

ORDINANCE NO. 45-17

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 35, "EMPLOYEE POLICIES AND BENEFITS," SECTION 35.089, "DEFINITIONS"; AMENDING SECTION 35.093, "CREDITED SERVICE FOR FORMER EMPLOYEES AND EMPLOYEES WHO WERE EXCLUDED FROM PARTICIPATION IN THE PLAN"; AMENDING SECTION 35.094, "PURCHASE OF ADDITIONAL CREDITED SERVICE FOR PRIOR MILITARY OR GOVERNMENT EMPLOYMENT"; AMENDING SECTION 35.095, "CONTRIBUTIONS OF PARTICIPANT AND CITY"; AMENDING SECTION 35.096, "EXPENSES OF ADMINISTRATION"; AMENDING SECTION 35.097, "RETIREMENT INCOME; BASIS, AMOUNT, AND PAYMENT"; AMENDING SECTION 35.101, "BENEFITS NONASSIGNABLE"; AMENDING SECTION 35.102, "BENEFITS PAYABLE TO MINORS AND INCOMPETENTS"; AMENDING SECTION 35.103, "ABANDONMENT OF BENEFITS"; AMENDING SECTION 35.105, "ADMINISTRATION BY RETIREMENT COMMITTEE"; AMENDING SECTION 35.1051, "CLAIMS PROCEDURE"; AMENDING SECTION 35.106, "TRUST FUND AND TRUSTEE"; AMENDING SECTION 35.108, "AMENDMENT OF PLAN"; AMENDING SECTION 35.109, "TERMINATION OF PLAN"; PROVIDING CONFLICT CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, the City of Delray Beach General Employees' Retirement Plan was adopted by the City Commission to provide retirement benefits to general employees of the City; and

WHEREAS, the General Employees' Retirement Plan is a qualified plan under Section 401 of the U.S. Internal Revenue Code, and is also subject to Part VII, Chapter 112, Florida Statutes; and;

WHEREAS, the General Employees' Retirement Plan has not been reviewed for compliance with changes in the Internal Revenue Code, IRS regulations and state law for many years; and

WHEREAS, the City Attorney, in consultation with the Retirement Committee which administers the General Employees' Retirement Plan, recently engaged legal counsel to review the Retirement Plan and recommend changes to comply with the Internal Revenue Code, IRS regulations and state law; and

WHEREAS, to implement the recommended changes, it is necessary to adopt an ordinance amending several sections of the City Code.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That Chapter 35, "Employee Policies and Benefits", Section 35.089, "Definitions", of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 35.089. – Definitions.

Actuarial (actuarially) equivalence (equivalent). Equality in value of the aggregate amounts expected to be received under different forms of payment. For the purpose of determining the actuarial equivalent amounts for the purpose of under the plan will be determined utilizing value of an optional benefit form, an interest rate of 7.25% per annum compounded annually shall be utilized with the following mortality tables:

(a) For heathy lives, a 50% / 50% blend of the following tables:

1. Male – the RP-2000 mortality table for annuitants with mortality improvements projected to all future years after 2000 using Scale BB, 50% annuitant white collar / 50% annuitant blue collar.

2. Female - the RP-2000 mortality table for annuitants with mortality improvements projected to all future years after 2000 using Scale BB, 100% annuitant white collar.

(b) For disabled lives: a 50% / 50% blend of the following tables:

1. Male - the RP-2000 mortality table for disabled annuitants with a four year set-back and no provision being made for future mortality improvements.

2. Female - the RP-2000 mortality table for disabled annuitants with a two year set-forward and no provision being made for future mortality improvements.

~~the 1983 group annuity mortality table, blended for males and females, with interest at seven (7) percent where the participant's age shall be set back one year and the beneficiary's age shall be set back four (4) years regardless of gender. For the purpose of converting DROP account balances to an equivalent lifetime annuity as required under Section 415 of the Internal Revenue Code, "actuarial equivalent" shall mean a benefit amount of equal value based upon the applicable mortality table as provided under Section 415 of the Internal Revenue Code and an interest rate of five and one-half percent per annum. For other purposes of actuarial equivalent adjustments required under Section 415 of the Internal Revenue Code, the statutory basis shall be used as applicable. However, in the event of plan termination, actuarial equivalence will be based upon the interest and mortality assumptions prescribed by the pension benefit guaranty corporation for plan terminations in effect on the actual date of plan termination.~~

Basic compensation. The compensation actually paid to a participant by the City, including participant contributions picked up by the City in accordance with Section 35.095(A)(1) of this subchapter, and exclusive of overtime pay, Commissions, bonuses, expense allowances, and all

other extraordinary compensation. An employee's earnings, compensation or salary contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code shall also be deemed to be compensation the employee would receive if he or she were not participating in such program and shall be treated as compensation for retirement purposes. For any person who first becomes a participant in any plan year beginning on or after January 1, 1996, compensation for any plan year shall not include any amounts in excess of the Internal Revenue Code section 401(a)(17) limitation, which limitation shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code Section 401(a)(17)(B).

Beginning January 1, 2009, to the extent required by Internal Revenue Code section 414(u)(12), an individual receiving differential wage payments, as defined under Internal Revenue Code section 3401(h)(2), from an employer shall be treated as employed by the City, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Internal Revenue Code section 415(c). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Beneficiary. The person (or persons), designated in writing by a participant and filed with the board, who is entitled to receive benefits hereunder upon the death of the participant. If no such designation has been made in writing by the participant, or if no designated beneficiary is living at the time of the participant's death, the beneficiary is the participant's estate.

City. The City of Delray Beach, Florida.

Credited service. The period of continuous City employment from the employee's most recent date of hire to the date of termination of City employment up to a maximum of thirty (30) years, except as otherwise provided in Section 35.093 or Section 35.094 of this subchapter, ~~and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time.~~ Credited service shall include all periods of paid leave, and unpaid leave up to and including thirty (30) days in any calendar year. Unpaid leave in excess of thirty (30) days in any calendar year shall be excluded from credited service, except as otherwise required by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as amended from time to time. The credited service of any ~~member~~ participant whose City employment is terminated by reason of the ~~member's~~ participant's death within thirty (30) days prior to attaining five (5) years of credited service shall be deemed to include the period between the participant's ~~member's~~ death and the date on which the participant ~~member~~ would have attained five (5) years of credited service.

A participant shall receive credited service for all purposes, including vesting, for the years or fractional parts of years that he or she performs "Qualified Military Service" including voluntary or involuntary service in the armed forces of the United States as defined under USERRA, after separation from employment with the City, to perform training or service, provided that:

- (a) The participant returns to employment with the City within one (1) year following the date of military discharge or release from active service.
- (b) The participant is entitled to reemployment under the provisions of USERRA,
- (c) The participant pays to the plan the amount he or she would have contributed to the plan as pick-up contributions if his or her employment would have continued during the period of

absence due to Qualified Military Service. Such payment must be made by the earlier of a period equal to three (3) times the period of absence or five (5) years.

- (d) The maximum credit for military service pursuant to this paragraph shall be five (5) years.
- (e) This section is intended to satisfy the minimum requirements of USERRA, as may be amended from time to time. To the extent that this section does not meet the minimum requirements of USERRA, the provisions of USERRA shall govern.

If a participant dies on or after January 1, 2007 while performing Qualified Military Service as defined by USERRA, the participant's beneficiaries shall be entitled to any benefits to which the participant would have been entitled had he or she resumed employment and then died while employed.

Credited service shall also include, for purposes of vesting and determining eligibility for normal retirement only, the years and completed months of a participant's ~~member's~~ full-time employment with the City as a police officer or firefighter subsequent to membership in this plan. Such service shall not be considered in determining the amount of a participant's ~~member's~~ benefits under this plan.

Employee. Any regular full-time employee of the City, except as otherwise provided herein.

- (1) The term "employee" shall not include: City Commissioners; the City Manager (and assistants); the City Attorney (and assistants); department heads upon their written election not to participate in the plan; former department heads who have elected not to participate in the plan; any person not classified by the City as a regular, full-time employee; any participant who retires and receives early or normal retirement benefits under the plan, is subsequently re-employed by the City, and elects to continue receiving retirement income during the period of employment pursuant to Section 35.090(E) of this subchapter; and firefighters and police officers employed by the City who participate in another retirement plan.
- (2) Effective January 7, 2003, the term "employee" shall include the City Manager (and assistants) upon their written election to participate in the plan; the City Attorney (and assistants) upon their written election to participate in the plan; department heads; and the Sustainability Officer/Public Information Officer who previously elected not to participate in the plan, upon their written election to participate in the plan. Such written election shall be irrevocable.

Employment. Regular, full-time employment as a City employee.

Final monthly compensation. For participants who retire or terminate employment with five (5) or more years of credited service prior to October 6, 2010, final monthly compensation means the total basic compensation received by a participant during the highest-paid twenty-four (24) consecutive months of the one hundred twenty (120) months immediately preceding the termination of employment, divided by twenty-four (24). For participants who are employed on October 5, 2010, and who retire or terminate employment with five (5) or more years of credited service on or after October 6, 2010, final monthly compensation means the total basic compensation received by a participant during the highest-paid thirty-six (36) consecutive months of the one hundred twenty (120) months immediately preceding the termination of employment, divided by thirty-six (36). Notwithstanding the preceding sentence, in no event shall the average

final compensation of any participant who is employed on October 5, 2010 be less than the total basic compensation received by the participant during the highest-paid twenty-four (24) consecutive months of the one hundred twenty (120) months immediately preceding October 5, 2010, divided by twenty-four (24). For participants hired on or after October 6, 2010, final monthly compensation means the highest paid sixty (60) consecutive months of the one hundred twenty (120) months immediately preceding the termination of employment, divided by sixty (60). In computing final monthly compensation for a participant who has returned to active City employment following an approved leave of absence, disability retirement or termination of employment with a vested benefit, the period of leave of absence, disability retirement, or following termination of employment shall be ignored in determining the highest paid twenty-four (24), thirty-six (36) or sixty (60) consecutive months, as applicable, of the one hundred twenty (120) months immediately preceding the subsequent termination of employment. Notwithstanding any other provision of this paragraph, the definition of final monthly compensation contained in the first sentence of this paragraph shall continue to apply to participants who are employed in a position included in a bargaining unit on October 5, 2010, until such time as changes to the definition are implemented through the collective bargaining process.

Normal retirement date. For participants who retire or terminate employment with five (5) or more years of credited service prior to October 6, 2010, and for participants who are employed on October 5, 2010, and within ten (10) years of attaining age sixty (60) or thirty (30) years of credited service as of that date, normal retirement date means the first day of the month coincident with or next following the date a participant attains the age of sixty (60) and completes ten (10) years of credited service, or the date on which a participant attains thirty (30) years of credited service, regardless of age, whichever occurs first. Effective October 6, 2010, for participants who are employed on October 5, 2010, and not within ten (10) years of attaining age sixty (60) or thirty (30) years of credited service as of that date, normal retirement date means the first day of the month coincident with or next following the date a participant attains the age of sixty-two (62) and completes ten (10) years of credited service, or the date on which a participant attains thirty (30) years of credited service, regardless of age, whichever occurs first. The normal retirement date for participants hired on or after October 6, 2010, shall be the date a participant attains the age of sixty-five (65) and completes ten (10) years of credited service. A participant who terminates employment with five (5) or more years of credited service prior to October 6, 2010, does not receive a return of participant contributions in accordance with Section 35.095(A), and is subsequently reemployed in a position covered by this plan, shall be entitled to receive a benefit in two (2) parts as follows: the vested accrued benefit based on credited service prior to October 6, 2010, payable on the date the participant attains the age of sixty (60) and completes ten (10) years of credited service; and the vested accrued benefit based on credited service on or after October 6, 2010, payable on the date the participant attains the age of sixty-five (65) and completes ten (10) years of credited service. A participant may continue in the employ of the City and continue to participate in the plan beyond the normal retirement date. Notwithstanding any other provision of this paragraph, the definition of normal retirement date contained in the first sentence of this paragraph shall continue to apply to participants who are employed in a position included in a bargaining unit on October 5, 2010, until such time as changes to the definition are implemented through the collective bargaining process.

Participant. An employee who is eligible to participate and who actually participates in the plan.

Retire (retired). To separate (be separated) from City employment with eligibility for immediate receipt of benefits under the plan and commence receipt of (be receiving) benefits.

Retirement. Either termination of City employment with immediate entitlement to receive normal, early or disability retirement income under the plan, or entry into the Deferred Retirement Option Plan ("DROP") with immediate entitlement to receive normal retirement income from the general employees retirement plan to the DROP.

Retirement Committee. A five (5) member committee appointed by the City Commission, responsible for the administration of the plan as provided herein (hereinafter "the Committee").

Spouse. The ~~lawful husband or wife~~ legal spouse, as permitted under applicable law, of an employee at the time of the employee's retirement or death, whichever is applicable.

Terminated participant. A plan participant with at least five (5) years of credited service whose City employment is terminated for any reason other than death, early retirement or disability retirement prior to the normal retirement date.

Section 2. That Chapter 35, "Employee Policies and Benefits", Section 35.093, "Credited Service for Former Employees and Employees who were Excluded from Participation in the Plan", of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 35.093. -- Credited Service for Former Employees and Employees who were Excluded from Participation in the Plan.

- (A) Former plan participants who have not begun to receive benefits under the plan and who are reemployed by the City as eligible employees will be considered new employees with credited service for all purposes calculated as such unless the former participants elect to pay back to the plan the amount of any previous distribution received from the plan plus interest. The amount of interest required will be calculated based upon a seven (7) percent per annum rate for the period from date of original distribution to the date of repayment. Former plan participants who elect to repay this amount will be granted the credited service awarded prior to their previous termination of service.
- (B) Current employees, or employees who left the employ of the City on or after January 1, 1984, who participated in the plan and who were excluded from further participation in the plan during employment due to being over the then-existing maximum age provisions, but who never received retirement income or withdrawal of participant contributions from the plan, shall have credited service for purposes of benefit calculation equal to the period of participation before exclusion plus one year, plus whatever time they elect to buy back under divisions (C) and (D) of this Section, plus the time after September 25, 1984, during which they contributed to and participated in the plan. If an employee who was excluded from further participation in the plan received retirement income or a withdrawal of participant contributions, then credited service for purposes of benefit calculation shall be equal to the number of years the employee elects to buy back under divisions (C) and (D) of this Section, plus one year, plus the time after September 25, 1984, during which the employee contributed to and participated in the plan. Employees in this category may buy back both those years for which they have received a withdrawal of participant contributions and the years during which

they were excluded from the plan. In no event shall this credited service calculation exceed the total number of years of full-time employment with the City.

