the distribution shall be limited to an amount sufficient only to meet the emergency and shall in no event exceed the amount of his deferred compensation account as of the accounting date next preceding or coincident with such withdrawal.

e. The allowed distribution shall be payable in a method determined by the committee and commence as soon as possible but not later than thirty (30) days after notice to the participant and the administrator of approval by the committee.

The committee may delegate to the person performing accounting and administrative services for the plan the responsibility to determine whether an unforeseeable emergency exists and the extent of the distribution necessary to make the emergency.

(7) *Designation of beneficiary.* A participant may designate a beneficiary or beneficiaries who will receive any balance in the participant's deferred compensation account in the event of his or her death in accordance with the following:

a. A designation of a beneficiary shall be effective when received by the administrator and made on a form approved by the

administrator for that purpose which has been signed by the participant.

b. No beneficiary shall have any rights under this plan until the death of the participant who has designated him or her. A participant may, at any time, change his or her beneficiary in accordance with subsection (e)(7)a.

c. Participants may designate primary and contingent beneficiaries. A contingent beneficiary and/or beneficiaries will become effective only after the death of any and all primary beneficiaries.

d. If more than one (1) beneficiary is named in either category, benefits will be paid according to the following rules:

1. Beneficiaries can be designated to share equally or to receive specific percentages;

2. If a beneficiary dies before the participant, only the surviving beneficiaries will be eligible to receive any benefits in the event of death of the participant. If more than two (2) beneficiaries are originally named to receive different percentages of the benefits, surviving beneficiaries will share in the same proportion to each other as indicated in the original designation.

e. A person, trust, estate or other legal entity may be designated as a beneficiary.

f. If a beneficiary has not been designated, or a designation is ineffective due to the death of any and all beneficiaries prior to the death of the participant, or the designation is ineffective for any reason, the estate of the participant shall be the beneficiary.

g. Upon the death of the participant, any beneficiary entitled to the value of the deferred compensation account under the provisions of this section shall become a vested beneficiary and have all the rights of the participant with the exception of making any deferrals, including the right to designate a beneficiary.

h. In the event of a conflict between the provisions of this section and the terms of an annuity distribution which has commenced under subsection (e)(5)c., the latter shall prevail.

(8) *Leave of absence.* Any participant who is granted a leave of absence by the employer may continue to participate in this plan so long as the

leave of absence is approved by the employer. If an approved leave of absence is terminated by the employer or employee without the resumption of the employment relationship, the participant shall be treated as having a termination of service under this plan, as of the date of termination of the leave.

(f) *Miscellaneous.*

(1) *Nonassignability.*

a. The contract entered into between the employer and a participant through this plan and the benefits, proceeds or payments thereunder cannot be sold, assigned, pledged, commuted, transferred or otherwise conveyed by an employee, participant or beneficiary. Any attempt to assign or transfer shall not be recognized and shall impose no liability upon the employer.

b. Except as otherwise required by law, any deferred compensation monies withheld pursuant to this plan shall be not subject to attachment, garnishment or execution, or to transfer by operation of law in the event of bankruptcy or insolvency of the participant or otherwise.

(2) *Payments to minors and incompetents.* If the administrator shall receive evidence satisfactory to it that a participant or beneficiary entitled to receive any benefit under this plan is, at the time when the benefit becomes payable, a minor or, as adjudicated by a court of law, is mentally incompetent to receive the benefit and to give a valid release therefor and that another person or an institution is then maintaining or has custody of such participant or beneficiary, and that no guardian of the person or other representative of the estate of the participant or beneficiary shall have been duly appointed, the administrator may authorize payment of the benefit to the other person or institution, including a custodian under any State Gifts to Minors Act (who shall be an adult, a guardian of the minor, or a trust company), or to a court of law for distribution pursuant to that court's order, and the release of the other person or institution shall be a valid and complete discharge for the payment of the benefit.

(3) *Heading and subheadings.* The headings and subheadings in this plan are inserted for the convenience of reference only and are to be ignored in any construction of the provisions hereof.

(4) *Severability.* If any provision of this plan shall be for any reason invalid or unenforceable, the remaining provisions shall nevertheless continue in effect and shall not be invalidated thereby.

(5) *Plan year.* The plan year shall be the fiscal year beginning October first and ending September thirtieth, unless a different plan year is designated into the adoption agreement.

(6) *Days and dates.* Whenever a time limit is expressed in terms of number of days, they shall be consecutive calendar days, including weekends and holidays, provided however, that if the last day of a period of days would occur on a weekend or a holiday recognized by the employer, the last day of the period shall be the next business day following.

(7) *Conflicts.* In the event any form or other document used in administering the plan, including but not limited to, enrollment forms and designation of beneficiary forms, conflicts with the terms of the plan, the terms of the plan shall prevail. The adoption agreement, however, may be used to modify the terms of the plan and any provisions of the adoption agreement shall prevail over the plan.

(g) *Amendment or termination of plan.*

(1) *Amendment of plan.* The administrator shall have the authority to propose amendments to this plan from time to time by submitting them in writing to the committee for approval. No amendment or modification shall adversely affect the rights of participants or their beneficiaries to the receipt of compensation deferred prior to the amendment or modification unless required by state or federal law to maintain the tax status of the plan and any compensation previously deferred.

(2) *Termination of plan.* The city council shall have the authority to terminate this plan, or to substitute a new plan. Upon termination of the plan, each participant shall be deemed to have withdrawn from the plan as of the date of the termination, and the participant's full compensation will be restored to a nondeferred basis. The plan will otherwise continue in effect until all deferred compensation accounts have been distributed in accordance with the plan.

(3) *Merger with prior plan.* If designated in the adoption agreement, this plan constitutes an amendment and restatement of the plan or plans. All participants and any compensation deferred under the prior plan

are, from the effective date of this plan, governed by the terms of this plan subject to the following provisions:

a. All deferrals elected under the prior plan shall continue without further action so long as they do not exceed the limits in subsection (c)(4).

b. Any election of the method of distribution of benefits made through the prior plan shall be void, and a participant or beneficiary may elect the form of distribution in accordance with subsection (e) of this section.

If benefits have commenced to be distributed in accordance with an election made pursuant to the prior plan, the election shall be considered void with respect to any undistributed amount of the participant's deferred compensation account for twenty-five (25) days after the effective date of this plan. If the participant or beneficiary elects a method of distribution in accordance with those provided by subsection (e) before the expiration of the twenty-five (25) days, the method shall become the method of distribution. Otherwise, the method elected under the prior plan shall be reinstated under this plan.

(h) *Applicable law.* This plan shall be construed, administered and governed in all respects under and by the laws of the state and the Internal Revenue Code of 1986, as amended.

(i) *Qualified domestic relations order/distribution to alternate payee.* All rights and benefits, including elections, provided to a participant in this plan shall be subject to the rights afforded to any "alternate payee" under a "qualified domestic relations order." Furthermore, a distribution from this plan to an "alternate payee" shall be permitted if such distribution is authorized by a "qualified domestic relations order" even if the affected participant is not eligible to receive a distribution from the plan because the participant has not severed employment with the employer or experienced an unforeseeable emergency. For purposes of this section (i), "alternate payee" and "qualified domestic relations order" shall have the meaning set forth in section 414(p) of the code. The employer shall develop a qualified domestic relations order procedure to be used as guidance when a court issues a domestic relations order affecting a participant's interest in the plan.

(j) *Loans to participants.*

(1) The trustee/administrator may, in the trustee/administrator's discretion, make loans to participants and beneficiaries under the following circumstances:

(i) Loans shall be made available to all participants and beneficiaries on a uniform and nondiscriminatory basis;

(ii) Loans shall be at a reasonable rate of interest;

(iii) Loans shall be adequately secured; and

(iv) Loans shall provide for periodic repayment over a reasonable period of time.

(2) Loans made pursuant to this subsection (when added to the outstanding balance of all other loans made by the plan to the participant) may, in accordance with a uniform and nondiscriminatory policy established by the administrator, be limited to the lesser of:

(i) Fifty thousand dollars ($50,000.00) reduced by the excess (if any) of the highest outstanding balance of loans from the plan to the participant during the one year period ending on the day before the day on which the loan is made, over the outstanding balance of loans from the plan to the participant on the date on which such loan is made; or

(ii) One-half of the present value of the participant's vested interest under the plan.

For the purpose of this limit, all plans of employer shall be considered one plan.

(3) Loans shall provide for level amortization with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as a "principal residence" of the participant shall provide for periodic repayment over a reasonable period of time that may exceed five (5) years. For this purpose, a "principal residence" has the same meaning as a "principal residence" under Section 121 of the code. Any loans granted or renewed shall be made pursuant to a participant loan program. Such loan program shall be established in writing and must include, but need not be limited to, the following:

(i) The identity of the person or positions authorized to administer the participant loan program;

(ii) A procedure for applying for a loan;

(iii) The basis on which loans will be approved or denied;

(iv) Limitations, if any, on the types and amounts of loans offered;

(v) The procedure under the program for determining a reasonable rate of interest;

(vi) The types of collateral which may secure a participant loan; and

(vii) The events constituting a default and the steps that will be taken to preserve plan assets.

Such participant loan program shall be contained in a separate written document which, when properly adopted, is hereby incorporated by reference and made a part of the plan. Furthermore, such participant loan program may be modified or amended in writing from time to time without the necessity of amending this subsection.

(4) Notwithstanding anything in this plan to the contrary, if a participant or beneficiary defaults on a loan made pursuant to this section, then the loan default will be a distributable event to the extent permitted by the code and regulations.

(5) The administrator may delegate to the investment manager, provided for in the plan, authority to make loans to participants in accordance with this subsection and the plan.

(Code 1968, § 49-3; Ord. No. 78-83, §§ 1—5, 6-9-83; Ord. No. 7-91, § 5, 2-28-91; Ord. No. 7-98, §§ 2—7, 3-12-98; Ord. No. 10-01, § 1, 3-8-01; Ord. No. 35-02, § 10, 10-24-02; Ord. No. 16-07, §§ 21, 22, 4-26-07; Ord. No. 06-13, § 2, 2-28-13)

DIVISION 4. - DEFINED CONTRIBUTION PENSION PLAN

Sec. 9-6-7. - Defined contribution pension plan; established.

(1) *Establishment.* Effective April 1, 2001, the city established the City of Pensacola 401 (a) Matching Plan and the terms of plan which shall be

contained within the plan document which is available for public inspection at the city clerk's office.

(2) *Purpose.* The Plan is intended to provide mandatory employer matching contributions on behalf of participants who defer in the City of Pensacola 457 Deferred Compensation Plan as prescribed by the city. Such amounts are invested at the discretion of and in a manner approved by the city until termination of employment, financial emergency or death of the participant. Participation in this plan shall not be construed to establish or create an employment contract between the employee and the employer.

(3) *Transfers.* Notwithstanding any other provision contained in the plan, at the discretion of the plan administrator, participants in the Police Officers Retirement Fund or participant in the General Pension and Retirement Fund who becomes a member of the Florida Retirement System may transfer their funds to this plan as provided in the plan document.

