

- (E) DROP participants. Members or retirees who are or were in the deferred retirement option plan shall, following termination of employment after DROP participation, have the options provided for in this section for reemployment.

(Ord. 2010-05, § 1, passed 3-1-10)

Firefighters' Retirement System

34.42 - Plan freeze and enrollment in the Florida Retirement System.

Notwithstanding any other provision of the system:

- (A) The accrued benefits of all members of this system who are employed and not participating in the DROP on September 30, 2013, shall be frozen on that date. All members shall be fully vested in their frozen accrued benefit based on their length of service as of September 30, 2013. The value of each member's frozen accrued benefit shall be calculated in accordance with the provisions of the system in effect on September 30, 2013, based on the member's credited service and average final compensation on that date. The frozen accrued benefit shall be payable to the member upon termination of town employment and attaining age 55 with ten years of credited service, 25 years of credited service regardless of age, or age 60 regardless of years of credited service, whichever occurs first. In applying the preceding sentence, credited service shall include all credited service as a member of this system prior to October 1, 2013, and all periods of employment as a full-time firefighter with the Town of Longboat Key on and after October 1, 2013. For the purpose of determining a member's frozen accrued benefit in accordance with this subsection (A), salary shall include any payments of accrued leave that would have been included in the member's salary if the member retired prior to October 1, 2013. However, the member's accrued leave balance shall be reduced by the amount of vacation or sick leave used subsequent to October 1, 2013, and the member's frozen accrued benefit shall be adjusted accordingly.
- (B) No benefits shall be accrued under this system on or after October 1, 2013, and no member contributions to this system shall be required on or after that date. The town shall continue to make contributions to the system in accordance with subsection 34.47(C), and the board shall continue to administer the system in accordance with sections 34.43 through 34.67, until all accrued benefits have been paid to all eligible members and beneficiaries.
- (C) Any member of this system who is employed on September 30, 2013, and has less than ten years of credited service on that date may elect to receive a refund of their accumulated contributions or the actuarial present value of their frozen accrued benefit, in lieu of any other benefit under the system.
- (D) Effective October 1, 2013, all current and future firefighters of the Town of Longboat Key shall be enrolled in the Florida Retirement System, and shall accrue benefits under and make contributions to the Florida Retirement System for all service as a firefighter with the town on and after that date, in accordance with the state statutes and rules applicable to the Florida Retirement System, as those statutes and rules may be amended from time to time.
- (E) Members of this system who retired, entered the DROP or terminated town employment with the right to a deferred vested benefit prior to October 1, 2013, shall be entitled to receive benefits from the system in accordance with the provisions of the system in effect on the date of their retirement, DROP entry, or termination of employment. Members who retire or enter the DROP prior to October 1, 2013, shall not be eligible for reemployment with the town after that date, except at the exclusive option of the town.

(Ord. No. 2013-13, § 1, 7-1-13)

34.43 - Definitions.

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

"Accumulated contributions" means a member's own contributions without interest. For those members who purchase credited service with interest or at no cost to the system, only that portion of any payment representing the amount attributable to member contributions based on the applicable member contribution rate, shall be included in accumulated contributions.

"Actuarial equivalent" means a benefit or amount of equal value, based upon the RP 2000 Combined Healthy Mortality Table at an interest rate of eight percent per annum. This definition may be amended by the town pursuant to the recommendation of the board with the advice of the plan's actuary, and the town may obtain the advice of an independent actuary, such that actuarial assumptions are not subject to town discretion.

"Average final compensation" means one-twelfth of the average salary of the five best years of the last ten years of credited service prior to retirement, termination, or death, or the career average as a full-time firefighter, whichever is greater. A year shall be 12 consecutive months.

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

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

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Credited service" means the total number of years and fractional parts of years of service as a firefighter with member contributions, when required, omitting intervening years or fractional parts of years when such member was not employed by the town as a firefighter. A member may voluntarily leave his accumulated contributions in the fund for a period of five years after leaving the employ of the fire department pending the possibility of being reemployed as a firefighter, without losing credit for the time that he was a member of the system. If a vested member leaves the employ of the fire department, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a firefighter with the fire department within five years, his accumulated contributions shall be returned. Upon return of a member's accumulated contributions, all of his rights and benefits under the system are forfeited and terminated. Upon any reemployment, a firefighter shall not receive credit for the years and fractional parts of years of service for which he has withdrawn his accumulated contributions from the fund, unless the firefighter repays into the fund the contributions he has withdrawn, with interest, as determined by the board, within 90 days after his reemployment.

The years or fractional parts of a year that a member services in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, or as a firefighter with any employer prior to employment with the Town of Longboat Key, including prior service as a firefighter with the town, shall be added to the member's credited service for all purposes, including vesting, provided that:

- (1) The member submits a written request, to purchase credited service for prior service with the city, prior firefighter service for any other employer or prior military service, in writing to the board.
- (2) The member contributes to the system the full actuarial cost of all such credited service that would have occurred had the member been employed by the Town of Longboat Key as a firefighter for the period of credited service purchased, computed as a lump sum payment into the system. Such payment may be by direct transfer of eligible rollover distribution from any other qualified plan as described in the Internal Revenue Code, to include as illustrative and not limiting; a member's individual retirement account (408(a))

account), individual retirement annuity (408(b) account), annuity plan (403(a) account), qualified trust (401(a) account) and deferred compensation account (457 account).

- (3) The purchase of credited service under this section by member shall be paid in full prior to the member's actual retirement date in accordance with all terms, rules, procedures or regulations established by the board. Such purchase of credited service shall take effect upon vesting in the system. If a member terminates employment with the town prior to attaining vested status and receives a refund of member contributions, the amount paid for such prior credited service shall also be refunded.
- (4) Credited service for prior military or firefighter service shall not be granted for service where the member is receiving or is entitled to receive a benefit from another governmental pension system.
- (5) Credited service for prior firefighter service under this section shall only be provided for service as a firefighter, as defined in F.S. ch. 175.
- (6) Credited service for prior military and firefighter service, shall not exceed five years.

"Effective date" means the date on which the ordinance codified in sections 34.43 through 34.67 becomes effective.

"Firefighter" means an actively employed full-time person employed by the town, including his initial probationary employment period, who is certified as a firefighter as a condition of employment in accordance with the provisions of F.S. § 633.35, and whose duty it is to extinguish fires, to protect life and to protect property.

"Fund" means the trust fund established herein as part of the system.

"Member" means an actively employed firefighter who fulfills the prescribed membership requirements. Benefit improvements which, in the past, have been provided for by amendments to the system adopted by town ordinance, and any benefit improvements which might be made in the future shall apply prospectively and shall not apply to members who terminate employment or who retire prior to the effective date of any ordinance adopting such benefit improvements, unless such ordinance specifically provides to the contrary.

"Plan year" means the 12-month period beginning October 1 and ending September 30 of the following year.

