

- (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.

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. 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 30 years of credited service or age 62 regardless of years of credited service, whichever occurs first. Alternatively, a member who is employed and not participating in the DROP on September 30, 2013 may elect to receive the frozen accrued benefit, reduced in accordance with subsection 34.78(D), upon termination of town employment and attaining age 50 with 15 years of credited service. In applying the preceding two sentences, credited service shall include all credited service as a member of this system prior to October 1, 2013, and all periods of employment 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 do not exceed the member's accrued leave balance as of July 1, 2011, and 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 as of July 1, 2011 shall be reduced by the amount of vacation or sick leave used after that date, 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 34.77(B), and the board shall continue to administer the system in accordance with sections 34.73 through 34.98, as modified by this section 34.72, 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. Such election must be made in writing on a form provided by the town on or before December 13, 2013, and if a member does not make a timely election he/she shall retain the frozen accrued benefit and shall not be eligible for a refund of accumulated contributions or the actuarial present value of their frozen accrued benefit, except as otherwise provided in the plan.
- (D) Effective October 1, 2013, all current and future general employees of the Town of Longboat Key shall participate in a defined contribution retirement plan established by the Town of Longboat Key, and shall be eligible for benefits and make contributions to the defined contribution plan for all service as a general employee with the town on and after that date, in accordance with the defined contribution plan, as it 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.
- (F) Notwithstanding the provisions of subsection 34.96(B)(1), 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.

(Ord. 2013-15, § 1, 8-14-13)

34.73 - 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, any payment representing the amount attributable to member contributions based on the applicable member contribution rate, interest and any required actuarially calculated payments for the purchase of such credited service, 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 and an interest rate of 7.75 percent per annum. This definition may only be amended by the town pursuant to the recommendation of the board using assumptions adopted by the board with the advice of the plan's actuary, such that actuarial assumptions are not subject to town discretion.

"At-will employee" means any actively employed person in the regular full-time service of the town who serves at the pleasure of the town manager and who may be removed from their position and/or disciplined up to and including termination by the town manager for any or no reason subject only to applicable law.

"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 general employee, 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 as a general employee with member contributions, when required, omitting intervening years or fractional parts of years when such member was not employed by the town as a general employee. A member may voluntarily leave his accumulated contributions in the fund for a period of five years after leaving the employ of the town pending the possibility of being reemployed as a general employee, without losing credit for the time that he was a member of the system. If a vested member leaves the employ of the town, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a general employee with the town within five years, his accumulated contributions, if \$1,000.00 or less, shall be returned. If a member who is not vested is not reemployed within five years, his accumulated contributions, if more than \$1,000.00, will be returned only upon the written request of the member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the board. 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 general employee 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 general employee 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 parts of a year that a member performs "qualified military service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L. 103-353), after separation from employment as a general employee to perform training or service, shall be added to his years of credited service for all purposes, including vesting, provided that:

- A. The member is entitled to reemployment under the provisions of USERRA.
- B. The member returns to his employment as a general employee within one year following the earlier of the date of his military discharge or his release from service, unless otherwise required by USERRA.
- C. The member deposits into the fund the same sum that the member would have contributed, if any, if he had remained a general employee during his absence. The maximum credit for military service pursuant to this subchapter shall be five years. The member must deposit all missed contributions within a period equal to three times the period of military service, but not more than five years, following reemployment or he will forfeit the right to receive credited service for his military service pursuant to this paragraph.
- D. This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a member dies on or after January 1, 2007, while performing USERRA qualified military service, the beneficiaries of the member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the member had resumed employment and then died while employed.

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

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

"General employee" means any actively employed person in the regular full-time service of the town, including those in their initial probationary employment period and those at-will employees who do not elect to not be a member of the system as provided for in section 34-74, but not including certified police officers and certified firefighters employed by the town.

"Member" means an actively employed general employee 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 or entry into the deferred retirement option plan.

"Salary" means the total compensation for services rendered to the town as a general employee 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. Compensation in excess of the limitations set forth in § 401(a)(17) of the Code as of the first day of the plan year shall

be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each member taken into account in determining benefits or employee contributions for any plan year beginning on or after January 1, 2002, may not exceed \$200,000.00, as adjusted for cost-of-living increases in accordance with Code § 401(a)(17)(B). Compensation means compensation during the fiscal year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The limitation on compensation for an "eligible employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. "Eligible employee" is an individual who was a member before the first plan year beginning after December 31, 1995.

"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 General Employees' 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. 2010-04, passed 3-1-10; Amd. Ord. 2011-18, passed 6-6-11; Amd. Ord. 2013-16, passed 9-23-13)

34.74 - Membership.

- (A) *Conditions of eligibility.* All general employees as of the effective date, and all future new general employees, shall become members of this system as a condition of employment.

- (B) Notwithstanding the above subsection, the following provisions shall apply to at-will employees:

- (1) An at-will employee employed by the town on July 10, 2006, may, within 60 days after the effective date, notify the board and the town, in writing, of his irrevocable 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.
- (2) An at-will employee employed by the town after July 10, 2006, may, within 30 days of his employment, notify the board and the town, in writing, of his irrevocable election to not be a member of the system. In the event of such election, he shall be barred from future participation in the system.

Notwithstanding the above two subsections, the current town manager and any future town manager or assistant town manager may, in the event he has elected to participate in another pension program, within the first 12 months of his employment as town manager or Assistant town manager, 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.

- (C) *Designation of beneficiary.* Each general employee shall complete a form prescribed by the board designating a beneficiary or beneficiaries.

(Ord. 2010-04, passed 3-1-10)

34.75 - Reserved.

Editor's note—

Ord. 2014-26, § 4, adopted Sept. 8, 2014, repealed § 34.75, entitled "Board of trustees", which derived from Ord. 2010-04, § 1, passed Mar. 1, 2010; and Ord. 2013-14, § 1, passed May 20, 2013.

34.76 - Reserved.

Editor's note—

Ord. 2014-26, § 4, adopted Sept. 8, 2014, repealed § 34.76, entitled "Finances and fund management", which derived from Ord. 2010-04, § 1, passed Mar. 1, 2010; and Ord. 2013-16, § 2, passed Sept. 23, 2013.

34.77 - 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 six 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 members' 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) *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 required town contributions as shown by the applicable actuarial valuation of the system.

(C) *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. 2010-04, passed 3-1-10)

34.78 - 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 30 years of credited service or the attainment of age 62, regardless of years of credited service. A member may retire on his normal retirement date or on the first day of any month thereafter, and each member shall become 100 percent vested in his 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 120 payments guaranteed in any event. The monthly retirement benefit shall equal 2.75 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 50 and the completion of 15 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 his 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 his normal retirement date had he continued employment as a general employee 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 his normal retirement date, except that credited service and average final compensation shall be determined as of his early retirement date; or
 - (2) An immediate monthly retirement benefit which shall commence on his early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in subsection (1) above, reduced by 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 he continued employment as a general employee.
- (E) *Early retirement incentive program.*
- (1) Members who have or will have attained age 50 and completed 15 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 an irrevocable written election, delivered to the town manager not later than September 4, 2008, to retire and terminate employment on October 1, 2008.
 - (2) "Eligible members", as determined by subsection (D)(1) above, shall be eligible to retire and receive an early retirement benefit as set forth in subsection (D) of this section 34.78, but for purposes of determining the pension benefit, there shall be no three percent reduction for each year, up to a maximum of five years, by which the commencement of benefits precede the date which would have been the member's normal retirement date had he continued employment as a general employee. 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 34.81(A)(4), or participation in the deferred retirement option plan.
- (F) *Required distribution date.* The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½, or the calendar year in which the member terminates employment with the town.