~~(a) Effective April 1, 2001, the city hereby establishes a defined contribution pension plan for current employees who satisfy the eligibility requirements described in section 9-6-3. The plan shall be known as the Social Security Replacement Defined Contribution Pension Plan and shall be governed by the plan document on file in the office of the city clerk. A copy of the plan and trust document for the plan hereby established is attached to this ordinance as Exhibit A and is hereby incorporated herein by reference.~~

~~(b) Notwithstanding any other provision contained in this plan, at the direction of the plan administrator, the employee contributions of a participant in the general pension and retirement fund who becomes a member of the Florida Retirement System may be transferred to this plan as provided herein.~~

~~(Ord. No. 10-01, § 1, 3-8-01; Ord. No. 34-02, § 2, 10-24-02; Ord. No. 16-07, § 23, 4-26-07)~~

~~**Editor's note** — Exhibit A is not included herein but is available for public inspection in the office of the city clerk.~~

Secs. 9-6-8—9-6-10. - Reserved.

ARTICLE II. - ELECTED OFFICERS AND PART-TIME, SEASONAL AND OTHER TEMPORARY EMPLOYEES

Commented [RS38]: Replaced by Ord. No. 08-16, Sec. 8, 3/17/16.

Sec. 9-6-11. - Establishment and purpose.

(a) *Establishment.* Effective July 1, 1991, the city established the City of Pensacola Deferred Compensation Plan for Elected Officers and Part-Time, Seasonal and other Temporary Employees (the "plan") which has been amended from time to time. The Plan is intended to qualify as an "eligible state deferred compensation plan" under Section 457 of the Internal Revenue Code of 1986, as amended.

(b) *Purpose.* The plan is intended to provide a retirement system for the mayor, members of the city council and certain employees of the city who are not covered by a retirement system maintained by the city. The terms of the plan shall be contained within the plan document which is available for public inspection at the city clerk's office.

Commented [RS39]: Replaced by Ord. No. 08-16, Sec. 9, 3/17/16.

~~(a) *Establishment.* There is hereby established this deferred compensation plan which shall become effective on July 1, 1991. The plan is intended to qualify as an "eligible state deferred compensation plan" under Section 457 of the Internal Revenue Code of 1986, as amended.~~

~~(b) *Purpose.* The purpose of this plan is to provide a retirement system for the mayor, members of the council and certain employees of the city who are not covered by a retirement system maintained by the city. Any compensation deferred by participants shall be invested by the city. Participation in this plan shall not be construed to establish or create an employment contract between the participant and the city.~~

~~(Ord. No. 30-91, § 2, 6-27-91)~~

Secs. 9-6-12 – 9-6-19. - RESERVED

~~Sec. 9-6-12. - Definitions.~~

~~Whenever used in the plan, the following terms shall have the meanings as set forth below unless otherwise expressly provided:~~

~~*Accounting date* means the date on which an investment fund is valued and earnings and/or losses are allocated to participants' deferred compensation accounts. There shall be an accounting date at least once a month on the last business day of the month and, if practical, more frequent~~

accounting dates to reflect, as closely as possible, the earnings and/or losses with respect to a deferred compensation account from the time compensation is deferred and invested in various investment funds until it is eventually distributed according to the plan.

Administrator means the director of finance of the city.

Beneficiary means the person, persons, or legal entity to receive any undistributed deferred compensation which becomes payable in the event of the participant's death, as designated by the participant or provided for in accordance with subsection 9-6-15(d). The term beneficiary may also include an alternate payee under a qualified domestic relations order.

Committee means the committee established in accordance with subsection 9-6-14(b) of this article.

Compensation means the gross annual salary including basic salary, overtime, and bonuses for which the participant may be entitled to payment (but excluding any and all incentive payments, court attendance payments, expense allowance payments not reported by the city as participants' income on Internal Revenue Service Form W-2, or any other payments made to the participant) which would be payable to a participant by the city for a taxable year if no agreement were in effect to defer compensation under this plan or under Section 403(b) of the Internal Revenue Code.

Deferred compensation means that portion of the participant's compensation which is deferred pursuant to this plan.

Includible compensation. The includible compensation of a participant means, with respect to a taxable year, the participant's compensation, as defined in Section 415(c)(3) of the Internal Revenue Code paid for services performed for the Employer. The amount of Includible Compensation is determined without regard to community property laws.

Internal Revenue Code means the Internal Revenue Code of 1986, as amended.

Investment fund means those money market securities, mutual funds, or other conservative and suitable investments selected by the administrator.

Normal retirement age. Age seventy (70) years, unless the participant has elected an alternate normal retirement age by written instrument delivered to the administrator prior to termination of service. A participant's normal retirement age determines (a) the latest time when benefits may commence under this plan (unless the participant continues employment

after normal retirement age), and (b) the period during which a participant may utilize the three-year catch-up provision of subsection 9-6-13(b)(3). Once a participant has to any extent utilized the catch-up provisions of subsection 9-6-13(b)(3), his normal retirement age may not be changed. A participant's alternate normal retirement age may not be earlier than the earliest date that the participant will become eligible to retire and receive unreduced retirement benefits under the employee's basic retirement plan covering that participant and may not be later than the date the participant attains age seventy (70) years. If a participant continues employment after attaining age seventy (70) years, not having previously elected an alternative normal retirement age, the participant's alternative normal retirement age shall not be later than the mandatory retirement age, if any, established by the employer, or the age at which the participant actually separates from service if the employer has no mandatory retirement age. If the participant will not become eligible to receive benefits under a basic retirement plan maintained by the employer, the participant's alternate normal retirement age may not be earlier than attainment of age fifty-five (55) years and may not be later than attainment of age seventy (70) years.

Participant means a member of the council, and any employee of the city who is employed temporarily, seasonally, or part-time for less than thirty (30) hours per week and who is not a participant in any other defined benefit or defined contribution retirement plan or deferred compensation plan of the city. But such term does not include a person reemployed subsequent to retirement under another retirement plan of the city who is either correctly receiving retirement benefits from such plan or has reached the normal retirement age for such plan, provided that the level of benefits under such plan conforms to the requirements of regulations adopted pursuant to Section 3121(b)(7)(F) of the Omnibus Budget Reconciliation Act of 1990. Provided, however, for any individual who may not participate in this plan without exceeding the limitations set forth in Section 457(c) of the Internal Revenue Code, the administrator may provide an alternative retirement plan in lieu of participation in this plan.

Pay period means a regular accounting period established by the director of finance for measuring and paying compensation earned by participant. A pay period can be monthly, semimonthly, biweekly, weekly, daily or hourly.

Plan means this division of the City Code as it may be amended, from time to time.

Termination of service means the permanent severance of the participant's employment relationship with the city by means of: retirement; discharge; resignation (provided seniority or continuous service is interrupted); permanent layoff (provided the participant's reemployment rights from layoff have lapsed); expiration or nonrenewal of appointment or term of office; nonreelection; or, such other form of permanent severance as may be provided by appropriate law, contract, rules or regulations.

(Ord. No. 30-91, § 2, 6-27-91; Ord. No. 35-02, § 11, 10-24-02; Ord. No. 16-10, § 149, 9-9-10)

Sec. 9-6-13. - Deferment plan.

(a) *Mandatory (nonelective) deferment.* There shall be deferred from each participant's periodic compensation payments a sum equal to seven and one-half (7.5) percent of the participant's compensation for such period. Such nonelective deferral shall commence immediately upon the participant becoming an employee of the city. Such deferrals shall be a condition of participant's employment with the city, and participant's agreement shall be evidenced by the participant's acceptance of employment with the city.

(b) *Elective deferment and limitations.*

(1) *Elective deferment.* A participant may elect, on a form to be provided by the administrator, to make an additional deferment of his or her compensation subject to the limitation of this subsection. The deferment will commence with the first pay period beginning on or after the first day of the month following the date the form is properly completed by the participant and accepted by the administrator.

(2) *Normal limitation.* Except as provided in paragraphs (3) and (4) of this subsection, the annual deferral amount for a taxable year (the plan ceiling) may not exceed the lesser of (a) the applicable dollar amount specified in Section 457(e)(15) of the code (eleven thousand dollars ($11,000.00) for 2002; twelve thousand dollars ($12,000.00) for 2003; thirteen thousand dollars ($13,000.00) for 2004; fourteen thousand dollars ($14,000.00) for 2005; and fifteen thousand dollars ($15,000.00) for 2006 and thereafter; after 2006, the fifteen thousand dollar ($15,000.00) amount shall be adjusted for cost-of-living adjustments); or (b) one hundred (100) percent of the participant's Includible Compensation for the taxable year.

For purposes of determining the plan ceiling, the annual deferral amount does not include any rollover amounts received by the plan, but employer contributions shall be included in deferrals in determining the annual deferral amount.

(3) *Age 50 catch-up.* A participant who has attained the age of fifty (50) years by the end of the plan year (hereinafter the "age requirement") may make additional elective deferrals to the plan for each plan year after the participant satisfies the age requirement so long as such deferrals do not exceed the catch-up limit under Section 414(v)(2) of the code for the taxable year. (The maximum amount of age fifty (50) catch-up contributions for a taxable year under Section 414(v) is as follows: One thousand dollars ($1,000.00) for 2002; two thousand dollars ($2,000.00) for 2003; three thousand dollars ($3,000.00) for 2004; four thousand dollars ($4,000.00) for 2005; and five thousand dollars ($5,000.00) for 2006 and thereafter; after 2006, the five thousand dollar ($5,000.00) amount is adjusted for cost of living adjustments). Notwithstanding the foregoing, the age fifty (50) catch-up described in this paragraph does not apply for any taxable year for which a higher limitation applies under the special Section 457 catch-up under paragraph (4) of this subsection (b).

(4) *Special section 457 catch-up.* Except as provided in paragraph (3) of this subsection (b) for one (1) or more of the participant's last three (3) taxable years ending before the participant attains normal retirement age, the plan ceiling is an amount equal to the lesser of (a) twice the dollar amount in effect under paragraph (2) of this subsection (b), or (b) the under-utilized limitation described in this paragraph (4). The under-utilized limitation amount is the sum of (i) the plan ceiling established under paragraph (2) of this section (b) for the taxable year; plus (ii) the plan ceiling established under subparagraph (2) of this section (b) (or under section 457(b)(2) of the code for years before the plan year beginning after December 31, 2001) for any prior taxable year or years less the amount of annual deferrals under the plan for such prior taxable year or years (disregarding any annual deferrals under the plan permitted under the age 50 catch-up under paragraph (3) of this subsection (b)). The under-utilized amount shall be determined under regulations implementing Section 457(b)(3) of the code.

(5) *Excess deferrals.* If a participant's deferrals to this plan for any tax year exceed the limitations of paragraphs (2) through (4) of this subsection (b) the amount of such excess deferrals with applicable net income shall be distributed to the deferring participant as soon as administratively practicable after the plan administrator determines that the amount is an excess deferral. For purposes of determining whether there is an excess deferral under this paragraph, all section 457 plans of the employer are treated as a single plan.

(Ord. No. 30-91, § 2, 6-27-91; Ord. No. 8-98, § 1, 3-12-98; Ord. No. 35-02, § 12, 10-24-02)

Sec. 9-6-14. - Administration.

(a) *Responsibilities of the administrator.* The administrator has the full power and authority to administer the plan and promulgate, adopt, amend or revoke internal management procedures which are consistent with, and necessary to implement and maintain, this plan.

The administrator may contract with individuals or corporations to perform any duties hereunder to the extent allowed by the laws of the state and any local ordinances or laws.