"Retiree" means a member who has entered retirement status.

"Retirement" means a member's separation from town employment with eligibility for immediate receipt of benefits under the system.

"Salary" means the total compensation for services rendered to the town as a firefighter reportable on the member's W-2 form plus all tax deferred, tax sheltered, or tax exempt items of income derived from elective employee payroll deductions or salary reductions, and shall also include any elective deferral (as defined in section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the police officer and which is not includible in the gross income of the member by reason of sections 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in subsection (A) of section 34.57 hereof, compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code.

"Spouse" means the lawful wife or husband of a member or retiree at the time benefits become payable.

"System" means the Town of Longboat Key Firefighters' Retirement System as contained herein and all amendments thereto.

"Town" means Town of Longboat Key, Florida.

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

(Ord. 99-25, passed 7-6-99; Amd. Ord. 03-07, passed 7-7-03; Amd. Ord. 2011-06, § passed 5-2-11; Amd. Ord. 2011-12, passed 6-6-11)

34.44 - Membership.

- (A) *Conditions of eligibility.* All firefighters as of the effective date, and all future new firefighters, shall become members of this system as a condition of employment. The fire chief may, however, within the first 30 days of employment as fire chief, notify the board and the town, in writing, of his election to not be a member of the system. In the event of any such election, he shall be barred from future membership in the system. Thereafter, contributions to the plan in accordance with section 34.47 shall not be required, he shall not be eligible to be elected as a member trustee on the board or vote for a member trustee and shall not be eligible for any other benefits from the plan.
- (B) *Designation of beneficiary.* Each firefighter shall complete a form prescribed by the board designating a beneficiary or beneficiaries.

(Ord. 99-25, passed 7-6-99; Ord. 2010-37, § 1, 12-6-10)

34.45 - Reserved.

Editor's note—

Ord. 2014-26, § 4, adopted Sept. 8, 2014, repealed § 34.45, entitled "Board of trustees", which derived from Ord. 99-25, passed July 6, 1999; Ord. 2010-03, § 1, passed Mar. 1, 2010; Ord. 2011-20, § 1, passed June 6, 2011; and Ord. 2013-12, § 1, passed Apr. 15, 2013.

34.46 - Reserved.

Editor's note—

Ord. 2014-26, § 4, adopted Sept. 8, 2014, repealed § 34.46, entitled "Finances and fund management", which derived from Ord. 99-25, passed July 6, 1999; Ord. 2007-04, passed Dec. 21, 2006; and Ord. 2010-03, § 2, passed Mar. 1, 2010.

34.47 - Contributions.

- (A) *Member contributions.*

(1) *Amount.* Each member of the system shall be required to make regular contributions to the fund in the amount of ten percent of his salary. Member contributions withheld by the town on behalf of the member shall be deposited with the board immediately after each pay period. The contributions made by each member to the fund shall be designated as employer contributions pursuant to § 414(h) of the Code. Such designation is contingent upon the contributions being excluded from the member's gross income for federal income tax purposes. For all other purposes of the system, such contributions shall be considered to be member contributions.

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

- (B) *State contributions.* Any monies received or receivable by reason of laws of the State of Florida, for the express purpose of funding and paying for retirement benefits for firefighters of the town shall be deposited in the fund comprising part of this system immediately and under no circumstances more than five days after receipt by the town.
- (C) *Town contributions.* So long as this system is in effect, the town shall make quarterly contributions to the fund in an amount equal to the difference in each year, between the total aggregate member

contributions for the year, plus state contributions for such year, and the total cost for the year, as shown by the most recent actuarial valuation of the system. The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded past service liability as provided in F.S. ch. 112, pt. VII.

- (D) *Other.* Private donations, gifts and contributions may be deposited to the fund, but such deposits must be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used only for additional benefits for members, as determined by the board, and may not be used to reduce what would have otherwise been required town contributions.

(Ord. 99-25, passed 7-6-99; Amd. Ord. 02-06, passed 7-8-02)

34.48 - Benefit amounts and eligibility.

- (A) *Normal retirement date.* A member's normal retirement date shall be the first day of the month coincident with, or next following the earlier of the attainment of age 55 and the completion of ten years of credited service, or the completion of 25 years of credited service regardless of age, or the attainment of age 60, regardless of years of credited service. A member may retire on the member's normal retirement date or on the first day of any month thereafter and each member shall become 100 percent vested in the member's accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the town on or after the normal retirement date.

- (B) *Normal retirement benefit.* A member retiring hereunder on or after his normal retirement date shall receive a monthly benefit, which shall commence on the first day of the month coincident with or next following his retirement and be continued thereafter during member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. The monthly retirement benefit shall equal 3½ percent of average final compensation, for each year of credited service.

- (C) *Early retirement date.* A member may retire on his early retirement date which shall be the first day of any month coincident with or next following the attainment of age 45 and the completion of 15 years of credited service or age 50 and the completion of ten years of credited service. Early retirement under the system is retirement from employment with the town on or after the early retirement date and prior to the normal retirement date.

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

- (1) A deferred monthly retirement benefit which shall commence on what would have been the member's normal retirement date had the member continued employment as a firefighter and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement on the member's normal retirement date, except that credited service and average final compensation shall be determined as of the member's early retirement date; or

- (2) An immediate monthly retirement benefit which shall commence on the member's early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in subsection (D)(1) above, actuarially reduced to take into account the firefighter's younger age and the earlier commencement of the retirement benefit. In no event shall the early retirement reduction exceed three percent for each year by which the commencement of benefits precedes the date which would have been the member's normal retirement date had the member's continued employment as a firefighter.

- (E) *Early retirement incentive program.*

- (1) (a) Members who have or will have attained age 45 and completed 15 or more years of credited service or have attained age 50 and completed ten or more years of credited service on or before October 1, 2008, shall be deemed "eligible members" and may elect to receive the benefits set forth in this subsection (E), on the condition that they make a

one time irrevocable written election, delivered to the town manager not later than October 24, 2008, to retire and terminate employment effective on November 1, 2008.