- (C) (1) Eligible employees who had previously been excluded from plan participation due to being over the then-existing maximum allowable age for participation at hire, or were excluded from the plan due to being over the then-existing maximum age at any time during their employment with the City, will have their credited service calculated in accordance with division (B) of this Section. Eligible employees who wish to buy back any time they were excluded from the plan shall be required to make payment in accordance with division (D), which payment shall be equal to an amount which represents the employee contributions they would have made to the plan had they always participated, plus interest. The amount of interest required will be calculated based upon a seven (7) percent per annum rate for the period from which the money would otherwise have been paid into the plan to the date of repayment. Those employees who elect to make this payment will be granted credited service for purposes of benefit calculation in accordance with division (B). Employees will be required to buy back the most recent years first. All new participants will receive credited service for the purpose of determining their normal retirement date whether or not the optional payment is made.
- (2) The repayment provisions of division (C)(1) shall also be available to former employees who retired from the City on or after January 1, 1984, and who were excluded from the plan due to being over the then-existing maximum age, thereby being prevented from accruing ten (10) years of credited service.
- (D) The repayment of a previous distribution plus interest under division (A) of this Section or the payment of employee contributions plus interest under division (C) of this Section will be payable in a lump sum within ninety (90) days after reemployment or on or before July 1, 1985, whichever is later. However, persons who are employees of the City as of January 16, 1985, at 5:01 p.m. may elect to pay the amount required in installments. If this option is used, one thousand dollars (\$1,000.00) will be due on or before April 15, 1985, with subsequent payments of the lesser of one thousand dollars (\$1,000.00) or the balance due payable every three (3) months after the initial payment. If any type of benefit payment under the plan begins prior to the full payment of employee contributions or a previous distribution plus interest, the outstanding balance will be deducted from the benefit payments as they become due. The Retirement Committee shall have the authority to waive the repayment deadlines set forth herein, upon a finding by the Retirement Committee of extenuating circumstances upon individual request which shall be submitted not later than nine (9) months following the expiration of the applicable deadline.
- (E) Employees who were previously excluded from the plan who elect to participate in the plan pursuant to Section 35.089(D)(2) shall earn credited service from the date of their election to participate in the plan. Such employees may also purchase credited service under the plan, in years and tenths of a year, for all or a portion of the period of their prior employment with the City, by paying into the plan the full actuarial cost of such credited service, as determined by the plan actuary. Such payment must be made in full prior to entering the DROP or separation from City employment, whichever occurs earlier, and in the event full payment is not made prior to such date, the participant member shall receive only the amount of credited service, as determined by the actuary, for which the payment made, excluding interest, is the full actuarial cost. A participant purchasing such additional credited service must pay the full cost

of any actuarial calculations required. Payment for the purchase of credited service pursuant to this subsection may be made using any one or a combination of the following options:

1. *[Cash Payment.]* Cash lump sum payment.
2. *[Direct Transfer, Rollover.]* Direct transfer or rollover of an eligible rollover distribution from a qualified plan, in accordance with Sec. 35.097(L).
3. *Time Payment Plan.* Under this option the participant ~~member~~ may elect to pay any remaining balance due for the purchase of credited service through payroll deduction on a time payment plan over a period of not more than five (5) years, as approved by the Retirement Committee. Interest on such payments shall be paid based on the assumed rate of return of the plan. Payments deducted from an employee's pay shall be designated as employer contributions pursuant to Section 414(h) of the Internal Revenue Code.

Section 3. That Chapter 35, "Employee Policies and Benefits", Section 35.094, "Purchase of Additional Credited Service for Prior Military or Government Employment", of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 35.094. -- Purchase of Additional Credited Service for Prior Military or Government Employment.

A participant with at least five (5) years of credited service based on City employment who has not entered the DROP may purchase up to three (3) additional years of credited service, in full years and tenths of a year, at any time before retirement for a like period of previous full-time employment with the Federal government, including military service, or any State, county, or city government other than the City of Delray Beach; provided the participant has paid into the plan the full actuarial cost of such credited service as determined by the plan actuary. A participant purchasing such additional credited service must pay the full cost of any actuarial calculations required, and must provide proof of the prior government employment to the City. No additional service credit will be allowed if the participant is receiving or will receive any other retirement benefit based on the prior government service. Payment for the purchase of credited service for prior government employment pursuant to this Section must be made in full prior to entering the DROP or separation from City employment, whichever occurs earlier. In the event full payment is not made prior to such date, the participant ~~member~~ shall receive only the amount of credited service, as determined by the actuary, for which the payment made, excluding interest, is the full actuarial cost. Payment for the purchase of credited service pursuant to this subsection may be made using any one or a combination of the following options:

1. *[Cash Payment.]* Cash lump sum payment.
2. *[Direct Transfer, Rollover.]* Direct transfer or rollover of an eligible rollover distribution from a qualified plan, in accordance with Sec. 35.097(L).
3. *Time Payment Plan.* Under this option the participant ~~member~~ may elect to pay any remaining balance due for the purchase of credited service through payroll deduction on a time payment plan over a period of not more than five (5) years, as approved by the Retirement Committee. Interest on such payments shall be paid based on the assumed rate of return of the plan, and the credited service purchased shall not be credited until all

installments are paid. Payments deducted from an employee's pay shall be designated as employer contributions pursuant to Section 414(h) of the Internal Revenue Code.

Section 4. That Chapter 35, "Employee Policies and Benefits", Section 35.095, "Contributions of Participant and City", of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 35.095. -- Contributions of Participant and City.

(A) Participant's Contribution Account.

- (1) *[Tax-Deferred Contributions.]* For the purpose of this Section "Participant's Contribution Account" will consist of tax deferred participant contributions. Effective the first pay period beginning on or after October 1, 1989, employee contributions will be picked up by the City and shall be treated as employer contributions for tax purposes. However, for all purposes of determining benefits under the plan, they will be considered participant contributions.
- (2) *Participants' Contributions.* Each participant will contribute toward the cost of the plan an amount equal to three (3) percent of the first four thousand eight hundred dollars (\$4,800.00) of his basic annual compensation, and six (6) percent of basic annual compensation in excess of four thousand eight hundred dollars (\$4,800.00) until the beginning of the first pay period after September 25, 1984. Beginning with the first pay period after September 25, 1984, each participant will contribute toward the cost of the plan an amount equal to six (6) percent of basic compensation. Effective as of the first pay period beginning on or after October 1, 1989, participant contributions will be equal to four and one-half (4½) percent of basic compensation on a tax-deferred basis. Beginning with the first pay period after September 1, 1999, participants shall not be required to contribute to the plan, except those participants described in paragraph (4) of this Section. Beginning with the first pay period after September 30, 2003, participants who are not included in the bargaining unit specified in paragraph (4) shall contribute two (2) percent of basic compensation. Beginning with the first pay period after November 1, 2004, participants who are not included in the bargaining unit specified in Paragraph (4) shall contribute two and one-half (2.5) percent of basic compensation. Beginning with the first pay period after October 6, 2010, participants who are not included in a bargaining unit shall contribute three and five one-hundredths (3.05) percent of basic compensation.
- (3) *[Total Benefits Payable.]* Anything in the plan to the contrary notwithstanding, the total benefits payable under the plan to, or with respect to, a participant shall not be less than the benefits that can be provided by the participant's contributions, and further provided, if a participant, who is terminated, elects to withdraw participant contributions, the participant will be entitled to the return of participant contributions with interest, in lieu of all other benefits payable under the plan. Effective September 1, 1999, if a participant has ten (10) or more years of credited service under the plan a noncompounded simple interest rate of five (5) percent per year shall be applied to the principal balance of the participant's contribution as accrued on December 31 of each year. Effective September 1, 1999, if a participant has less than ten (10) years of credited service under the plan a

noncompounded simple interest rate of three (3) percent shall be applied to the principal balance of the participant's contribution as accrued on December 31 of each year. Participant contributions cannot be withdrawn while a participant remains in the employ of the City or after the payment of benefits under the plan has commenced.

- (4) *Applicability to Bargaining Unit Employees.* Participants who are members of the bargaining unit represented by the National Conference of Firemen and Oilers shall not be required to contribute to the plan unless a written actuarial valuation indicates that contributions are required to properly fund the plan in an actuarially sound manner. If an actuary selected by the Retirement Committee determines that additional contributions are required to properly fund the plan, the City and bargaining unit members shall equally share such contributions on a percentage of payroll basis; provided that no participant member shall be required to contribute more than four and one-half (4½) percent of basic compensation unless the City and union agree to a greater participant contribution. Notwithstanding the foregoing, effective November 13, 2004, employees who are members of the bargaining unit represented by the National Conference of Firemen and Oilers shall contribute two and one-half (2½) percent of their gross pay to fund the City's defined benefit pension plan. If an actuary selected by the Pension Board determines that additional monies are required to properly fund the plan, employees shall contribute at the same rate as all other nonrepresented employees who are participants members of the defined benefit pension plan. However, in no event shall employees contribute less than two and one-half (2½) percent nor more than four and one-half (4½) percent of their gross pay, unless the union and the City bargain for a lesser or greater percentage. Notwithstanding the foregoing, employees who are included in a bargaining unit shall contribute three and five one-hundredths (3.05) percent of basic compensation upon implementation of this change through the collective bargaining process.
- (5) Effective September 24, 2010, each participant shall continue to contribute to the plan until the earliest to occur of the following dates:
- (a) Date the participant retires under the plan.
 - (b) Date of death of the participant.
 - (c) Date of termination of the participant's employment with the City.
 - (d) Date the participant attains thirty (30) years of credited service under the plan. Any participant who attained thirty (30) years of credited service under the plan on or after September 24, 2010 shall receive a refund of participant contributions for the period commencing on the date the participant member attained thirty (30) years of credited service.

(B) *City's Contributions.*

- (1) The City intends to make contributions as are required, together with contributions of participants and earnings on investment of fund assets, to maintain the Trust Fund established for the purposes of the plan on a sound actuarial basis, as determined by the actuary employed by the City in accordance with Section 35.105(e) of this subchapter.
- (2) The City shall have no right, title, or interest in the Trust Fund or in any part thereof, and no contributions made thereof shall revert to the City except that part of the Trust Fund,

if any, which remains therein after the satisfaction of all liabilities to persons entitled to benefits under the plan, as described in Section 35.106(E) of this subchapter with respect to termination of the plan.

Section 5. That Chapter 35, "Employee Policies and Benefits", Section 35.096, "Expenses of Administration", of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 35.096. -- Expenses of Administration.

The City may pay all expenses incurred in the administration of the plan, ~~including expenses and fees of the trustee~~, but it shall not be obligated to do so, and any expenses and fees not so paid by the City shall be paid from the Trust Fund.

Section 6. That Chapter 35, "Employee Policies and Benefits", Section 35.097, "Retirement Income; Basis, Amount, and Payment", of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 35.097. -- Retirement Income; Basis, Amount, and Payment.

(A) *Normal Retirement Income.*

- (1) *Amount of Normal Retirement Income.* The amount of retirement income payable to a participant who retires on or after his normal retirement date shall be an amount equal to two and one-half (2.5) percent of final monthly compensation multiplied by credited service, expressed in years and tenths of a year, up to a maximum of thirty (30) years, multiplied by the participant's vested percentage as set forth in Section 35.091.
- (2) *Payment of Normal Retirement Income.* The monthly retirement income payable in the event of normal retirement will be payable on the first day of each month. The first payment will be made effective on the participant's normal retirement date (or on the first day of the month following actual retirement, if later), and shall be continued thereafter during the participant's lifetime. Upon the participant's death the same monthly benefit shall be continued to his or her spouse for one year, and sixty (60) percent of that amount shall be continued to the spouse thereafter until the earlier of the spouse's death or remarriage. The normal form of benefit for a participant who is not married at the time of retirement is a single life annuity. If a participant who is not married at the time of retirement later marries, the spousal benefit provided in this paragraph shall not apply unless the participant requests an actuarially adjusted benefit. Notwithstanding the foregoing provisions of this paragraph, the normal form of benefit for participants who are employed in a position not included in a bargaining unit on October 5, 2010, and not within ten (10) years of attaining the normal retirement date in effect on that date, shall be a single life annuity. The normal form of benefit provided in the third and fourth sentences of this paragraph shall continue to apply to participants who are employed in positions included in a bargaining unit on October 5, 2010, until such time as changes to the normal form of benefit are implemented through the collective bargaining process.

(B) *Early Retirement and Retirement Income.* Early retirement under the plan is retirement from the service of the City prior to the participant's normal retirement date but subsequent to: the attainment of age fifty-five (55) and the completion of fifteen (15) years of credited service; or the completion of twenty (20) years of credited service, regardless of age. Payment of early retirement income will be governed by the following provisions of this Section:

- (1) *Early Retirement Date.* The early retirement date will be the first day of the month following the date a participant retires from the service of the City under the provisions of this Section prior to his normal retirement date.
- (2) *Amount of Early Retirement Income.* The monthly amount of early retirement income payable to a participant shall equal the product of "a" and "b" where "a" is the number of years and tenths of a year of credited service at the early retirement date multiplied by two and one-half (2.5) percent of final monthly compensation; and "b" is the applicable actuarial reduction factor to take into account the participant's younger age and the earlier commencement of retirement income payments. The factor to be used in "b" above is equal to one minus five-twelfths of one percent for each month that the early retirement date precedes the normal retirement date.
- (3) *Payment of Early Retirement Income.* The retirement income payable in the event of early retirement will be payable on the first day of each month. The first payment will be made effective on the participant's early retirement date and shall be continued thereafter during the participant's lifetime. Upon the participant's death the same monthly benefit shall be continued to his or her spouse for one year, and sixty (60) percent of that amount shall be continued to the spouse thereafter until the earlier of the spouse's death or remarriage.