(b) *Responsibilities of the committee.* A committee shall be formed which shall be responsible for determining whether any participant has suffered an unforeseeable emergency and is entitled to a distribution under subsection 9-6-15(e). The committee also has the responsibility for general supervision of the plan which shall include, but not be limited to: establishment of the plan; approving or disapproving any proposed changes in the plan; obtaining Internal Revenue Service approval for the plan or any amendments thereto (if deemed necessary by the committee); and reviewing any and all proposed investment offerings, each of which must be determined acceptable by the committee prior to being utilized for the investment of deferred compensation.

Members of this committee shall be recommended by the mayor and approved by the council. Members of this committee, if they are participants, shall be entitled to defer compensation; however, no member of the committee shall make any determination with respect to any interest that he may have under the plan. The committee may delegate to the person performing accounting and administrative services for the plan the

responsibility to determine whether an unforeseeable emergency exists for purposes of the distribution described in subsection 9-6-15(f).

(Ord. No. 30-91, § 2, 6-27-91; Ord. No. 35-02, § 13, 10-24-02; Ord. No. 16-10, § 150, 9-9-10)

Sec. 9-6-15. - Participant's accounts, investments and distributions.

(a) *Deferred compensation accounts.* The city shall establish a "deferred compensation account" for each participant which shall be the basis for any distributions payable to the participants under subsection (c) of this section. Each participant's deferred compensation account shall be credited with the amount of any compensation deferred and shall be further credited or debited, as applicable, with (i) any increase or decrease resulting from investments made by the city, (ii) any applicable expenses incurred by the city in maintaining and administering this plan, and (iii) debited for the amount of any distribution.

(1) *Crediting of accounts.* A participant's deferred compensation account, shall reflect the amount and value of the investments or other property obtained by the city through the investment of the participant's deferred compensation. It is anticipated that the city's investments with respect to a participant will conform to the investment preference specified by the participant pursuant to subsection (a)(4) of this section, but nothing in this article shall be construed to require the employer to make any particular investment of a participant's deferred compensation.

(2) *Accounting dates and investment fund valuation.* Any investment fund under the plan is to be valued as of each accounting date. Any investment fund is to be valued at fair market value as of each accounting date on a reasonable and consistent basis. Any withdrawals or distribution made under this plan shall be made by cash, check or wire transfer. The amount paid upon such withdrawal or distribution shall be based upon the participant's account as of the accounting date.

(3) *Administrative costs.* Any administrative expenses not assumed by the investment fund(s) may be either paid by the city or borne by the participants as determined by the administrator, subject to the approval of the committee.

(4) *Method of making investment requests.* A participant shall, at the time of enrollment, make an investment request on a form provided for that purpose by the administrator. Once made, an investment request shall continue for any deferments unless later changed by the participant. A participant may, subject to any nondiscriminatory limitations imposed by the administrator, change his investment request with respect to amounts previously deferred. A change in investment request shall be effective as soon as practical following receipt of the request by the administrator. A participant may, subject to any limitations in the adoption agreement, change his investment request with respect to future amounts of deferred compensation. A change in investment request shall be effective with respect to compensation to be deferred as soon as practicable following receipt of the request by the administrator.

(5) *Participant statements.* Each participant shall be provided at least quarterly with an accounting of his deferred compensation account including, but not limited to, the amount deferred during the plan year and any amounts credited or debited up to the most recent accounting date. Such accounting shall be made not later than forty-five (45) days after the end of the plan year.

(b) *Assets held in trust.* All assets of the plan, including deferred amounts, property, and rights purchased with deferred amounts and all income attributable to such deferred amounts and all income attributable to such deferred amounts, property or rights shall be held in trust for the exclusive benefit of participants and their beneficiaries. The trustee named by the committee (in the absence of the naming of a trustee by the committee, the administrator of the plan shall be the trustee of such trust) shall hold the assets in a separate trust in accordance with the provisions of this plan. The trustee shall assure that no part of the assets of the trust or the income therefrom is used for, or diverted to, purposes other than the exclusive benefit of participants and their beneficiaries. Additional terms of such trust may be described in a separate document which shall be incorporated herein by reference. The trust described herein shall satisfy the requirements of Section 457 of the code and the implementing regulations.

(c) *Distribution events.*

(1) *Normal distributions.* Except as otherwise provided herein with respect to (i) distributions on account of an unforeseeable emergency,

(ii) distributions of small accounts, or (iii) distributions related to domestic relations orders, distributions to a participant or beneficiary shall not be made before the participant has a severance from employment with the employer. A participant has a severance of employment with the employer if the participant dies, retires, or otherwise has a severance of employment from the employer. When a participant has a severance from employment, the participant's entitlement under the plan will be distributed to the participant at the participant's election. Provided, however, the distribution of a participant's benefit under this plan shall be made in accordance with the following requirements and shall otherwise comply with Section 401(a)(9) of the code and the regulations thereunder (including Regulation Section 1.401(a)(9)-2), the provisions of which are incorporated herein by reference:

• A participant's benefit shall be distributed or must begin to be distributed not later than April 1 of the calendar year following the later of (i) the calendar year in which the participant attains age seventy and one-half (70½); or (ii) the calendar year in which the participant retires.

(2) *Death prior to commencement of benefits.* Should a participant die before he has begun to receive the retirement benefits provided by subparagraph (1), a death benefit which shall be the balance of the participant's deferred compensation account shall be paid to a participant's beneficiary (determined in accordance with subsection (d) of this section) in a lump sum. The death benefit pursuant to this subparagraph shall be payable within sixty (60) days after receipt by the administrator of satisfactory proof of death of the participant. Payments to a beneficiary pursuant to this subsection must satisfy the requirements of the last sentence of subsection (d)(7) of this section.

(3) *Other distribution events.* (a) All or a portion of a participant's deferred compensation account may be distributed in the event of an unforeseeable emergency, as provided in subsection (f) of this section. (b) In service distribution not to exceed the dollar limit under Section 411(a)(11)(A) of the Internal Revenue Code: If the total amount payable to the participant under the plan does not exceed the dollar limit under Section 411(a)(11)(A) of the Internal Revenue Code ((five thousand dollars ($5,000.00) for plan years beginning after August 5, 1997) as adjusted from time to time, the participant may

elect to receive such amount before separation of service (or the plan may distribute such amount without the participant's consent) if (a) no amount has been deferred under the plan with respect to such participant during the two-year period ending on the date of distribution, and (b) there has been no prior distribution under the plan to such participant to which this section applied.

(4) A participant in the year in which he or she attains the age of seventy and one-half (70-½) years or any year thereafter may elect to receive an in-service distribution, provided however, any employee electing to receive such a distribution would be allowed only to continue employment for up to five (5) years from the effective date of the in-service distribution.

(5) If a participant who has had a termination of service with the city subsequently becomes employed by another employer which maintains an eligible deferred compensation plan with the meaning of Section 457 of the Internal Revenue Code, the city may transfer the value of the participant's deferred compensation account to such other employer if all of the following conditions are satisfied: (i) the other employer's plan provided for the acceptance of such transfers; (ii) the other employer agrees in writing to assume the city's obligation to the participant represented by the value of the deferred compensation account; and (iii) the participant agrees in writing to transfer and release the city from the obligation to the participant assumed by the other employer.

(d) *Designation of beneficiary.* A participant may designate a beneficiary or beneficiaries who will receive any balance in the participant's deferred compensation account in the event of his death in accordance with following:

(1) A designation of a beneficiary shall be effective when actually received by the administrator and made on a form approved by the administrator for that purpose which has been signed by the participant.

(2) No beneficiary shall have any rights under this plan until the death of the participant who has designated him. A participant may, at any time, change his beneficiary(ies) in accordance with subsection (d)(1) of this section.

(3) Participants may designate primary and contingent beneficiaries. A contingent beneficiary and/or beneficiaries will become effective only after the death of any and all primary beneficiaries.

(4) If more than one beneficiary is named in either category, benefits will be paid according to the following rules:

a. Beneficiaries can be designated to share equally or to receive specific percentages.

b. If a beneficiary dies before the participant, only the surviving beneficiaries will be eligible to receive any benefits in the event of death of the participant. If more than two (2) beneficiaries are originally named to receive different percentages of the benefits, surviving beneficiaries will share in the same proportion to each other as indicated in the original designation.

(5) A person, trust, estate, or other legal entity may be designated as a beneficiary.

(6) If a beneficiary has not been designated, or a designation is ineffective due to the death of any and all beneficiaries prior to the death of the participant, or the designation is ineffective for any reason, the beneficiary of the participant shall be the participant's spouse; or if there is no spouse, the participant's children equally; or if there are no spouse and no children, the personal representative of the estate of the participant.

(7) If the participant dies before the entire amount is paid to the participant, the entire amount deferred or the remaining part of the deferrals (if payment thereof has commenced) must be distributed to a beneficiary in a manner that complies with section 401(a)(9) of the code and the regulations implementing section 401(a)(9).

(e) *Election of method of distribution.* Upon severance of employment, the participant or the participant's beneficiary may elect a distribution in any of the following forms:

(1) A lump sum cash payment of all or a portion of the balance.

(2) Installments over a period of years not longer than the life expectancy of the participant or, if married, the joint life expectancy of the participant and his spouse, determined at the time the distributions are to commence according to any applicable Internal Revenue Service Tables. The installments may be made in monthly or other

regular increments. Any portion of the deferred compensation account which has not been distributed shall continue to be credited and/or debited according to the provisions of subsection (a) of this section.

(3) In a series of payments on an annuity basis as if an annuity contract was purchased based on the life of the participant or beneficiary (if applicable). The annuity payments shall be based on one of the following methods:

a. The life of the participant.

b. The life of the participant or a period certain, whichever is greater.

c. The joint and last survivor life of the participant and another named person.

Once payments have commenced on an annuity basis, any future payments to a beneficiary will depend on the terms of the annuity payments agreed to by the participant and the employer. If a participant dies prior to a period certain, any remaining distribution will be paid to the beneficiary(ies) determined under subsection (d) of this section. If annuity payments have commenced on a joint and last survivor basis, any payments due after the death of the participant will be due only to the other person on which the annuity payments have been based and not to any other beneficiary(ies).

If, in fact, an annuity contract is purchased, the owner and named beneficiary shall be the employer. Any rights of participants or beneficiaries are derived solely from this plan.

(4) Notwithstanding any provision of the plan that would otherwise limit a "distributee's" election under this subsection (e), a "distributee" may elect at the time and in the manner prescribed by the administrator to have any portion of any eligible rollover distribution (that is at least five hundred dollars ($500.00)) paid directly to an "eligible retirement plan" specified by the "distributee" in a "direct rollover." For purposes of this subparagraph, the following definitions apply:

1. 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 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 any portion of any other distribution that is not includible in gross income.

2. 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 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.

3. A *"distributee"* includes an employee or a 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 an alternate payee under a 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.

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

No payment option may be selected by a participant hereunder unless the present value of the payments to the participant, determined as of the date benefits commence, exceeds fifty (50) percent of the value of the participant's deferred compensation account as of the date benefits commence. Present value determinations under this section shall be made by the administrator in accordance with the expected return multiples set forth in Section 1.72-9 of the Federal Income Tax Regulations (or any successor provision to such regulations).

