

DIVISION 5. - POLICE OFFICERS' PENSIONS

Footnotes:

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State Law reference— *Municipal Police Pensions, F.S. ch. 185; local plans generally, F.S. §§ 185.35, 185.39.*

Sec. 2-252. - Legislative intent; findings.

- (a) The city commission has previously declared its intent and purpose in adopting this division to invoke a local option plan as approved by article 15 of the P.B.A. Contract, authorized under F.S. § 185.161, carrying with it the date of December 14, 1979, as the original date the Police Pension Fund System was established.
- (b) The city commission further declares and finds that police officers, as herein defined, perform municipal functions, make arrests for violations of state and city traffic laws on public highways, keep the public peace and preserve and protect both life and property and that their activities and functions are vital to the health, safety and general welfare of this municipality and its citizenry; therefore, the city commission finds and declares this to be a proper and legitimate stated purpose to provide a uniform retirement system for the benefit of police officers, as hereinafter defined.
- (c) The city commission intends, in the future, to regularly consider pension plan amendments to assure the adequacy of benefits and to work toward achieving a three-percent benefit level.

(Code 1990, § 49-13)

Sec. 2-253. - Title.

This division shall be known and may be cited as the "City of North Port Police Officers' Pension—Local Option Trust Fund."

(Code 1990, § 49-14; Ord. No. 08-25, § 1, 5-27-2008)

Sec. 2-254. - Establishment and continuation.

The city commission, having declared itself on the purpose and intent, does hereby continue the establishment and creation of the North Port Police Officers' Pension Fund under the local option plan, which establishment and creation shall be dated December 14, 1979, for the North Port Police Department.

(Code 1990, § 49-15)

Sec. 2-255. - Definitions.

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meanings indicated:

Accumulated contributions. 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, and any payment representing interest and any required actuarially calculated payments for the purchase of such credited service, shall be included in accumulated contributions.

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

Average final compensation. 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 police officer since July 1, 1953, whichever is greater. A year shall be 12 consecutive months.

Beneficiary. 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. The board of trustees, which shall administer and manage the system herein provided and serve as trustees of the fund.

City. The City of North Port, Florida.

Code. The Internal Revenue Code of 1986, as amended from time to time.

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

The years or fractional parts of years 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 police officer with the city to perform training or service, shall be added to his or her years of credited service for all purposes, including vesting, provided that:

- (1) The member is entitled to reemployment under the provisions of USERRA.
- (2) The member returns to his or her employment as a police officer within one year from the earlier of the date of his or her military discharge or release from active service under honorable conditions, unless otherwise required by USERRA.
- (3) The maximum credit for military service pursuant to this subsection shall be five years.
- (4) 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 section 414(u)(12) of the code, an individual receiving differential wage payments (as defined under section 3401(h)(2) of the code) 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

section 415(c) of the code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Effective date. October 1, 1991.

Fund. The trust fund established herein as part of the system.

Member. An actively employed police officer who fulfills the prescribed membership requirements. Benefit improvements which, in the past, have been provided for by amendments to the system adopted by city 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. The 12-month period beginning October 1 and ending September 30 of the following year.

Police officer. An actively employed full-time person, employed by the city, including his or her initial probationary employment period, who is certified as a police officer as a condition of employment in accordance with the provisions of F.S. § 943.1395, who is vested with authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic or highway laws of the State of Florida.

Rate of pay. The current hourly rate of pay times 2,080 hours plus any incentive and specialty pay.

Retiree. A member who has entered retirement status.

Retirement. A member's separation from city employment with eligibility for immediate receipt of benefits under the system or entry into the deferred retirement option plan.

Salary. The total compensation for services rendered to the city as a police officer reportable on the member's W-2 form plus all tax-deferred or tax-exempt items of income derived from elective employee payroll deductions or salary reductions. For service earned after the effective date of Ordinance 2014-21, salary shall not include more than 300 hours of overtime per calendar year and shall also not include payments for accrued unused sick or annual leave. Provided however, in any event, payments for overtime in excess of 300 hours per year or accrued unused sick or annual leave accrued as of the effective date and attributable to service earned prior to the effective date, may still be included in salary for pension purposes even if the payment is not actually made until on or after the effective date. In any event, with respect to unused sick leave and unused annual leave accrued prior to the effective date, salary will include the lesser of the amount of sick or annual leave time accrued on the effective date or the actual amount of sick or annual leave time for which the retiree receives payment at the time of retirement, regardless of whether the amount of sick or annual leave was, at some time prior to retirement, reduced below the amount on the effective date.