(C) *Disability Retirement and Retirement Income.*

- (1) *[Disability Retirement.]* A participant may retire from the service of the City under the plan if he or she becomes totally and permanently disabled, as defined in subsection (C)(2) of this Section, on or after the effective date of this Section. This type of retirement shall be referred to as disability retirement.
- (2) *Total and Permanent Disability.* A participant will be considered totally disabled if, in the opinion of the Retirement Committee, the participant is wholly prevented from engaging in any occupation for wage or profit; and a participant will be considered permanently disabled if, in the opinion of the Committee, the participant is likely to remain so disabled continuously and permanently from a cause other than those specified in subsection (C)(3) of this Section.
- (3) *Disqualifying Causes of Disability.* A participant will not be entitled to receive any disability retirement income if, in the opinion of the Committee, the disability is a result of:
 - (a) The participant's excessive or habitual use of drugs, intoxicants, or narcotics;
 - (b) Injury or disease sustained by the participant while willfully and illegally participating in fights, riots, civil insurrections, or while committing a felony;
 - (c) Injury or disease sustained by the participant while serving in any [of the] armed forces;

- (d) Injury or disease sustained by the participant diagnosed or discovered after the termination of city employment;
 - (e) Injury or disease sustained by the participant while working for anyone other than the City, and arising out of such employment; or
 - (f) Injury or disease sustained by the participant as a result of an act of war, whether or not the act arises from a formally declared State of war.
- (4) *Proof of Disability.* The Committee, before approving the payment of any disability retirement income, shall require satisfactory proof, in the form of a certificate from a duly licensed physician selected or approved by the Committee, that the participant has become disabled as provided herein. The Committee may require similar proof of the continued disability of a participant after the commencement of disability retirement income.
- (5) *Disability retirement income.*
- (a) *Monthly income payable.*
 - (1) *Service-Connected Disability.* The benefit payable to a participant who retires from the service of the City due to total and permanent disability arising out of and in the course of city employment and occurring prior to October 6, 2010, shall be a monthly retirement income equal to seventy-five (75) percent of the participant's final monthly compensation at the date of disability, subject to offsets for Social Security and workers' compensation benefits in accordance with subsection (C)(5)(a)(4) of this Section. The benefit payable to a participant who retires from the service of the City due to total and permanent disability arising out of and in the course of city employment and occurring on or after October 6, 2010, shall be a monthly retirement income equal to sixty (60) percent of the participant's final monthly compensation at the date of disability, subject to offsets for Social Security and workers' compensation benefits in accordance with subsection (C)(5)(a)(4) of this Section. Notwithstanding the preceding sentence, the first sentence of this paragraph shall continue to apply to participants who are employed in a position included in a bargaining unit on October 5, 2010, until this benefit is changed through the collective bargaining process.
 - (2) *Nonservice-Connected Disability.* The benefit payable to a participant who retires from the service of the City due to total and permanent disability not arising out of and in the course of city employment, after the completion of ten (10) years of credited service, shall be an amount equal to two (2) percent of final monthly compensation at the date of disability, multiplied by the years and tenths of years of credited service, subject to a maximum monthly retirement income of fifty (50) percent of final monthly compensation, and subject to offsets for social security and workers' compensation benefits in accordance with subsection (D)(5)(a)(4) of this Section.
 - (3) *Optional Benefit.* If a participant with greater than ten (10) years of credited service is eligible to receive a nonservice disability benefit of less than fifty dollars (\$50.00) per month under subsection (C)(5)(a)(2) of this Section, the

participant may elect to receive an optional benefit payable commencing according to the provisions of subsection (C)(6) of this Section and subject to subsection (E) of this Section. This optional benefit will be equal to the product of "a" and "b", where "a" is the number of years and tenths of years of credited service at the date of disability, multiplied by two and one-half (2.5) percent of final monthly compensation, and "b" is the applicable actuarial reduction factor to take into account the participant's younger age and the earlier commencement of retirement income payments. If this option is elected, the benefit payable will not be subject to the provisions of subsection (C)(5)(b) of this Section, but will be payable as a normal retirement benefit would be paid pursuant to subsection (A)(2) of this Section, unless an optional form of payment is elected under subsection (E) of this Section, in which case such election will define the period of payment.

4. *Reductions in benefits.* The disability retirement income described above shall be reduced by Social Security and workers' compensation wage-loss benefits received by the participant, as follows. The reduction for Social Security benefits shall be in the amount of the primary insurance amount only, not including any family benefit. Any cost-of-living adjustments in the participant's Social Security benefits shall not serve to reduce further the disability retirement income payable from the plan. The reduction for Social Security disability benefits shall terminate upon the retiree's attainment of age 65. Disability retirement income payable from the plan shall be reduced by workers' compensation wage-loss benefits received by the participant to the extent that such benefits, when added to the participant's disability retirement income from the plan (adjusted for Social Security benefits received, if applicable), exceed the participant's final monthly compensation at the date of disability. Any cost of living adjustments in the participant's workers' compensation benefits shall not serve to reduce further the disability retirement income payable from the plan. In the case of a lump sum workers' compensation settlement, the disability retirement income payable from the plan shall be adjusted as follows:
 - (a) The amount of the lump sum settlement shall be divided by the participant's remaining life expectancy (in months), as determined using standard actuarial tables approved by the plan actuary;
 - (b) If the number obtained in subsection (a), above, when added to the participant's monthly disability retirement income from the plan, exceeds the participant's final monthly compensation on the date of disability, the amount of the excess shall be deducted from the participant's monthly disability retirement income from the plan, for the duration of the participant's remaining life expectancy as determined in subsection (a), above.
 - (c) If the number obtained in subsection (a), above, when added to the participant's monthly disability retirement income from the plan does not exceed the participant's final monthly compensation on the date of disability, there shall be no reduction of the participant's disability retirement income from the plan.

- (b) *Normal Retirement Income Commencing on the Cessation of Disability Retirement Income.* If a participant's monthly disability retirement income from the plan ceases pursuant to subsection (C)(6)(c) of this Section, normal retirement income shall commence in accordance with this paragraph. For the purpose of this subsection, a participant's credited service shall include all periods of credited service as defined in Section 35.089 and Section 35.093 of this subchapter, and all years and tenths of years during which the participant received disability retirement income from the plan. Upon the cessation of disability retirement income pursuant to subsection (C)(6)(c) of this Section, the participant shall begin receiving monthly retirement income computed in the same manner as for normal retirement in accordance with subsection (A)(1) of this Section, based upon the participant's credited service as defined in this paragraph, and projected rate of final monthly compensation (as defined in this paragraph, below). The participant's projected rate of final monthly compensation shall be determined in accordance with Section 35.089(E) of this subchapter, but based on the assumption that the participant's rate of monthly basic compensation at the date of termination of city employment due to disability would have continued without change to the date disability retirement income ceased.
- (6) *Payment of Disability Retirement Income.* The monthly retirement income payable upon disability retirement will be payable on the first day of each month. The first payment will be made effective on the first day of the month following the date on which the participant's disability has existed for five (5) months, or the date on which the participant submits a written application for disability retirement income, whichever is later. Disability retirement income will continue to be paid in lieu of any other retirement income under the plan, until the earliest of the following occurrences:
- (a) If the participant recovers from disability, the last disability retirement income payment will be the payment due next preceding the date of recovery.
 - (b) If the participant dies without recovering from disability, the last payment will be the payment due next preceding the date of death.
 - (c) For participants who become disabled at age sixty (60) or less, disability retirement income shall cease upon the date the participant attains age sixty-five (65). For participants who become disabled after age sixty (60), disability retirement income shall cease five (5) years after the commencement of benefits. Upon the cessation of disability retirement income under this subparagraph (c), payment of normal retirement income shall commence in accordance with subparagraph (C)(5)(b) of this Section.
- (7) *Recovery from Disability.* If the Committee finds that a participant who is receiving disability retirement income is, at any time, no longer disabled as provided herein, the Committee shall direct that the retirement income be discontinued. Recovery from disability as used herein shall mean the ability of the participant to engage in any occupation for wage or profit. However, any participant who recovers from disability and whose disability retirement income is discontinued by the Committee and who, as of the date of termination of City employment due to disability, had completed twenty (20) years of credited service or who had both attained the age of fifty-five (55) years and completed at least fifteen (15) years of credited service shall, if not reemployed by the

City, be entitled to early retirement income as provided in subparagraph (B) of this Section, based on the participant's final monthly compensation and credited service as of the date of termination of city employment due to disability and upon the participant's age as of the date of recovery from disability. The amount of early retirement income payable in this circumstance shall be actuarially reduced to take into account the participant's younger age and the earlier commencement of retirement income payments as provided in subparagraph (B) of this Section. Any participant who recovers from disability and whose disability retirement income is discontinued by the Committee and who, as of the date of termination of city employment due to disability had completed at least five (5) years of credited service shall, if not reemployed by the City, be entitled to vested deferred retirement income as provided in subparagraph (D) of this Section.

- (8) *Reemployment by the City.* If a participant recovers from disability and is reemployed by the City, the participant's city employment will be deemed to have been continuous and credited service under the plan will be granted for the period of disability.

(D) *Benefits Other than on Retirement.*

(1) *Benefit on Termination of Service and on Death After Termination of Service:*

- (a) If a participant's city employment is terminated after completion of five (5) years of credited service but before the normal retirement date, and the termination of employment is for any reason other than the participant's death, early retirement as described in subparagraph (B) of this Section, or disability retirement as described in subparagraph (C) of this Section, the participant shall, if then living, be entitled to a deferred monthly retirement income commencing on the normal retirement date. The amount of the deferred monthly retirement income shall be computed in the same manner as normal retirement income under subparagraph (B)(2) of this Section, based upon the terminated participant's vested percentage, credited service and final monthly compensation at the date of termination of city employment. A participant who terminates city employment after completion of five (5) years of credited service may alternatively elect, in lieu of any other plan benefits, to withdraw participant contributions in accordance with Section 35.095(A).
- (b) In the event a terminated participant dies prior to the commencement of deferred retirement income and without having received a lump sum benefit in accordance with division (G) of this Section or a withdrawal of participant contributions, the participant's designated beneficiary shall receive the monthly retirement income, payable for ten (10) years certain and life thereafter and effective on the date of the participant's death, which can be provided by the single-sum value of the participant's accrued deferred monthly retirement income as of the date of termination of the participant's employment, accumulated at interest from the date of such termination to the date of the participant's death.
- (c) If a terminated participant who has not received a withdrawal of participant contributions or any other retirement benefit or income from the plan is reemployed by the City in a position eligible for participation in the plan, the participant shall retain the prior credited service, and earn additional credited service as a contributing participant during the period of reemployment, in lieu of the deferred retirement income provided in division (D)(1)(a) of this Section. The monthly retirement

income payable to such a participant following the subsequent termination of employment, and commencing on or after the normal retirement date, shall not in any event be less than the amount to which the participant was entitled under subparagraph (D)(1)(a) of this Section prior to reemployment by the City.

- (d) The provisions of subparagraph (E) of this Section relating to optional forms of retirement income are applicable to the benefits provided under subparagraph (B)(1)(a) of this Section.
 - (e) Except as provided in subparagraph (A) of this Section with respect to normal retirement, subparagraph (C) of this Section with respect to disability retirement, and subparagraph (D) of this Section with respect to death, a participant whose employment is terminated prior to the completion of five (5) years of credited service shall be entitled only to the return of participant contributions in accordance with Section 35.095(A).
 - (f) Except as otherwise provided in subparagraph (D) of this Section and Section 35.093(C), any participant who terminates city employment and is subsequently reemployed by the City in a position eligible for participation in the plan will be treated as a new participant in all respects, with date of participation and credited service determined on the basis of the participant's most recent date of employment.
- (2) *Benefit Payable in the Event of Participating Employee's Death on or Before the Normal Retirement Date:*
- (a) *Death benefit—Service-Connected Death.* If a participant's city employment is terminated by reason of death on or before the normal retirement date, and the death arises out of or in the course of city employment, there shall be payable the following:
 - (1) To the participant's spouse or other designated beneficiary or beneficiaries, as the case may be, a lump-sum payment of ten thousand dollars (\$10,000.00); plus
 - (2) To the participant's spouse, until the earlier of his or her death or remarriage, a monthly income equal to sixty (60) percent of the participant's final monthly compensation at the date of death; or to a designated beneficiary or beneficiaries other than the spouse, until death, a monthly income equal to the actuarial equivalent of a lifetime benefit payable to the participant in the amount of sixty (60) percent of the participant's final monthly compensation at the date of death; plus
 - (3) For each child of the participant until he or she attains the age of eighteen (18) years, and for each child from age eighteen (18) until age twenty-two (22) who is a full-time student in an accredited school, there shall be payable an additional monthly income equal to seven and one-half (7.5) percent of the participant's final monthly compensation. The maximum monthly income for the participant's spouse and children combined shall not exceed seventy-five (75) percent of the participant's final monthly compensation at the date of death. A nonstudent child's monthly income shall terminate effective the first day of the month next preceding the child's death, marriage, or the attainment of age eighteen (18), whichever occurs first; the monthly income of a child who is a full-time student shall terminate effective the first day of the month next preceding the child's

death, marriage, or the attainment of age twenty-two (22), whichever occurs first. Legally adopted children shall be eligible for a monthly income in the same manner as biological children.