Notwithstanding anything to the contrary, if a deferred compensation account of either a participant or a beneficiary is equal to or less than one thousand dollars ($1,000.00) on the date distributions are to commence, the account shall be distributed in a lump sum immediately or held until a delayed distribution date not exceeding one year from the date the participant was first entitled to begin distributions.

If the participant dies before the entire amount is paid to the participant, the entire amount deferred or the remaining part of the deferrals (if payment thereof has commenced) must be distributed to a beneficiary in a manner that complies with section 401(a)(9) of the code and the regulations implementing section 401(a)(9).

(f) *Unforeseeable emergency.* A distribution of all or a portion of a participant's deferred compensation account shall be permitted in the event the participant experiences an unforeseeable emergency. An unforeseeable emergency is a severe financial hardship to the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse, or the participant's or beneficiary's dependent (as defined in section 152(a) of the code); loss of the participant's or beneficiary's property due to casualty, or similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary. Distributions may not be made to the extent that such hardship is or may be relieved: (i) through reimbursement or compensation by insurance or otherwise; (ii) by liquidation of the participant's assets to the extent the liquidation of such assets would not itself cause severe financial hardship; or (iii) by cessation of deferrals under the plan.

The committee may delegate to the person performing accounting and administrative services for the plan the responsibility to determine whether an unforeseeable emergency exists and the extent of the distribution necessary to meet the emergency.

(g) *Leave of absence.* Subject to the requirement of Section 457(b) of the Internal Revenue Code that only individuals who perform services for the city may be participants, any participant who is granted a leave of absence by the city may continue to participate in this plan as long as the leave of absence is approved by the city. If an approved leave of absence is terminated by the city or participant without the resumption of the employment relationship, the participant shall be treated as having a termination of service under this plan, as of the date of termination of such leave.

(Ord. No. 30-91, § 2, 6-27-91; Ord. No. 8-98, §§ 2—4, 3-12-98; Ord. No. 35-02, § 14, 10-24-02; Ord. No. 16-07, § 24, 4-26-07)

Sec. 9-6-16. - Miscellaneous.

(a) *Nonassignability.* The benefits, proceeds or payments provided under this plan cannot be sold, assigned, pledged, commuted, transferred or otherwise conveyed by any participant or beneficiary. Any attempt to assign or transfer shall not be recognized and shall impose no liability upon the city.

Except as otherwise required by law, any deferred compensation monies withheld pursuant to this plan shall be not subject to attachment, garnishment or execution, or to transfer by operation of law in the event of bankruptcy or insolvency of the participant or otherwise.

(b) *Payments to minors and incompetents.* If the administrator shall receive evidence satisfactory that a participant or beneficiary entitled to receive any benefit under this plan is, at the time when such benefit becomes payable, a minor, or, as adjudicated by a court of law, is mentally incompetent to receive such benefit and to give a valid release therefore and that another person or an institution is then maintaining or has custody of such participant or beneficiary, and that no guardian of the person or other representative of the estate of such participant or beneficiary shall have been duly appointed, the administrator may authorize payment of such benefit to such other person or institution, including a custodian under any state gift to minors act (who shall be an adult, a guardian of the minor or a trust company), or to a court of law for distribution pursuant to that court's order, and the release of such other person or institution shall be a valid and complete discharge for the payment of such benefit.

(c) *Plan-to-plan transfers.* This plan may accept transfers from another eligible governmental plan or make a transfer to another governmental plan. Amounts so transferred shall be credited to the participant's deferred compensation account. Provided, however, a transfer from another eligible governmental plan to this plan is permitted only if the following conditions are met:

(i) The transferor plan provides for transfers;

(ii) The recipient plan provides for receipt of transfers.

(iii) The participant or beneficiary whose amounts are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and

(iv) The participant or beneficiary whose amounts deferred are being transferred has had a severance from employment with the transferring employer and is performing services for the employer; provided, however, the severance from employment requirement is not required to be satisfied if (a) all of the assets held by the eligible governmental plan are transferred; (b) the transfer is to another eligible governmental plan maintained by an eligible employer that is a state entity within the same state as this plan; and (c) the participants whose deferred amounts are being transferred are not eligible for additional annual deferrals in the receiving plan unless they perform services for the employer.

In addition, if the requirements described below are satisfied, the amounts deferred under this plan by participant or beneficiary may be transferred to a qualified plan (under section 401(a) of the code) maintained by a governmental entity. The requirements for a transfer to a qualified plan are satisfied if either (a) the transfer is for the purchase of permissive past service credit (as defined in section 415(n)(3)(A) of the code) under the receiving defined benefit government plan, or (b) the purpose of the transfer is a repayment to which section 415 of the code does not apply as a result of section 415(k)(3).

(d) *Qualified domestic relations order/distribution to alternate payee.* All rights and benefits, including elections, provided to a participant in this plan shall be subject to the rights afforded to any "alternate payee" under a "qualified domestic relations order." Furthermore, a distribution from this plan to an "alternate payee" shall be permitted if such distribution is authorized by a "qualified domestic relations order" even if the affected participant is not eligible to receive a distribution from the plan because the participant has not severed employment with the employer or experienced an unforeseeable emergency. For purposes of this section (d), "alternate payee" and "qualified domestic relations order" shall have the meaning set forth in section 414(p) of the code. The employer shall develop a qualified domestic relations order procedure to be used as guidance when a court issues a domestic relations order affecting a participant's interest in the plan.

(e) *Loans to participants.*

(1) The trustee/administrator may, in the trustee/administrator's discretion, make loans to participants and beneficiaries under the following circumstances:

(i) Loans shall be made available to all participants and beneficiaries on a uniform and nondiscriminatory basis;

(ii) Loans shall be at a reasonable rate of interest;

(iii) Loans shall be adequately secured; and

(iv) Loans shall provide for periodic repayment over a reasonable period of time.

(2) Loans made pursuant to this subsection (when added to the outstanding balance of all other loans made by the plan to the participant) may, in accordance with a uniform and nondiscriminatory policy established by the administrator, be limited to the lesser of:

(i) Fifty thousand dollars ($50,000.00) reduced by the excess (if any) of the highest outstanding balance of loans from the plan to the participant during the one year period ending on the day before the day on which the loan is made, over the outstanding balance of loans from the plan to the participant on the date on which such loan is made; or

(ii) One-half (½) of the present value of the participant's vested interest under the plan.

For the purpose of this limit, all plans of employer shall be considered one plan.

(3) Loans shall provide for level amortization with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as a "principal residence" of the participant shall provide for periodic repayment over a reasonable period of time that may exceed five (5) years. For this purpose, a "principal residence" has the same meaning as a "principal residence" under Section 121 of the code. Any loans granted or renewed shall be made pursuant to a participant loan program. Such loan program shall be established in writing and must include, but need not be limited to, the following:

(i) The identity of the person or positions authorized to administer the participant loan program;

(ii) A procedure for applying for a loan;

(iii) The basis on which loans will be approved or denied;

(iv) Limitations, if any, on the types and amounts of loans offered;

(v) The procedure under the program for determining a reasonable rate of interest;

(vi) The types of collateral which may secure a participant loan; and

(vii) The events constituting a default and the steps that will be taken to preserve plan assets.

Such participant loan program shall be contained in a separate written document which, when properly adopted, is hereby incorporated by reference and made a part of the plan. Furthermore, such participant loan program may be modified or amended in writing from time to time without the necessity of amending this subsection.

(4) Notwithstanding anything in this plan to the contrary, if a participant or beneficiary defaults on a loan made pursuant to this section, then the loan default will be a distributable event to the extent permitted by the code and regulations.

(5) The administrator may delegate to the investment manager, provided for in the plan, authority to make loans to participants in accordance with this subsection and the plan.

(Ord. No. 30-91, § 2, 6-27-91; Ord. No. 35-02, § 15, 10-24-02)

Sec. 9-6-17. - Amendment or termination of plan.

(a) *Amendment.* The city shall have the authority to propose amendments to this plan from time to time. No amendment or modification shall adversely affect the rights of participants or their beneficiaries to the receipt of compensation deferred prior to such amendment or modification unless required by state or federal law to maintain the tax status of the plan and any compensation previously deferred.

(b) *Termination.* The city shall have the authority to terminate this plan, or to substitute a new plan. Upon termination of the plan, each participant shall

~~be deemed to have withdrawn from the plan as of the date of such termination, and the participant's full compensation will be restored to a nondeferred basis. The plan will otherwise continue in effect until all deferred compensation accounts have been distributed in accordance with the plan.~~

~~(Ord. No. 30-91, § 2, 6-27-91)~~

~~Secs. 9-6-18, 9-6-19. - Reserved.~~

ARTICLE III. - FIREFIGHTERS DEFERRED COMPENSATION PLAN

DIVISION 1. - GENERALLY

Sec. 9-6-20. - Established.

The city hereby establishes this deferred compensation plan which shall become effective June 10, 2015. This program is intended to provide benefits in the areas of retirement, disability and survivor coverage for City of Pensacola Firefighters hired on and after June 10, 2015. The deferred compensation plan has three (3) divisions:

(1) *Disability and survivor plan.* A disability and survivor plan to provide disability and survivor coverage as described in division 2.

(2) *Deferred compensation plan.* A deferred compensation plan set forth in division 3 of this article which is paired with the defined contribution plan set forth in division 4. This deferred compensation plan is intended to qualify as an "eligible deferred compensation plan" under Section 457 of the Internal Revenue Code of 1986, as amended.

(3) *A defined contribution plan.* A defined contribution plan set forth in division 4 of this article which is paired with the deferred compensation plan set forth in division 3. This plan is intended to meet the applicable requirements of Section 401(a) of the Internal Revenue Code of 1986, as amended.

(Ord. No. 19-15, § 1, 10-8-15)

Sec. 9-6-21. - Definitions.

Except as otherwise provided with respect to the deferred compensation plan described in division 3 below or the defined contribution plan set forth in division 4 of this article, whenever used in this article, the following terms have the meanings set forth below (where there is a conflict between these definitions and the definitions set forth in the provisions concerning the deferred compensation plan or the defined contribution plan, then the provisions of the particular plan shall prevail over these general definitions).

Compensation. Any remuneration payable to an employee for employment or contractual services rendered to the employer which is reportable as taxable income for purposes of the Internal Revenue Code of 1986 ("IRC"), as amended, except, however, that amounts deferred by an employee (which are not reportable as taxable income) under this or any other deferred compensation plan of the employer (other than a plan qualified under IRC Section 401) shall be included in the annual compensation for the purpose of determining disability and survivor benefits. Provided, however, compensation shall not include any of the following: educational incentive pay, clothing allowance, education benefit, special duty pay, certification pay, field training pay, shift differential pay, non-substantiated business expenses, non-cash benefits such as employer-provided vehicles or any other city provided benefit.

Employee. Any person who, was hired on or after June 10, 2015, and is a member of the City of Pensacola Firefighters' Relief and Pension Plan.

Employer. The City of Pensacola, a Florida municipal corporation.

Except when otherwise indicated by the context, any masculine terminology herein shall also include the feminine and neuter and vice-versa, and the definition of any terms herein in the singular may also include the plural.

(Ord. No. 19-15, § 1, 10-8-15)

Sec. 9-6-22. - Eligibility.