(Ord. 2010-04, passed 3-1-10)

34.79 - Pre-retirement death.

- (A) *Prior to vesting or eligibility for retirement.* The beneficiary of a deceased member who was not receiving monthly benefits or who was not yet vested or eligible for early or normal retirement shall receive a refund of 100 percent of the member's accumulated contributions.
- (B) *Deceased members vested or eligible for retirement with spouse as beneficiary.* This subsection (B) applies only when the member's spouse is the sole designated beneficiary. The spouse beneficiary of any member who dies and who, at the date of his death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:
- (1) If the member was vested, but not eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the date that the deceased member would have been eligible for early or normal retirement, at the option of the spouse beneficiary. 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. The spouse beneficiary may also elect to receive an immediate benefit, payable for ten years, which is actuarially reduced to reflect the commencement of benefits prior to the early retirement date.

- (2) If the deceased member was eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the first day of the month following the member's death or at the deceased member's otherwise early or normal retirement date, at the option of the spouse beneficiary. 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) A spouse beneficiary may not elect an optional form of benefit, however, the board may elect to make a lump sum payment pursuant to subsection 34.81(G).
 - (4) A spouse beneficiary may, in lieu of any benefit provided for in subsections (A) or (B) above, elect to receive a refund of the deceased member's accumulated contributions.
 - (5) Notwithstanding anything contained in this section to the contrary, in any event, distributions to the spouse beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by a date selected pursuant to the above provisions in this section that must be on or before December 31 of the calendar year in which the member would have attained 70½.
 - (6) If the surviving spouse beneficiary commences receiving a benefit under subsections (B)(1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the spouse beneficiary's estate in a lump sum.
- (C) *Deceased members vested or eligible for retirement with nonspouse beneficiary.* This subsection applies only when the member's spouse is not the beneficiary or is not the sole designated beneficiary, but there is a surviving beneficiary. The beneficiary of any member who dies and who, at the date of his death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:
- (1) If the member was vested, but not eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten years. The benefit will begin by December 31 of the calendar year immediately following the calendar year in which the member died. The benefit will be calculated as for normal retirement based on the deceased member's credited service and average final compensation and actuarially reduced to reflect the commencement of benefits prior to the normal retirement date.
 - (2) If the deceased member was eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten years, beginning on the first day of the month following the member's death. The benefit will 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 for early retirement, if applicable.
 - (3) A beneficiary may not elect an optional form of benefit, however the board may elect to make a lump sum payment pursuant to subsection 34.81(G).
 - (4) A beneficiary, may, in lieu of any benefit provided for in subsections (C)(1) or (2) above, elect to receive a refund of the deceased member's accumulated contributions.
 - (5) If a surviving beneficiary commences receiving a benefit under subsections (C)(1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the surviving beneficiary's estate by December 31 of the calendar year of the beneficiary's death in a lump sum.
 - (6) If there is no surviving beneficiary as of the member's death, and the estate is to receive the benefits, the actuarial equivalent of the member's entire interest must be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.
 - (7) The Uniform Lifetime Table in Treasury Regulations § 1.401(a)(9)-9, shall determine the payment period for the calendar year benefits commence, if necessary to satisfy the regulations.

(Ord. 2010-04, passed 3-1-10)

34.80 - Vesting.

If a member terminates his employment as a general employee, 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 34.81(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.

(Ord. 2010-04, passed 3-1-10)

34.81 - 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, 66 2/3 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, payments to the joint pensioner as a percentage of the payments to the retiree shall not exceed the applicable percentage provided for in the applicable table in the Treasury Regulations. (See Q & A-2 of 1.401(a)(9)-6.)
 - (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.
- (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. If a member has elected an option with a joint pensioner or beneficiary and 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 if the designated joint pensioner and the member were married at the time of member's retirement and are divorced subsequent thereto and the joint pensioner is alive at the time of the change.
- (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 and sex of the former joint pensioner, the new joint pensioner and the retiree. 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 34.82
- (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 34.79
 - (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 34.82

- (4) If a member continues beyond his normal retirement date pursuant to the provisions of subsection 34.78(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.
 - (5) The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½, or the calendar year in which the member terminates employment with the town.
- (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 total commuted value of the monthly income payments to be paid do not exceed \$1,000.00. 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. 2010-04, passed 3-1-10)

34.82 - 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. 2010-04, passed 3-1-10)

34.83 - 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. 2010-04, passed 3-1-10)

34.84 - Roster of retirees.

The secretary of the board shall keep a record of all persons enjoying a pension under the provisions of the ordinance from which this subchapter derives, 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. 2010-04, passed 3-1-10)

34.85 - Maximum pension.

(A) *Basic limitation.* Notwithstanding any other provisions of this system to the contrary, the member contributions paid to, and retirement benefits paid from, the system shall be limited to such extent as may be necessary to conform to the requirements of Code § 415 for a qualified retirement plan. Before January 1, 1995, a plan member may not receive an annual benefit that exceeds the limits specified in Code § 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a plan member may not receive an annual benefit that exceeds the dollar amount specified in Code § 415(b)(1)(A) (\$160,000.00), subject to the applicable adjustments in Code § 415(b) and subject to any additional limits that may be specified in this system. For purposes of this section, "limitation year" shall be the calendar year.

For purposes of Code § 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Code § 415(n) and to rollover contributions (as defined in Code § 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(B) *Adjustments to basic limitation for form of benefit.* If the benefit under the plan is other than the annual benefit described in subsection (A), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations. If the form of the benefit without regard to any automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Code § 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulations § 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:

(1) For a benefit paid in a form to which Code § 417(e)(3) does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

a. The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or

b. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent interest assumption (or the applicable statutory interest assumption); and: (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulations § 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62); and (ii) for years after December 31, 2008, the applicable mortality tables described in Code § 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Code § 417(e)(3)(B)); or

- (2) For a benefit paid in a form to which Code § 417(e)(3) applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:
 - a. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
 - b. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption); and: (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulations § 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); and (ii) for years after December 31, 2008, the applicable mortality tables described in Code § 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Code § 417(e)(3)(B)); or
 - c. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulations § 1.417(e)-1(d)(3) (the 30-year Treasury rate {prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period}); and: (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulations § 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); and (ii) for years after December 31, 2008, the applicable mortality tables described in Code § 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing § 417(e)(3)(B) of the Code), divided by 1.05.
 - (3) The actuary may adjust the 415(b) limit at the annuity starting date in accordance with subsections (1) and (2) above.
- (C) *Benefits not taken into account.* For purposes of this section, the following benefits shall not be taken into account in applying these limits:
- (1) Any ancillary benefit which is not directly related to retirement income benefits;
 - (2) Any other benefit not required under Code § 415 (b)(2) and regulations thereunder to be taken into account for purposes of the limitation of Code § 415(b)(1); and
 - (3) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity.
- (D) *COLA effect.* Effective on and after January 1, 2003, for purposes of applying the limits under Code § 415(b) (the "Limit"), the following will apply:
- (1) A member's applicable limit will be applied to the member's annual benefit in the member's first limitation year of benefit payments without regard to any automatic cost of living adjustments;
 - (2) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable benefit limit including any adjustment to the Code § 415(b)(1)(A) dollar limit under Code § 415(d), and the regulations thereunder; but
 - (3) In no event shall a member's benefit payable under the system in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code § 415(d) and the regulations thereunder.