Notwithstanding the provisions of subparagraph (2) above, participants who are employed in a position included in a bargaining unit on October 5, 2010, shall, if their employment is terminated by reason of death on or before the normal retirement date, and the death arises out of or in the course of city employment, be entitled to the following benefit payable to the participant's spouse until this benefit is changed through the collective bargaining process: to the participant's spouse, until the earlier of his or her death or remarriage, a monthly income equal to seventy-five (75) percent of the participant's final monthly compensation at the date of death; or to a designated beneficiary or beneficiaries other than the spouse, until death, a monthly income equal to the actuarial equivalent of a lifetime benefit payable to the participant in the amount of seventy-five (75) percent of the participant's final monthly compensation at the date of death.

(b) *Death Benefit—Nonservice-Connected Death.* If a participant's city employment is terminated by reason of death on or before the participant's actual retirement date, and benefits are not payable pursuant to Section 35.097(D)(2)(a), there shall be payable the following:

- (1) If the participant has at least one year but less than five (5) years of credited service, a lump-sum payment of five thousand dollars (\$5,000.00) to the participant's spouse, or other designated beneficiary or beneficiaries.
- (2) If the participant has five (5) or more years of credited service, there shall be payable:
 - (a) A lump-sum payment of ten thousand dollars (\$10,000.00) to the spouse or other designated beneficiary or beneficiaries; plus
 - (b) To the participant's spouse, until the earlier of his or her death or remarriage, a monthly income equal to sixty-five (65) percent of the participant's normal retirement income which has accrued to the date of death; subject to a minimum of twenty (20) percent of the participant's final monthly compensation at the date of death; or to a designated beneficiary or beneficiaries other than the spouse, until death, a monthly income equal to the actuarial equivalent of a lifetime benefit payable to the participant in the amount of sixty-five (65) percent of the participant's normal retirement income which has accrued to the date of death; plus
 - (c) For each child of the participant until he or she attains the age of eighteen (18) years, and for each child from age eighteen (18) until age twenty-two (22) who is a full-time student in an accredited school, there shall be payable an additional monthly income of seven and one-half (7.5) percent of the participant's final monthly compensation. The maximum monthly income for the spouse and children combined shall not exceed fifty (50) percent of the participant's final monthly compensation at the date of death. A

nonstudent child's monthly income shall terminate effective the first day of the month next preceding the child's death, marriage, or the attainment of age eighteen (18), whichever occurs first; the monthly income of a child who is a full-time student shall terminate on the first day of the month next preceding the child's death, marriage, or the attainment of age twenty-two (22), whichever occurs first. Legally adopted children shall be eligible for a monthly income in the same manner as biological children.

- (c) The minimum death benefit payable to the designated beneficiary or beneficiaries under subsection (D)(2) of this Section shall be an amount equal to the death benefit that would have been payable under the terms of the superseded plan based on the assumption that the employee had died on the effective date of this Section. In the event more than one beneficiary is designated by the participant, the death benefits provided herein shall be equally apportioned among the beneficiaries.

(E) *Optional Forms of Retirement Income.*

- (1) In lieu of the amount and form of retirement income payable in the event of normal retirement, early retirement, or termination of service as specified in subparagraphs (A), (B) and (D)(1) of this Section, a participant or a terminated participant may, upon written request to the Committee submitted prior to the receipt of retirement income or benefits under the plan, and subject to the approval of the Committee, elect to receive a retirement income or benefit commencing on the date specified in subparagraphs (A), (B) and (D)(1) of this Section, whichever is applicable, of equivalent actuarial value payable in accordance with one of the following options:
 - (a) *Option 1.* A retirement income of a modified monthly amount, payable to the participant for life, except that in the event the participant dies before receiving retirement income for a period of ten (10) years, the same monthly benefit will be paid to the beneficiary designated by the participant for the balance of the ten-year period.
 - (b) *Option 2 .* A retirement income of a modified monthly amount payable to the participant during the lifetime of the participant and following the participant's death, one hundred (100) percent, seventy-five (75) percent, sixty-six and two-thirds (66.66) percent or fifty (50) percent of the participant's modified monthly benefit shall be payable to the joint pensioner for life. Election of this option shall be null and void if the designated joint pensioner dies before the participant's retirement, unless the participant designates another joint pensioner in accordance with subsection 35.097(E)(2). Except where a participant's joint pensioner is his/her spouse, the present value of payments to the participant shall not be less than fifty (50) percent of the total present value of the payments to the participant and the participant and the joint pensioner. In addition, the participant may elect to add a "pop-up feature" to such joint and survivor option. If the participant elects to add a "pop-up feature" to the joint and survivor option, then upon the death of his/her joint pensioner, the amount of the participant's monthly payment will be increased to the amount of a straight life annuity and such amount will be payable as of the first day of each month after the death of the joint pensioner for the remainder of the participant's lifetime. The monthly benefit payable to the participant under this

Option 2 shall be actuarially reduced to take into account the addition of the pop-up feature.

- (c) *Option 3.* In lieu of the other optional forms enumerated in this Section, and upon the request of a participant, retirement benefits may be paid in any form approved by the Board so long as actuarial equivalence with the benefit otherwise payable is maintained.
- (2) A participant, upon electing any option under this Section, shall designate the joint pensioner or beneficiary to receive the benefit, if any, payable under the plan in the event of the participant's death, on a form provided by the Committee. The participant may revoke or change the designation of a joint pensioner or beneficiary at any time prior to the commencement of retirement income or benefits, by submitting such change in writing on a form provided by the Committee. A participant may also change the designation of a joint pensioner or beneficiary after the commencement of retirement income or benefits, subject to approval by the Committee, and in accordance with the following:
 - (a) The participant must pay the full cost of determining the equivalent actuarial value of the benefit payable.
 - (b) The consent of a participant's joint pensioner or beneficiary to any change in such designation shall not be required.
 - (c) The amount of retirement income payable to the participant upon the designation of a new joint pensioner shall be actuarially redetermined, taking into account the benefits already received by the participant, and the age and sex of the former joint pensioner, the new joint pensioner and the participant.
 - (d) Each designation of a joint pensioner or beneficiary shall be made in writing on a form provided by the Committee.
 - (e) In the event that no designated beneficiary survives the participant and the participant did not elect to add a "pop-up feature" in accordance with subsection (1)(b) above, the benefits payable in the event of the participant's death subsequent to retirement shall be paid as provided in Section 35.100(A) of this subchapter.
- (3) Retirement income payments will be made under the option elected in accordance with the provisions of this division and will be subject to the following limitations:
 - (a) If a participant dies prior to his retirement under the plan, or if a terminated participant dies prior to the commencement of normal retirement income, no benefit will be payable under the option to any person, but benefits will be payable as provided in subparagraph (D) of this Section.
 - (b) If a participant's designated beneficiary or joint pensioner dies before the participant's retirement under the plan, the option elected will be canceled automatically and retirement income in the normal form and amount will be payable to the participant upon retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this Section, or unless a new beneficiary or joint pensioner is designated by the participant prior to retirement.

- (c) If both the participant and designated beneficiary die after the date the participant's retirement income commences under the plan, but before the full actuarial value of benefits under the provisions of subparagraph (E)(1)(a) or (c) has been received, the Committee may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with Section 35.100(B).
- (F) *Lump-Sum Payment of Small Retirement Income.* Notwithstanding any provision of the plan to the contrary, if the monthly retirement income payable to any person entitled to any benefit hereunder is less than fifty dollars (\$50.00), the retirement committee may, in the exercise of its discretion, specify that the actuarial equivalent of the retirement income be paid in a lump sum or in monthly installments for a period certain of not more than sixty (60) months; provided, if the actuarial equivalent of the monthly retirement income is greater than one thousand dollars (\$1,000.00), payment of the benefit in a lump sum shall be made only upon the written request of a participant member or designated beneficiary.
- (G) *Termination of City Employment for Dishonesty.*
- ~~(1) If a participant's city employment is terminated because of dishonest conduct injurious to the City, or if dishonest conduct injurious to the City committed by a participant is determined by the City during the lifetime of the participant but within one year after service with the City is terminated or within one year after retirement under the plan, the Retirement Committee may terminate a participant's interest and benefits under the plan and Trust Fund.~~
- ~~(2) The dishonest conduct injurious to the City committed by a participant shall be determined and decided by the Committee only after a full investigation of the alleged dishonest conduct and an opportunity has been given the participant to appear before the Committee to present testimony and evidence. The Committee or the City Manager may conduct an investigation pursuant to this Section. The decision made by the Committee in those cases shall be final and binding on all participants or other persons affected by the decision.~~

Forfeiture of pension.

- (1) Any participant who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this plan, except for the return of his accumulated contributions as of the date of termination. Specified offenses are as follows:
- (a) The committing, aiding or abetting of an embezzlement of public funds;
- (b) The committing, aiding or abetting of any theft by a public officer or employee from employer;
- (c) Bribery in connection with the employment of a public officer or employee;
- (d) Any felony specified in chapter 838, Florida Statutes, except sections 838.15 and 838.16, Florida Statutes;
- (e) The committing of an impeachable offense;

- (f) The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position; or
 - (g). The committing on or after October 1, 2008, of any felony defined in section 800.04, Florida Statutes against a victim younger than 16 years of age, or any felony defined in chapter 794 against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.
 - (2) "Conviction" shall be defined as an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.
 - (3) "Court" shall be defined as any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense.
 - (4) Prior to forfeiture, the board shall hold a hearing on which notice shall be given to the participant whose benefits are being considered for forfeiture. Said participant shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the participant shall be afforded a full opportunity to present his case against forfeiture.
 - (5) Any participant who has received benefits from the system in excess of his accumulated contributions after such participant's rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his accumulated contributions. The board may implement all legal action necessary to recover such funds.
- (H) *Funding of Benefits Through Purchase of Life Insurance Contract or Contracts.*
- (1) In lieu of paying benefits from the Trust Fund to a participant or his beneficiary, and upon direction of the Retirement Committee with specific prior authorization by the City, the shall purchase, with funds in the trust, an individual retirement income or retirement annuity contract from an insurance company which, as far as possible, provides benefits equal to (or actuarially equivalent to) those provided in the plan for that participant or beneficiary, whereupon the contract shall thereafter govern the payment of the amount of benefit, if any, represented by that contract which is payable under the plan upon the participant's normal retirement, early retirement, death, or termination of service, and the liability of the Trust Fund and of the plan will cease and terminate with respect to those benefits that are purchased and for which the premiums are duly paid. The individual retirement income or retirement annuity contract may be purchased by the Committee trustee on a single-premium basis or on the basis of annual premiums payable over a period of years, as directed by the Committee and as agreed upon by the insurance company; the individual retirement income or retirement annuity contract may be

purchased, as directed by the Committee, at any time on or after the participant's date of retirement to provide the benefits due under the plan to the participant or his beneficiary.

- (2) With specific prior authorization by the City, the Committee may ~~direct the trustee to~~ enter into a contract or contracts with one or more life insurance companies for the purchase of retirement annuities, five-year renewable term life insurance, one-year renewable term life insurance or other form of life insurance or other benefits, on an individual or group basis, in a manner and in a form as may be deemed appropriate by the Committee, as provided for in the plan, and further provided the insurance benefit will be no greater than one hundred (100) times the participant's anticipated monthly retirement income commencing at normal retirement date. The amount of the anticipated monthly retirement income commencing at normal retirement date shall be computed as for normal retirement in subparagraph (A)(1) of this Section.
 - (3) The participant's projected final monthly compensation at normal retirement date shall be determined in accordance with Section 35.089(E) of this subchapter, and shall be determined as of the participant's normal retirement date, based on the assumption that the participant's rate of monthly compensation as of his date of death had been continued without change to his normal retirement date. Specifically, those retirement annuities and other benefits as may be provided for in the plan may be purchased under one or more deposit administration type group annuity contracts.
 - (4) No insurance company which may issue any contract pursuant to this section~~upon the application of the trustee~~ shall be required to take or permit any action contrary to the provisions of that contract; or be bound to allow any benefit or privilege to any person interested in any contract it has issued which is not provided in the contract; or be deemed to be a party to this plan for any purpose; or be responsible for the validity of this plan; or be required to look into the terms of this plan; or question any act of the Committee~~or the trustee~~ hereunder; or be required to see that any action of the ~~Committee~~trustee is authorized by this plan. Any issuing company shall be fully discharged from any and all liability for any amount paid to the plan~~trustee~~; or in accordance with the trustee's ~~the~~ direction of the Committee; and no issuing company shall be obligated to see to the application of any moneys so paid by it. Any issuing company shall be fully protected in taking or permitting any action on the faith of any instrument executed by the Committee~~trustee in its name as trustee~~, and shall incur no liability for so doing.
 - (5) Upon termination of employment, a participant may receive the retirement income or annuity policies which are being purchased for him at the date of his termination, in lieu of any other benefit which he may be entitled to receive, upon payment to the plan~~trustee~~ of the difference between the cash value of the policies and the amount that the participant is entitled to receive as a benefit upon termination of his service.
- (I) *Technical Provisions Required by the Internal Revenue Code and Treasury Department Regulations.*
- ~~(1) Temporary Limitations on Benefits for the Twenty-Five (25) highest Paid Employees.~~
 - ~~(a) Class Restricted. Subparagraph (I)(1) of this Section is applicable only to those of the twenty-five (25) highest paid employees of the City, determined whose monthly retirement income upon normal retirement date would exceed one hundred twenty-~~

five dollars (\$125.00). The term "employee" as used in this subsection shall include all persons in the employment of the City who are participants in the plan and all other persons in the employment of the City on that date who may later become participants in the plan.