Compensation in excess of the limitations set forth in section 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 section 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. The lawful wife or husband of a member or retiree at the time benefits become payable.

System. The City of North Port Police Officers' Pension—Local Option Trust Fund as contained herein and all amendments thereto.

(Code 1990, § 49-16; Ord. No. 07-04, § 1, 2-12-2007; Ord. No. 2010-07, § 1(1.01), 2-8-2010; Ord. No. 2011-06, § 1, 4-25-2011; Ord. No. 2013-17, § 1, 9-9-2013; Ord. No. 2014-21, § 2, 5-27-2014)

Sec. 2-256. - Membership.

(a) *Conditions of eligibility.*

(1) All police officers, as of the effective date, and all future new police officers shall become members of this system as a condition of employment. Notwithstanding the previous sentence, the current police chief may, within 30 days of the effective date of the ordinance adopting this section, or any future police chief may, within 30 days of becoming police chief, notify the board and the city, 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. Contributions to the plan shall not be required, and he shall not be eligible for any other benefits from the plan, except that the election to opt out shall not affect any right to benefits which had accrued prior to the election.

(2) All future new police officers shall be required to complete a medical examination as prescribed by the city.

(b) Designation of beneficiary. Each police officer shall complete a form prescribed by the board designating a beneficiary or beneficiaries.

(c) Notwithstanding any other provision of this section, the city shall join the Florida Retirement System (FRS) for police officers effective January 1, 2016, or as soon thereafter as administratively feasible, and this system shall be closed to new members on that date. Police officers hired on or after the date the city joins FRS shall become compulsory members of the Florida Retirement System and shall not be eligible for membership in this system. Police officers hired before the date the city joins FRS who are members of this system on the date the city joins FRS may elect to participate in FRS or continue participating in this system, in accordance with section 2-260(f).

(Code 1990, § 49-17; Ord. No. 07-04, § 1, 2-12-2007; Ord. No. 2010-07, § 2(2.01), 2-8-2010; Ord. No. 2015-54, § 2, 1-12-2016)

Sec. 2-257. - Board of trustees; powers and duties.

(a) Membership; term.

(1) The sole and exclusive administration of and responsibility for the proper operation of the system and for making effective the provisions of this article are hereby vested in a board of trustees. The board is hereby designated as the plan administrator. The board shall consist of five trustees, two of whom, unless otherwise prohibited by law, shall be legal residents of the city, who shall be appointed by the North Port City Commission, and two of whom shall be members of the system, who shall be elected by a majority of the police officers who are members of the system. The fifth trustee shall be chosen by a majority of the previous four trustees as provided for herein, and such person's name shall be submitted to the North Port City Commission. Upon receipt of the fifth person's name, the North Port City Commission shall, as a ministerial duty, appoint such person to the board of trustees as its fifth trustee. The fifth trustee shall have the same rights as each of the other four members appointed or elected as herein provided and shall serve a two year term unless he or she sooner vacates the office.

(2) Each resident trustee shall serve as trustee for a period of two years, unless he or she sooner vacates the office or is sooner replaced by the North Port City Commission, at whose pleasure he or she shall serve. Each member trustee shall serve as trustee for a period of two years, unless he or she sooner leaves the employment of the city as a police officer or otherwise vacates his or her office as trustee, whereupon his or her successor shall be chosen in the same manner as the departing trustee. Each trustee may succeed himself or herself in office. DROP participants can be

elected as but not vote for elected trustees. The board shall meet at least quarterly each year. Each 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.

- (b) The trustees shall by a majority vote elect a chairman and 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.
- (c) Each trustee shall be entitled to one vote on the board. Three 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.
- (d) The board shall engage such actuarial, accounting, legal and other services as shall be required to transact the business of the system. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the system shall be paid from the fund at such rates and in such amounts as the board of trustees shall agree. In the event the board chooses to use the city's legal counsel, actuary or other professional, technical or other advisors, it shall do so only under terms and conditions acceptable to the board.
- (e) The duties and responsibilities of the board shall include but not necessarily be limited by 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 any and all changes in the provisions of the system.
 - (9) To perform such other duties as are required to prudently administer the system.