All current employees hired on or after June 10, 2015 who are members of the City of Pensacola Firefighters' Relief and Pension Plan and have elected to participate in the deferred compensation plan at the time of employment. Those employees hired on or after June 10, 2015 that were not given the option to join the plan at the time of employment shall be given the option to join within thirty (30) days after the adoption date of the plan.

(Ord. No. 19-15, § 1, 10-8-15)

Sec. 9-6-23. - Funding.

(a) The deferred compensation plan shall be funded with contributions of both the city and the employee in the following manner:

(1) If the employee elects to participate, he must contribute a mandatory amount equal to one (1.0) percent of his compensation.

(2) The city shall contribute a mandatory amount equal one (1.0) percent of compensation for each participating employee.

(3) The employee may contribute an additional amount on a voluntary basis up to the maximum amount allowed by law.

(4) The city shall contribute an additional amount equal to the amount of the voluntary contribution of each employee up to but not exceeding five and seven-tenths (5.7) percent of compensation.

(b) The contributions to fund the deferred compensation plan shall be distributed in the following manner:

(1) Each employee's contribution, both the one (1.0) percent of compensation mandatory contribution and the up to five and seven-tenths (5.7) percent of compensation additional voluntary contribution, shall be deposited in the plan's deferred compensation account for each employee in accordance with the terms of the deferred compensation plan.

(2) The first one (1.0) percent of the city's one (1.0) percent of compensation mandatory contribution shall be used to fund first the deferred compensation plan disability and survivor plan, provided for in Division 2 of this chapter, on behalf of all participants; the remaining city contributions after funding the deferred compensation plan disability and survivor plan shall be deposited in the defined contribution plan account of employees in accordance with the terms of the defined contribution plan.

(3) The city's contribution of up to an additional five and seven-tenths (5.7) percent of compensation to match employee's voluntary contribution of up to an additional five and seven-tenths (5.7) percent of compensation shall be deposited in the defined contribution plan account of employees in accordance with the terms of the defined contribution plan.

(4) City contributions to an employee's defined contribution plan account shall cease during any calendar year at the time such employee contributions to that account cease.

(Ord. No. 19-15, § 1, 10-8-15)

DIVISION 2. - DISABILITY AND SURVIVOR PLAN

Sec. 9-6-24. - Disability and survivor plan.

(a) *Design.* The purpose of the disability and survivor plan is to provide protection for employees and their families in the event of a disabling impairment which prevents the employee from performing any gainful employment, or in the event of the death of the employee. The deferred compensation plan disability and survivor plan shall be administered for determination of disability through an insurance carrier or other independent third-party agent. The mayor of the city is hereby authorized to enter into one (1) or more contracts with an insurance company and/or other third-party agent as necessary to provide at minimum the coverage outlined in subsections (b) and (c) and to amend, modify and/or terminate said contract, and to adopt subsequent contract as necessary to provide at minimum the coverage outlined in subsections (b) and (c). The city, at its option, may choose to self-insure all or a portion of the disability and survivor plan, provided that all administration of the disability and survivor plan for determination of disability shall be provided through an insurance carrier or other independent third-party agent.

(b) *Outline of disability coverage.* The disability and survivor plan shall provide for disability protection according to the following general plan outline. The provisions of the disability and survivor plan shall be governed in the specific by the contractual agreement entered into as authorized in subsection (a).

(1) *Amount of benefit.* The amount of monthly benefit shall be equal to sixty (60) percent of current monthly compensation less any benefit from social security, the fire pension fund, or other government pension benefit.

(2) *Minimum benefit.* A minimum benefit of fifty dollars ($50.00) per month shall be paid regardless of the amount of offsets.

(3) *Duration of benefits.* The disability benefit shall be payable until recovery or age sixty-five (65), whichever occurs first.

(4) *Contributions to defined contribution plan account.* The city shall continue to contribute each year an amount equal to four (4) percent of the disabled employee's current annual compensation as of the date of disability to his defined contribution plan account provided for in division 4 of this article until the employee reaches age sixty-five (65), or until such time as distribution of the account commences, whichever event occurs first, and such contributions shall not cease because of a distribution for an unforeseeable emergency made pursuant to the provisions outlined in the defined contribution plan.

(5) *Definition of disability.* Disability shall be defined as the inability to perform any gainful employment and is further restricted by the specific definition of disability to be found in the contractual agreement governing the disability and survivor plan, and shall be administered by a third-party.

(c) *Outline of survivor coverage.* The disability and survivor plan shall provide for survivor coverage in the event of the death of an employee according to the following general plan outline. The provisions of the disability and survivor plan shall be governed in the specific by the contractual agreement entered into as authorized in subsection (a).

(1) *Amount of benefit.* The amount of monthly benefit shall be equal to twenty (20) percent of current annual compensation payable to the first survivor as designated by the employee; plus ten (10) percent of compensation to the next two (2) survivors as designated by the employee, for a maximum benefit of forty (40) percent of compensation. Eligible survivors are the employee's spouse and dependent, unmarried children.

(2) *Benefit for employee without survivor.* Employees who die without a survivor shall be entitled to a one-time benefit equal to current annual compensation payable to the deceased employee's designated beneficiary.

(3) *Duration of benefits.* The survivor benefits shall continue until the spouse reaches age sixty-five (65) or remarries, whichever occurs first, and the children's benefits shall continue until the child reaches age eighteen (18), or to age twenty-three (23) if continuously a full-time student.

(Ord. No. 19-15, § 1, 10-8-15)

DIVISION 3. - DEFERRED COMPENSATION PLAN

Sec. 9-6-25. - Deferred compensation plan.

Effective June 10, 2015, the city establishes the firefighters deferred compensation plan ("deferred compensation plan") which is intended to allow certain firefighters the ability to designate a portion of their compensation to be deferred each pay period and invested at the discretion of and in a manner approved by the city until termination of employment, financial hardship or death of the employee. Participation in the deferred compensation plan is optional. If an eligible employee elects to participate in the deferred compensation plan a mandatory minimum deferral is required. Any compensation deferred by participants may be invested by the city, but there is no requirement to do so. Participation in this deferred compensation plan shall not be construed to establish or create an employment contract between the employee and the city. The terms of the deferred compensation plan shall be contained within the plan document which is available for public inspection in the office of the city clerk.

(Ord. No. 19-15, § 1, 10-8-15)

DIVISION 4. - DEFINED CONTRIBUTION PLAN

Sec. 9-6-26. - Defined contribution plan; established.

(a) *Establishment.* Effective June 10, 2015, the city shall establish the firefighters defined contribution plan ("defined contribution plan") the terms of which shall be contained within a separate plan document which is available for public inspection in the office of the city clerk.

(b) *Purpose.* The defined contribution plan is intended to provide mandatory employer matching contributions on behalf of participants who defer in the deferred compensation plan, set forth in division 3, as prescribed by the city. Such amounts are invested at the discretion of and in a manner approved by the city until termination of employment, financial

emergency or death of the participant. Participation in this defined contribution plan shall not be construed to establish or create an employment contract between the employee and the employer.

(Ord. No. 19-15, § 1, 10-8-15)

CHAPTER 9-7. GROUP INSURANCE[12]

Footnotes:

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Cross reference— Employee benefits and compensation, Ch. 9-3.

Sec. 9-7-1. - General provisions.

The city may create, establish, modify, amend and terminate or discontinue, in whole or in part, from time to time group health, dental, life and other insurance plans for city employees, former employees, mayor, city council members and their dependents. The city may determine, modify and amend the coverages and levels of benefits, plan participation, premium contributions and other provisions of such plans. No such plan shall be deemed to constitute a contract between the city and the employee, plan participant or person insured or to be a consideration of inducement for the employee or participant. Nothing contained in any such plan shall be deemed to give any employee the right to be retained in the service of the city, to interfere with the right of the city to discharge any employee at any time regardless of the effect such discharge shall have upon the employee as a participant of such plan, or to interfere with the right of the city to terminate, discontinue, modify or amend any such plan in whole or in part. The mayor shall notify eligible employees, eligible former employees, and city council members of their eligibility to participate in such plans.

(Ord. No. 4-94, § 1, 1-13-94; Ord. No. 18-01, § 2, 9-27-01; Ord. No. 24-02, § 1, 9-26-02; Ord. No. 16-10, § 151, 9-9-10)

Sec. 9-7-2. - Participants; persons insured.

The following persons may be participants or persons insured in any plan of group health, dental, life or other insurance, unless by action of the city council plan participation is otherwise limited:

a. The mayor and any active, permanent, full-time city employee who is regularly scheduled to work forty (40) hours or more per week on a full-time basis.

b. Any other active city employee whose written employment contract with the mayor provides for participation in such insurance plan.

c. Any former employee, as described in subsection a. or b., employed by the city prior to January 1, 1994, who while an active employee was a member of the City General Pension and Retirement plan, Firemen's Relief and Pension Plan, or Police Officers Retirement Plan.

d. Any former employee, as described in subsection a. or b., employed by the city prior to January 1, 1994, who while an employee was a member of one of the city's defined contribution pension or deferred compensation plans, and who was actively employed by the city for a continuous period of ten (10) years, or whose written employment contract provided for participation in such insurance plan following termination of active employment.

e. Any former employee, as described in subsection a. or b., whose employment has been terminated due to a total disability due to an accident, injury or occupational disease arising out of and in the course of city employment which is compensable under the workers' compensation laws of Florida in effect at the time that such accident, injury or occupational disease occurs, for so long as such employee remains totally disabled.

f. City council members and their eligible dependents are eligible to participate in the group health and dental plans only provided that the council members pay one hundred (100) percent of the health and dental insurance premiums. City council members and their eligible dependents will not be eligible to participate in any other city group benefit plans. The mayor, city council members and any eligible dependents will continue to be eligible to participate in the group health and dental plans only during their term(s) in office.

g. Insurance coverage shall be extended to the eligible dependents of any of the above-described employees, former employees, or mayor

or city council members provided that the employee, or city council member, while in the active service of the city or while holding office, enrolls such eligible dependents for coverage during an authorized enrollment period.

h. Any surviving spouse and/or eligible dependent children of an employee or former employee eligible to receive retirement benefits under one of the retirement plans described in subsection c., provided that such surviving spouse and/or eligible dependent children were enrolled for coverage prior to the deceased employee's last day of active service with the city.

(Ord. No. 4-94, § 1, 1-13-94; Ord. No. 18-01, § 2, 9-27-01; Ord. No. 24-02, § 1, 9-26-02; Ord. No. 16-10, § 152, 9-9-10)

Sec. 9-7-3. - Conditions of participation and insurance.

a. Participation and insurance coverage, and the privilege of continuing participation and coverage shall be conditioned upon the prompt payment of premiums for coverage by the city and by the participant. The mayor shall determine the means and manner for collecting such premiums, including, without limitation, payroll deductions, pension benefit deductions or collection from the participant. The failure of any participant to promptly and completely pay all premiums due by the participant shall be cause for cancellation of the participant's insurance upon written notice. No person whose participation has been cancelled for non-payment of premiums shall thereafter again become eligible for participation.

b. Participation shall be voluntary. Participant enrollment shall be subject to enrollment during enrollment periods established by the mayor. No person may be a participant who does not enroll during enrollment periods.

c. No former employee shall be enrolled as a participant unless the employee was a participant immediately prior to the termination of the employee's active service and unless, prior to terminating active service, the employee enrolls for participation following active service.

d. No surviving spouse or eligible dependent of a former employee shall be enrolled as a participant or person insured unless the employee was a participant immediately prior to the termination of the employee's active

service, and the employee enrolled the spouse and eligible dependents as persons insured prior to termination of the employee's active service.