~~(b) Restrictions.~~

~~(1) Subject only to the specific exceptions contained in subparagraph (I)(1) of this Section, and notwithstanding any provisions of the plan to the contrary, the amount of city contributions which may be used to provide benefits for any participant to whom subparagraph (I)(1) of this Section applies which may be received prior to the end of the ten-year period that next follows the effective date of the plan shall not exceed an amount which is equal in value to (or which is actuarially equivalent to) the larger of the following amounts: Twenty thousand dollars (\$20,000.00); or an amount equal to:~~

~~(a) Twenty (20) percent of the participant's average regular compensation received from the City for the five (5) years immediately preceding the date of the determination, date of termination of employment or the normal retirement date, respectively, for a participant whose service is terminated, who has retired prior to the normal retirement date or who has attained the normal retirement date, whether or not he has retired under the plan; or~~

~~(b) Ten thousand dollars (\$10,000.00), whichever is smaller, multiplied by the number of years between the date of the establishment of the plan and the earliest of: the date of termination of the plan; the date the benefit of an employee, who is among the twenty five (25) highest paid whose anticipated annual retirement income exceeds one thousand five hundred dollars (\$1,500.00) becomes payable; or the date of the failure to meet the full current costs of the plan, in the case of an employee described in subparagraph (I)(1)(a) of this Section.~~

~~(2) However, if the full current costs of the plan have not been met at the end of the ten-year period that next follows the effective date of the plan, the above restrictions will continue to apply until the full current costs are funded for the first time.~~

~~(c) Exceptions.~~

~~(1) The foregoing conditions will not restrict the payment of the full benefits to a beneficiary after the death of a participant whose benefits are subject to the provisions of this subparagraph (I)(1) of this Section, if, at the time of the death, the plan is in full effect and the full current costs thereof have not been met.~~

~~(2) The provisions of this subparagraph (I)(1) of this Section will not apply to the retirement income payable in the normal form or under any optional form which does not provide a larger monthly income than the income payable for life to any participant retiring or receiving benefits during any period in which the plan is in full effect and the full current costs thereof have been met.~~

- ~~(3) The limitations of this subparagraph (I)(1) of this Section will not apply to the payment of any survivorship income with respect to any deceased participant or retired participant who dies prior to the termination of the plan and while the full current costs thereof have been met.~~
- ~~(d) *Future Amendment.* If the plan is amended so as to produce a substantial increase in benefits actually payable, in the event of the subsequent termination of the plan or the subsequent discontinuance of contributions, the provisions of this subparagraph (I)(1) of this Section shall be applied to the increase in benefits under the plan as amended as though the increase were benefits under a new plan established on the effective date of that amendment. However, the provisions in subparagraph (I)(1)(b) of this Section that the unrestricted amount of city contributions on behalf of any employee is at least twenty thousand dollars (\$20,000.00) is applicable to the aggregate amount contributed by the City on behalf of that employee from the effective date of the plan, and for the purpose of determining if the employee's anticipated normal monthly retirement income produces in excess of one hundred twenty five dollars (\$125.00) per month, both the City contributions on the employee's behalf prior to the effective date of the amendment of the plan and those expected to be made on his behalf subsequent to the effective date of the amendment of the plan (based on the employee's rate of compensation on the effective date of that amendment) are to be taken into account.~~
- ~~(e) *Use of Funds After Rights of Other Employees Satisfied.* In the event of the termination of the plan while the limitations of this subparagraph (I)(1) of this Section are in effect, that portion of the assets of the Trust Fund arising from contributions made by the City with respect to those of its employees to whom the provisions of this subparagraph (I)(1) of this Section are applicable which is in excess of the limitations set forth in subparagraph (I)(1)(b) of this Section will be apportioned to its other participants, including its retired participants, in accordance with the provisions of Section 35.109 of this subchapter. However, if there be any asset value after the full apportionment specified in Section 35.109 of this subchapter, apportionment shall be made in a nondiscriminatory manner, prior to the apportionment specified in Section 35.109(B)(2) of this subchapter with respect to each employee to whom the provisions of this subparagraph (I)(1) of this Section are applicable in the amount required to provide that portion of the allocation provided on his behalf under Section 35.109 of this subchapter to which he is not entitled by reason of the limitations of this subparagraph (I)(1) of this Section, and provided further that, if the remaining asset value be less than the aggregate of those amounts, the amounts shall be proportionately reduced as contemplated by Section 35.109 of this subchapter so that the aggregate of those reduced amounts will be equal to the remaining asset value.~~
- (1)(2) *Forfeitures.* Forfeitures shall not be used to increase the benefits that any employee would otherwise receive under the plan at any time prior to the termination of the plan or the complete discontinuance of contributions to the plan, but shall be anticipated in determining the costs under the plan. Likewise, any dividends under any contract issued in accordance with subsection (H) of this Section shall not be used to increase the benefits that any employee would otherwise receive under the plan.

~~(2)(3)~~ *Benefits Nonforfeitable if Plan is Terminated or Contributions Permanently Discontinued.* Any provisions of the plan to the contrary notwithstanding, in the event that the plan is terminated or contributions to the trust are completely discontinued, the rights of each participant in the plan to benefits accrued to the date of termination or discontinuance, to the extent then funded, shall be nonforfeitable and those benefits shall be determined and distributed as provided in Section 35.109.

(J) *Maximum Pension.*

(1) *Basic Limitation.* Notwithstanding any other provisions of this plan to the contrary, the participant contributions paid to, and retirement benefits paid from, the plan shall be limited to such extent as may be necessary to conform to the requirements of Code Section 415 for a qualified retirement plan. Subject to the adjustments hereinafter set forth, the maximum amount of annual retirement income payable with respect to a participant member under this plan shall not exceed the maximum limitation amount provided by Section 415(b) of the U.S. Internal Revenue Code, as that Section may be amended in the future, adjusted for increases in the cost-of-living pursuant to Section 415(d) of the Internal Revenue Code.

For purposes of applying the above limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by Treasury Regulations, so that such benefits are the actuarial equivalent of a straight life annuity. For purposes of this Section, the following shall not be taken into account:

- (a) Any ancillary benefit which is not directly related to retirement income benefits;
 - (b) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the participant's benefit were paid in another form;
 - (c) Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.
- (2) *Participation in other Defined Benefit Plan.* The limitation of this Section with respect to any participant member who at any time has been a member in any other defined benefit plan (as defined in Section 414(j) of the Internal Revenue Code) maintained by the City shall apply as if the total benefits payable under all defined benefit plans in which the participant member has been a participant member were payable from one plan.
- (3) *Adjustments in Limitations for Form of Benefit.*
- (a) If the form of benefit is other than the annual benefit defined in subsection (1), the benefit shall be adjusted so that it is the equivalent of the annual benefit using factors prescribed in Treasury Regulations. If the form of benefit without regard to any automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity then the preceding sentence is applied by either reducing the Code Section 415(b) limit applicable at the annuity starting date or by adjusting the form of benefit to an actuarially equivalent amount determined using the assumptions specified in 26 CFR 1.415(b)-1 that takes into account the additional benefits under the form of benefit as follows:

1. Benefit Forms Not Subject to § 417(e)(3): The straight life annuity that is actuarially equivalent to the participant's form of benefit shall be determined under this subsection if the form of a participant's benefit is either a non-decreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Employee (or in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or an annuity that decreases during the life of the participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)). For a benefit paid in a form described in this subsection, the actuarially equivalent straight life annuity is equal to the greater of:
 - a. The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the participant's form of benefit, or
 - b. the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using a 5 percent (5%) interest rate assumption and the applicable mortality tables described in Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Code Section 417(e)(3)(B)); or
2. Benefit Forms Subject to § 417(e)(3): If a form of participant's benefit is other than a benefit form described in subsection (3)(a)1, the actuarially equivalent straight life annuity benefit that is the greatest of:
 - a. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
 - b. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable computed using a five and one-half percent interest assumption for the applicable statutory interest assumption and (i) for years prior to January 1, 2009 the applicable mortality tables for the distribution under 26 CFR 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) and (ii) for years after December 31, 2008 the applicable mortality tables described in Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Code Section 417(e)(3)(B)); or
 - c. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable computed using the applicable interest rate for the distribution under 26 CFR 1.417(e)-1(d)(3) the 30-year Treasury rate prior

to January 1, 2007 using the rate in effect for the month prior to retirement and on and after January 1, 2007 using the rate in effect for the first day of the plan year with a one-year stabilization period and (i) for years prior to January 1, 2009 the applicable mortality tables for the distribution under 26 CFR 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) and (ii) for years after December 31, 2008 the applicable mortality tables described in Code Section 417(e)(3)(B) (Notice 200885 or any subsequent Internal Revenue Service guidance implementing Code Section 417(e)(3)(B)), divided by 1.05.

3. The actuary may adjust the 415(b) limit at that annuity starting date in accordance with paragraphs 1 and 2 above.

(4) Other Adjustments in Limitations.

- (a) In the event the participant's ~~member's~~ retirement benefits become payable before age sixty-two (62), the limitation prescribed by subsection (1) of this Section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Section 415(b) of the Internal Revenue Code so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) that is equivalent to the maximum annual benefit beginning at age 62.
- (b) The reductions provided in the preceding subparagraphs shall not be applicable to disability benefits paid pursuant to Section 35.097(C) preretirement death benefits paid pursuant to Section 35.097(D).
- (c) If the participant's ~~member's~~ retirement benefit becomes payable after age sixty-five (65), for purposes of determining (1) herein, such benefit shall be adjusted so that it is actuarially made using an assumed interest rate of five (5) percent and shall be made in accordance with the regulations promulgated by the Secretary of the Treasury or his delegate so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to the maximum annual benefit beginning at age sixty-five (65).
- (d) If the participant's ~~member's~~ retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the limitation set forth in Section [(J)](1) herein, such benefit shall be adjusted so that it is actuarially made using an assumed interest rate of five (5) percent and shall be made in accordance with the regulations promulgated by the Secretary of the Treasury or his delegate.
- (e) In the event the participant's benefit is based on at least fifteen (15) years of credited service as a full-time police officer or firefighter, the adjustments provided for in (4)(a) above shall not apply.

(5)(4) Less than Ten (10) Years of Service. The maximum retirement benefits payable under this Section to any participant ~~member~~ who has completed less than ten (10) years of credited service with the City shall be the amount determined under subparagraph (1)(A) of this Section multiplied by a fraction, the numerator of which is the number of the participant's ~~member's~~ years of credited service and the denominator of which is ten

(10). The reduction provided by this section cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. This reduction shall not be applicable to disability benefits paid pursuant to Section 35.097(C) or preretirement death benefits paid pursuant to Section 35.097(D).

- ~~(6)(5)~~ *Ten Thousand Dollar (\$10,000.00) Limit.* Notwithstanding the foregoing, the retirement benefit payable with respect to a participant member shall be deemed not to exceed the limitations set forth in this Section of the benefits payable with respect to such participant member under this plan and under all other qualified defined benefit pension plans to which the City contributions do not exceed ten thousand dollars (\$10,000.00) for the applicable plan year and for any prior plan year and the City has not at any time maintained a qualified defined contribution plan in which the participant member participated; provided, however, that if the participant has completed less than ten years of credited service, the limit under this subsection shall be a reduced limit equal to ten thousand dollars (\$10,000) multiplied by a fraction, the numerator of which is the number of the participant's years of credited service and the denominator of which is ten.
- ~~(6)~~ *Reduction of Benefits.* ~~Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the participant's member's benefit under any defined benefit plans in which he participated, such reduction to be made first with respect to the plan in which he most recently accrued benefits and thereafter in such priority as shall be determined by the Trustees of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the participant member participated, such reduction to be made first with respect to the plan in which he most recently accrued benefits and thereafter in such priority as shall be established by the Trustees for such other plans, provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the trustees of all other plans covering such participant member.~~
- (7) *Cost-of-living adjustments.* The limitations as stated in subsections (1), (2),~~(4)~~ ~~(3)~~ and ~~(7)(6)~~ herein shall be adjusted to the time payment of a benefit begins in accordance with any cost-of-living adjustments prescribed by the secretary of the treasury pursuant to Section 415(d) of the Internal Revenue Code. For purposes of applying the limits under Section 415(d) of the Internal Revenue Code (the "Limit"), the following will apply:
- (a) A participant's applicable limit will be applied to the participant's annual benefit in the first limitation year of benefit payments without regard to any automatic cost of living adjustments;
 - (b) thereafter, in any subsequent limitation year, a participant's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable benefit limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Code Section 415(d), and the regulations thereunder; but
 - (c) in no event shall a participant's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d) and the regulations thereunder.
- (8) Service Credit Purchase Limits.

- (a) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a participant makes one or more contributions to purchase permissive service credit under the plan, then the requirements of this section will be treated as met only if:
1. the requirements of Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Code Section 415(b), or
 2. the requirements of Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Code Section 415(c).
 3. For purposes of applying subparagraph (a)2 the plan will not fail to meet the reduced limit under Code section 415(b)(2)(C) solely by reason of this subparagraph, and for purposes of applying subparagraph (a)2 the plan will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Code solely by reason of this subparagraph 3.
- (b) For purposes of this subsection the term “permissive service credit” means service credit—
1. recognized by the plan for purposes of calculating a participant’s benefit under the plan.
 2. which such participant has not received under the plan, and
 3. which such participant may receive only by making a voluntary additional contribution, in an amount determined under the plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may, if otherwise provided by the plan, include service credit for periods for which there is no performance of service, and, notwithstanding clause (9)(b) may include service credited in order to provide an increased benefit for service credit which a participant is receiving under the plan.

- (c) For purposes of applying the limits in this subsection (9) only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulations located in 26 CFR 1.415(c)-2, or successor regulations. Unless another definition of compensation that is permitted by Treasury Regulations Section 1.415(c)-2, or successor regulation, is specified by the plan, compensation will be defined as wages within the meaning of Code Section 3401(a) and all other payments of compensation to a participant by a City for which the City is required to furnish the participant a written statement under Code Sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2).
1. However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but

for an election under Code Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning after December 31, 2000, compensation will also include any elective amounts that are not includible in the gross income of the participant by reason of Code Section 132(f)(4).

2. For limitation years beginning on and after January 1, 2007, compensation for the limitation year will also include compensation paid by the later of 2½ months after an participant's severance from employment or the end of the limitation year that includes the date of the participant's severance from employment if:

a. the payment is regular compensation for services during the participant's regular working hours, or compensation for services outside the participant's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the participant had the participant continued in employment with the City; or

b. the payment is for unused accrued bona fide sick, vacation or other leave that the participant would have been able to use if employment had continued.