(Code 1990, § 49-18; Ord. No. 07-04, § 1, 2-12-2007)

State Law reference— Board of trustees, F.S. § 185.05.

Sec. 2-258. - Finances and fund management.

- (a) As part of the system there exists the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the system.
- (b) The actual custody and supervision of the fund (and assets thereof) shall be vested in the board. Payment of benefits and disbursements from the fund shall be made by the disbursing agent but only upon written authorization from the board.
- (c) All funds of the municipal police officers' pension trust fund may be deposited by the board with the finance officer of the city, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the city. However, any funds so deposited with the finance officer of the city shall be kept in a separate fund by the municipal finance officer or clearly identified as such funds of the municipal police officers' pension trust fund. In lieu thereof, the board shall deposit the funds of the municipal police officers' pension trust fund 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 Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.

- (d) 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;
 - (2) Receipts and disbursements;
 - (3) Benefit payments;
 - (4) Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city;
 - (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.
- (e) 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.
- (f) Investment powers and authority.
- (1) The board shall have the following investment powers and authority:
 - a. The board shall be vested with full legal title to said fund, subject, however, and in any event to the authority and power of the City of North Port City Commission to amend or terminate this fund, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this system, except as otherwise provided herein. All contributions from time to time paid into the fund and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund.
 - b. All monies paid into or held in the fund shall be invested and reinvested by the board and the investment of all or any part of such funds shall be subject to the following.
 - [1] Notwithstanding any limitation provided for in F.S. ch. 185 to the contrary, (unless such limitation may not be amended by local ordinance), or any limitation in prior city ordinances to the contrary, all monies paid into or held in the fund may be invested and reinvested in such securities, investment vehicles or property wherever situated and of whatever kind, as shall be approved by the board, including but not limited to common or preferred stocks, bonds, and other evidences of indebtedness or ownership. In no event, however, shall more than 25 percent of the assets of the fund at market value be invested in foreign securities.
 - [2] The board shall develop and adopt a written investment policy statement setting forth permissible types of investments, goals and objectives of investments and setting quality and quantity limitations on investments in accordance with the recommendations of its investment consultants. The investment policy statement shall be reviewed by the board at least annually.
 - [3] In addition, the board may, upon recommendation by the board's investment consultant, make investments in group trusts meeting the requirements of Internal Revenue Service Revenue Ruling 81-100 and Revenue

Ruling 2011-1 or successor rulings or guidance of similar import, and operated or maintained exclusively for the commingling and collective investment of monies, provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under section 401(a) of the code, individual retirement accounts that are exempt under section 408(e) of the code, eligible governmental plans that meet the requirements of section 457(b) of the code, and governmental plans under 401(a)(24) of the code. For this purpose, a trust includes a custodial account that is treated as a trust under section 401(f) or under section 457(g)(3) of the code. While any portion of the assets of the fund are invested in such a group trust, such group trust is itself adopted as a part of the system or plan.

- c. At least once every three years, and more often as determined by the board, the board shall retain a professionally qualified independent consultant, as defined in F.S. § 185.06, to evaluate the performance of all current investment managers and make recommendations regarding the retention of all such investment managers. These recommendations shall be considered by the board at its next regularly scheduled meeting.
- d. 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.
- e. 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, her or its own negligence, willful misconduct or lack of good faith.
- f. 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.
- g. 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.
- h. The board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any powers contained herein.
- i. Where any action which the board is required to take or any duty or function which it is required to perform, either under the terms herein or under the general law applicable to it as trustee under this division, can reasonably be taken or performed only after receipt by it from a member, the city or any other entity, of specific information, certification, direction or instructions, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.
- j. 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.
- k. The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits provided for herein.

- l. In any application to or proceeding or action in the courts, only the board shall be a necessary party, and no member person having an interest in the fund shall be entitled to any notice or service of process. Any judgment entered in a proceeding or action shall be conclusive upon all persons.
- m. 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.