Unless otherwise specified in the system, for purposes of applying the limits under Code § 415(b), a member's applicable limit will be applied taking into consideration cost of living increases as required by Code § 415(b) and applicable Treasury Regulations.

(E) *Other adjustments in limitations.*

- (1) In the event the member's retirement benefits become payable before age 62, the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Code § 415(b), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a \$160,000.00 annual benefit beginning at age 62.
- (2) In the event the member's benefit is based on at least 15 years of credited service as a full-time employee of the fire or police department of the town, the adjustments provided for in subsection (E)(1) above shall not apply.
- (3) The reductions provided for in subsection (E)(1) above shall not be applicable to pre-retirement death benefits paid pursuant to section 34.79
- (4) In the event the member's retirement benefit becomes payable after age 65, for purposes of determining whether this benefit meets the limit set forth in subsection (A) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age 65. This adjustment shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

(F) *Less than ten years of participation or service.* The maximum retirement benefits payable under this section to any member who has completed less than ten years of credited service with the town shall be the amount determined under subsection (A) of this section multiplied by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below ten percent of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement death benefits paid pursuant to section 34.79

(G) *Participation in other defined benefit plans.* The limit of this section with respect to any member who at any time has been a member in any other defined benefit plan as defined in Code § 414(j) maintained by the town shall apply as if the total benefits payable under all town defined benefit plans in which the member has been a member were payable from one plan.

(H) *Ten thousand dollar limit; less than ten years of service.* Notwithstanding anything in this section 34.85, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection (H) of section 34.85 if the benefits payable, with respect to such member under this system and under all other qualified defined benefit pension plans to which the town contributes, do not exceed \$10,000.00 for the applicable limitation year and for any prior limitation year and the town has not any time maintained a qualified defined contribution plan in which the member participated; provided, however, that if the member has completed less than ten years of credited service with the town, the limit under this subsection (H) of section 34.85 shall be a reduced limit equal to \$10,000.00 multiplied by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten.

(I) *Reduction of benefits.* Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be determined by the board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be established by the board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the board and the plan administrator of all other plans covering such member.

(J) *Service credit purchase limits.*

- (1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the system, as allowed in sections 34.96 and 34.97, then the requirements of this section will be treated as met only if:
 - a. The requirements of Code § 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Code § 415(b); or
 - b. The requirements of Code § 415(c) are met, determined by treating all such contributions as annual additions for purposes of Code § 415(c).

For purposes of applying subsection (J)(1)a., the system will not fail to meet the reduced limit under Code § 415(b)(2)(C) solely by reason of this subsection, and for purposes of applying subsection (J)(1)b. the system will not fail to meet the percentage limitation under Code § 415(c)(1)(B) solely by reason of this subsection.

- (2) For purposes of this subsection the term "permissive service credit" means service credit:
 - a. Recognized by the system for purposes of calculating a member's benefit under the plan;
 - b. Which such member has not received under the plan; and
 - c. Which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may, if otherwise provided by the system, include service credit for periods for which there is no performance of service, and, notwithstanding the clause of subsection (J)(2)b., may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system.

(K) *Contribution limits.*

- (1) For purposes of applying the Code § 415(c) limits which are incorporated by reference and for purposes of this subsection (K), only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulations § 1.415(c)-2, or successor regulations. Unless another definition of compensation that is permitted by Treasury Regulations § 1.415(c)-2, or successor regulation, is specified by the system, compensation will be defined as wages within the meaning of Code § 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Code §§ 6041(d), 6051(a)(3) and 6052, and will be determined without regard to any rules under Code § 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code § 3401(a)(2)).
 - a. However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Code §§ 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning after December 31, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of Code § 132(f)(4).
 - b. For limitation years beginning on and after January 1, 2007, compensation for the limitation year will also include compensation paid by the later of 2½ months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:
 1. The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working

hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or

2. The payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.
 - c. Back pay, within the meaning of Treasury Regulations § 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.
- (2) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Code § 415 by using the following methods:
 - a. If the law requires a lump sum payment for the purchase of service credit, the board may establish a periodic payment deduction plan for the member to avoid a contribution in excess of the limits under Code §§ 415(c) or 415(n).
 - b. If payment pursuant to subsection (K)(2)a. will not avoid a contribution in excess of the limits imposed by Code § 415(c), the board may either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.
 - (3) If the annual additions for any member for a limitation year exceed the limitation under Code § 415(c), the excess annual addition will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).
 - (4) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of this subsection (K) shall not exceed the annual limit under Code § 401(a)(17).
- (L) *Additional limitation on pension benefits.* Notwithstanding anything herein to the contrary:
- (1) The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1, 1980, shall not exceed 100 percent of his average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.
 - (2) No member of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to Social Security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

(Ord. 2010-04, passed 3-1-10; Amd. Ord. 2013-16, passed 9-23-13)

34.86 - Minimum distribution of benefits.

(A) *General rules.*

- (1) *Effective date.* Effective as of January 1, 1989, the plan will pay all benefits in accordance with a good faith interpretation of the requirements of Code § 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Code § 414(d). Effective on and after January 1, 2003, the plan is also subject to the specific provisions contained in this section. The provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- (2) *Precedence.* The requirements of this section will take precedence over any inconsistent provisions of the plan.

- (3) *TEFRA § 242(b) (2), Elections.* Notwithstanding the other provisions of this section other than this subsection (A)(3), distributions may be made under a designation made before January 1, 1984, in accordance with § 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that related to § 242(b)(2) of TEFRA.

(B) *Time and manner of distribution.*

- (1) *Required beginning date.* The member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date which shall not be later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½ or the calendar year in which the member terminates employment with the town.
- (2) *Death of member before distributions begin.* If the member dies before distributions begin, the member's entire interest will be distributed, or begin to be distributed no later than as follows:
 - a. If the member's surviving spouse is the member'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 member died, or by a date on or before December 31 of the calendar year in which the member would have attained age 70½, if later, as the surviving spouse elects.
 - b. If the member's surviving spouse is not the member'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 member died.
 - c. If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.
 - d. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subsection (B)(2), other than subsection (B)(2)a., will apply as if the surviving spouse were the member.