- (b) Members who have or will have attained age 45 and completed 15 or more years of credited service or have attained age 50 and completed ten or more years of credited service on or before August 1, 2009, shall be deemed "eligible members" and may elect to receive the benefits set forth in this subsection (E), on the condition that they make a one time irrevocable written election, delivered to the town manager not later than August 24, 2009, to retire and terminate employment effective on September 1, 2009.
- (2) (a) "*Eligible members*", as determined by subsection (E)(1)(a) above, shall be eligible to retire and receive an early retirement benefit as set forth in subsection (D) of this section, however, for purposes of determining the pension benefit, there shall not be a three percent reduction for each year, up to a maximum of five years, in which the commencement of benefits precedes the date which would have been the member's normal retirement date had he continued employment as a firefighter. Eligible members electing the early retirement incentive program provided for in this subsection (E) shall not be eligible for the lump sum optional form of benefit provided for in subsection 34.52(A)(4), or participation in the deferred retirement option plan as provided for in subsection 34.52(A)(5).
- (b) "*Eligible members*", as determined by subsection (E)(1)(b) above, shall be eligible to retire and receive an early retirement benefit as set forth in subsection (D) of this section; however, for purposes of determining the pension benefit, there shall not be a three percent reduction for each year, up to a maximum of five years, in which the commencement of benefits precedes the date which would have been the member's normal retirement date had he continued employment as a firefighter. Eligible members electing the early retirement incentive program provided for in this subsection (E) shall not be eligible for the lump sum optional form of benefit provided for in subsection 34.52(A)(4), or participation in the deferred retirement option plan as provided for in subsection 34.52(A)(5).
- (F) *Cost-of-living adjustment.* The monthly amount payable to normal and early service retirees, their joint pensioners or beneficiaries, if applicable, shall be subject to a cost-of-living adjustment commencing on the first October 1st following five complete years of receiving retirement income payments and on each October 1st thereafter. The cost-of-living adjustment shall be three percent of the previous year's benefit amount. Disability retirees and terminated vested persons shall not receive cost-of-living adjustments.
- (G) *Service stipend.* Each member at retirement shall receive a stipend equal to \$10.00 per month for each year of credited service, which shall be payable until age 65. However such stipend shall be adjusted to ensure that total retirement income payments do not exceed the limitation provision of F.S. ch. 112

(Ord. 99-25, passed 7-6-99; Amd. Ord. 2000-23, passed 9-23-00; Amd. Ord. 01-10, passed 7-2-01; Amd. Ord. 02-06, passed 7-8-02; Amd. Ord. 03-07, passed 7-7-03; Amd. Ord. 2007-04, passed 12-21-06; Amd. Ord. 08-19, passed 9-8-08)

(Ord. 2009-14, § 1, 7-6-09)

34.49 - Pre-retirement death.

- (A) *Prior to eligibility for early or normal retirement and with less than five years of credited service.* The beneficiary of a deceased member who was not eligible for early or normal retirement and who had less than five years of credited service shall receive a refund of 100 percent of the member's accumulated contributions.
- (B) *Deceased members eligible for early or normal retirement and who had five or more years of credited service.* The beneficiary of any member who dies and who, at the date of his death was

eligible for early or normal retirement and had five or more years of credited service, shall be entitled to a benefit as follows:

- (1) The beneficiary of a member whose death occurs after the member attained five or more years of credited service but who was not eligible for early or normal retirement shall be entitled to receive any accrued benefit payable to the member at the option of the beneficiary. The benefit shall be calculated as for the benefit accrual rate provided in section 34.51, based on the deceased member's credited service and average final compensation as of the date of his death.
- (2) A beneficiary of a member whose death occurs after the member's eligibility for early or normal retirement shall be entitled to all benefits otherwise payable to the member. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable.
- (3) The board may elect to make an actuarial equivalent lump sum payment if the monthly retirement benefit is less than \$100.00, or if the single sum value of the accrued retirement benefit is less than \$5,000.00.
- (4) A beneficiary may, in lieu of the benefits provided herein, elect to receive a refund of the deceased member's accumulated contributions.

(Ord. 99-25, passed 7-6-99)

34.50 - Disability.

- (A) *Disability benefits in-line of duty.* Any member who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability was directly caused by the performance of his duty as a firefighter, shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to three percent of his average final compensation multiplied by the total years of credited service, but in any event the minimum amount paid to the member shall be 42 percent of the average final compensation of the member. Terminated persons, either vested or nonvested, are not eligible for disability benefits, except that those terminated by the town for medical reasons may apply for a disability within 30 days after termination. Notwithstanding the foregoing, the monthly pension payable to a member who is determined to be totally and permanently disabled in accordance with this subsection (A) shall be 3.2 percent of average final compensation multiplied by the total years of credited service for a disability incurred on or after July 8, 2002, and 3.5 percent of average final compensation multiplied by the total years of credited service for a disability incurred on or after the effective date of the ordinance codified in this section; but in any event the minimum amount paid to the member shall be 42 percent of the average final compensation of the member.
- (B) *In-line of duty presumptions.*
 - (1) *Presumption.* Any condition or impairment of health of a member caused by hypertension or heart disease shall be presumed to have been suffered in-line of duty unless the contrary is shown by competent evidence, provided that such member shall have successfully passed a physical examination upon entering into such service, which examination failed to reveal any evidence of such condition; and provided further, that such presumption shall not apply to benefits payable or granted in a policy of life insurance or disability insurance.
 - (2) *Additional presumption.* The presumption provided for in this subsection shall apply only to those conditions described in this subsection that are diagnosed on or after January 1, 1996.
 - (a) *Definitions.* As used in this subsection (B)(2), the following definitions apply:
 - (i) *"Body fluids"* means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of

blood-borne pathogens, as established by the Centers for Disease Control, apply. For purposes of potential transmission of meningococcal meningitis or tuberculosis, the term "body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, and saliva, mucous, and other fluids through which infectious airborne organisms can be transmitted between persons.

- (ii) *"Emergency rescue or public safety member"* means any member employed full-time by the town as a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who, in the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis, or tuberculosis and who is not employed elsewhere in a similar capacity. However, the term "emergency rescue or public safety member" does not include any person employed by a public hospital licensed under F.S. ch. 395, or any person employed by a subsidiary thereof.
 - (iii) *"Hepatitis"* means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C, or any other strain of hepatitis generally recognized by the medical community.
 - (iv) *"High risk of occupational exposure"* means that risk that is incurred because a person subject to the provisions of this subsection, in performing the basic duties associated with his employment:
 - a. Provides emergency medical treatment in a nonhealth care setting where there is a potential for transfer of body fluids between persons;
 - b. At the site of an accident, fire or other rescue or public safety operation, or in an emergency rescue or public safety vehicle, handles body fluids in or out of containers or works with or otherwise handles needles or other sharp instruments exposed to body fluids;
 - c. Engages in the pursuit, apprehension and arrest of law violators or suspected law violators and, in performing such duties, may be exposed to body fluids; or
 - d. Is responsible for the custody and physical restraint when necessary, of prisoners or inmates within a prison, jail or other criminal detention facility, while on work detail outside the facility, or while being transported and, in performing such duties, may be exposed to body fluids.
 - (v) *"Occupational exposure"*, in the case of hepatitis, meningococcal meningitis or tuberculosis, means an exposure that occurs during the performance of job duties that may place a worker at risk of infection.
- (b) *Presumption.* Any emergency rescue or public safety member who suffers a condition or impairment of health that is caused by hepatitis, meningococcal meningitis, or tuberculosis, that requires medical treatment, and that results in total or partial disability or death shall be presumed to have a disability suffered in the line of duty, unless the contrary is shown by competent evidence; however, in order to be entitled to the presumption, the member must, by written affidavit as provided in F.S. § 92.50, verify by written declaration that, to the best of his knowledge and belief:
- (i) In the case of a medical condition caused by or derived from hepatitis, he has not:
 - a. Been exposed, through transfer of bodily fluids, to any person known to have sickness or medical conditions derived from hepatitis, outside the scope of his employment;
 - b. Had a transfusion of blood or blood components, other than a transfusion arising out of an accident or injury happening in connection with his present employment, or received any blood products for the treatment of a coagulation disorder since last undergoing medical tests for hepatitis, which tests failed to indicate the presence of hepatitis;

