

TITLE IX. - PERSONNEL^[1]

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

CHAPTER 9-1. GENERAL PROVISIONS

(RESERVED)

CHAPTER 9-2. DEPARTMENT OF HUMAN RESOURCES^[2]

Footnotes:

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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.

A department of human resources is hereby established. 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)

REPEAL SECTION 9-2-2,

CHAPTER 9-3. EMPLOYEE BENEFITS AND COMPENSATION^[3]

Footnotes:

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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

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.
- (b) *Administration.* There shall be established and maintained a human resources policy manual related to the terms and conditions of employment which may include, but not be limited to, working hours, official holidays, weekend observance, compensation, leaves of absence, accrual of time, personal time off, separation of service and retirement benefits. The human resources policy manual shall be maintained and readily available for public inspection on the city's webpage. The policies shall conform to this article and shall take into consideration that the city seeks to provide a positive work environment and a solid foundation for employees that is in compliance with federal, state, and local laws.

(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 unless they are designated as part-

time employees or paid interns. The regular workweek shall be from 12:01 a.m. Monday to 12:00 midnight the following Sunday. 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 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.

(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, Good Friday, Memorial Day, the Fourth of July, Labor Day, Veteran's Day, Thanksgiving, the day after Thanksgiving, Christmas and the day after Christmas. The mayor is hereby authorized in his or her 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, 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.* There shall be two (2) additional personal holidays observed by each employee on a workday of the employee's choosing subject to approval in advance by the department director. 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 or wage payments 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 procedures by which the director of human resources 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.
- (1) *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 than one (1) hour and shall be in increments of not less than one (1) hour.
- (2) *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.

(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.

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 EMPLOYEES⁴

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.

REPEAL SECTION 9-3-22.

REPEAL SECTION 9-3-23.

REPEAL SECTION 9-3-24.

REPEAL SECTION 9-3-25.

REPEAL SECTION 9-3-26,

REPEAL SECTION 9-3-27.

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.

(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 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.

REPEAL SECTION 9-3-29.

REPEAL SECTION 9-3-30

REPEAL SECTION 9-3-31.

REPEAL SECTION 9-3-32.

REPEAL SECTION 9-3-33.

REPEAL SECTION 9-3-34.

REPEAL SECTION 9-3-35.

REPEAL SECTION 9-3-36.

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.

REPEAL SECTION 9-3-40.

Sec. 9-3-41. - 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.

REPEAL ARTICLE III.

REPEAL SECTION 9-3-58.

REPEAL ARTICLE IV.

Footnotes:

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State Law reference— Firefighters; supplemental compensation from state, F.S. § 633.382.

REPEAL SECTION 9-3-76.

REPEAL SECTION 9-3-77.

REPEAL SECTION 9-3-78.

REPEAL SECTION 9-3-79.

REPEAL SECTION 9-3-80.

REPEAL SECTION 9-3-81.

REPEAL SECTION 9-3-82.

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.

REPEAL ARTICLE I.

REPEAL SECTION 9-5-1.

REPEAL SECTION 9-5-2.

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 31, 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 aforementioned 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 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 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 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 plan administrator to direct the investment and reinvestment of any such investment accounts. The 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 plan administrator shall report the nature, extent and return of the investments made by said finance director on a monthly basis. The 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. 9-5-21.5. - Defined contribution plan.

- (a) *Established.* Pursuant to F.S. § 185.35, a defined contribution plan to be entitled "Police Officers' Retirement Fund Defined Contribution Plan" is hereby created. The purpose of this plan is to receive

fifty (50) percent of the excess insurance premium tax revenues over the insurance premium tax revenues received for calendar year 2012. The plan will not be funded if the city and the collective bargaining units come to mutual consent on an alternate use of the funds. The separate defined contribution plan hereby created shall be in addition to any other benefits available to the members under the police officers' retirement fund and nothing herein shall in any way affect any other benefits that now or hereafter exist.

- (b) Any extra benefits to be provided or on behalf of participants of the police officers' retirement fund defined contribution plan shall be provided through individual accounts with each participant - directed investments and in accordance with Section 401(a) of the Internal Revenue Code and its related regulations.
- (c) The city shall not be required to levy any additional taxes on its residents or to make any other contributions to the defined contribution plan.

(Ord. No. 31-16, § 1, 11-17-16)

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 (66 2/3) 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 officer 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 of 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 (66 2/3) 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 reinstatement 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 in 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

REPEAL SECTION 9-5-46.