(Code 1990, § 49-19; Ord. No. 07-04, § 1, 2-12-2007; Ord. No. 08-25, § 2, 5-27-2008; Ord. No. 2010-07, § 3(3.01), 2-8-2010; Ord. No. 2013-17, § 2, 9-9-2013)

State Law reference— Investments generally, F.S. § 185.06.

Sec. 2-259. - 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 eight percent of his or her salary. Member contributions withheld by the city on behalf of the member shall be deposited with the board of trustees immediately after each pay period. The contributions made by each member to the fund shall be designated as employer contributions pursuant to section 414(h) of the Internal Revenue Code of 1986. 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) *State contributions.* Any monies received or receivable by reason of laws of the State of Florida, for the express purpose of funding and paying for retirement benefits for police officers of the city, shall be deposited in the trust fund comprising part of this system immediately and under no circumstances more than five days after receipt by the city.

(c) *City contributions.* So long as this system is in effect, the city shall make quarterly contributions to the trust fund in an amount equal to the required city contribution, as shown by the applicable actuarial valuation of the system, but in no event shall such city contributions be less than 18 percent of the total salaries of police officers. By mutual agreement of the city and Police Benevolent Association, all Chapter 185 premium tax revenues received up to \$280,000.00 per year shall be used to reduce the city's annual pension contribution, notwithstanding any other provision of this section. In addition, the city and Police Benevolent Association have mutually agreed that the excess state monies reserve on the effective date of the ordinance from which this section derives shall be used in its entirety to reduce the city's pension contribution for the plan year beginning October 1, 2015, notwithstanding any other provision of this section.

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

(Code 1990, § 49-20; Ord. No. 07-04, § 1, 2-12-2007; Ord. No. 2010-07, § 4(4.01), 2-8-2010; Ord. No. 2015-54, § 3, 1-12-2016)

State Law reference— Contributions, F.S. § 185.07.

Sec. 2-260. - Benefit amounts and eligibility.

(a) *Normal retirement.*

(1) *Normal retirement date.* The normal retirement date of a member hired prior to the effective date of ordinance 2014-21 shall be the first day of the month coincident with or next following the earlier of the attainment of age 55

and the completion of ten years of credited service or upon the completion of 25 years of credited service, regardless of age. The normal retirement date of a member hired on or after the effective date of ordinance 2014-21 shall be the first day of the month coincident with or next following the earlier of the attainment age 55 and the completion of ten years of credited service or upon the attainment of age 52 and the completion of 25 years of credited service. A member may retire on his or her normal retirement date or on the first day of any month thereafter, and each member shall become 100 percent vested in his or her accrued benefit on his or her normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date.

(2) *Normal retirement benefit.* A member retiring hereunder on or after his or her normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his or her retirement and be continued thereafter during the member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. The monthly retirement benefit of a member hired prior to the effective date of ordinance 2014-21 shall equal 3.5 percent of average final compensation, for each year of credited service. The monthly retirement benefit of a member hired on or after the effective date of ordinance 2014-21 shall equal 3.15 percent of average final compensation, for each year of credited service.

(b) *Early retirement.*

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

(2) *Early retirement benefit.* A member retiring hereunder on his or her 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:

- a. A deferred monthly retirement benefit which shall commence on what would have been his or her normal retirement date, determined based upon his or her actual years of credited service, 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 or her normal retirement date, determined as if he had remained employed as a police officer, except that credited service and average final compensation shall be determined as of his or her early retirement date; or
- b. An immediate monthly retirement benefit which shall commence on his or her early retirement date and shall be continued on the first day of each month thereafter. For members hired on or after the effective date of ordinance 2014-21, the benefit payable shall be as determined in subsection (b)(2)a. above, reduced by three percent per year by which the commencement of benefits precedes the normal retirement date. For members hired before the effective date of ordinance 2014-21, the benefit payable shall be as determined in subsection (b)(2)a. above, reduced by:
 1. Three percent per year by which the commencement of benefits precedes the normal retirement date, if the member has less than 15 years of credited service at the time of retirement; or
 2. Two percent per year by which the commencement of benefits precedes the normal retirement date, if the member has at least 15 years, but less than 20 years of credited service at the time of retirement; or
 3. One percent per year by which the commencement of benefits precedes the normal retirement date, if the member has 20 or more years of credited service at the time of retirement.