- c. Engaged in unsafe sexual practices or other high-risk behavior, as identified by the Centers for Disease Control or the Surgeon General of the United States or had sexual relations with a person known to him to have engaged in such unsafe sexual practices or other high-risk behavior; or
 - d. Used intravenous drugs not prescribed by a physician.
- (ii) In the case of meningococcal meningitis, in the ten days immediately preceding diagnosis he was not exposed, outside the scope of his employment, to any person known to have meningococcal meningitis or known to be an asymptomatic carrier of the disease.
 - (iii) In the case of tuberculosis, in the period of time since the member's last negative tuberculosis skin test, he has not been exposed, outside the scope of his employment, to any person known by him to have tuberculosis.
- (c) *Immunization.* Whenever any standard, medically recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is granted under this section, if medically indicated in the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the U.S. Public Health Service, an emergency rescue or public safety member may be required by the town to undergo the immunization or prophylaxis unless the member's physician determines in writing that the immunization or other prophylaxis would pose a significant risk to the member's health. Absent such written declaration, failure or refusal by an emergency rescue or public safety member to undergo such immunization or prophylaxis disqualifies the member from the benefits of the presumption.
 - (d) *Record of exposures.* The town shall maintain a record of any known or reasonably suspected exposure of an emergency rescue or public safety member in its employ to the disease described in this section and shall immediately notify the member of such exposure. An emergency rescue or public safety member shall file an incident or accident report with the town of each instance of known or suspected occupational exposure to hepatitis infection, meningococcal meningitis or tuberculosis.
 - (e) *Required medical tests; preemployment physical.* In order to be entitled to the presumption provided by this section:
 - (i) An emergency rescue or public safety member must, prior to diagnosis, have undergone standard, medically acceptable tests for evidence of the communicable disease for which the presumption is sought, or evidence of medical conditions derived therefrom, which tests fail to indicate the presence of infection. This subsection does not apply in the case of meningococcal meningitis.
 - (ii) On or after June 15, 1995, an emergency rescue or public safety member may be required to undergo a preemployment physical examination that tests for and fails to reveal any evidence of hepatitis or tuberculosis.
- (C) *Disability benefits not in-line of duty.* Any member with ten years or more credited service who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability is not directly caused by the performance of his duties as a firefighter shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to three percent of his average final compensation multiplied by the total years of credited service. Terminated persons, either vested or nonvested, are not eligible for disability benefits, except that those terminated by the town for medical reasons may apply for a disability within 30 days after termination. Notwithstanding the foregoing, the monthly pension payable to a member who is determined to be totally and permanently disabled in accordance with this subsection (C) shall be 3.2 percent of average final compensation multiplied by the total years of credited service for a disability incurred on or after July 8, 2002, and 3.5 percent of average final compensation multiplied by the

total years of credited service for a disability incurred on or after the effective date of the ordinance codified in this section.

- (D) *Conditions disqualifying disability benefits.* Each member who is claiming disability benefits shall establish, to the satisfaction of the board, that such disability was not occasioned primarily by:
- (1) Excessive or habitual use of any drugs, intoxicants or narcotics.
 - (2) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections or while committing a crime.
 - (3) Injury or disease sustained while serving in any branch of the Armed Forces.
 - (4) Injury or disease sustained by the member after his employment as a firefighter with the Town of Longboat Key shall have terminated.
- (E) *Physical examination requirement.* A member shall not become eligible for disability benefits until and unless he undergoes a physical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the board for that purpose. The board shall not select the member's treating physician or surgeon for this purpose except in an unusual case where the board determines that it would be reasonable and prudent to do so.

Any retiree receiving disability benefits under provisions of sections 34.43 through 34.67, may be periodically re-examined by a qualified physician or physicians and/or surgeon or surgeons who shall be selected by the board, to determine if such disability has ceased to exist. If the board finds that the retiree is no longer permanently and totally disabled to the extent that he is unable to render useful and efficient service as a firefighter, the board shall recommend to the town that the retiree be returned to performance of duty as a firefighter, and the retiree so returned shall enjoy the same rights that he had at the time he was placed upon pension. In the event the retiree so ordered to return shall refuse to comply with the order within 30 days from the issuance thereof, he shall forfeit the right to his pension.

The cost of the physical examination and/or re-examination of the member claiming or the retiree receiving disability benefits shall be borne by the fund. All other reasonable costs as determined by the board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the fund.

If the retiree recovers from disability and reenters the service of the town as a firefighter, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service of the town will not be considered as credited service for the purposes of the system.

The board shall have the power and authority to make the final decisions regarding all disability claims.

- (F) *Disability payments.* The monthly benefit to which a member is entitled in the event of the member's disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be:
- (1) If the retiree recovers from the disability prior to his normal retirement date, the payment due next preceding the date of such recovery; or
 - (2) If the retiree dies without recovering from disability or attains his normal retirement date while still disabled, the payment due next preceding his death or the 120th monthly payment, whichever is later.

Provided, however, the disability retiree may select, at any time prior to the date on which benefit payments begin, an optional form of benefit payment as described in subsections 34.52(A)(1) or (A)(2), which shall be the actuarial equivalent of the normal form of benefit.

(Ord. 99-25, passed 7-6-99; Amd. Ord. 2000-18, passed 6-20-00; Amd. Ord. 2000-23, 9-21-00; Amd. Ord. 2007-04, passed 12-21-06)

34.51 - Vesting.

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

- (A) If the member has less than five years credited service upon termination, the member shall be entitled to a refund of his accumulated contributions or the member may leave it deposited with the fund.
- (B) If the member has five or more years of credited service upon termination, the member shall be entitled to a monthly retirement benefit or, if elected, an optional form of benefit as provided for in subsection 34.52(A)(4), determined in the same manner as for normal or early retirement and based upon the member's credited service, average final compensation and the benefit accrual rate as of the date of termination, and in accordance with the following vesting schedule:

Years of Credited Service	Percentage of Vesting
Less than 5 years	0
5 years but less than 6 years	50
6 years but less than 7 years	60
7 years but less than 8 years	70
8 years but less than 9 years	80
9 years but less than 10 years	90
10 years or more	100

The benefits shall be payable to him commencing at the member's otherwise normal or early retirement date, determined as if he had remained employed, provided he does not elect to withdraw his accumulated contributions and provided the member survives to his otherwise normal or early retirement date. If the member does not withdraw his accumulated contributions and does not survive to his otherwise normal or early retirement date, his designated beneficiary shall be entitled to a benefit as provided herein for a deceased member, vested or eligible for retirement under pre-retirement death.