For purposes of this subsection (B)(2) and subsection (E), distributions are considered to begin on the member's required beginning date or, if subsection (B)(2)d. applies, the date of distributions are required to begin to the surviving spouse under subsection (B)(2)a. If annuity payments irrevocably commence to the member before the member's required beginning date (or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (B)(2)a.) the date distributions are considered to begin is the date distributions actually commence.

- (3) *Death after distributions begin.* If the member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.
- (4) *Form of distribution.* Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with this section. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of § 401(a) (9) of the Code and Treasury Regulations. Any part of the member's interest which is in the form of an individual account described in § 414(k) of the Code, will be distributed in a manner satisfying the requirements of § 401(a) (9) of the Code and Treasury Regulations that apply to individual accounts.

(C) *Determination of amount to be distributed each year.*

- (1) *General requirements.* If the member'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 member's entire interest must be distributed pursuant to sections 34.78, 34.79, 34.80 or 34.81 (as applicable) and in any event over a period equal to or less than the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary. The life expectancy of the member, the member's spouse, or the member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.
- (2) *Amount required to be distributed by required beginning date.* The amount that must be distributed on or before the member's required beginning date (or, if the member dies before distributions begin, the date distributions are required to begin under section 34.79) 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., monthly. All of the member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.
- (3) *Additional accruals after first distribution calendar year.* Any additional benefits accruing to the member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
- (D) *General distribution rules.*
- (1) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Code § 401(a) (9) (G), and effective for any annuity commencing on or after January 1, 2008, the minimum distribution incidental benefit rule under Treasury Regulation § 1.401(a) (9)-6, Q&A-2.
 - (2) The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in Code § 401(a) (9) (G) and Treasury Regulation § 1.401-1(b) (1) (I), or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25 percent of the cost for all of the members' benefits received from the retirement system.
- (E) *Definitions.*
- (1) *Designated beneficiary.* The individual who is designated as the beneficiary under the plan and is the designated beneficiary under § 401(a) (9) of the Code and § 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 member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section 34.79

(Ord. 2010-04, passed 3-1-10)

34.87 - Miscellaneous provisions.

- (A) *Interest of members in system.* All assets of the fund are held in trust, and 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 for a qualified plan under Code § 401(a) and a governmental plan under Code § 414(d), 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.
- (E) *Prohibited transactions.* Effective as of January 1, 1989, a board may not engage in a transaction prohibited by Code § 503(b).
- (F) *USERRA.* Effective December 12, 1994, notwithstanding any other provision of this system, contributions, benefits and service credit with respect to qualified military service are governed by Code § 414(u), and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended. To the extent that the definition of "credited service" sets forth contribution requirements that are more favorable to the member than the minimum compliance requirements, the more favorable provisions shall apply.
- (G) *Vesting.*
 - (1) A member will be 100 percent vested in all benefits upon attainment of the plan's age and service requirements for the plan's normal retirement benefit; and
 - (2) A member will be 100 percent vested in all accrued benefits, to the extent funded, if the plan is terminated or experiences a complete discontinuance of employer contributions.
- (H) *Electronic forms.* In those circumstances where a written election or consent is not required by the plan or the Code, an oral, electronic, or telephonic form in lieu of or in addition to a written form may be prescribed by the board. However, where applicable, the board shall comply with Treasury Regulations § 1.401(a)-21.

(Ord. 2010-04, passed 3-1-10)

34.88 - Repeal or termination of system.

- (A) The ordinance codified in this subchapter, 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 this subchapter 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 this subchapter, 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 this subchapter 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 and such benefits shall be nonforfeitable.
- (C) The fund shall be distributed in accordance with the following procedures:

- (1) The board shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits after taking into account the expenses of such distribution. The board shall inform the town if additional assets are required, in which event the town shall continue to financially support the plan until all nonforfeitable benefits have been funded.
- (2) The board shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each general employee entitled to benefits under the plan as specified in subsection (3).
- (3) The board shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the general employee's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the general employee.
- (4) If there is asset value remaining after the full distribution specified in subsection (3), and after the payment of any expenses incurred with such distribution, such excess shall be returned to the town.
- (5) The board shall distribute, in accordance with subsection (2), the amounts determined under subsection (3).

(Ord. 2010-04, passed 3-1-10)

34.89 - Domestic relations orders; retiree directed payments; exemption from execution, non-assignability.

(A) *Domestic relations orders.*

- (1) Prior to the entry of any domestic relations order which affects or purports to affect the system's responsibility in connection with the payment of benefits of a retiree, the member or retiree shall submit the proposed order to the board for review to determine whether the system may legally honor the order.
- (2) If a domestic relations order is not submitted to the board for review prior to entry of the order, and the system is ordered to take action that it may not legally take, and the system expends administrative or legal fees in resolving the matter, the member or retiree who submits such an order will be required to reimburse the system for its expenses in connection with the order.

(B) *Retiree directed payments.* The board may, upon written request by a retiree or by a dependent, when authorized by a retiree or the retiree's beneficiary, authorize the system to withhold from the monthly retirement payment those funds that are necessary to pay for the benefits being received through the town, to pay the certified bargaining agent of the town, to make payments to insurance companies for insurance premiums, and to make any payments for child support or alimony.

(C) *Exemption from execution.* Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this subchapter and the accumulated contributions and the cash securities in the fund created under the ordinance from which this subchapter derives, 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.

(Ord. 2010-04, passed 3-1-10)

34.90 - 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 this subchapter 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 this subchapter 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. 2010-04, passed 3-1-10)

34.91 - 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; or
 - (7) The committing on or after October 1, 2008, of any felony defined in F.S. § 800.04, against a victim younger than 16 years of age, or any felony defined in F.S. ch. 794, against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.
- (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. 2010-04, passed 3-1-10)

34.92 - 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. 2010-04, passed 3-1-10)

34.93 - Direct transfers of eligible rollover distributions; elimination of mandatory distributions.

(A) *Rollover distributions.*

(1) *General.* This section applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the system 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 board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) *Definitions.*

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 any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under § 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income. Effective January 1, 2002, any portion of any distribution which would be includible in gross income as after-tax employee contributions will be an eligible rollover distribution if the distribution is made to an individual retirement account described in § 408(a); to an individual retirement annuity described in § 408(b); to a qualified defined contribution plan described in § 401(a) or § 403(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or on or after January 1, 2007, to a qualified defined benefit plan described in Code § 401(a); or to an annuity contract described in Code § 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

b. *"Eligible retirement plan."* An eligible retirement plan is an individual retirement account described in § 408(a) of the Code; an individual retirement annuity described in § 408(b) of the Code; an annuity plan described in § 403(a) of the Code; effective January 1, 2002, an eligible deferred compensation plan described in § 457(b) of the Code which is maintained by an eligible employer described in § 457(e)(1)(A) of the Code and which agrees to separately account for amounts transferred into such plan from this plan; effective January

1, 2002 an annuity contract described in § 403(b) of the Code; a qualified trust described in §401(a) of the Code; or effective January 1, 2008, a Roth IRA described in § 408A of the Code, that accepts the distributee's eligible rollover distribution. This definition shall also apply in the case of an eligible rollover distribution to the surviving spouse.