(c) *Cost-of-living adjustment.*

(1) Effective retroactively to October 1, 1999, the monthly benefit currently being received by every retiree, including service and disability retirees, joint pensioners or beneficiaries who were receiving benefits on or before that date,

shall be increased by two percent for each full year of retirement as of that date. This is a one-time increase in these benefits.

- (2) Effective retroactively to October 1, 2010, the monthly benefit currently being received by every retiree, including service and disability retirees, joint pensioners or beneficiaries who were receiving benefits on October 1, 2009, shall be increased by two percent for each full year of retirement as of that date up to a maximum of ten percent. This is a one-time increase in these benefits.
- (d) *Supplemental benefit.* Effective October 1, 2001, all current and future retirees, including service retirees, disability retirees, current and future terminated vested persons, and beneficiaries shall receive a \$165.00 per-month benefit supplement. Notwithstanding the preceding sentence, members hired on or after the effective date of ordinance 2014-21, and the beneficiaries of such members, shall not be eligible for a supplemental benefit under this subsection (d).
- (e) *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 city.
- (f) *Participation in the Florida Retirement System.* Effective January 1, 2016, or as soon thereafter as administratively feasible, the city will join the Florida Retirement System (FRS), and this system will be closed to new members. Police officers hired on or after the date the city joins FRS shall become compulsory members of the Florida Retirement System and shall not be eligible for membership in this system. Police officers hired before the date the city joins FRS who are members of this system on the date the city joins FRS may elect to participate in FRS or continue participating in this system. The accrued benefits earned under this system prior to the date the city joins FRS by members who are employed on the date the city joins FRS and elect to join the Florida Retirement System will be frozen on that date, based on the member's average final compensation and credited service on the date the city joins FRS. Such members shall be 100 percent vested in their frozen accrued benefit under this system. The frozen accrued benefit shall be payable when the member reaches the early retirement date, if applicable, or normal retirement date, and separates from city employment. Alternatively, members who elect to join FRS may obtain a refund of their employee contributions or accrued benefit under the system. Eligibility for participation in the FRS, as well as FRS benefits and contributions, will be determined in accordance with F.S. Ch. 121, as that statute now exists and as it may be amended in the future.

(Code 1990, § 49-21; Ord. No. 07-04, § 1, 2-12-2007; Ord. No. 2011-06, § 2, 4-25-2011; Ord. No. 2014-21, § 2, 5-27-2014; Ord. No. 2015-54, § 4, 1-12-2016)

State Law reference— Retirement and optional benefits, F.S. §§ 185.16, 185.161.

Sec. 2-261. - Preretirement death.

- (a) *Not-in-line-of-duty death.* If a member with five years or more of credited service shall die from causes not directly caused by the performance of his or her duties as a police officer, the surviving spouse, if any, shall be entitled to a monthly benefit equal to 50 percent of the police officer's salary at the time of his or her death and continuing to such spouse for life or until his or her remarriage. In the event that there is no surviving spouse, then the aforementioned pension shall be paid in equal shares to any of the police officer's surviving children who are under age 18 years and/or who are under age 23 years and pursuing a full-time education.
- (b) *In-line-of-duty death benefit.* If a member dies and his or her death is directly caused by the performance of his or her duties as a police officer, the surviving spouse, if any, shall be entitled to a monthly benefit equal to 60 percent of member's salary at the time of his or her death and continuing to such spouse for life. In the event that there is no surviving spouse, then the aforementioned pension shall be paid in equal shares to the member's surviving children who are under age 18 years and/or who are under age 23 years and pursuing a full-time education. The in-line-of-duty presumptions listed in subsection 2-262(b) shall apply to the determination of an in-line-of-duty death.

(c) *[Amount of benefits.]* If the total monthly income benefits paid under this section to the member's surviving spouse and/or surviving children are not equal to 100 percent of the member's accumulated contributions made to the date of his or her death, then an amount equal to 100 percent of his or her contributions minus total monthly income benefits paid shall be paid to member's beneficiary pursuant to the provisions of section 2-265.