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

(Ord. 99-25, passed 7-6-99)

34.52 - Optional forms of benefits.

- (A) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified herein, a member, upon written request to the board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:
- (1) A retirement income of a monthly amount payable to the retiree for his lifetime only.
 - (2) A retirement income of a modified monthly amount, payable to the retiree during the lifetime of the retiree and following the death of the retiree, 100 percent, 75 percent, 66²/₃ percent or 50 percent of such monthly amount payable to a joint pensioner for his lifetime. Except where the retiree's joint pensioner is his spouse, the present value of payments to the retiree shall not be less than 50 percent of the total present value of payments to the retiree and his joint pensioner.
 - (3) If a member retires prior to the time at which social security benefits are payable, he may elect to receive an increased retirement benefit until such time as Social Security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of retirement. The amounts payable shall be as recommended by the actuaries for the system, based upon the Social Security law in effect at the time of the member's retirement.
 - (4) A lump sum amount, however, the board shall not approve a request for a lump sum distribution to any member, joint pensioner or beneficiary of a member who was hired after April 1, 1992, in an amount in excess of \$5,000.00.
 - (5) *Deferred retirement option plan.* A member may enter into the deferred retirement option plan (DROP), which is to be created and administered by the board of trustees of the plan on the first day of any month following the completion of attaining normal retirement date (age). Notwithstanding the preceding sentence, a member who as of June 1, 2013, is within five years of the normal retirement date, may enter the DROP without penalty or enhancements on the first day of any month prior to September 30, 2013. Any member entering DROP pursuant to this provision must execute a voluntary resignation irrevocable for any reason to be effective at the end of the member's participation in the DROP, and which provides that the member shall not be eligible for reemployment with the town, except at the exclusive option of the town.

The maximum duration of participation in the DROP shall not exceed 36 months.

A member may participate in the DROP only once and after commencement in the DROP the member shall never have the right to be a contributing member of the plan again.

Upon the effective date of the commencement of participation in the DROP, membership in the plan shall terminate and neither the employee nor employer contributions shall be payable. The member contributions to the plan, including those picked up by the town shall cease and instead of being paid to the plan, shall be paid to the employee. For purposes on this section, average monthly earnings and creditable service shall remain as they existed on the effective date of commencement of participation in the DROP. The monthly retirement benefits that would have been payable, had the member elected to cease employment and receive a service retirement benefit, shall be credited to the member's DROP account.

The member's DROP account shall earn interest at a rate set quarterly by the board of trustees. Such interest rate shall not exceed the plan's net rate of investment return for the year and shall be credited to each individual account balance on a quarterly basis. In the alternative a DROP participant may select, at the participant's option a fixed rate money market account, as established by the board of trustees. Such option shall be available at any time during the 36-month DROP period as an irrevocable one-time option.

Individual DROP accounts shall not be subject to any fees or charges of any kind for any purpose.

If a member dies during the period of participation in the DROP, a lump sum payment equal to the member's account balance shall be paid to the member's named beneficiary or, if none, to the member's estate; in addition, any survivor benefits selected by the member shall be payable.

Upon termination of employment, a participant in the DROP shall receive, at the member's option, a lump sum payment from the account equal to the payments to the account, plus earned interest, or an annuity based upon the member's account balance, or the member may elect any other method of payment approved by the board of trustees.

If employment is not terminated at the end of the period specified for participation in the DROP, payments into the account shall cease and no further interest shall be earned or credited to the member's DROP account. The amount in the DROP account shall not be payable to the member until the member terminates employment.

If a member dies after the period of participation in the DROP but while still an employee, a lump sum payment equal to the member's account balance shall be paid to the member's named beneficiary or, if none, to the member's estate; in addition, any survivor benefits selected by the member shall be payable.

- (B) The member, upon electing any option of this section, will designate the joint pensioner (subsection (A)(2) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. A member may change his beneficiary at any time. If a member has elected an option with a joint pensioner and the member's retirement income benefits have commenced, the member may thereafter change his designated beneficiary at any time, but may only change his joint pensioner up to two times as provided in F.S. § 175.333, without the approval of the board of trustees or the current joint survivor or designated beneficiary. The member need not provide proof of the good health of the joint survivor or beneficiary being removed, and the joint survivor or beneficiary being removed need not be living. After any such change in joint survivor or beneficiary, the member's pension benefit will be recalculated accordingly by the actuary and retirement income shall be payable to the member based on the new calculation.
- (C) The consent of a member's or retiree's joint pensioner or beneficiary to any such change shall not be required. The rights of all previously-designated beneficiaries to receive benefits under the system shall thereupon cease.
- (D) Upon change of a retiree's joint pensioner in accordance with this section the amount of the retirement income payable to the retiree shall be actuarially determined to take into account the age of the former joint pensioner, the new joint pensioner and the retiree and to ensure that the benefit paid is the actuarial equivalent of the present value of the retiree's then-current benefit at the time of the change. Any such retiree shall pay the actuarial recalculation expenses. Each request for a change will be made in writing on a form prepared by the board and on completion will be filed with the board. In the event that no designated beneficiary survives the retiree, such benefits as are payable in the event of the death of the retiree subsequent to his retirement shall be paid as provided in section 34.53
- (E) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:
 - (1) If a member dies prior to his normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under section 34.49
 - (2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the member's retirement under the system, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the member upon his retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the member prior to his retirement.

- (3) If both the retiree and the beneficiary (or beneficiaries) designated by member or retiree die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection (A), the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 34.53
- (4) If a member continues beyond his normal retirement date pursuant to the provisions of subsection 34.48(A), and dies prior to his actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the member in the amount or amounts computed as if the member had retired under the option on the date on which his death occurred.
- (F) A retiree may not change his retirement option after the date of cashing or depositing his first retirement check.
- (G) Notwithstanding anything herein to the contrary, the board in its discretion, may elect to make a lump sum payment to a member or a member's beneficiary in the event that the monthly benefit amount is less than \$100.00 or the total commuted value of the remaining monthly income payments to be paid do not exceed \$5,000.00. Any such payment made to any person pursuant to the power and discretion conferred upon the board by the preceding sentence shall operate as a complete discharge of all obligations under the system with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

(Ord. 99-25, passed 7-6-99; Amd. Ord. 2000-18, passed 6-20-00; Amd. Ord. 02-06, passed 7-8-02; Amd. Ord. 04-16, passed 7-12-04; Ord. 2010-03, § 3, 3-1-10; Ord. 2013-13, § 2, 7-1-13)

34.53 - Beneficiaries.