(Ord. No. 4-94, § 1, 1-13-94; Ord. No. 16-10, § 153, 9-9-10)

Sec. 9-7-4. - Eligible dependent defined.

For the purpose of this chapter, eligible dependent shall be defined in the manner set forth in the insurance policy.

(Ord. No. 4-94, § 1, 1-13-94)

CHAPTER 9-8. - GENERAL PENSION AND RETIREMENT FUND[13]

Footnotes:

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Cross reference— Employee benefits and compensation, Ch. 9-3; pensions and deferred compensation, Ch.9-5; general pension replacement benefit plan, § 9-5-81 et seq.

Secs. 9-8-1 – 9-8-4. - RESERVED

~~Sec. 9-8-1. - Title and purpose.~~

~~The common name of this ordinance shall be the general pension and retirement fund ordinance. It is adopted for the purpose of providing for defined benefit retirement plans for all future permanent full-time employees of the city and providing an opportunity for such benefits for existing permanent full-time employees.~~

Commented [RS40]: Superseded by provisions of the General Pension Plan and city participation in the FRS.

~~(Ord. No. 44-96, § 1, 9-26-96)~~

~~Sec. 9-8-2. - Participants.~~

Commented [RS41]: Superseded by provisions of the General Pension Plan and city participation in the FRS.

~~All permanent full-time employees of the city hired on or after October 6, 1997, shall become participants of the general pension and retirement fund~~

created by Section 61-2655, Laws of Florida, as amended, and codified in Related Special Acts, Part I, Subpart B, Article VII of this Code. Further, except as otherwise provided herein, all permanent full-time employees of the city hired before October 6, 1997, may, no later than December 1, 1997, irrevocably elect to participate in the general pension and retirement fund and to commence accrual of benefits as of October 6, 1997. Such employees shall be called electing participants. Provided, however, that those employees of the police department hired on or after October 1, 1979, and fire department employees who are eligible for other defined benefit retirement plans and public safety cadets in the police and fire departments shall not be participants in this fund. For those employees hired after October 1, 1979, service eligible for future benefits in another city defined benefit retirement plan shall not be credited for future benefits in this fund. No person shall be allowed to participate in this plan if such person's participation shall result in a violation of F.S. § 112.65(2).

(Ord. No. 44-96, § 1, 9-26-96; Ord. No. 29-97, § 2, 8-28-97)

Sec. 9-8-3. - Participation restricted in other plans.

Commented [RS42]: Superseded by provisions of the General Pension Plan and city participation in the FRS.

Participants in this fund shall be ineligible to participate in defined contribution plans provided for in section 9-3-40 and 9-5-81, et seq. of this code. No contributions shall be made by or on behalf of the electing participants to the defined contribution plans provided for in section 9-3-40 or 9-5-81 et seq. for any period during which the electing participant is participating in this fund.

(Ord. No. 44-96, § 1, 9-26-96)

Sec. 9-8-4. - Prior service credit.

Commented [RS43]: Superseded by provisions of the General Pension Plan and city participation in the FRS.

Upon cash payment by a participant and/or transfer on the participant's behalf (from other plans described herein) of an amount determined by the plan administrator of the general pension and retirement fund, then for purposes of determining the electing participant's accrued benefit under the general pension and retirement fund, each electing participant shall be credited with all years of service as a permanent full-time city employee prior to October 6, 1997. Electing participants who do not have funds available, as determined by the plan administrator, to purchase all such prior years of service may elect to purchase part of their prior years of service; the number

~~of years purchased shall be determined by the plan administrator of the general pension and retirement fund. Such payment for the purchase of all or a portion of the participant's prior years of service shall be made to the general pension and retirement fund, and may be made by cash payment and/or transfer of funds held for the benefit of the electing participant pursuant to the defined contribution plan provided for in section 9-3-40 of this code or by transfer of assets from other transferrable asset plans. Provided, however, such purchase for prior service credit as described herein shall be accepted only if the plan administrator has determined that the form and manner of such payment will not cause this plan to lose its status as a retirement plan qualified under Sections 401 and 501 of the Internal Revenue Code of 1986 as amended. The full payment for any prior service credit obtained pursuant to this section 9-8-4 must be made by a date to be determined by the plan administrator of the general pension and retirement fund, or the right to acquire prior service credit under this section 9-8-4 shall lapse.~~

~~(Ord. No. 44-96, § 1, 9-26-96; Ord. No. 29-97, § 2, 8-28-97)~~

Sec. 9-8-5. - Treatment of certain contributions to general pension and retirement plan.

For the purpose of Section 414(h) of the Internal Revenue Code, the contributions made by each employee to the General Pension and Retirement Fund and the Firemen's Relief and Pension Fund shall be designated as employer contributions. Provided, however, such designation is contingent upon the contributions being excluded from the employee's gross income for federal income tax purposes as picked up contributions under Section 414(h)(2) of the Internal Revenue Code. Such contributions shall, nevertheless, be subject to refund or return to the employee upon termination of his employment, or later, as such may be provided for in the General Pension and Retirement Plan or Firemen's Relief and Pension Fund Plan.

(Ord. No. 44-90, § 1, 9-13-90; Ord. No. 27-99, § 1, 7-22-99; Ord. No. 17-01, § 7, 9-27-01)

Editor's note— Formerly § 9-3-41.

CHAPTER 9-9. - DEFERRED RETIREMENT OPTION PLAN (DROP)

Sec. 9-9-1. - Establishment of a Deferred Retirement Option Plan (DROP).

A Deferred Retirement Option Plan (hereinafter referred to as "the DROP"), is hereby established, in which an eligible participant in one of the specifically identified defined benefit pension plans may continue employment with the City of Pensacola but elect to freeze the accrual of additional pension benefits as of the effective date of such election as if the participant had retired on such effective date (such election is hereinafter referred to as the "DROP Election"). If an eligible employee files a proper DROP Election, then such participant's pension retirement benefits will be credited to a DROP account within the applicable pension plan. The DROP account will earn interest at the rate described in subsection 9-9-4(g) for as long as the participant is properly participating in the DROP, which is for a specific and limited period set forth in the DROP election. Any cost-of-living increase granted by the applicable pension board with respect to pension benefits shall also apply to a DROP participant's pension benefit. Through the DROP, city employees may retire from the general pension and retirement fund, Police Officers' retirement fund, and the firemen's relief and pension fund and receive pension benefits credited into the DROP, which is a fund within the pension plan and a trust in which the employee participates, while remaining employed with the City of Pensacola.

For purposes of this plan, participants will be considered as retired from their respective pension plans for pension purposes, but not separated from city employment. During participation in the DROP, the employee's pension benefits will be credited into an account, within the pension plan for which the DROP election was made (hereinafter the "DROP account"). Pension benefits credited into the DROP account, plus interest as described in subsection 9-9-4(g), are eligible to receive distribution of the employee's DROP funds upon separation from employment in accordance with employee's DROP election. At the time of such separation of employment, the employee will also begin to receive the previously determined normal retirement benefits including any cost-of-living adjustments granted while in the DROP under the applicable defined benefit pension plan.

(Ord. No. 46-99, § 1, 11-18-99)

Sec. 9-9-2. - Definitions.

(a) *DROP.* DROP refers to a Deferred Retirement Option Plan which allows retirement eligible employees to continue working for the city for a defined period of time while, at the same time, accumulating retirement benefits in a DROP account within the applicable defined benefit pension plan.

(b) *DROP account.* A DROP account is a separate accounting within the appropriate retirement plan which credits the individual DROP participant with his/her benefits plus earnings during his/her election period.

(c) *DROP participation.* DROP participation results when an employee has completed and submitted a DROP election form, selecting a DROP period, and continues to work for the city for a period not to exceed sixty (60) months. During this period, the employee's retirement benefits will be credited to his/her DROP account.

(d) *DROP election.* DROP election means the establishment of a date upon which the employee intends to terminate his/her employment with the City of Pensacola. The date is established through the irrevocable completion of a DROP election form to be submitted to the DROP administrator. Following the submission of a DROP election, the employee's employment with the city cannot exceed sixty (60) months in duration, although employees may terminate employment with the city at any time prior to the termination date indicated on the DROP election form.

(Ord. No. 46-99, § 2, 11-18-99)

Sec. 9-9-3. - Participation.

(a) *Eligibility.* Any employee entitled to receive normal, nondisability pension benefits but not already receiving a pension benefit described in article VII, of the General Pension and Retirement Fund, article II of the Police Officers' Retirement Fund, or article VI of the Firemen's Relief and Pension Fund of the Code of the City of Pensacola, Florida, is eligible to participate in the DROP when such employee also satisfies the criteria set forth in subsection 9-9-3(b).

(b) *Criteria.* An employee may participate in the DROP if the employee is eligible for retirement under the appropriate plan.

(c) *Length of participation.* An employee shall be entitled to only one (1) DROP election for each applicable defined benefit pension plan in which the employee is a participant and for which the employee satisfies the

criteria of subsection 9-9-3(b). Once made, a DROP election is irrevocable. An eligible employee may elect to participate in the DROP for a period not to exceed sixty (60) months commencing upon the date on which the employee enters the DROP.

(d) *Election.* In order to make a proper DROP election, an eligible employee must complete and execute the proper forms supplied by the DROP administrator. The election to participate in the DROP is binding and irrevocable.

(e) *Participant benefits.* With the exception of the accrual of additional pension benefits to the General Pension and Retirement Fund, the Police Officers' Retirement Fund, or the Firemen's Relief and Pension Fund (which accruals shall cease as of the effective date of DROP election with respect to such plans), participants of the DROP may participate in other benefits and benefit programs available to employees of the city in accordance with the terms and provisions of such benefit programs. Participation in the DROP does not alter the participant's employment status except with respect to defined benefit pension plan benefits, and such employee shall not be deemed to terminate employment until his or her deferred resignation (as defined in the DROP election) is effective and termination occurs.

(f) *Pension calculations.* Pension benefits shall be calculated according to the formula in existence on the date of the DROP election, according to the provisions of the applicable pension plan. Additional years of service in the pension plan and additional benefit for years of service in such plan shall cease as of the date of entry into the DROP.

(g) *Pension fund participation.* An employee who elects to participate in the DROP shall not have, at any time, the right to become a contributing or recontributing member of the General Pension and Retirement Fund, the Police Officers' Retirement Fund and/or Firemen's Relief and Pension Fund. An employee who enters the DROP shall be considered, for pension purposes, as retired. While an employee who enters the DROP shall receive cost-of-living increases with respect to such employee's pension benefits, increases or decreases in benefits (other than cost-of-living increases), by amendment of the pension plan after the effective date of the DROP election, shall not apply with respect to the employee who enters the DROP, unless the amendment expressly provides that it is intended to apply to DROP participants.

(h) *Cessation of pension contributions.* Upon the effective date of an employee's participation in a DROP, the participant shall cease to make contributions to his/her respective pension fund. The City of Pensacola shall also cease to make contributions to the Pension Fund based on the DROP participant's salary.

(i) *Participation by members of two (2) pension plans.* An employee who is a member of the General Pension and Retirement Fund and the Police Officers' Retirement Fund may elect to participate in the DROP for one (1) or simultaneously for both retirement plans.