(d) *[Pre-retirement death.]* Notwithstanding subsections (a), (b), or (c), if any member having at least ten years of credited service dies prior to retirement, his or her beneficiary is entitled to the benefits otherwise payable to the member at early or normal retirement age, less the value of any previously received benefits.

(Code 1990, § 49-22; Ord. No. 07-04, § 1, 2-12-2007; Ord. No. 2018-53, § 2, 9-25-2018)

Sec. 2-262. - Disability payments.

(a) *Disability benefits in line of duty.* Any member who shall become totally and permanently disabled to the extent that he or she is wholly prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as a police officer, which disability was directly caused by the performance of his or her duty as a police officer, shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to two percent of his or her average final compensation multiplied by the total years of credited service, but in any event, the minimum amount paid to the member shall be 60 percent of his or her rate of pay at the time he or she became disabled. Notwithstanding the previous sentence, in the event a member is determined by the board to be disabled in line of duty and the disability resulted from the perpetration of an intentional act of violence directed toward the police officer and the board reasonably believes the perpetrator intended to cause great bodily harm or permanent disfigurement of the police officer, the minimum amount paid to the member shall be 80 percent of the average final compensation of the member. Eligibility requirements for disability benefits are set forth in subsection (g), below.

(b) *In-line-of-duty presumptions.*

(1) *Presumption.* Any condition or impairment of health of a member caused by hypertension or heart disease shall be presumed to have been suffered in line of duty unless the contrary is shown by competent evidence, provided that such member shall have successfully passed a physical examination upon entering into such service, including cardiogram, which examination failed to reveal any evidence of such condition; and provided further, that such presumption shall not apply to benefits payable or granted in a policy of life insurance or disability insurance.

(2) *Additional presumption.* The presumption provided for in this subsection (b)(2) shall apply only to those conditions described in this subsection (b)(2) that are diagnosed on or after January 1, 1996.

a. *Definitions.* As used in this subsection (b)(2), the following definitions apply:

Body fluids. Blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the centers for disease control, apply. For purposes of potential transmission of meningococcal meningitis or tuberculosis, the term "body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum and saliva, mucous and other fluids through which infectious airborne organisms can be transmitted between persons.

Emergency rescue or public safety member. Any member employed full time by the city as a fire fighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who, in the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis or tuberculosis and who is not employed elsewhere in a similar capacity. However, the term "emergency rescue or public safety member" does not include any person employed by a public hospital licensed under F.S. ch. 395, or any person employed by a subsidiary thereof.

Hepatitis. Hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C or any other strain of hepatitis generally recognized by the medical community.

High risk of occupational exposure. That risk that is incurred because a person subject to the provisions of this subsection, in performing the basic duties associated with his or her employment:

- [1] Provides emergency medical treatment in a non-health-care setting where there is a potential for transfer of body fluids between persons;
- [2] At the site of an accident, fire or other rescue or public safety operation, or in an emergency rescue or public safety vehicle, handles body fluids in or out of containers or works with or otherwise handles needles or other sharp instruments exposed to body fluids;
- [3] Engages in the pursuit, apprehension, and arrest of law violators or suspected law violators and, in performing such duties, may be exposed to body fluids; or
- [4] Is responsible for the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail or other criminal detention facility, while on work detail outside the facility or while being transported and, in performing such duties, may be exposed to body fluids.

Occupational exposure. In the case of hepatitis, meningococcal meningitis, or tuberculosis, an exposure that occurs during the performance of job duties that may place a worker at risk of infection.

- b. *Presumption.* Any emergency rescue or public safety member who suffers a condition or impairment of health that is caused by hepatitis, meningococcal meningitis or tuberculosis that requires medical treatment and that results in total or partial disability or death shall be presumed to have a disability suffered in the line of duty, unless the contrary is shown by competent evidence; however, in order to be entitled to the presumption, the member must, by written affidavit as provided in F.S. § 92.50, verify by written declaration that, to the best of his or her knowledge and belief:

- [1] In the case of a medical condition caused by or derived from hepatitis, he or she has not:
 - [a] Been exposed, through transfer of bodily fluids, to any person known to have sickness or medical conditions derived from hepatitis, outside the scope of his or her employment;
 - [b] Had a transfusion of blood or blood components, other than a transfusion arising out of an accident or injury happening in connection with his or her present employment, or received any blood products for the treatment of a coagulation disorder since last undergoing medical tests for hepatitis, which tests failed to indicate the presence of hepatitis;
 - [c] Engaged in unsafe sexual practices or other high-risk behavior, as identified by the centers for disease control or the Surgeon General of the United States or had sexual relations with a person known to him or her to have engaged in such unsafe sexual practices or other high-risk behavior; or
 - [d] Used intravenous drugs not prescribed by a physician.
- [2] In the case of meningococcal meningitis, in the ten days immediately preceding diagnosis he or she was not exposed, outside the scope of his or her employment, to any person known to have meningococcal meningitis or known to be an asymptomatic carrier of the disease.
- [3] In the case of tuberculosis, in the period of time since the member's last negative tuberculosis skin test, he or she has not been exposed, outside the scope of his or her employment, to any person known by him or her to have tuberculosis.

- c. *Immunization.* Whenever any standard, medically recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is granted under this section, if medically indicated in the given circumstances pursuant to immunization policies established by the advisory committee on immunization practices of the United States public health service, an emergency rescue or public safety member may be required by the city to undergo the immunization or prophylaxis unless the

member's physician determines in writing that the immunization or other prophylaxis would pose a significant risk to the member's health. Absent such written declaration, failure or refusal by an emergency rescue or public safety member to undergo such immunization or prophylaxis disqualifies the member from the benefits of the presumption.

- d. *Record of exposures.* The city shall maintain a record of any known or reasonably suspected exposure of an emergency rescue or public safety member in its employ to the disease described in this section and shall immediately notify the member of such exposure. An emergency rescue or public safety member shall file an incident or accident report with the city of each instance of known or suspected occupational exposure to hepatitis infection, meningococcal meningitis or tuberculosis.
- e. *Required medical tests; preemployment physical.* In order to be entitled to the presumption provided by this section:

[1] An emergency rescue or public safety member must, prior to diagnosis, have undergone standard, medically acceptable tests for evidence of the communicable disease for which the presumption is sought, or evidence of medical conditions derived therefrom, which tests fail to indicate the presence of infection, or, in the case of hepatitis infection, shall have banked serum for future testing, which future tests fail to reveal evidence of infection. This subsection does not apply in the case of meningococcal meningitis.

[2] On or after June 15, 1995, an emergency rescue or public safety member may be required to undergo a preemployment physical examination that tests for and fails to reveal any evidence of hepatitis or tuberculosis.

- (c) *Disability benefits not-in-line of duty.* Any member with ten years or more of credited service who shall become totally and permanently disabled to the extent that he or she is wholly prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as a police officer, which disability is not directly caused by the performance of his or her duties as a police officer shall, upon establishing the same to the satisfaction of the board be entitled to a monthly pension equal to two percent of his or her average final compensation multiplied by the total years of credited service, but in any event, the minimum amount paid to the member shall be 50 percent of his or her rate of pay at the time he or she became disabled. Eligibility requirements for disability benefits are set forth in subsection (g), below.
- (d) *Conditions disqualifying disability benefits.* Each member who is claiming disability benefits shall establish, to the satisfaction of the board that such disability was not occasioned primarily by:
- (1) Excessive or habitual use of any drugs, intoxicants or narcotics.
 - (2) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections or while committing a crime.
 - (3) Injury or disease sustained while serving in any branch of the armed forces.
 - (4) Injury or disease sustained after his or her employment as a police officer with the City of North Port shall have terminated.
 - (5) Injury or disease sustained by the member while working for anyone other than the city and arising out of such employment.
- (e) *Physical examination requirement.*
- (1) A member shall not become eligible for disability benefits until and unless he or she undergoes a physical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the board for that purpose. The board shall not select the member's treating physician or surgeon for this purpose except in an unusual case where the board determines that it would be reasonable and prudent to do so.
 - (2) Reexamination; recovery.