- (A) Each member or retiree may, on a form provided for that purpose, signed and filed with the board, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his death. Each designation may be revoked or changed by such member or retiree by signing and filing with the board a new designation-of-beneficiary form. Upon such change, the rights of all previously designated beneficiaries to receive any benefits under the system shall cease.
- (B) If a deceased member or retiree failed to name a beneficiary in the manner prescribed in subsection (A), or if the beneficiary (or beneficiaries) named by a deceased member or retiree predeceases the member or retiree, the death benefit, if any, which may be payable under the system with respect to such deceased member or retiree, shall be paid to the estate of the member or retiree and the board, in its discretion, may direct that the commuted value of the remaining monthly income benefits be paid in a lump sum.
- (C) Any payment made to any person pursuant to this section shall operate as a complete discharge of all obligations under the system with regard to the deceased member and any other persons with rights under the system and shall not be subject to review by anyone but shall be final, binding and conclusive on all persons ever interested hereunder.

(Ord. 99-25, passed 7-6-99)

34.54 - Claims procedures.

- (A) The board shall establish administrative claims procedures to be utilized in processing written requests ("claims"), on matters which affect the substantial rights of any person ("claimant"), including members, retirees, beneficiaries, or any person affected by a decision of the board.
- (B) The board shall have the power to subpoena and require the attendance of witnesses and the production of documents for discovery prior to and at any proceedings provided for in the board's claims procedures. The claimant may request in writing the issuance of subpoenas by the board. A reasonable fee may be charged for the issuance of any subpoenas not to exceed the fees set forth in Florida Statutes.

(Ord. 99-25, passed 7-6-99)

34.55 - Reports to division of retirement.

Each year and no later than March 15, the board shall file an annual report with the division of retirement containing the documents and information required by F.S. § 175.261.

(Ord. 99-25, passed 7-6-99)

34.56 - Roster of retirees.

The secretary of the board shall keep a record of all persons enjoying a pension under the provisions of sections 34.43 through 34.67, in which it shall be noted the time when the pension is allowed and when the same shall cease to be paid. Additionally, the Secretary shall keep a record of all members in such a manner as to show the name, address, date of employment and date of termination of employment.

(Ord. 99-25, passed 7-6-99)

34.57 - Compliance with Internal Revenue Code.

(A) *Maximum pension.* Notwithstanding any provision of this plan to the contrary, the annual pension that is accrued by or paid to a participant shall not exceed the dollar limitation set forth below. If the benefit the participant would otherwise accrue in a limitation year would produce an annual pension in excess of the dollar limitation, the benefit shall be limited to a benefit that does not exceed the dollar limitation.

(1) Definitions used in this section:

- (a) "*Annual pension*" means the benefits received by a participant under this plan expressed in the form of a straight life annuity. In determining whether benefits payable exceed the dollar limitation set forth below, benefits payable in any form other than a straight life annuity shall be adjusted to the larger of:
 - (i) 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 form of benefit payable to the participant; or
 - (ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a five percent interest assumption and the applicable mortality table described in section 1.417(e)-1(d)(2) for that annuity starting date.

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this subsection (a), and the amount payable under the form of benefit in any limitation year shall not exceed the limits of this subsection (A) of section 34.57 applicable at the annuity starting date, as increased in subsequent years pursuant to section 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

- (b) "*Dollar Limitation*" means \$160,000.00 (subject to the annual adjustments provided under section 415(d) of the IRC). Said amount shall be adjusted based on the age of the participant when benefits begin, as follows:
 - (i) Except with respect to a participant who is a "qualified participant" as defined in section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits

as defined in section 415(b)(2)(l) of the Code) beginning before age 62 the Age-adjusted dollar limitation is equal to the lesser of:

- a. The actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a deferred straight life annuity commencing at age 62, where annual payments under the straight life annuity commencing at age 62 are equal to the dollar limitation (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a five percent interest rate and the applicable mortality table under section 1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date); and
 - b. The dollar limitation (as adjusted pursuant to section 415(d)) multiplied by the ratio of the annual amount of the straight life annuity under the plan to the annual amount of the straight life annuity under the plan commencing at age 62, with both annual amounts determined without applying the rules of section 415.
- (ii) For benefits beginning after the age of 65, the age-adjusted dollar limitation is equal to the lesser of:
- a. The actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a straight life annuity commencing at age 65, where annual payments under the straight life annuity commencing at age 65 are equal to the dollar limitation of section 415(b)(1)(A) (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a five percent interest rate and the applicable mortality table under section 1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date); and
 - b. The section 415(b)(1)(A) dollar limitation (as adjusted pursuant to section 415(d) and section 1.415(d)-1 for the limitation year) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan to the adjusted age 65 straight life annuity. The adjusted immediately commencing straight life annuity means the annual amount of the immediately commencing straight life annuity payable to the participant, computed disregarding the participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are applied to offset accruals. For this purpose, the annual amount of the immediately commencing straight life annuity is determined without applying the rules of section 415. The adjusted age 65 straight life annuity means the annual amount of the straight life annuity that would be payable under the plan to a hypothetical participant who is 65 years old and has the same accrued benefit (with no actuarial increases for commencement after age 65) as the participant receiving the distribution (determined disregarding the participant's accruals after age 65 and without applying the rules of section 415).
 - c. There shall be no age adjustment of the dollar limitation with respect to benefits beginning between the ages of 62 and 65.
- (iii) The limitations set forth in this subsection (A) of section 34.57 shall not apply if the annual pension does not exceed \$10,000.00 provided the participant has never participated in a defined contribution plan maintained by the town.

- (iv) Cost-of-living adjustments in the dollar limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under section subsection 415(d) of the Code.
 - (v) In the case of a participant who has fewer than ten years of participation in the plan, the dollar limitation set forth in subsection (1)(b) of this section (A) shall be multiplied by a fraction: (i) the numerator of which is the number of years (or part thereof) of participation in the plan; and (ii) the denominator of which is ten.
 - (vi) Any portion of a participant's benefit that is attributable to mandatory employee contributions (unless picked-up by the town) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under section 415 of the Code.
 - (vii) Should any participant participate in more than one defined benefit plan maintained by the town, in any case in which the participant's benefits under all such defined benefit plans (determined as of the same age) would exceed the dollar limitation applicable at that age, the accrual of the participant's benefit under this plan shall be reduced so that the participant's combined benefits will equal the dollar limitation.
 - (viii) For a participant who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to section 1.401(a)-20, Q&A 10(d), and with regard to sections 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.
 - (ix) The determination of the annual pension under subsection (a)(1) of this subsection (A) of section 34.57 shall take into account (in the manner prescribed by the regulations under section 415 of the Code) Social Security supplements described in section 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant section 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.
 - (x) The above limitations are intended to comply with the provisions of section 415 of the Code, as amended, so that the maximum benefits provided by plans of the town shall be exactly equal to the maximum amounts allowed under section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this subsection (A) of section 34.57 of the plan and the provisions of section 415 of the Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of section 415 of the Code. The value of any benefits forfeited as a result of the application of this subsection (A) of section 34.57 shall be used to decrease future employer contributions.
- (B) *Required beginning date.* Notwithstanding any other provision of the plan, payment of a participant's retirement benefits under the plan shall commence not later than the participant's required beginning date, which is defined as the later of:
- April 1 of the calendar year that next follows the calendar year in which the participant attains or will attain the age of 70½ years; or
 - April 1 of the calendar year that next follows the calendar year in which the participant retires.
- (C) *Required minimum distributions.*
- (1) *Required beginning date.* The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date as defined in subsection (B) of this section 34.57