(j) *Employment.* The employment relationship is not changed by the DROP. However, additional years of service in the pension plan shall cease as of the date of entry into the DROP.

(k) *Sick and annual leave.* Employees participating in the DROP may receive a lump sum payment for accrued annual leave and sick leave earned as provided in the pay plan in existence on the date of termination of employment. This lump sum payment shall not increase or otherwise affect the employee's retirement benefit, which was previously determined when the employee elected to participate in the DROP.

(l) *Disability.* DROP participants are not eligible for disability retirements.

(Ord. No. 46-99, § 3, 11-18-99)

Sec. 9-9-4. - DROP accounts.

(a) *Definition.* The City of Pensacola shall establish a DROP account for each employee electing to enter the DROP. The DROP account balances will be an individual accounting only and all balances will remain within the applicable defined benefit pension plan.

(b) *Payments into the DROP account.* Pension benefits which the employee would have received as a retiree will be credited into the separate accounting of the DROP account established for the employee within the applicable defined benefit pension plan. Amounts shall be credited to the participant's DROP account balance with the same frequency as other retirement payments. When a DROP participant terminates employment with the City of Pensacola, all credits to the participant's DROP account shall immediately cease.

(c) *Plan statements.* Periodic statements shall be provided to participants in a manner determined by the DROP administrator.

(d) *Distributions.* Upon termination of the employee's employment with the City of Pensacola, distributions credited from the DROP account shall be made to the employee or, if the employee is deceased, to such participant's properly designated beneficiary. Participant or beneficiary payment elections shall be made on forms provided by the DROP administrator. For a participant or beneficiary who fails to elect a method of payment within sixty (60) days of termination of the DROP, the City of Pensacola shall pay a lump sum as provided in subparagraph (1) below. The alternative methods of payment are as follows:

(1) *Lump sum.* All accrued DROP benefits, plus interest, less federal withholding taxes remitted to the Internal Revenue Service, shall be paid the DROP participant or surviving beneficiary in a single lump sum.

(2) *Direct rollover.* All accrued DROP benefits, plus interest, shall be paid from the DROP directly to the custodian of an eligible retirement plan as defined in section 402(c)(8)(B) of the Internal Revenue code. However, 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 Internal Revenue Code.

(3) *Partial lump sum.* A portion of the accrued DROP benefits shall be paid the DROP participant, less withholding taxes remitted to the Internal Revenue Service, and the remaining DROP benefits shall be transferred directly to the custodian of an eligible retirement plan as defined in Section 402(c)(8)(B) of the Internal Revenue Code. However, 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 Internal Revenue Code. The proportions shall be specified by the DROP participant or surviving beneficiary.

The form of payment selected by the DROP participant or surviving beneficiary must comply with the minimum distribution requirements of the Internal Revenue Code.

(e) *Death of a participant.* Upon the death of a DROP participant, the participant's designated beneficiary shall have the same payout rights as the participant to elect and receive payouts, in accordance with the above

subsection (d), except that a beneficiary other than the participant's surviving spouse shall not be eligible for a direct transfer of funds to an eligible retirement plan.

The normal retirement benefit accrued in the DROP during the month of a participant's death shall be the final monthly benefit credited for such DROP participant before the participant's death.

Eligibility to participate in the DROP terminates upon the death of the participant. If the participant dies on or after the effective date of enrollment in the DROP, but prior to the first monthly benefit being credited to the DROP, the benefits shall be paid in accordance with the participant's appropriate retirement fund without participation in the DROP.

DROP account distributions shall be in addition to any other benefits the beneficiary may be entitled.

(f) *Benefits not guaranteed.* All final benefits credited from the DROP shall be paid only from the assets within the participant's individual DROP Account. Neither the City of Pensacola, nor the General Pension and Retirement Fund, nor the Police Officers' Retirement Fund, nor the Firemen's Relief and Pension Fund shall have any duty or liability to make credits or other considerations to an individual participant's DROP Account, other than the benefits which were calculated at the time of the participant's initial election in the DROP. The City of Pensacola, the General Pension and Retirement Fund, the Police Officers' Retirement Fund, and the Firemen's Relief and Pension Fund shall not guarantee any specific total dollar amount or rate of return payable upon conclusion of the DROP by a participant.

(g) *Interest earned.* DROP Accounts earn interest at an annual rate of four percent, which may be adjusted from time to time by the DROP Administrator. However, effective for General Pension and Retirement Plan participants entering DROP on or after October 1, 2012, DROP accounts earn interest at an annual rate of 1.3%. Also, effective for Police Officers' Retirement Fund participants entering DROP on or after January 1, 2013, DROP accounts earn interest at an annual rate of 1.3%. Effective for participants in the Firefighters' Relief and Pension Plan entering DROP on or after the date Special Act amendments become law as referenced in the collective bargaining agreement ratified by City Council on February 12, 2015, DROP accounts earn interest at an annual rate of 1.3%.

(h) *Cost-of-living.* Any cost-of-living increase granted by the respective pension boards shall apply to the pensions of DROP participants. However, effective for General Pension and Retirement Plan participants entering DROP on or after October 1, 2012, any cost-of-living increase provided by the General Pension and Retirement Plan shall not apply to the DROP participants. Also, effective for the Police Officers' Retirement Fund participants entering DROP on or after January 1, 2013, any cost of living increase provided by the Police Officers' Retirement Fund shall not apply to the DROP participants. Effective for the Firefighters' Relief and Pension Plan participants entering DROP on or after date Special Act amendments become law as referenced in the collective bargaining agreement ratified by city council on February 12, 2015, any cost of living increase provided by the Firefighters' Relief and Pension Plan shall not apply to the DROP participants.

(i) *Health insurance subsidy.* Retiree health insurance subsidies will not be granted to active DROP participants. Eligible participants will start receiving the health insurance subsidy at the conclusion of the DROP period, provided the proper application is made and the participant meets the eligibility requirements for such subsidy.

(j) *Assignment of benefits.* The accrued benefits of any DROP participant, and any contributions accumulated under the DROP, shall not be subject to assignment, execution, attachment, or any legal process whatsoever, except for qualified domestic relations orders issued by a court of competent jurisdiction, or other exceptions specifically authorized by Section 401(a)(13) of the Internal Revenue code.

(k) *Forfeiture of retirement benefits.* Nothing in this ordinance shall be construed to remove DROP participants from the scope of Section 8(d) Article II of the State Constitution, Section 112.373, and paragraph (5)(f). DROP participants who commit a specified felony offense while employed will be subject to forfeiture of all retirement benefits, including DROP benefits, pursuant to those provisions of law.

(l) *Employment limitation after DROP participation.* A DROP participant who is not a member of the General Pension and Retirement Fund shall not be eligible for ~~civil service or contract~~ reemployment with the City of Pensacola after the conclusion of the DROP period if the nature and extent of such employment or re-employment could result in the participant being eligible to participate in any defined benefit retirement plan of the city.

(Ord. No. 46-99, § 4, 11-18-99; Ord. No. 16-07, § 25, 4-26-07; Ord. No. 25-12, § 1, 12-13-12; Ord. No. 01-13, § 1, 1-10-13; Ord. No. 07-15, § 1, 3-12-15)

Editor's note— Section 4 of Ord. No. 01-13 states this ordinance shall [be effective] on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.30(d) [4.03(d)] of the City Charter of the City of Pensacola.

Sec. 9-9-5. - DROP administration.

(a) *DROP administrator.* The DROP administrator shall be the ~~director of finance~~ Chief Financial Officer of the City of Pensacola, Florida. The DROP administrator shall have full power and authority to administer the DROP. Such power will include the ability to promulgate, adopt, amend, or revoke procedures which are necessary to implement and maintain the DROP. The DROP administrator shall make such rules as are necessary for the effective and efficient administration of the plan. The DROP administrator shall not be required to advise members of the federal tax consequences of an election related to the DROP but may advise members to seek independent advice.

(b) *DROP expense.* Administrative expenses shall be credited as determined by the DROP administrator from the investment fund(s) selected by the administrator of the DROP.

(Ord. No. 46-99, § 5, 11-18-99)

Sec. 9-9-6. - Reservation of power to alter or amend.

Although the city council, through the adoption of this ordinance, has agreed to join with those communities and other governmental bodies in providing its workforce with additional flexibility in planning for and entering into retirement following a career with the city, the city council acknowledges that DROP plans are still in their relative infancy and may ultimately produce results, either financial or otherwise, which may be deemed adverse to the interest of the City of Pensacola, Florida. In that regard, in the adoption of the DROP plan ordinance, the city council hereby expressly reserves the authority in the future to amend, modify or repeal all or portions of this DROP plan ordinance as may be deemed necessary and appropriate. Any future change will be adopted in accordance with the requirements of law. With respect to city employees who have not terminated their employment with the city and who have not executed a DROP election, the adoption of this

chapter shall not be deemed to have conferred any vested rights or property interest upon those employees.

(Ord. No. 46-99, § 6, 11-18-99)

CHAPTER 9-10. STATE-MANDATED PENSION BENEFITS

Secs. 9-10-1 – 9-10-9. - RESERVED

~~Sec. 9-10-1. - Early retirement pension benefits for firefighters.~~

Commented [RS44]: All provisions have been incorporated into the Fire Pension Special Act in 2015.

~~Any firefighter who has attained the age of fifty (50) years and has served as a firefighter for the City of Pensacola, Florida, for a period of ten (10) continuous years, upon application to the board of trustees of the Firefighters' Relief and Pension Fund, shall be retired on a pension as provided in Part I (Charter and Related Special Acts), Subpart B (Related Special Acts), article VI, section 5(a) of the Code of the City of Pensacola, Florida; provided, that the amount of such pension shall be reduced by three (3) percent for each year by which the firefighter's age at retirement precedes the age of fifty-five (55) and further the amount of such monthly benefit shall be reduced to take into account the firefighter's younger age and the earlier commencement of such benefits.~~

~~(Ord. No. 14-01, § 1, 8-9-01)~~

~~Sec. 9-10-2. - Minimum non-duty disability benefit.~~

~~If after ten (10) years of service, a firefighter suffers a total and permanent disability which is other than in the line of duty and the firefighter retires, the firefighter's monthly benefit shall be the accrued normal retirement benefit, but shall not be less than twenty-five (25) percent of the firefighter's average monthly salary at the time of disability.~~

~~(Ord. No. 28-02, § 1, 9-26-02)~~

~~Sec. 9-10-3. - Minimum line of duty disability benefit.~~

~~The benefit payable to a firefighter who retires from the service of the city due to total and permanent disability as a direct result of a disability that~~

occurred in the line of duty shall be the accrued normal retirement benefit, payable for ten (10) years certain and life, but shall not be less than forty-two (42) percent of the firefighter's average monthly salary at the time of disability.

(Ord. No. 28-02, § 2, 9-26-02)

Sec. 9-10-4. - State mandated minimum accrued benefit.

The amount of monthly retirement income payable to a firefighter who retires on or after the firefighter's normal retirement date shall be, at a minimum, an amount equal to the number of the firefighter's years of credited service multiplied by two (2) percent of the firefighter's average final compensation as a firefighter.

(Ord. No. 28-02, § 3, 9-26-02)

Sec. 9-10-5. - Minimum normal form of payment.