- c. *"Distributee."* A distributee includes an employee or former employee. It also includes, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse. Effective January 1, 2007, it further includes a nonspouse beneficiary who is a designated beneficiary as defined by Code § 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.
- d. *"Direct rollover."* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(B) *Rollovers or transfers into the fund.* On or after January 1, 2002, the system will accept, solely for the purpose of purchasing credited service as provided herein, permissible member requested transfers of funds from other retirement or pension plans, member rollover cash contributions and/or direct cash rollovers of distributions made on or after January 1, 2002, as follows:

- (1) *Transfers and direct rollovers or member rollover contributions from other plans.* The system will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in § 401(a) or 403(a) of the Code, from an annuity contract described in § 403(b) of the Code or from an eligible plan under § 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. The system will also accept legally permissible member requested transfers of funds from other retirement or pension plans.
- (2) *Member rollover contributions from IRAs.* The system will accept a member rollover contribution of the portion of a distribution from an individual retirement account or annuity described in §§ 408(a) or 408(b) of the Code that is eligible to be rolled over.

(C) *Elimination of mandatory distributions.* Notwithstanding any other provision herein to the contrary, in the event this plan provides for a mandatory (involuntary) cash distribution from the plan not otherwise required by law, for an amount in excess of \$1,000.00, such distribution shall be made from the plan only upon written request of the member and completion by the member of a written election on forms designated by the board, to either receive a cash lump sum or to rollover the lump sum amount.

(Ord. 2010-04, passed 3-1-10)

34.94 - 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. 2010-04, passed 3-1-10)

34.95 - Deferred retirement option plan.

(A) *Definitions.* As used in this section 34-95, the following definitions apply:

(1) "DROP." The Town of Longboat Key General Employees' Retirement System Deferred Retirement Option Plan.

(2) "DROP account." The account established for each DROP participant under subsection (C).

(B) *Participation.*

(1) *Eligibility to participate.* In lieu of terminating his employment as a general employee, any member who is eligible for normal retirement under the system may elect to defer receipt of such service retirement pension and to participate in the DROP.

(2) *Election to participate.* A member's election to participate in the DROP must be made in writing in a time and manner determined by the board and shall be effective on the first day of the first calendar month which is at least 15 business days after it is received by the board.

(3) *Period of participation.* A member who elects to participate in the DROP under subsection (B)(2), shall participate in the DROP for a period not to exceed 60 months beginning at the time his election to participate in the DROP first becomes effective. An election to participate in the DROP shall constitute an irrevocable election to resign from the service of the town not later than the date provided for in the previous sentence. A member may participate only once.

(4) *Termination of participation.*

a. A member's participation in the DROP shall cease the earlier of:

1. The end of his permissible period of participation in the DROP as determined under subsection (B)(3); or

2. Termination of his employment as a general employee.

b. Upon the member's termination of participation in the DROP, pursuant to subsection (4) above, all amounts provided for in subsection (C)(2), including monthly benefits and investment earnings and losses or interest, shall cease to be transferred from the system to his DROP account. Any amounts remaining in his DROP account shall be paid to him in accordance with the provisions of subsection (D) when he terminates his employment as a general employee.

c. A member who terminates his participation in the DROP under this subsection (B)(4), shall not be permitted to again become a participant in the DROP.

(5) *Effect of DROP participation on the system.*

a. A member's credited service and his accrued benefit under the system shall be determined on the date his election to participate in the DROP first becomes effective. For purposes of determining the accrued benefit, the member's salary for the purposes of calculating his average final compensation shall include an amount equal to any lump sum payments which would have been paid to the member and included as salary as defined herein, had the member retired under normal retirement and not elected DROP participation. Member contributions attributable to any lump sums used in the benefit calculation and not actually received by the member shall be deducted from the first payments to the member's DROP account. The member shall not accrue any additional credited service or any additional

benefits under the system (except for any additional benefits provided under any cost-of-living adjustment for retirees in the system) while he is a participant in the DROP. After a member commences participation, he shall not be permitted to again contribute to the system, nor shall he be eligible for pre-retirement death benefits.

- b. No amounts shall be paid to a member from the system while the member is a participant in the DROP. Unless otherwise specified in the system, if a member's participation in the DROP is terminated other than by terminating his employment as a general employee, no amounts shall be paid to him from the system until he terminates his employment as a general employee. Unless otherwise specified in the system, amounts transferred from the system to the member's DROP account shall be paid directly to the member only on the termination of his employment as a general employee.

(C) *Funding.*

- (1) *Establishment of DROP account.* A DROP account shall be established for each member participating in the DROP. A member's DROP account shall consist of amounts transferred to the DROP under subsection (C)(2), and earnings or interest on those amounts.

- (2) *Transfers from retirement system.*

- a. As of the first day of each month of a member's period of participation in the DROP, the monthly retirement benefit he would have received under the system had he terminated his employment as a general employee and elected to receive monthly benefit payments thereunder shall be transferred to his DROP account, except as otherwise provided for in subsection (B)(4)b. A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (B)(3) and (B)(4), but in no event shall it continue past the date he terminates his employment as a general employee.
- b. Except as otherwise provided in subsection (B)(4)b., a member's DROP account under this subsection (C)(2), shall be debited or credited after each fiscal year quarter with either:
 - 1. Interest at an effective rate of 6.5 percent per annum compounded monthly on the prior month's ending balance; or
 - 2. Earnings, determined as follows:

The average daily balance in a member's DROP account shall be credited or debited at a rate equal to the net investment return realized by the system for that quarter. "Net investment return" for the purpose of this paragraph is the total return of the assets in which the member's DROP account is invested by the board net of brokerage commissions, transaction costs and management fees.

Upon electing participation in the DROP, the member shall elect to receive either interest or earnings on his account to be determined as provided above. The member may, in writing, elect to change his election only once during his DROP participation. An election to change must be made prior to the end of a quarter and shall be effective beginning the following quarter.

- c. A member's DROP account shall only be credited or debited with earnings or interest and monthly benefits while the member is a participant in the DROP. A member's final DROP account value for distribution to the member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation, plus interest or earnings earned as of that date, plus any monthly periodic additions made to the DROP account subsequent to the end of the previous quarter and prior to distribution. If a member fails to terminate employment after participating in the DROP for the permissible period of DROP participation, then beginning with the member's 1st month of employment following the last month of permissible DROP participation, the member's DROP account will no longer be credited or debited with earnings or interest, nor will monthly benefits be transferred to the DROP account. All such nontransferred amounts shall be forfeited and continue to be forfeited while the member is

employed by the town. A member employed by the town after the permissible period of DROP participation will still not be eligible for pre-retirement death, nor will he accrue additional credited service.