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

- (a) If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (i) 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.
 - (ii) If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.
 - (iii) 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) *The participant's entire interest shall be distributed as follows:*

- (1) *Participant survived by designated beneficiary.* If the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in subsection (C)(2)(a) above, over the life of the designated beneficiary or over a period certain not exceeding:
 - (a) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or
 - (b) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.
- (2) *No designated beneficiary.* If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
- (3) *Death of surviving spouse before distributions to surviving spouse begin.* In any case in which:
 - (i) The participant dies before the date distribution of his or her interest begins;
 - (ii) The participant's surviving spouse is the participant's sole designated beneficiary; and
 - (iii) The surviving spouse dies before distributions to the surviving spouse begin, subsections (1)(a) and 2(b) above shall apply as though the surviving spouse were the participant.

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

- (1) *Joint life annuities where the beneficiary is not the participant's spouse.* If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

- (2) *Period certain annuities.* Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this subsection, or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.
- (F) *Form of distribution.* Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with the subsections below. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in section 414(k) of the Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.
- (1) *General annuity requirements.* If the participant's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:
- (a) The annuity distributions will be paid in periodic payments made at intervals not longer than one year;
 - (b) The distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described above, whichever is applicable, of this subsection (b);
 - (c) Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
 - (d) Payments will either be non-increasing or increase only as follows:
 - (i) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the bureau of labor statistics;
 - (ii) To the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p) of the Code;
 - (iii) To provide cash refunds of employee contributions upon the participant's death; or
 - (iv) To pay increased benefits that result from a plan amendment.
- (2) *Amount required to be distributed by required beginning date.* The amount that must be distributed on or before the participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under subsections (2)(A)(i) or (2)(A)(ii), whichever is applicable) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even

if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.

- (3) *Additional accruals after first distribution calendar year.* Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
- (G) For purposes of this subsection, distributions are considered to begin on the participant's required beginning date. If annuity payments irrevocably commence to the participant (or to the participant's surviving spouse) before the participant's required beginning date (or, if to the participant's surviving spouse, before the date distributions are required to begin in accordance with subsection (2)(A) above), the date distributions are considered to begin is the date distributions actually commence.
- (H) *Definitions.*
- (1) *Designated beneficiary.* The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.
 - (2) *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to subsection (2) of this subsection.
 - (3) *Life expectancy.* Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.
- (I) *Eligible rollover distribution.*
- (1) Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
 - (2) *Definitions.* The following definitions apply to this section:
 - (a) *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
 - (i) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;
 - (ii) Any distribution to the extent such distribution is required under section 401(a)(9) of the Code;
 - (iii) The portion of any distribution that is a hardship distribution described in section 401(k)(2)(B)(i)(IV) of the Code; and
 - (iv) The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be

transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (b) *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, an annuity contract described in section 403(b) of the Code, a qualified trust described in section 401(a) of the Code, an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of Code section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.
 - (c) *Distributee:* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated beneficiary as defined in section 401(a)(9)(E) of the Code who is not the surviving spouse and who elects a direct rollover to an individual retirement account described in section 408(a) of the Code or an individual retirement annuity described in section 408(b) of the Code shall be considered a distributee.
 - (d) *Direct rollover:* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.
- (J) Notwithstanding any other provision of this plan, the maximum amount of any mandatory distribution, as defined in section 401(a)(31) of the Code, payable under the plan shall be \$1,000.00.
- (K) *Compensation limitations under section 401(a)(17):*
- (1) In addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the plan to the contrary, the annual compensation of each participant taken into account under the plan shall not exceed the EGTRRA annual compensation limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is \$200,000.00, as adjusted by the commissioner for increases in the cost of living in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.
 - (2) Any reference in the plan to the limitation under section 401 (a)(17) of the Code shall mean the EGTRRA annual compensation limit set forth in this provision.

(Ord. 2011-06, § 2, 5-2-11)

Editor's note—

Ord. 2011-06, § 2, adopted May 2, 2011, deleted § 34.57, entitled "Maximum pension", and enacted a new § 34.57 as set out herein. The former § 34.57 derived from: Ord. 99-25, passed July 6, 1999; and Ord. 2000-18, passed June 20, 2000

34.58 - Reserved.

Editor's note—

Ord. 2011-06, § 3, adopted May 2, 2011, deleted § 34.58, entitled "Distribution of benefits", which derived from: Ord. 99-25 passed July, 6, 1999.

34.59 - Miscellaneous provisions.

- (A) *Interest of members in system.* At no time prior to the satisfaction of all liabilities under the system with respect to retirees and members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.
- (B) *No reduction of accrued benefits.* No amendment or ordinance shall be adopted by the Town Commission of the Town of Longboat Key which shall have the effect of reducing the then vested accrued benefits of members or a member's beneficiaries.
- (C) *Qualification of system.* It is intended that the system will constitute a qualified public pension plan under the applicable provisions of the Code, as now in effect or hereafter amended. Any modification or amendment of the system may be made retroactively, if necessary or appropriate, to qualify or maintain the system as a plan meeting the requirements of the applicable provisions of the Code as now in effect or hereafter amended, or any other applicable provisions of the U.S. Federal Tax Laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder.
- (D) *Use of forfeitures.* Forfeitures arising from terminations of service of members shall serve only to reduce future town contributions.

(Ord. 99-25, passed 7-6-99)

34.60 - Repeal or termination of system.

- (A) The ordinance codified in sections 34.43 through 34.67, establishing the system and fund, and subsequent ordinances pertaining to said system and fund, may be modified, terminated or amended, in whole or in part; provided that if this or any subsequent ordinance shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the member or beneficiary shall not be affected thereby.
- (B) If sections 34.43 through 34.67 shall be repealed, or if contributions to the system are discontinued or if there is a transfer, merger or consolidation of government units, services or functions as provided in F.S. ch. 121, the board shall continue to administer the system in accordance with the provisions of sections 34.43 through 34.67, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in sections 34.43 through 34.67, who are designated by any of said members. In the event of repeal, discontinuance of contributions, or transfer merger or consolidation of government units, services or functions, there shall be full vesting (100 percent) of benefits accrued to date of repeal. The board shall determine the date of distribution and the asset value required to fund all nonforfeitable benefits after taking into account the expenses of such distribution. The board shall inform the town, or then current plan sponsor, if additional assets are required in which event the town, or then current plan sponsor, shall continue to financially support the pension plan until all nonforfeitable benefits have been funded. At such time, the funds shall be appropriated and distributed in accordance with the provisions of F.S. ch. 175.