3. Back pay, within the meaning of Treasury Regulations Section 1.415(c) -2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(d) Notwithstanding any other provision of law to the contrary, the Board may modify a request by a participant to make a contribution to the plan if the amount of the contribution would exceed the limits provided in Code Section 415 by using the following methods:

1. If the law requires a lump sum payment for the purchase of service credit, the Board may establish a periodic payment deduction plan for the participant to avoid a contribution in excess of the limits under Code Sections 415(c) or 415(n).

2. If payment pursuant to subparagraph (d)1 will not avoid a contribution in excess of the limits imposed by Code Section 415(c), the Board may either reduce the participant's contribution to an amount within the limits of that section or refuse the participant's contribution

(e) If the annual additions for any participant for a plan year exceed the limitation under Code Section 415(c), the excess annual addition will be corrected as permitted under the Member Plans Compliance Resolution System (or similar IRS correction program).

(f) For limitation years beginning on or after January 1, 2009, a participant's compensation for purposes of this subsection shall not exceed the annual limit under Code Section 401(a)(17).

(9) *Additional Limitation on Pension Benefits.* Notwithstanding anything herein to the contrary:

- (a) The normal retirement benefit or pension payable to a retiree who becomes a participant member of the plan and who has not previously participated in such plan, on or after January 1, 1980, shall not exceed one hundred (100) percent of his average final compensation. However, nothing contained in this Section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.
 - (b) No participant member of the plan who is not now a participant member of such plan shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the participant member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement plan or system. This restriction does not apply to Social Security benefits or Federal benefits under Chapter 1223 ~~67~~, Title 10, U.S. Code.
 - (c) Notwithstanding any other provision of this plan to the contrary, the annual benefit to which a participant member is entitled under the plan shall not, in any limitation year, be in an amount which would exceed the applicable limitations under Section 415 of the Internal Revenue Code and the regulations issued thereunder. If the benefit payable under the plan would (but for this Section) exceed the limitations of Section 415 of the Code by reason of a benefit payable under another defined benefit plan aggregated with this plan under [Internal Revenue] Code Section 415(f), the benefit under this plan shall be reduced only after all reductions have been made under such other plan. As of January 1 of each calendar year commencing on or after January 1, 2008, the dollar limitation as determined by the Commissioner of the Internal Revenue Service for that calendar year shall become effective as the maximum permissible dollar amount of benefit payable under the plan during the limitation year ending within that calendar year.
- (K) *Distribution of Benefits.* Notwithstanding any other provision of this plan to the contrary, a form of retirement income payable from this plan after the effective date of this ordinance, shall satisfy the following conditions:
- (1) If any retirement income is payable before the participant's member's death:
 - (a) It shall either be distributed or commence to the participant member not later than April 1 of the calendar year following the later of the calendar year in which the participant member attains age seventy and one-half (70½) years or the calendar year in which he retires.
 - (b) The distribution shall commence not later than the calendar year defined in subparagraph (A) above and (1) shall be paid over the life of the participant member or over the lifetimes of the participant member and his spouse, issue or dependent, or (2) shall be paid over the period extending not beyond the life expectancy of the participant member and his spouse, issue or dependent.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the participant member dies before his entire interest in the plan has been distributed, the remaining portion of such interest in the plan shall be

distributed no less rapidly than under the form of distribution in effect at the time of the participant's ~~member's~~ death.

- (2) If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
- (a) If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.
 - (b) If the participant's surviving spouse is not the participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.
 - (c) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
 - (d) If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse are required to begin, this section (2), other than subsection (2)(a), will apply as if the surviving spouse were the participant. For purposes of this section, unless subsection (2)(d) applies, distributions are considered to begin on the participant's required beginning date. If subsection (2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section (2)(d). If distributions under an annuity meeting the requirements of this article commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under section (2)(a), the date distributions are considered to begin is the date distributions actually commence.

~~If the member's death occurs before the distribution of his interest in the plan has commenced, his entire interest in the plan shall be distributed within five (5) years of his death, unless it is to be distributed in accordance with the following rules:~~

- ~~(a) The member's remaining interest in the plan is payable to his spouse, issue or dependent;~~
- ~~(b) The remaining interest is to be distributed over the life of the spouse, issue or dependent or over a period not extending beyond the life expectancy of the spouse, issue or dependent; and~~
- ~~(c) Such distribution begins within one year of the member's death unless the member's spouse, issue or dependent shall receive the remaining interest in which case the distribution need not begin before the date on which the member would have attained age seventy and one-half (70½) years, and if the spouse, issue or dependent dies~~

~~before the distribution to the spouse, issue or dependent begins, this Section shall be applied as if the spouse, issue or dependent were the plan member.~~

(L) *Direct Transfers of Eligible Rollover Contributions.*

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

(2) *Definitions.*

Eligible rollover distribution. Any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for 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 Internal Revenue Code; and the portion of any distribution that is not includable in gross income.

Eligible retirement plan. An eligible retirement plan is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code (other than an endowment contract), and annuity plan described in Section 403(a) of the Internal Revenue Code, qualified trust described in Section 401(a) of the Internal Revenue Code, an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code which is maintained by an eligible employer described in Section 457(e)(1)(A) of the Internal Revenue Code, or an annuity contract described in Section 403(b) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to (1) a traditional individual retirement account or annuity described in § 408(a) or (b) of the Code (a traditional IRA) or a Roth individual retirement account or annuity described in § 408A (a Roth IRA); or (2) to a qualified defined contribution, defined benefit, or annuity plan described in § 401(a) or § 403(a) or to an annuity contract described in § 403(b), if such plan or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

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

Direct rollover. A payment by the plan to the eligible retirement plan specified by the distributee.

- (3) *Rollovers or Transfers into the Fund.* On or after the effective date of Ordinance No. 57-02 [Jan. 7, 2003], the fund will accept participant ~~member~~ rollover cash contributions and/or direct cash rollovers of distributions for the purchase of credited service pursuant to Section 35.093(E), as follows: the plan will accept either a direct rollover of an eligible rollover distribution or a participant ~~member~~ contribution of an eligible rollover distribution from a qualified plan described in Section 403(a) of the Internal Revenue Code, from an annuity contract described in Section 403(b) of the Internal Revenue Code, or from an eligible plan under Section 457(b) of the Internal Revenue Code, which is maintained by a State, political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State.
- (4) *Direct Rollover to an IRA by Nonspouse Beneficiary.* In accordance with Section 829 of the Pension Protection Act of 2006, on and after the effective date of this subsection the plan will allow a designated nonspouse beneficiary to make a direct rollover of a distribution from the plan to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code. Also, in this case, the determination of any required minimum distribution under § 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395.

(M) *Early Retirement Incentive.*

- (1) Effective October 1, 2002, an early retirement incentive program shall be provided in accordance with this Section. The availability of the early retirement incentive in any plan year shall be determined by the City. The City shall provide all eligible employees with at least thirty (30) days advance notice that the early retirement incentive will be offered. The early retirement incentive program shall be voluntary for all eligible employees.
- (2) Employees who are one hundred (100) percent vested and within two (2) years of their earliest normal retirement date during the period that the early retirement incentive is offered shall be eligible for the early retirement incentive. In the period in which the early retirement incentive is offered, eligible employees shall be given an opportunity to elect the early retirement incentive within sixty (60) days following receipt of notice that the early retirement incentive is being offered. The employee's election shall be made in writing on a form provided by the City, and shall be irrevocable.
- (3) Eligible employees who elect the early retirement incentive shall have their retirement benefit calculated in accordance with Section 35.097(A), based on credited service and final monthly compensation as of the last day of employment. There shall be no actuarial reduction as defined in Section 35.097(B)(2). Employees who elect the early retirement incentive shall immediately retire and terminate City employment.
- (4) Effective September 1, 2007, through September 30, 2007, any eligible employee who elects the early retirement incentive and any employee age fifty-eight (58) or older who elects to terminate City employment and retire on or before September 30, 2007, shall receive up to one additional year of credited service, at no cost to the employee, for the purpose of calculating the employee's normal retirement income; provided, in no event shall any employee's credited service exceed thirty (30) years. Effective August 1, 2008, through September 30, 2008, any eligible employee who elects the early retirement incentive and any employee age fifty-eight (58) or older who elects to terminate City employment and retire on or before September 30, 2008, shall receive up to one additional

year of credited service, at no cost to the employee, for the purpose of calculating the employee's normal retirement income; provided, in no event shall any employee's credited service exceed 30 years.

- (5) An employee who elects to receive the early retirement incentive under this subsection cannot also participate in the Deferred Retirement Option Plan under Section 35.110.

(N) *Optional Enhanced Multiplier.*

- (1) Notwithstanding any provision of the plan to the contrary, an eligible participant may elect a normal retirement benefit or early retirement benefit equal to three (3) percent of final monthly compensation multiplied by credited service, expressed in years and tenths of a year, up to a maximum of thirty (30) years. Participants electing this enhanced multiplier shall thereafter contribute three and forty-five one-hundredths (3.45) percent of earnings to the Plan in addition to the participant contribution specified in Section 35.095, and shall receive the enhanced multiplier for future periods of credited service only. Such participants may also elect to purchase the enhanced multiplier for some or all periods of continuous service prior to the date of the election, by paying into the plan ~~Plan~~ the full actuarial cost of the enhanced multiplier, plus the full cost of any actuarial or other professional services required. Such payment may be made by cash lump-sum payment or by a direct rollover of an eligible rollover distribution or a participant ~~member~~ contribution of an eligible rollover distribution from an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code (other than an endowment contract), an annuity plan described in Section 403(a) of the Internal Revenue Code, a qualified trust described in Section 401(a) of the Internal Revenue Code Section or an annuity contract described in Section 403(b) of the Internal Revenue Code. Alternatively, a participant who also participates in a Section 457(b) plan may purchase additional credited service in an amount sufficient to provide an additional benefit equal to the benefit produced by applying the enhanced multiplier provided in this subsection to some or all periods of continuous service prior to the date of the election, by paying into the plan ~~Plan~~ the full actuarial cost of such additional benefit, plus the full cost of any actuarial or other professional services required; with payment for such alternative purchase made by a direct transfer from the participant's 457(b) account.
- (2) The election to receive the enhanced multiplier under this Section must be made in writing on a form provided by the City. Such election shall be irrevocable. If an eligible participant does not elect the optional enhanced multiplier under this Section, or if an eligible participant elects the enhanced multiplier for only a portion of his total continuous service, then the benefit provided in paragraph (1) shall be used to calculate the benefit for all continuous service to which the enhanced multiplier does not apply.
- (3) For the purpose of this subsection (C), an eligible participant is any plan participant who is employed by the City on or after the effective date of this ordinance, who has not entered the DROP, and who is not a member of a certified bargaining unit. At such time as the City and the union representing participants in a bargaining unit enter into a collective bargaining agreement that includes the optional enhanced multiplier provided in this paragraph, such participants who otherwise meet the eligibility criteria shall become eligible participants for the purpose of this subsection.

- (O) *Deminimus Payments.* If the present value of any non-forfeitable accrued benefit is less than five thousand dollars (\$5,000.00), at the participant's or beneficiary's request the Committee may direct that such benefit be distributed in a lump sum, and such lump sum payment shall fully discharge all liability of the plan with respect to such benefit. ~~*Lump-Sum Distributions in Excess of One Thousand Dollars 1,000.00).*~~ Notwithstanding any provision of the plan to the contrary, and only to the extent a lump-sum distribution is expressly authorized, a lump-sum distribution in excess of one thousand dollars (\$1,000.00) shall be made only upon the written request of a member or designated beneficiary.
- (P) *Qualification of Plan.* It is intended that this plan shall constitute a qualified public pension plan under the applicable provisions of the Internal Revenue Code for a qualified plan under Code Section 401(a) and a governmental plan under Code Section 414(d), as now in effect and as may be amended from time to time. Any modification or amendment of this plan may be made retroactively, if necessary or appropriate to maintain qualification.
- (Q) *Prohibited Transaction.* The Board may not engage in any transaction prohibited under Section 503(b) of the Internal Revenue Code.

Section 7. That Chapter 35, "Employee Policies and Benefits", Section 35.101, "Benefits Nonassignable", of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 35.101. -- Benefits Nonassignable.

- (A) No benefits, rights or accounts shall exist under the plan which are subject in any manner to voluntary or involuntary anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge and any attempt so to anticipate, alienate, transfer, assign, pledge, encumber or charge the same shall be void; nor shall any benefit, right, or account be in any manner liable for or subject to the debts, contracts, liabilities, engagements, torts, or other obligations of the person entitled to that benefit, right or account, except as specifically provided in the plan; nor shall any benefit, right or account under the plan constitute an asset in case of the bankruptcy, receivership, or divorce of any person entitled under the plan.
- (B) If a participant or any other person entitled to benefits under the plan becomes bankrupt or makes an assignment for the benefit of creditors or in any way suffers a lien or judgment against his personal assets, or in any way attempts to anticipate, alienate, sell, assign, pledge, encumber, or charge a benefit, right or account, except as specifically provided in the plan, then that benefit, right or account in the discretion of the Committee may cease and terminate; and in that event the trustee shall, at the direction of the Retirement Committee shall, hold or apply funds equal in value to that terminated account in the interest of the participant. This shall include not only distributions directly to the participant at the Committee's discretion but to or for the benefit of the participant's spouse, children, or other dependents where the Committee determines this to be appropriate. (See Section 35.102(A)(1) through (3) of this subchapter for permissible methods of distribution.)

Section 8. That Chapter 35, "Employee Policies and Benefits", Section 35.102, "Benefits Payable to Minors and Incompetents", of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 35.102. -- Benefits Payable to Minors and Incompetents.

- (A) Whenever any person entitled to benefits under this plan is a minor or legally incompetent, the Committee may, in the exercise of its discretion, direct all or any portion of those payments to be made in any one or more of the following ways:
- (1) To the parent, lawfully appointed legal guardian, or legal representative of the person entitled to benefits under the plan;
 - (2) To the spouse, child or other blood relative to be expended on behalf of the person entitled to benefits under the plan or that person's dependents;
 - (3) To a recognized charity or nonprofit organization to be expended for the benefit of the person entitled to benefits under the plan or that person's dependents.
- (B) The decision of the Committee will, in each case, be final and binding upon all persons. Any payment made pursuant to the power herein conferred upon the Committee shall operate as a complete discharge of the obligations of the ~~trustee and of the~~ Committee.