(D) *Distribution of DROP accounts on termination of employment.*

- (1) *Eligibility for benefits.* A member shall receive the balance in his DROP account in accordance with the provisions of this subsection (D), upon his termination of employment as a general employee. Except as provided in subsection (D)(5), no amounts shall be paid to a member from the DROP prior to his termination of employment as a general employee.
- (2) *Form of distribution.*
 - a. Unless the member elects otherwise, distribution of his DROP account shall be made in a cash lump sum, subject to the direct rollover provisions set forth in subsection (D)(6). Elections under this subsection shall be in writing and shall be made in such time or manner as the board shall determine.
 - b. Notwithstanding the preceding, if a member dies before his benefit is paid, his DROP account shall be paid to his beneficiary in such optional form as his beneficiary may select. If no beneficiary designation is made, the DROP account shall be distributed to the member's estate.
- (3) *Date of payment of distribution.* Except as otherwise provided in this subsection (D), distribution of a member's DROP account shall be made as soon as administratively practicable following the member's termination of employment. Distribution of the amount in a member's DROP account will not be made unless the member completes a written request for distribution and a written election, on forms designated by the board, to either receive a cash lump sum or a rollover of the lump sum amount.
- (4) *Proof of death and right of beneficiary or other person.* The board may require and rely upon such proof of death and such evidence of the right of any beneficiary or other person to receive the value of a deceased member's DROP account as the board may deem proper and its determination of the right of that beneficiary or other person to receive payment shall be conclusive.
- (5) *Distribution limitation.* Notwithstanding any other provision of subsection (D), all distributions from the DROP shall conform to the "minimum distribution of benefits" provisions as provided for herein.
- (6) *Direct rollover of certain distributions.* This subsection applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the DROP to the contrary, a distributee may elect to have any portion of an eligible rollover distribution paid in a direct rollover as otherwise provided under the system in section 34.93

(E) *Administration of DROP.*

- (1) *Board administers the DROP.* The general administration of the DROP, the responsibility for carrying out the provisions of the DROP and the responsibility of overseeing the investment of the DROP's assets shall be placed in the board. The members of the board may appoint from their number such subcommittees with such powers as they shall determine; may adopt such administrative procedures and regulations as they deem desirable for the conduct of their affairs; may authorize one or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical, accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP; and may allocate among themselves or delegate to other persons all or such portion of their duties under the DROP, other than those granted to them as trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A trustee shall not vote on any question relating exclusively to himself.

- (2) *Individual accounts, records and reports.* The board shall maintain, or cause to be maintained, records showing the operation and condition of the DROP, including records showing the individual balances in each member's DROP account, and the board shall keep, or cause to be kept, in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The board shall prepare or cause to be prepared and distributed to members participating in the DROP and other individuals or filed with the appropriate governmental agencies, as the case may be, all necessary descriptions, reports, information returns, and data required to be distributed or filed for the DROP pursuant to the Code and any other applicable laws.
- (3) *Establishment of rules.* Subject to the limitations of the DROP, the board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The board shall have discretionary authority to construe and interpret the DROP (including, but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in the DROP). The determination of the board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law. The board shall also oversee the investment of the DROP'S assets.
- (4) *Limitation of liability.*
 - a. The trustees shall not incur any liability individually or on behalf of any other individuals for any act or failure to act, made in good faith in relation to the DROP or the funds of the DROP.
 - b. Neither the board, nor any trustee of the board shall be responsible for any reports furnished by any expert retained or employed by the board, but they shall be entitled to rely thereon as well as on certificates furnished by an accountant or an actuary, and on all opinions of counsel. The board shall be fully protected with respect to any action taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.

(F) *General provisions.*

- (1) *Amendment of DROP.* The DROP may be amended by an ordinance of the town at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP account of any member.
- (2) *Facility of payment.* If the board shall find that a member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or is a minor, the board may direct that any benefit due him, unless claim shall have been made for the benefit by a duly appointed legal representative, be paid to his spouse, a child, a parent or other blood relative, or to a person with whom he resides. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.
- (3) *Information.* Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the DROP, shall file with the board the information that it shall require to establish his rights and benefits under the DROP.
- (4) *Prevention of escheat.* If the board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the board may, no earlier than three years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the board or the town. If such person has not made written claim therefore within three months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the DROP, direct that such payment and all remaining

payments otherwise due such person be canceled on the records of the DROP. Upon such cancellation, the DROP shall have no further liability therefore except that, in the event such person or his beneficiary later notifies the board of his whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.

(5) *Written elections, notification.*

- a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the board in a time and manner determined by the board under rules uniformly applicable to all employees similarly situated. The board reserves the right to change from time to time the manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.
- b. Each member or retiree who has a DROP account shall be responsible for furnishing the board with his current address and any subsequent changes in his address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him at the last such address given to the board and mailed by registered or certified United States Mail. If any check mailed by registered or certified United States Mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the board of his address.

(6) *Benefits not guaranteed.* All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP account and neither the town, nor the board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.

(7) *Construction.*

- a. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.
- b. The titles and headings of the subsections in this section 34.95, are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

(8) *Forfeiture of retirement benefits.* Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.

(9) *Effect of DROP participation on employment.* Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

(Ord. 2010-04, passed 3-1-10)

34.96 - Military service prior to employment.

The time that a general employee serves or has served on active duty in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily and honorably or under honorable conditions, prior to first and initial employment with the Town of Longboat Key shall be added to his years of credited service provided that:

- (A) The member contributes to the fund the sum that he would have contributed had he been a member of the system for the time 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 years of credited service.

- (B) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.
- (C) Payment by the member of the required amount shall be made within six months of his request for credit, but not later than the retirement date, and shall be made in one lump sum payment upon receipt of which credited service shall be given.
- (D) The maximum credit under this section, when combined with service purchased for prior government service with an employer other than the Town of Longboat Key, shall be five years.
- (E) Credited service purchased pursuant to this section shall count for all purposes, except vesting.

(Ord. 2010-04, passed 3-1-10)

34.97 - Prior government service.

Unless otherwise prohibited by law, the time that a general employee who was previously a member, but who terminated employment and received a refund of his contributions or who terminated employment and is not otherwise entitled to credited service for such previous period of employment as a general employee, or the time that a member previously served as an employee for any governmental agency in the United States, including, but not limited to federal, state or local government service, and for which he does not otherwise qualify for and receive credit under this system, shall be added to his years of credited service provided that:

- (A) The member contributes to the fund the sum that he would have contributed had he been a member of the system for the time 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 years of credited service.
- (B) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.
- (C) Payment by the member of the required amount shall be made within six months of his request for credit, but not later than the retirement date, and shall be made in one lump sum payment upon receipt of which credited service shall be given.
- (D) The maximum credit under this section for service other than with the Town of Longboat Key, when combined with service purchased for military service prior to employment, shall be five years of credited service and shall count for all purposes, except vesting. There shall be no maximum purchase of credit for prior service with the Town of Longboat Key and such credit shall count for all purposes, including vesting.
- (E) In no event, however, may credited service be purchased pursuant to this section for prior service with any other governmental agency, if such prior service forms or will form the basis of a retirement benefit or pension from a different employers' retirement system or plan as set forth in subsection 34.85(K)(2).

(Ord. 2010-04, passed 3-1-10)

34.98 - Reemployment after retirement.

- (A) Any retiree who is retired under this system, may be reemployed by any public or private employer, except the town, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this system. Reemployment by the town shall be subject to the limitations set forth in this section.
- (B) *After normal retirement.* Any retiree who is retired under normal retirement pursuant to this system and who is reemployed by the town in any capacity, shall upon being reemployed, continue receipt of

retirement benefits during any such employment period. A retiree who returns to work under the provisions of this section shall not be eligible for membership in this system, and, therefore, shall not accumulate additional credited service for subsequent periods of employment described in this section, shall not be required to make contributions to the system, nor shall he be eligible for any other benefit other than the retiree's normal retirement benefit.