The allocation of the fund provided for in this subsection may, as decided by the board, be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this subsection. The fund may be distributed in one sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the board may direct. The fund may be continued in existence for purposes of subsequent distributions.

If, at any time during the first ten years after the effective date of the ordinance codified in this chapter originally establishing this system, the system shall be terminated or the full current costs of the system shall not have been met, anything in the system to the contrary notwithstanding, town contributions which may be used for the benefit of any one of the 25 highest paid members on the effective date, whose anticipated annual retirement allowance provided by the town's contributions at member's normal retirement date would exceed \$1,500.00, shall not exceed the greater of either: a) \$20,000.00; or b), an amount computed by multiplying the smaller of \$10,000.00 or 20 percent of such member's average annual earnings during his last five years of service by the number of years of service since the effective date. In the event that it shall hereafter be determined by statute, court decision, ruling by the commissioner of Internal Revenue, or otherwise, that the provisions of this paragraph are not then necessary to qualify the system under the Code, this paragraph shall be ineffective without the necessity of further amendment of sections 39.43 through 34.67.

(C) After all the vested and accrued benefits provided hereunder have been paid and after all other liabilities have been satisfied, then and only then shall any remaining funds revert to the general fund of the town.

(Ord. 99-25, passed 7-6-99)

(Ord. No. 2010-03, § 4, 3-1-10)

34.61 - Exemption from execution, non-assignability.

Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of sections 34.43 through 34.67 and the accumulated contributions and the cash securities in the fund created under this chapter are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable; except the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit those funds necessary to pay for the benefits being received through the town, to pay the certified bargaining agent of the town, and to make any payments for child support or alimony. The board of trustees may, upon the written request of the retiree of the pension plan, authorize the plan administrator to withhold from the retirement payment those funds that are necessary to pay for premiums for accident, health, and long-term care insurance for the retiree and the retiree's spouse and dependents. The pension plan, and its board of trustees, shall not incur any liability for participation in this permissive program should its actions be taken in good faith.

(Ord. 99-25, passed 7-6-99; Amd. Ord. 04-23, passed 11-8-04; Ord. 2010-03, § 5, 3-1-10)

34.62 - Pension validity.

The board shall have the power to examine into the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. The board is empowered to purge the pension rolls or correct the pension amount of any person heretofore granted a pension under prior or existing law or any person hereafter granted a pension under sections 34.43 through 34.67, if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any person who has heretofore under any prior or existing law been or who shall hereafter under sections 34.43 through 34.67 be erroneously, improperly or illegally classified. Any overpayments or underpayments shall be corrected and paid or repaid in a reasonable manner determined by the board.

(Ord. 99-25, passed 7-6-99)

34.63 - Forfeiture of pension.

(A) Any member who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this system, except for the return of his accumulated contributions as of the date of termination. Specified offenses are as follows:

- (1) The committing, aiding or abetting of an embezzlement of public funds.
 - (2) The committing, aiding or abetting of any theft by a public officer or employee from employer.
 - (3) Bribery in connection with the employment of a public officer or employee.
 - (4) Any felony specified in F.S. ch. 838.
 - (5) The committing of an impeachable offense.
 - (6) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he acts or in which he is employed, of the right to receive the faithful performance of his duty as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his public office or employment position.
- (B) Conviction shall be defined as an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or a nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.
- (C) Court shall be defined as any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the board shall hold a hearing on which notice shall be given to the member whose benefits are being considered for forfeiture. Said member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the member shall be afforded a full opportunity to present his case against forfeiture.
- (D) Any member who has received benefits from the system in excess of his accumulated contributions after member's rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his accumulated contributions. The board may implement all legal action necessary to recover such funds.

(Ord. 99-25, passed 7-6-99)

34.64 - Conviction and forfeiture; false, misleading or fraudulent statements.

- (A) It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent or misleading oral or written statement or withhold or conceal material information to obtain any benefit from the system.
- (B) A person who violates subsection (A) commits a misdemeanor of the first degree, punishable as provided in F.S. §§ 775.082 or 775.083.
- (C) In addition to any applicable criminal penalty, upon conviction for a violation described in subsection (A), a member or beneficiary of the system may, in the discretion of the board, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled under the system. For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(Ord. 99-25, passed 7-6-99)

34.65 - Indemnification.

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

- (B) This section shall not be construed so as to relieve any insurance company or other entity liable to defend the claim or liable for payment of the judgment or claim, from any liability, nor does this section waive any provision of law affording the town immunity from any suit in whole or part, or waive any other substantive or procedural rights the town may have.
- (C) This section shall not apply, nor shall the town be responsible in any manner to defend or pay for claims arising out of acts or omissions of members of the board which constitute felonies or gross malfeasance or gross misfeasance in office.

(Ord. 99-25, passed 7-6-99)

34.66 - Reserved.

Editor's note—

Ord. 2011-06, § 4, adopted May 2, 2011, deleted § 34.66, entitled "Direct transfers of eligible rollover distributions", which derived from: Ord. 99-25, passed July 6, 1999.

34.67 - Family and Medical Leave Act.

The fractional parts of the 12-month period ending each March 1 that a member is on leave without pay from the town pursuant to the Family and Medical Leave Act (FMLA) shall be added to his credited service provided that:

- (A) The member contributes to the fund the sum that he would have contributed, based on his salary and the member contribution rate in effect at the time that the credited service is requested, had he been a member of the system for the fractional parts of the 12 months ending each March 1, for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund, plus payment of costs for all professional services rendered to the board in connection with the purchase of periods of credited service.
- (B) The request for credited service for FMLA leave time for the 12-month period prior to each March 1 and payment of professional fees shall be made on or before March 31.
- (C) Payment by the member of the required amount shall be made on or before April 30 for the preceding 12-month period ending March 1 and shall be made in one lump sum payment upon receipt of which credited service shall be issued.
- (D) Credited service purchased pursuant to this section shall not count toward vesting.

(Ord. 99-25, passed 7-6-99)

General Employees' Retirement System

FOOTNOTE(S):

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Editor's note— Ord. 2010-04, § 1, adopted Mar. 1, 2010, amended the "General Employees Retirement System" in its entirety to read as herein set out. Former "General Employees Retirement System", §§ 34.73—34.98 derived from Ord. 99-26, adopted July 6, 1999; Ord. 01-16, adopted Dec. 20, 2001; Ord. 02-16, adopted Nov. 4, 2002; Ord. 06-06, adopted July 10, 2006; Ord. 06-12, adopted May 1, 2006; Ord. 08-20, adopted Sept. 8, 2008; and Ord. 2009-15, § 1, adopted July 6, 2009.

34.72 - Plan freeze and participation in defined contribution plan.