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 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 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 SYSTEM¹⁹

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. - Establishment and purpose.

- (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.

(Ord. No. 122-83, § 1, 12-8-83; Ord. No. 08-16, § 2, 3-17-16)

Secs. 9-5-67—9-5-80. - Reserved.

Editor's note— Ord. No. 08-16, § 3, adopted March 17, 2016, repealed §§ 9-5-67—9-5-74, which pertained to definitions and rules of construction, participation, administration,

participant's accounts, investments, distributions, miscellaneous, amendment or termination of plan. See Code Comparative Table for complete derivation.

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.

(Ord. No. 29-97, § 1, 8-28-97; Ord. No. 08-16, § 4, 3-17-16)

Secs. 9-5-92—9-5-100. - Reserved.

Editor's note— Ord. No. 08-16, § 5, adopted March 17, 2016, repealed §§ 9-5-92—9-5-98, which pertained to definitions, participation, administration, participant's accounts, investments, distributions, miscellaneous, amendment or termination of plan. See Code Comparative Table for complete derivation.

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 finance director 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 finance director 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.

(Ord. No. 28-16, § 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

- (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 (66 2/3) 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 its 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 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:

- (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.

(Code 1968, § 49-1(B); Ord. No. 7-98, § 2, 3-12-98; Ord. No. 10-01, § 1, 3-8-01; Ord. No. 08-16, § 6, 3-17-16)

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.

(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; Ord. No. 08-16, § 7, 3-17-16)

DIVISION 4. - DEFINED CONTRIBUTION PENSION PLAN

Sec. 9-6-7. - Defined contribution pension plan.

- (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 direction 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.

(Ord. No. 10-01, § 1, 3-8-01; Ord. No. 34-02, § 2, 10-24-02; Ord. No. 16-07, § 23, 4-26-07; Ord. No. 08-16, § 8, 3-17-16)

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

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.

(Ord. No. 30-91, § 2, 6-27-91; Ord. No. 08-16, § 9, 3-17-16)

Secs. 9-6-12—9-6-19. - Reserved.

Editor's note— Ord. No. 08-16, § 10, adopted March 17, 2016, repealed §§ 9-6-12—9-6-17, which pertained to definitions, deferment plan, administration, participant's accounts, investments, distributions, miscellaneous, amendment or termination of plan. See Code Comparative Table for complete derivation.

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 INSURANCE¹²¹

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 and part-time employees as required under the Affordable Care Act.
- 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. and city council member as described in f., who while an active employee was a member of the city general pension and retirement plan, firemen's relief and pension plan, police officers retirement plan or Florida Retirement System and who was actively employed by the city for a continuous period of six (6) years, or whose written employment contract provided for participation in such insurance plan following termination of active employment.
- d. Any former employee, as described in subsection a. or b., employed by the city as of October 1, 2016, 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 six (6) 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 plan in the manner as specified in c. above.

- 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 or special 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; Ord. No. 02-17, § 1, 1-12-17)

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.

REPEAL SECTION 9-8-1.

REPEAL SECTION 9-8-2.

REPEAL SECTION 9-8-3.

REPEAL SECTION 9-8-4.

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 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 other than participation in the Florida Retirement System in a position of the city established by the mayor pursuant to the provisions of section 9-9-4(m).
- (m) *Mayor's authority to re-employ former police DROP participants.* The mayor is authorized to create appropriate part-time employment positions for the purpose of enhancing and supplementing the public safety services rendered by the city's regular, sworn law enforcement employees. These positions shall be structured so as to permit, but not require, the employment of retired, former city law enforcement officers who shall not become participants in the police officers' retirement fund.

(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; Ord. No. 05-19, §§ 1, 2, 3-14-19)

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 finance director 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

REPEAL SECTION 9-10-1

REPEAL SECTION 9-10-2.

REPEAL SECTION 9-10-3.

REPEAL SECTION 9-10-4.

REPEAL SECTION 9-10-5.

REPEAL SECTION 9-10-6.

REPEAL SECTION 9-10-7.

REPEAL SECTION 9-10-

8.

REPEAL SECTION 9-10-9.

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) Only those general employees and sworn police officers who elected coverage under the Florida Retirement System by an affirmative vote in a 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.
- (b) 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 finance director 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 finance director 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)