Section 9. That Chapter 35, "Employee Policies and Benefits", Section 35.103, "Abandonment of Benefits", of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 35.103. -- Abandonment of Benefits.

- (A) All participants and any other persons entitled to plan benefits shall keep the Retirement Committee informed of their current mailing address at all times. All changes of address shall be promptly submitted in writing to the Committee. All checks and correspondence will be sent to the current address on file with the Committee. ~~The Neither the Committee nor the trustee~~ shall not be obliged to search for or ascertain the location of any person.
- (B) If the Committee, for any reason, is in doubt as to whether retirement income payments are being received by the person entitled thereto, it shall, by Registered mail addressed to the person concerned at the address last known to the Committee, notify the person that:
- (1) All unmailed and future retirement income payments shall be henceforth withheld until the person provides the Committee evidence of continued life and/or correct mailing address; and
 - (2) A participant's right to receive retirement income may, at the option of the Committee, be canceled forever if the participant does not respond or otherwise contact the Committee within three (3) years following the date payments are withheld pursuant to subsection (B)(1) of this Section.

Section 10. That Chapter 35, “Employee Policies and Benefits”, Section 35.105, “Administration by Retirement Committee”, of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 35.105. -- Administration by Retirement Committee.

(A) *Retirement Committee Established.*

- (1) The plan will be administered by the Retirement Committee (herein referred to as the Committee) appointed by the City Commission, consisting of five (5) members. One member shall be the Chief Financial Officer of the City. If the Chief Financial Officer cannot serve for any reason, the Treasurer of the City will take his or her place. The City Commission shall appoint four (4) additional members, three (3) of whom may, but need not, be employees of the City and one that may, but need not be an employee of the City or the Mayor or City Commissioner. Each appointed member shall serve until a successor is appointed in like manner.
- (2) An individual member of the Committee may resign by delivering his written resignation to the City Commission and to the other members of the Committee. The City Commission may remove an individual member of the Committee by so notifying the member and other Committee members, if any, in writing. Vacancies on the Committee shall be filled by City Commission appointment.

(B) *Secretary.* The Committee may appoint a secretary who may, but need not, be a member of the Committee. The City shall employ or retain any agents, clerical and other services, legal counsel, accountants, investment counselors, and actuaries, as may be required to administer the plan.

(C) *Action by Committee.*

- (1) A majority of the members of the Committee shall constitute a quorum for the transaction of business and shall have full power to act hereunder.
- (2) Committee meetings shall be noticed and open to the public. Meetings shall be conducted in accordance with rules adopted by the Committee, or by Robert's Rules of Order if the Committee has not adopted rules. Minutes of all meetings of the Committee and a record of any action taken by the Committee shall be kept in written form and such record shall be kept by the secretary appointed by the Committee. Official Committee action shall be by majority vote of a quorum of the Committee.
- (3) The Committee may invest and reinvest the assets of the Retirement Trust Fund in any investment in which assets of the Florida Retirement System may be invested pursuant to F.S. § 215.47, as that statute may be amended from time to time, or in accordance with a written investment policyies adopted by the Committee in accordance with F.S. § 112.66, as that statute may be amended from time to time. The Committee may retain such professional consultants, ~~actuaries~~, advisors and investment managers as it deems advisable to carry out its responsibilities under this Section.
- (4) A member of the Committee may not vote or decide upon any matter relating solely to that member, or vote in any case in which the member's individual right or claim to any benefit under the plan is involved. If a Committee member is required to abstain and the

remaining members of the Committee are unable to decide the matter, the City Commission may appoint a temporary substitute member to the Committee.

- (D) *Authority.* The Committee shall have the authority to make those rules and regulations and to take any action as may be necessary to carry out the provisions of the plan and will, subject to the provisions of the plan, decide any questions arising in the administration, interpretation, and application of the plan, which decisions shall be conclusive and binding on all parties. The Committee may delegate administrative, clerical, professional and other plan-related functions as it deems necessary and prudent.
- (E) *Additional Powers.* In order to effectuate the purposes of the plan, the Committee shall have the power to construe the plan, to supply any omissions therein, to reconcile and correct any errors or inconsistencies, and to make equitable adjustments for any mistakes or errors made in the administration of the plan.
- (F) *Liability.* No member of the Committee shall be liable for any loss unless resulting from that member's fraud or willful misconduct, and no member shall be personally liable upon, or with respect to, any agreement, act, transaction, or omission made in good faith as a member of the Committee. No member of the Committee shall be liable for the actions of other members, or the actions of any agent, representative, or employee of the Committee. The Committee and any individual member of the Committee and any agent thereof shall be entitled to rely on the advice of professional consultants and advisors employed or retained by the City, including but not limited to Attorneys, accountants, investment advisors and actuaries.
- (G) *Actuary's Responsibilities.*
- (1) The actuary will do any technical and advisory work as the Committee may request, including analysis of the experience of the plan from time to time, the preparation of actuarial tables for the making of computations thereunder, and the submission of an actuarial report as of the anniversary date of the plan each year to the City and the Committee, which report shall contain an actuarial valuation showing the financial condition of the plan, a statement of the contributions to be made by the City for the ensuing year, and any other information as may be required by the Committee.
 - (2) ~~The actuary shall be selected by the Committee. In computing benefits to which a participant may be entitled upon early retirement, upon the exercise of optional forms of retirement income, or upon termination of the plan, and in all other instances in which actuarial computations are required, the actuary shall use those assumptions of mortality and interest rates as were employed in the most recent actuarial valuation of the plan, or, at the option of the Committee, those assumptions as are decided upon jointly by the actuary and the Committee as being reasonable at the time the calculations are made. The actuarial assumptions and the computations made therefrom adopted by the Committee shall be conclusive and binding on all persons. Neither the Committee nor the City and trustee shall not be liable for any mistakes or errors in any computations made in good faith.~~
- (H) *State Law.* The plan will be construed, enforced and administered according to the laws of the State of Florida.

Section 11. That Chapter 35, “Employee Policies and Benefits”, Section 35.1051, “Claims Procedure”, of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 35.1051. --Claims Procedure.

(A) *Claims of Affected Persons.*

- (1) The Committee shall grant an initial hearing upon receipt of a written request ("Claim"), on matters which affect the substantial rights of any person ("Claimant"), including participants, active or retired, beneficiaries, or any person affected by a decision of the Committee.
- (2) The Committee shall review the Claim at an initial hearing and enter an order within sixty (60) days from the date of receipt of the Claim and, in the case of disability claims, receipt by the Committee of a completed application and signed authorization for the release of medical records on a form approved by the Committee. The Committee may extend the time for entering the order at an initial hearing for an additional forty-five (45) days if it determines such time is necessary for full discovery and adequate review. The Committee and the Claimant may stipulate to further extensions of time.

(B) *Initial Hearing.*

- (1) At the initial hearing, the only evidence to be considered by the Committee shall be documentary evidence contained in the Claimant's pension file, including, but not limited to, correspondence, medical records and reports of treating physicians and/or examining physicians and evidence received pursuant to paragraph (2).
- (2) Other than questions from the Committee, there will be no taking of additional evidence at the initial hearing, except that the Claimant and/or his representative will be afforded fifteen (15) minutes to make a presentation, which shall be limited to comments and/or arguments as to the evidence or information already contained in the Claimant's pension file, including the report of the examining physician.
- (3) Upon completion of the review of the Claim at the initial hearing, the Committee shall enter an order setting forth its findings and conclusions on the Claim. The written order shall be provided to the Claimant. The order shall include:
 - (a) The specific findings and conclusions of the Committee, including specific references to pertinent provisions of the system on which such conclusions are based;
 - (b) A description of any additional material or information that the Committee may deem necessary for the Claimant to perfect his Claim, together with the reasons why such material or information is necessary; and
 - (c) An explanation of the Claimant's right to a full hearing on the Claim and the time limit in which a full hearing must be requested in writing.
- (4) The decision of the Committee at the initial hearing shall not be final until after the time has expired to request a full hearing or, if a full hearing is requested, until the Committee makes a decision at the conclusion of the full hearing.

(C) *Full Hearing.*

- (1) Any Claimant may request a full hearing on the issues presented to the Committee at an initial hearing and upon which the Committee has entered an order as provided in subsection (B) paragraph (3) of this Section.
- (2) A full hearing must be requested by the Claimant within thirty (30) days of the receipt of the Committee's order. The order will be deemed received three (3) days following the date it is mailed to Claimant at the address provided to the Committee by Claimant.
- (3) Upon receipt of the request for a full hearing and considering the amount of discovery which might be conducted, the Committee shall establish a date for the full hearing and cause notice to be given to the Claimant. The full hearing shall be held within ninety (90) days from the receipt of the request from the participant member. The full hearing may be postponed, if necessary and with the consent of the Claimant, to permit full discovery of the facts.
- (4) Copies of all documents to be offered into evidence at the full hearing, including depositions, and a complete witness list with names and addresses of witnesses expected to be called, shall be furnished to the Committee by the Claimant at least twenty (20) days prior to the full hearing. Documents not furnished to the Committee within the prescribed time limit may be excluded from evidence at the full hearing if a reasonable explanation is not provided for the delay in providing the documents.
- (5) A Claimant or the Committee may obtain discovery by deposition and/or interrogatories prior to the full hearing. Written notice of any depositions and/or interrogatories shall be given to the Committee and the Claimant.
- (6) The costs of any discovery, except discovery requested by the Committee, the appearance of witnesses at the hearing, and the making of a verbatim record of the proceedings shall be the responsibility of the Claimant.
- (7) The Claimant shall be responsible for the appearance of any witnesses called to testify by the Claimant at the hearing.
- (8) Testimony at the full hearing may be submitted in the form of a deposition. Since it will give the Committee more time for review and consideration, the Committee prefers that testimony be submitted by deposition. Depositions timely submitted will be part of the record before the Committee at the full hearing and will not be read in totality at the full hearing; provided, however, that this does not preclude the Claimant or the Committee from reading parts of depositions at the full hearing.
- (9) Irrelevant and unduly repetitious evidence shall be excluded.
- (10) The file maintained by the Committee, including but not limited to various medical reports therein, is part of the record before the Committee at the full hearing.
- (11) All proceedings of the Committee shall be conducted in public.
- (12) In cases concerning an application for pension benefits, including applications for disability retirement benefits, the burden of proof, except as provided by law, shall be on the participant member seeking to show entitlement to such benefits.

- (13) In cases concerning termination of pension benefits including reexamination of ~~participants~~ ~~members~~ receiving disability retirement benefits, the burden of proof shall be on the Committee.
- (14) Except as to those records which are exempted from the provisions of F.S. Chapter 119, Florida's Public Record Law, records maintained by the Committee are open for inspection and/or copying during normal business hours at a reasonable cost for the copying.
- (15) Should a Claimant requesting an initial or full hearing decide to appeal any decision made by the Committee, with respect to any matter considered at such hearing, the Claimant requesting an initial or full hearing will need a record of the proceedings and may need to assure that a verbatim record of the proceedings is made. The Claimant requesting an initial or full hearing will be responsible for obtaining a court reporter or otherwise making a record of the proceeding before the Committee.
- (16) The decisions of the Committee after the requested full hearing shall be final and binding.
- (17) Within fifteen (15) days after making a decision at the full hearing, the Committee shall enter a final order setting forth its findings and conclusions and a copy of the order shall be provided to the Claimant.
- (18) Judicial review of decisions of the Committee shall be sought by the filing of a timely petition for writ of certiorari with the Appellate Division of the Circuit Court for Palm Beach County.

(D) *Conduct of the Full Hearing.*

- (1) The Committee Chairman shall preside over the hearing and shall rule on all evidentiary, procedural, and other legal questions that arise during the hearing. The Chairman's rulings shall stand unless overruled by all other members present. The Chairman shall open the full hearing by explaining the procedures to be followed.
- (2) The Claimant shall have the right to be represented by counsel or be self-represented. The City Attorney shall advise the Committee.
- (3) The Claimant shall be allowed to make an opening statement not to exceed ten (10) minutes.
- (4) Testimony of witnesses shall be under oath or affirmation. Depositions or affidavits shall be admissible if agreed upon by the Claimant and the Committee or the City Attorney.
- (5) The Chairman, any member, the City Attorney, the Claimant or the Claimant's counsel, upon recognition by the Chairman, may direct questions to any witness during the proceedings.
- (6) The Claimant and the City Attorney shall have the right to present evidence relevant to the issues, to cross examine witnesses, to impeach witnesses and to respond to the evidence presented.
- (7) The Claimant shall be permitted a closing argument not to exceed fifteen (15) minutes.
- (8) The Committee shall deliberate and reach a decision following closing argument, and thereafter enter a written order as provided herein.

(E) *Disability Claims—Additional Procedures.*

- (1) All applications for disability pensions shall be in writing. Forms for such applications may be provided by the Committee. The disability claimant shall also be required to submit a completed authorization for release of medical records on a form provided by the Committee.
- (2) Upon receipt of the properly completed application and authorization for release of medical records, the Committee may request medical records from all relevant treating physicians, personnel records from the employer, copies of relevant workers' compensation records, and copies of other records deemed to be relevant to the Claim. The Committee shall pay the cost of any medical examinations required by the Committee and for copies of medical records.
- (3) Upon the Committee's receipt of all requested medical records concerning the Claimant, an independent medical examination (IME) may be scheduled with an appropriate physician who will be asked to render an opinion about the Claimant's medical condition as it relates to the Claimed disability.
- (4) Upon receipt of the IME report from the examining physician, the City Attorney will provide all records of treating physicians, relevant workers' compensation claims records, the independent medical evaluation, and all other relevant documents to the Committee for inclusion in the Claimant's pension file, and the Committee shall then schedule the initial hearing.