- (C) Any retiree who is retired under normal retirement pursuant to this system and who is reemployed by the town after that retirement and, by virtue of that reemployment is ineligible to participate in this system, shall, during the period of such reemployment, continue to receive retirement benefits previously earned. Former DROP participants shall begin receipt of benefits under these circumstances.
- (D) *After early retirement.* Any retiree who is retired under early retirement pursuant to this system and who subsequently becomes an employee of the town in any capacity, shall discontinue receipt of benefits from the system until the earlier of termination of employment or such time as the reemployed retiree reaches the date that he would have been eligible for normal retirement under this system had he continued employment and not elected early retirement. "Normal retirement", as used in this subsection shall be the current normal retirement date provided for under this system. A retiree who returns to work under the provisions of this section shall not be eligible for membership in the system, and, therefore, shall not accumulate additional credited service for subsequent periods of employment described in this section, shall not be required to make contributions to the system, nor shall he be eligible for any other benefit other than the retiree's early retirement benefit when he again becomes eligible as provided herein. Retirement pursuant to an early retirement incentive program shall be deemed early retirement for purposes of this section if the member was permitted to retire prior to the customary retirement date provided for in the system at the time of retirement.
- (E) *Reemployment of terminated vested persons.* Reemployed terminated vested persons shall not be subject to the provisions of this section until such time as they begin to actually receive benefits. Upon receipt of benefits, terminated vested persons shall be treated as normal or early retirees for purposes of applying the provisions of this section and their status as an early or normal retiree shall be determined by the date they elect to begin to receive their benefit.
- (F) *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. 2010-04, passed 3-1-10)

Salary Savings Plan

34.99 - Salary savings plan.

- (A) The Town of Longboat Key, Florida, Salary Savings Plan and the Related Trust, both dated June 5, 1985, attached hereto by reference are amended and restated in accordance with the ICMA-RC Governmental Profit Sharing Plan and Trust, and the Adoption Agreement, attached hereto by reference and codified and made a part of this section.
- (B) The salary savings committee is hereby dissolved. The town manager, or his designee, is authorized and directed to: cast votes on behalf of the town that may be required under the trust agreement, serve in the capacity as the plan coordinator, and execute all necessary documents and agreements incidental to the administration of the plan. ICMA-RC shall serve as the plan administrator to ensure compliance with all applicable Internal Revenue Service regulations, as may be amended.

(Ord. 85-1, passed 4-22-85; Amd. Ord. 88-11, passed 5-2-88; Amd. Ord. 91-23, passed 11-4-91; Amd. Ord. 92-18, passed 6-1-92; Amd. Ord. 94-27, passed 10-3-94; Amd. Ord. 95-02, passed 3-6-95; Amd. Ord. 99-26, passed 7-6-99; Ref. Ord. 06-21, passed 11-6-06; Amd. Ord. 08-11, passed 9-8-08)

34.100 - Consolidated retirement system.

Effective October 1, 2014, a consolidated retirement system is created for the purpose of administering the police officers' retirement system, firefighters' retirement system and general employees' retirement system, with one board of trustees as set forth in section 34.101, and one trust fund as set forth in section 34.102. It is the intent of the town commission that the retirement benefits and plan provisions set forth in sections 34.12 through 34.41 (police officers' retirement system), sections 34.42 through 34.67 (firefighters' retirement system) and sections 34.72 through 34.98 (general employees' retirement system) be administered by the board of trustees created by section 34.101, except that sections 34.15, 34.16, 34.45, 34.46, 34.75 and 34.76, relating to the existing boards of trustees, finances and fund management, shall be repealed and replaced in operation by sections 34.101 and 34.102. The retirement benefits of all town employees who, on the effective date of the ordinance from which this section derives, are members, vested former members, retirees or beneficiaries of the police officers' retirement system, firefighters' retirement system or general employees' retirement system, shall be administered by the board of trustees provided in section 34.101 on and after October 1, 2014; and such retirement benefits shall be funded as provided in section 34.102 on and after October 1, 2014. The term "system" as used in sections 34.101 and 34.102 refers to the consolidated retirement system created by this section.

(Ord. 2014-26, passed 9-8-14)

34.101. - Board of trustees.

- (A) A new board of trustees is hereby created to administer the consolidated retirement system. The members of the board of trustees shall be selected no later than September 19, 2014, and shall be sworn in on, or after, October 1, 2014. The existing boards of trustees of the police officers', firefighters', and general employees' retirement systems shall continue to operate through September 30, 2014, for the primary purpose of facilitating the transfer of contracts, investment holdings, assets and liabilities of the existing police officers', firefighters' and general employees' retirement systems, as well as all documents and records of those plans, to the consolidated retirement system. The existing boards of trustees shall take all necessary and appropriate action to carry out this purpose in a timely manner.
- (B) During the period prior to October 1, 2014, the boards of trustees of the existing police officers', firefighters', and general employees' retirement systems, shall take all necessary and appropriate action to ensure that the benefits due retired plan members and beneficiaries are not interrupted, and that any benefit applications submitted by plan members and beneficiaries are processed in a timely manner. Commencing October 1, 2014, the new board of trustees shall take all necessary and appropriate action to ensure that the benefits due retired plan members and beneficiaries are not interrupted, and that any benefit applications submitted by plan members and beneficiaries are processed in a timely manner.
- (C) The new board of trustees shall be established in accordance with subsection (D) below. Effective October 1, 2014, the police officers' board of trustees, firefighters' board of trustees, and general employees' board of trustees shall be abolished, and the board of trustees established in accordance with subsection (D) below shall be responsible for administering the consolidated retirement system and investing all assets of the system in accordance with this section 34.101 and section 34.102, for the benefit of the members, vested former members, retirees, and beneficiaries of the system.
- (D) The board of trustees ("board") shall consist of nine members selected as follows:
 - (1) One police officer who is a current or vested former member of the police officers' retirement system, elected by the employee members of that plan.
 - (2) One firefighter who is a current or vested former member of the firefighters' retirement system, elected by the employee members of that system.
 - (3) One general employee who is a current or vested former member of the general employees' retirement system, elected by the employee members of that system.