In the event that a firefighter dies after retirement but before the firefighter has received retirement benefits for a period of ten (10) years, the same monthly benefit will be paid to the beneficiary or beneficiaries designated by the firefighter for the balance of such ten (10) year period, when the firefighter is not survived by a widow or widower entitled to receive spousal benefits. Such beneficiary designation must be in writing and received and approved by the trustees prior to the firefighter's death.

(Ord. No. 28-02, § 4, 9-26-02)

Sec. 9-10-6. - Minimum death-in-service benefits.

If a firefighter continues in the service of the city beyond the firefighter's normal retirement date and dies prior to the firefighter's date of actual retirement, without either (i) leaving a widow or widower entitled to receive spousal benefits or (ii) affirmatively electing to receive an alternate form of retirement income permissible under the Plan, monthly retirement income payments will be made for a period of ten (10) years to the beneficiary or beneficiaries designated by the firefighter as if the firefighter had retired on the date on which the firefighter's death occurred. Such beneficiary designation must be in writing and received and approved by the trustees prior to the firefighter's death.

(Ord. No. 28-02, § 5, 9-26-02)

Sec. 9-10-7. - Optional forms of retirement.

(a) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in Article VI, Section 5 and Chapter 99-1, Section 9-10-1, a firefighter, upon written request to the board of trustees, prior to receiving any retirement income or benefit from the fund, and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value as calculated under Chapter 175.162, payable in accordance with one of the following options:

(1) A retirement income of a larger monthly amount, payable to the firefighter for his or her lifetime only.

(2) A retirement income of a modified monthly amount, payable to the firefighter during the joint lifetime of the firefighter and a joint pensioner designated by the firefighter, and following the death of either of them, one hundred (100) percent, seventy-five (75) percent, sixty-six and two-thirds (662/3) percent, or fifty (50) percent of such monthly amounts payable to the survivor for the lifetime of the survivor.

(3) Such other amount and form of retirement payment or benefits as, in the opinion of the board of trustees, will best meet the circumstances of the retirement firefighter.

a. The firefighter upon electing any option of this section will designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the plan in the event of his or her death, and will have the power to change such designation from time to time, but any such change shall be deemed a new election and will be subject to approval by the board of trustees. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a firefighter has elected an option with a joint pensioner or beneficiary and his or her retirement income benefits have commenced, the firefighter may thereafter change the designated joint pensioner or beneficiary, but only if the board of trustees consents to such change and if the joint pensioner last previously designated by the

firefighter is alive when the firefighter files with the board of trustees a request for such change.

b. The consent of a firefighter's joint pensioner or beneficiary to any such change shall not be required.

c. The board of trustees may request such evidence of the good health of the joint pensioner that is being removed as it may require and the amount of the retirement income payable to the firefighter upon designation of a new joint pensioner shall be actuarially redetermined taking into account the age and sex of the former joint pensioner, the new joint pensioner, and the firefighter. Each such designation will be made in writing on a form prepared by the board of trustees and on completion will be filed with the board of trustees. In the event that no designated beneficiary survives the firefighter, such benefits as are payable in the event of the death of the firefighter subsequent to his or her retirement shall be paid as provided in section 9-10-8 of the City of Pensacola Code.

(b) 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 firefighter dies prior to his or her 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 Article VI, Section 13 or 14 of the City of Pensacola Code or F.S. § 175.201, as the case may be.

(2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the firefighter's retirement under the plan, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the firefighter upon 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 firefighter prior to retirement and within ninety (90) days after the death of the beneficiary.

(3) If both the retired firefighter and the beneficiary (or beneficiaries) designated by him or her die before the full payment as been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of paragraph (a)(3), the

board of trustees may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 9-10-8 of the City of Pensacola Code.

(4) If a firefighter continues beyond his or her normal retirement date and dies prior to 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 (or beneficiaries) designated by the firefighter in the amounts or amounts computed as if the firefighter had retired under the option on the date on which the death occurred.

(c) No firefighter may make any change in his or her retirement option after the date of cashing or depositing the first retirement check.

(Ord. No. 10-05, § 1, 9-15-05)

Sec. 9-10-8. - Alternate beneficiary.

(a) Each firefighter may, on a form provided for that purpose, signed and filed with the board of trustees, designate a choice of one or more persons, named sequentially or jointly, as his or her beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his or her death; and each designation may be revoked by such firefighter by signing and filing with the board of trustees a new designation of beneficiary form. A firefighter may change his or her beneficiary at any time.

(b) If no beneficiary is named in the manner provided by subsection (a), or if no beneficiary designated by the member survives him or her, the death benefit, if any, which may be payable under the plan with respect to such deceased firefighter shall be paid by the board of trustees to the estate of such deceased firefighter, provided that the board of trustees, in its discretion, may direct that the commuted value of the remaining monthly income payments be paid in a lump sum. Any payment made to any person pursuant to this subsection shall operate as a complete discharge of all obligations under the plan with regard to the deceased firefighter and any other persons with rights under the plan and shall not be subject to review any anyone but shall be final, binding, and conclusive on all persons ever interested hereunder.

(c) Notwithstanding any other provision of law to the contrary, the surviving spouse of any pension participant member killed in the line of duty shall not lose survivor retirement benefits if the spouse remarries. The surviving spouse of such deceased member whose benefit terminated because of remarriage shall have the benefit reinstated as of July 1,1994, at an amount that would have been payable had such benefit not been terminated.

(d) If a firefighter has elected an option with a joint pensioner and retirement income benefits have commenced, the firefighter may transfer, change the designated beneficiary at any time, but may only change the joint pensioner twice.

(Ord. No. 10-05, § 2, 9-15-05)

Sec. 9-10-9. - Military service.

Notwithstanding any other provisions of the Firefighters' Relief and Pension Fund to the contrary, contributions, benefits and service credit with respect to qualified military service as defined in section 414(u) of the Code, shall be provided in accordance with section 414(u) of the Code, the Uniformed Services Employment Act of 1994 ("USERRA") and the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART ACT"). If a firefighter dies on or after January 1, 2007, while performing qualified military service, such firefighter's beneficiaries are entitled to any additional benefits the firefighter would have received had the firefighter resumed employment and then died while employed.

(Ord. No. 03-16, § 1, 1-14-16)

CHAPTER 9-11. FLORIDA RETIREMENT SYSTEM

Sec. 9-11-1. - Participation in the Florida Retirement System.

(a) All general employees of the city hired on or after July 1, 2007, and members of its city council and the mayor shall participate in the Florida Retirement System as authorized by F.S. Ch. 121, except as excluded by law or by this chapter. General employees hired before July 1, 2007, shall on July 1, 2007, become compulsory participants in the Florida

Retirement System except for such employees who pursuant to section 9-11-2 elect prior to July 1, 2007, not to participate in the Florida Retirement System. The mayor and members of the city council shall be in the elected officials class of the Florida Retirement System. The city attorney, and such other employees designated by the mayor shall be in the senior management service class of the Florida Retirement System.

(b) "General employees," as used in this chapter shall mean any employee of the city required to be covered by the Florida Retirement System other than the following:

(1) Employees of the city who are eligible to participate in the firefighters' relief and pension fund below the rank of fire chief unless otherwise prohibited by law.

(c) All sworn police officers of the city hired on or after January 2, 2013 shall participate in the Florida Retirement System Special Risk Class as authorized by F.S. Ch. 121, except as excluded by law or by this chapter. Sworn police officers hired before January 2, 2013, shall on April 1, 2013, become compulsory participants in the Florida Retirement System except for such employees who pursuant to section 9-11-2 elect prior to April 1, 2013, not to participate in the Florida Retirement System.

(Ord. No. 16-07, § 26, 4-26-07; Ord. No. 16-10, § 154, 9-9-10; Ord. No. 08-13, § 1, 2-28-13)

Sec. 9-11-2. - Election of the Florida Retirement System.

(a) Prior to July 1, 2007, a referendum election of coverage in which all general employees in the city having the right to participate in the Florida Retirement System shall be held on a date fixed by the city manager or his or her designee.

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(b) Prior to April 1, 2013, a referendum election of coverage in which all sworn police officers in the city having the right to participate in the Florida Retirement System shall be held on a date fixed by the mayor or his or her designee.

(c) Only those general employees and sworn police officers who elected coverage under the Florida Retirement System by an affirmative vote in this referendum election shall be eligible for such participation as well as future general employees and sworn police officers of the city who shall

become automatically compulsory members of Florida Retirement System without the right of election.

(d) Once made, the choice by the employee to participate in the Florida Retirement System shall be irrevocable.

(Ord. No. 16-07, § 26, 4-26-07; Ord. No. 08-13, § 2, 2-28-13)

Sec. 9-11-3. - Agreement execution.

(a) The mayor is hereby authorized and directed to execute all necessary agreement(s) and amendments thereto with the administrator of the Florida Retirement System for the purpose of extending the benefits provided by it to the city's general employees and sworn police officers.

(b) As provided herein, such agreement(s) shall provide for the methods of administration of this retirement plan by the city that are found by the administrator of the Florida Retirement System to be necessary and proper and shall be effective for any employment covered by such agreement(s) for employee services performed on and after the first day of July 2007 for general employees and April 1, 2013 for sworn police officers.

(Ord. No. 16-07, § 26, 4-26-07; Ord. No. 32-09, § 3, 9-24-09; Ord. No. 16-10, § 155, 9-9-10; Ord. No. 08-13, § 3, 2-28-13)

Sec. 9-11-4. - Employee withholding.

There shall be withheld from the periodic compensation of each general employee and each sworn police officer sufficient funds to remit to the Florida Retirement System for employee Social Security contributions which shall be paid over by the city to the Florida Retirement System administrator designated by state law or regulations to receive such amounts.

(Ord. No. 16-07, § 26, 4-26-07; Ord. No. 08-13, § 4, 2-28-13)

Sec. 9-11-5. - Appropriation and pay from city funds.

There shall be appropriated and paid to the lawfully designated administrator of the Florida Retirement System in the manner provided by applicable state laws and regulations such amounts from available city funds

and at such times as may be required to pay promptly the contributions and assessments of the city as a Florida Retirement System employer.

(Ord. No. 16-07, § 26, 4-26-07)

Sec. 9-11-6. - Records.

The city shall keep such records and make such reports as may be required by applicable state laws or regulations, and shall adhere to all laws and regulations relating to the Florida Retirement System.

(Ord. No. 16-07, § 26, 4-26-07)

Sec. 9-11-7. - Benefits and overage conditions.

The city hereby adopts the terms, conditions, requirements, reservations, benefits, privileges, and other conditions thereunto appertaining to the Florida Retirement System for and on behalf of the general employees of its departments and agencies and its sworn police officers to be covered under the agreement with Florida Retirement System.

(Ord. No. 16-07, § 26, 4-26-07; Ord. No. 08-13, § 5, 2-28-13)

Sec. 9-11-8. - Custodian of funds.

The ~~city director of finance~~ Chief Financial Officer is hereby designated the custodian of all Florida Retirement System sums withheld from the compensation of general employees and sworn police officers as authorized herein and of the appropriate funds from the employer's contributions. Also, the ~~director of finance~~ Chief Financial Officer is hereby designated the withholding and reporting agent and charged with the duty of maintaining records for the purposes of this chapter.

(Ord. No. 16-07, § 26, 4-26-07; Ord. No. 08-13, § 6, 2-28-13)