Section 12. That Chapter 35, “Employee Policies and Benefits”, Section 35.106, “Trust Fund and Trustee”, of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 35.106. – Trust Fund ~~and Trustee~~.

- (A) A Trust Fund will be created and maintained for the purpose of the plan, and Trust Fund assets will be invested in accordance with investment policies adopted by the Committee and approved by the City Commission. All contributions will be paid into the Trust Fund and all plan benefits under the plan will be paid from the Trust Fund.
- (B) Any person having any Claim under the plan will look solely to the assets of the Trust Fund for satisfaction. In no event will the City or any of its officials, employees, Commissioners, or agents be liable in their individual capacities to any person whomsoever, under the provisions of the plan or of the trust agreement.
- (C) The Trust Fund will be used and applied only in accordance with the provisions of the plan, to provide the benefits thereof, and no part of the corpus or income of the Trust Fund will be used for, or diverted to, purposes other than for the exclusive benefit of participants and other persons entitled to plan benefits, except to the extent provided in Sections 35.096 and 35.109 with respect of this subchapter with respect to expenses of administration and termination of the plan, respectively.

Section 13. That Chapter 35, "Employee Policies and Benefits", Section 35.108, "Amendment of Plan", of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 35.108. -- Amendment of Plan.

- (A) The plan may be amended by the City from time to time in any respect whatever, by ordinance by the Commission specifying the amendment, subject only to the following limitations:
 - (1) Under no condition shall the amendment result in or permit the return or repayment to the City of any property held or acquired by the plan~~trustee hereunder~~, or the proceeds thereof, or result in or permit the distribution of any property for the benefit of anyone other than the participants and their beneficiaries or joint pensioners, except to the extent provided by Sections 35.096 and 35.109 of this subchapter with respect to expenses of administration and termination of the plan, respectively.
 - (2) Under no condition shall the amendment change the duties or responsibilities of the ~~Committee~~~~trustee~~ unless the Committee~~trustee~~ is given advance notice of and an opportunity to comment on the change.
- (B) Subject to the foregoing limitations, any amendment may be made retroactively which, in the judgment of the Commission, is necessary or advisable provided that the retroactive amendment does not deprive a participant of the right to receive plan benefits to which the participant is otherwise entitled, except for amendments that are necessary to comply with any laws or regulations of the United States or the State of Florida, or to qualify the plan as a tax-exempt plan and trust.

Section 14. That Chapter 35, "Employee Policies and Benefits", Section 35.109, "Termination of Plan", of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 35.109. -- Termination of Plan.

- (A) The plan may be terminated by the City at any time by delivering to the ~~Committee and trustee~~ in writing an ordinance of the Commission, duly certified by an official of the City, specifying that the plan is being terminated or contributions thereunder are being permanently discontinued. The plan shall otherwise terminate only upon adjudication by a court of competent jurisdiction that the City is bankrupt or insolvent (whether the proceedings be voluntary or involuntary), dissolution of the City or upon its liquidation, merger, or consolidation without provisions being made by its successor, if any, for the continuation of the plan.
- (B) Upon termination of the plan for any reason, or upon written notice to the ~~Committee~~~~trustee~~ that contributions thereunder are being permanently discontinued, or upon discontinuation of contributions for other than a temporary period, the Trust Fund shall be apportioned and distributed in accordance with the following procedure:
 - (1) The Retirement Committee, subject to approval of the Commission, shall determine the date of distribution and the asset value to be distributed, after taking into account the expenses of that distribution.

- (2) The Committee, subject to approval of the Commission, shall determine the method of distribution of plan assets, and shall apportion those assets as follows:
- (a) An amount equal to each participant's contribution less the aggregate of any retirement income payments made to that participant will be determined, and that amount will be apportioned from the asset value. The asset value, if insufficient to provide that amount in full, will be apportioned among those participants in proportion to the amounts determined with respect to them.
 - (b) Apportionment will next be made with respect to each retired participant receiving a retirement income through the plan on the plan termination date, each person receiving a retirement income on that date on account of a deceased participant or a retired (but since deceased) participant, and each participant who has, by that date, become eligible for normal retirement but has not yet retired, in the amount required to provide the retirement income; provided that, if the asset value is less than the aggregate of those amounts, the amounts will be proportionately reduced so that the aggregate of the reduced amounts will be equal to the asset value.
 - (c) If there is any asset value remaining after the apportionment under subdivision (B)(2)(a) and (b) of this Section, apportionment shall next be made with respect to each participant or former participant who has both attained the age of fifty-five (55) years and completed at least fifteen (15) years of credited service, or has completed twenty (20) years of credited service, but has not yet begun to receive retirement income under the plan. Apportionment shall be made to such participants and former participants in the amount required to provide the actuarial equivalent of the retirement income accrued to the plan termination date; provided that, if the remaining asset value is less than the aggregate of the amounts to be apportioned, those amounts shall be proportionately reduced so that the aggregate of the reduced amounts will be equal to the remaining asset value.
 - (d) If there is any asset value remaining after the apportionments under divisions (B)(2)(a), (b) or (c) of this Section, apportionment shall next be made with respect to each participant in the service of the City on that date who is not entitled to an apportionment under divisions (B)(2)(a), (b) or (c) of this Section, but who has completed at least five (5) years of credited service, in the amount required to provide the actuarially equivalent single-sum value of the vested deferred retirement income accrued to the date of plan termination. However, if the remaining asset value is less than the aggregate of the amounts apportioned, the latter amounts shall be proportionately reduced so that the aggregate of those reduced amounts will be equal to the remaining asset value.
 - (e) If there is any asset value remaining after the apportionments under divisions (B)(2)(a) through (d) of this Section, apportionment shall next be made with respect to each participant in the service of the City on such date who is not entitled to an apportionment under division (B)(2)(a), (b), (c) or (d) of this Section, in the amount required to provide the actuarially equivalent single-sum value of the nonvested deferred retirement income accrued to the date of plan termination. If the remaining asset value be less than the aggregate of the amounts to be apportioned hereunder,

those latter amounts shall be proportionately reduced so that the aggregate of the reduced values will be equal to the remaining asset value.

- (f) In the event that there is asset value remaining after the full apportionments specified in divisions (B)(2)(a) through (e) of this Section, and under the provisions of Section 35.097(I) of this subchapter, the excess shall be returned to the City.
- (3) The order of priorities for, and the amounts of, distribution set forth in division (B)(2) of this Section shall be subject to the limitations provided by Section 35.097(I) of this subchapter, and to the distributions not being determined to be otherwise discriminatory by the Internal Revenue Service. In the event either the limitations under Section 35.097(I) of this subchapter become effective or the Internal Revenue Service rules that the distributions are otherwise discriminatory, adjustment may be made in the priorities and amounts of distribution as may be required to satisfy the requirements of subsection 35.097(I) of this subchapter or the Internal Revenue Code.
- (4) As soon as practicable after receipt by the City of a determination letter from the Internal Revenue Service stating that the method of distribution in this Section will not adversely affect the continued qualified status of the plan, the Retirement Committee shall ~~direct the trustee to~~ distribute, in accordance with the manner of distribution determined by the Committee, the amounts apportioned under divisions (B)(2) or (3) of this Section, or as may otherwise be required by law.

Section 15. That Chapter 35, "Employee Policies and Benefits", Section 35.110, "Deferred Retirement Option Plan", of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 35.110. -- Deferred Retirement Option Plan.

- (A) Beginning with the first pay period after September 1, 1999, any employee who is eligible for normal retirement, as defined in Section 35.089(G), may elect to participate in the Deferred Retirement Option Plan ("DROP"), except as provided in Section 35.110(L), in accordance with this Section. An employee is considered retired for pension plan purposes upon entering into the DROP plan.
- (B) An election to participate in the DROP plan must be made in writing and shall become effective thirty (30) days following the date it is received by the Retirement Committee or pension plan administrator, or on a later date if specified by the employee.
- (C) An employee who elects to participate in the DROP plan may participate in such plan for a maximum of sixty (60) months.
- (D) An employee's credited service and accrued benefit under the system shall be determined on the effective date of the employee's election to participate in the DROP plan. An employee shall not accrue any additional benefit under the plan after entering the DROP plan, except as afforded other eligible retirees under the plan. After entering the DROP plan, a participant shall not be eligible for disability or pre-retirement death benefits under the retirement plan.
- (E) A DROP plan account shall be established for each employee who elects to participate in the DROP plan in accordance with this Section. During the period of the employee's participation

in the DROP plan, the employee's normal retirement benefit shall be paid into the employee's DROP plan account. The employee's DROP plan account shall be invested by the Retirement Committee and credited with interest equal to the overall net (earning less costs) investment rate of return on the retirement plan assets during the period of the employee's participation in the DROP plan. Provided, however, the Committee, in its sole discretion, may establish a separate plan for DROP accounts that would be invested by the retiree and for which special rules may be applied consistent with Internal Revenue Service regulations.

- (F) At the conclusion of the retiree's participation in the DROP plan, and as a condition of participating in such plan, the retiree will continue his retirement and terminate City employment. The retiree will thereafter receive a normal retirement benefit at the same rate as previously calculated but the monthly amount will be paid to the retiree and not deposited in the DROP plan account. The retiree's DROP plan account will thereafter be distributed to the retiree in a cash lump sum, unless the retiree elects an alternative distribution as described below:
- (1) Payments in approximately equal quarterly or annual installments over a period designated by the retiree not to exceed the life expectancy of the retiree or the joint life expectancy of the retiree and the retiree's designated beneficiary. In the event that the retiree dies before all installments have been paid, the remaining balance in the DROP plan account shall be paid in an immediate cash lump sum to the retiree's designated beneficiary; or
 - (2) The purchase of a nonforfeitable fixed annuity payable in such form as the employee may elect. Elections shall be in writing and shall be made at such time or in such manner as the Retirement Committee shall determine. If the annuity form selected is not a qualified joint and fifty (50) percent survivor annuity with the retiree's spouse as the beneficiary, the annuity payable to the retiree and thereafter to the retiree's beneficiary shall be subject to the incidental death benefit rule as described in Section 401(a)(9)(G) of the Internal Revenue Code and applicable regulations.
- (G) Notwithstanding the provisions of paragraph (F), if a retiree dies before distribution of the retiree's DROP plan account commences, the account balance shall be paid to the retiree's designated beneficiary in such optional form as the beneficiary may select. Notwithstanding the provisions of paragraph (F), if the Retirement Committee adopts a separate plan in accordance with Section 35.110(E), distribution in accordance with rules established by the Retirement Committee under such separate plan will apply.
- (H) Except as otherwise provided in this Section, distribution of an employee's DROP plan account shall begin as soon as administratively practicable following the employee's termination of employment. A retiree may, in accordance with such procedures as the Retirement Committee may prescribe, elect to defer distribution of the DROP plan account until the first day of any month coincident with or following the termination of the retiree's City employment; provided, however, distribution shall be made before the distribution date elected by the employee to the extent necessary to comply with the Internal Revenue Code and regulations thereunder. Any amounts in a retiree's DROP plan account shall continue to be invested by the Retirement Committee and shall be credited with the net investment return on the Retirement Fund until the balance of the DROP plan account is fully distributed to the retiree or the retiree's beneficiary. Provided, however, if the Committee establishes a separate

plan as set forth in Section 35.110(E), the earnings will be invested and distributed pursuant to the rules of the separate plan.

- (I) In no event shall the provisions of this Section operate so as to allow the distribution of a retiree's DROP plan account to begin later than April 1 following the later of the calendar year in which the retiree terminates city employment or attains age seventy and one-half (70½).
- (J) Notwithstanding any other provisions of this Section, all distributions from retiree DROP plan accounts shall conform to applicable provisions of the Internal Revenue Code and regulations issued thereunder and as provided under a separate plan if adopted by the Retirement Committee.
- (K) Notwithstanding any provision of this Section to the contrary, a retiree or beneficiary receiving distributions from a DROP plan account may elect, at the time and in a manner prescribed by the Retirement Committee, to have any portion of an eligible rollover distribution paid directly from the DROP plan account to an eligible retirement plan specified by the retiree or beneficiary in a direct rollover; provided, however, if the Committee establishes a separate plan as set forth in Section 35.110(E), the eligible rollover distribution of the DROP plan allotment will be distributed pursuant to the rules of the separate plan. The following definitions apply to the terms used in this paragraph:
 - (1) *Eligible Rollover Distribution.* Any distribution of all or any portion of the balance to the credit of the distributee under the DROP plan, 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 Internal Revenue Code, and the portion of any distribution that is not includable in gross income.
 - (2) *Eligible Retirement Plan.* An individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
 - (3) *Distributee.* An employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse.
 - (4) *Direct Rollover.* A payment by the DROP plan to the eligible retirement plan specified by the distributee. The direct rollover may be accomplished by any reasonable means determined by the Retirement Committee.
- (L) The DROP is not a separate retirement plan; it is part of the plan. Upon termination of employment, a participant is entitled to a lump sum distribution of his or her DROP account balance or may elect a rollover. The DROP account distribution is in addition to the participant's monthly benefit.

(M) Notional account. The DROP account established for such a participant is a notional account, used only for the purpose of calculation of the DROP distribution amount. It is not a separate account in the plan.

(N) No employer discretion. The DROP benefit is determined pursuant to the provisions of this section which do not involve employer discretion.

(O) IRC limit. The DROP account distribution, along with other benefits payable from the system, is subject to limitation under Internal Revenue Code Section

~~Participants who are part of a bargaining unit which currently has not entered into a collective bargaining agreement or is operating under an expired collective bargaining agreement with the City shall not be allowed to participate in the DROP plan. Should the City and the affected bargaining units enter into and ratify a collective bargaining agreement, the affected participants shall be allowed to enter into the DROP plan as of the date the collective bargaining agreement is executed.~~

Section 16. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 17. Inclusion in the Code. It is the intention of the City Commission, and it is hereby ordained that this Ordinance shall become and be made a part of the City of Delray Beach City Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 18. Effective Date. That this Ordinance shall be effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the ____ day of _____, 2017.

MAYOR

Attest:

City Clerk

First Reading _____

Second Reading _____