- (4) Five residents of the town who are registered voters and not employees of the town, or members, vested former members, retirees, or beneficiaries of the retirement system, appointed by the town commission.
 - (5) The town manager or designee, who shall serve as a voting ex-officio member.
- (E) Trustees other than the town manager or designee shall serve staggered three-year terms, and may succeed themselves in office. To implement the staggered terms, the first elected employee trustee who is a police officer member shall serve a one-year term; the first elected employee trustee who is a firefighter member shall serve a two-year term; and the first elected employee trustee who is a general employee member shall serve a three-year term. The staggered terms for the appointed trustees shall be implemented as follows: two appointed trustees shall serve an initial term of one year; two appointed trustees shall serve an initial term of two years; and one appointed trustee shall serve an initial term of three years; as determined by the town commission. Trustees who are elected or appointed following the initial terms shall serve a term of three years.
 - (F) The board of trustees created by this section 34.101 shall be responsible for the administration and proper operation of the consolidated retirement system. The board is hereby designated as the plan administrator. The town commission shall designate one of the trustees it appoints as chairman of the board and another trustee as vice chairman, and may change such designations from time to time. The town shall establish the nominating and election procedures for the election of employee trustees. The board shall meet at least quarterly each year. The board shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature and description.
 - (G) The trustees shall, by a majority vote, elect a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.
 - (H) Each trustee shall be entitled to one vote on the board. Five affirmative votes shall be necessary for any decision by the trustees at any meeting of the board. A trustee shall abstain from voting as the result of a conflict of interest and shall comply with the provisions of F.S. § 112.3143.
 - (I) With input from the board, the town shall engage such actuarial, accounting, legal, administrative and other services as shall be required to transact the business of the system. The town shall consult with the chair regarding the selection of professional services required by the fund. The compensation of all persons engaged by the town and all other expenses necessary for the operation of the system shall be paid from the fund.
 - (J) The duties and responsibilities of the board shall include, but not necessarily be limited to the following:
 - (1) To construe the provisions of the system and determine all questions arising thereunder.
 - (2) To determine all questions relating to eligibility and membership.
 - (3) To determine and certify the amount of all retirement allowances or other benefits hereunder.
 - (4) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system.
 - (5) To distribute to members, at regular intervals, information concerning the system.
 - (6) To receive and process all applications for benefits.
 - (7) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund.
 - (8) To have performed actuarial studies and valuations, at least as often as required by law, and make recommendations regarding changes to the provisions of the system.
 - (9) To perform such other duties as are required to prudently administer the system.

- (K) The boards of trustees for the existing police officers', firefighters', and general employees' retirement systems shall continue to operate through September 30, 2014, for the primary purpose of facilitating the transfer of contracts, investment holdings, assets and liabilities of the police officers', firefighters', and general employees' retirement systems, as well as all documents and records of those plans, to the new board of trustees established pursuant to subsections (C) and (D) above. During the period prior to October 1, 2014, the boards of trustees for the police officers', firefighters', and general employees' retirement systems shall continue to perform their duties as set forth in sections 34.15, 34.45 and 34.75

(Ord. 2014-26, passed 9-8-14)

34.102. - Consolidated retirement system; finances and fund management.

- (A) Effective October 1, 2014, as part of the consolidated retirement system, there is hereby established a consolidated retirement trust fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the system, including all assets of the police officers', firefighters', and general employees' retirement systems.
- (B) All existing contracts, investment holdings, assets and liabilities of the existing police officers', firefighters', and general employees' retirement systems shall be transferred to and become contracts, investment holdings, assets and liabilities of the consolidated retirement system on October 1, 2014, or as soon thereafter as administratively possible. The existing police officers', firefighters', and general employees' retirement funds may be separately managed by the new board of trustees for up to 12 months following October 1, 2014, until such time as the new board of trustees determines that it is prudent to consolidate one or more of the funds. The existing police officers', firefighters', and general employees' retirement funds shall be consolidated into one consolidated retirement fund on or before October 1, 2015. Notwithstanding the consolidation of the retirement funds, the new board of trustees shall provide for a separate accounting of the assets and liabilities attributable to the police officers, firefighters, and general employee groups, and all actuarial valuations and studies performed on and after October 1, 2014 shall include a separate accounting of the assets and liabilities attributable to the police officers, firefighters, and general employee groups. The plan actuary shall prepare separate valuations for the existing police officers', firefighters', and general employees' retirement systems for the plan year ending September 30, 2014, and one valuation for the consolidated retirement system covering the three employee groups for plan years ending on and after September 30, 2015.
- (C) The actual custody and supervision of the fund shall be vested in the board of trustees created by section 34.101. Payment of benefits and disbursements from the fund shall be made by the disbursing agent but only upon written authorization of the board.
- (D) All funds of the retirement system may be deposited by the board with the finance director of the town, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he is liable for the safekeeping of funds for the town. However, any funds so deposited with the finance director of the town shall be kept in a separate fund by the finance director or clearly identified as such funds of the retirement system. In lieu thereof, the board shall deposit the funds of the retirement system in a qualified public depository as defined in F.S. § 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of F.S. ch. 280. In order to fulfill its investment responsibilities as set forth herein, the board may retain the services of a custodian bank, an investment advisor registered under the Investment Advisors Act of 1940, or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of maintaining custody of the fund or any portion thereof, and to advise the board on investments.
- (E) All funds and securities of the system may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:
- (1) Current amounts of accumulated contributions of members on both an individual and aggregate account basis; and

- (2) Receipts and disbursements; and
 - (3) Benefit payments; and
 - (4) Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the town; and
 - (5) All interest, dividends and gains (or losses) whatsoever; and
 - (6) Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.
- (F) An audit shall be performed annually by a certified public accountant for the most recent fiscal year of the system showing a detailed listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete evaluation of assets on both a cost and market basis, as well as other items normally included in a certified audit.
- (G) The board shall have the following investment powers and authority:
- (1) The board shall adopt an investment policy in accordance with F.S. § 112.661, and shall regularly review, evaluate and, if deemed in the best interest of the retirement system, revise the investment policy, subject to the approval of the town commission.
 - (2) In exercising its discretionary authority with respect to the management of the moneys and assets of the retirement system, the board shall exercise the care, skill, prudence and diligence under the circumstances then prevailing, that a person of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims.
 - (3) The board shall have full power and authority to invest and reinvest the moneys and assets held for the benefit of the members, retirees and beneficiaries of the system, subject to all terms, conditions, limitations and restrictions imposed by law on the investments of public employee retirement system assets, and subject to investment policy adopted by the board.
 - (4) The board may invest in securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 USC 80A-1 et seq., and in such other investments authorized by law and by the board's investment policy, including alternative investments.
 - (5) The board shall retain an independent consultant professionally qualified to advise the board on all investment matters and evaluate the performance of professional money managers. The independent consultant shall assist the board in developing and revising its investment policy, and make recommendations regarding the selection of money managers.
 - (6) The board may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the system.
 - (7) Neither the board, nor any trustee shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the fund, except that due to his or its own negligence, willful misconduct or lack of good faith.
 - (8) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.
 - (9) The board is empowered, but is not required, to vote upon any stocks, bonds or securities of any corporation, association or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or

all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the fund which it may deem to be to the best interest of the fund to exercise.

- (10) Any overpayments or underpayments from the fund to a member, retiree or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board in such a manner that the actuarial equivalent of the benefit to which the member, retiree or beneficiary was correctly entitled, shall be paid. Overpayments shall be charged against payments next succeeding the correction or collected in another manner if prudent. Underpayments shall be made up from the fund in a prudent manner.
- (11) The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits provided for herein.
- (12) In any application to or proceeding or action in the courts, only the board shall be a necessary party, and no member or other person having an interest in the fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.
- (13) Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents; provided that the board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to said fund shall always remain in the board.

(Ord. 2014-26, passed 9-8-14)