- a. Any retiree receiving disability benefits under provisions of this section may be required by the board to submit swc of his or her condition accompanied by a physician's statement (provided at the retiree's expense) to the board and be required by the board to undergo additional periodic re-examinations by a qualified physician or physicians and, surgeons who shall be selected by the board, to determine if such disability has ceased to exist. If, prior to the member's retirement date, the board finds that the retiree is no longer permanently and totally disabled to the extent that he is unable to render useful and efficient service as a police officer, the board shall recommend to the city that the retiree's performance of duty as a police officer and the retiree so returned shall enjoy the same rights that he or she had or she was placed upon pension. In the event a retiree so ordered to return shall refuse to comply with the order within 30 days from the issuance thereof, he or she shall forfeit the right to his or her pension.
 - b. If the retiree recovers from disability and reenters the service of the city as a police officer, his or her service will be deemed to have been continuous, but the period beginning with the first month for which he or she received a disability retirement income payment and ending with the date he or she reentered the service of the city will not be considered as credited service for the purposes of the system.
- (3) The cost of the physical examination and/or re-examination of the member claiming or the retiree receiving disability benefits shall be borne by the fund. All other reasonable costs as determined by the board incident to the physical examination, such as but not limited to transportation, meals and hotel accommodations, shall be borne by the fund.
- (4) The board shall have the power and authority to make the final decisions regarding all disability claims.
- (f) *Disability payments.* The monthly benefit to which a police officer is entitled in the event of his or her disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment.
- (1) The last payment will be:
 - a. If the retiree recovers from the disability, the payment due next preceding the date of such recovery; or
 - b. If the retiree dies without recovering from his or her disability, the payment due next preceding his or her death or the 120th monthly payment, whichever is later.
 - (2) Provided, however, that the disability retiree may select, at any time prior to the date on which benefit payments begin, an optional form of benefit payment as described in section 2-264(a)(1) or (2), which shall be the actuarial equivalent of the normal form of benefit.
- (g) *Eligibility for disability benefits.* Subject to the following regulations, only active members of the system on the date the board determines entitlement to a disability benefit are eligible for disability benefits.
- (1) Terminated persons, either vested or non-vested, are not eligible for disability benefits.
 - (2) If a member voluntarily terminates his or her employment, either before or after filing an application for disability benefits, the member is not eligible for disability benefits.
 - (3) If a member is terminated by the city for any reason other than for medical reasons, either before or after he or she files an application for disability benefits, the member is not eligible for disability benefits.
 - (4) The only exception to subsection (1) above is:
 - a. If the member is terminated by the city for medical reasons and he or she has already applied for disability benefits before the medical termination, or;
 - b. If the member is terminated by the city for medical reasons and he or she applies within 30 days after the medical termination date.
 - c. If either (4)a. or (4)b. herein applies, the member's application will be processed and fully considered by the board.

(Code 1990, § 49-23; Ord. No. 07-04, § 1, 2-12-2007; Ord. No. 2010-07, § 5(5.01), 2-8-2010; Ord. No. 2020-35, § 2.01, 10-13-2020)

State Law reference— Disability retirement, F.S. § 185.18.

Sec. 2-263. - Vesting.

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

- (1) If the member has less than ten years' credited service upon termination, the member shall be entitled to a refund of his or her accumulated contribution or he or she may leave it deposited with the fund.
- (2) If the member has more than ten years of credited service upon termination, the member shall be entitled to a monthly retirement benefit, 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 payable to him or her commencing at the member's otherwise early or normal retirement date, determined based upon his or her actual years of credited service, provided that he or she does not elect to withdraw his or her accumulated contributions and provided that the member survives to his or her early or normal retirement date. If the member does not withdraw his or her accumulated contributions and does not survive to his or her otherwise normal or early retirement date, his or her designated beneficiary shall be entitled to a benefit as provided herein for a deceased member, vested or eligible for retirement under preretirement death.
- (3) Reserved.

(Code 1990, § 49-24 Ord. No. 07-04, § 1, 2-12-2007)

Sec. 2-264. - 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 or her 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, 66⅔ percent or 50 percent of such monthly amounts payable to a joint pensioner for his or her lifetime. Except where the retiree's joint pensioner is his or her spouse, the 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) For members who do not participate in the DROP pursuant to section 2-283, the member may elect a percentage of benefit in a lump sum as follows.
 - a. Ten percent lump-sum benefit with 90 percent paid under the normal form or as per [subsections] (1), (2) or (3) above.
 - b. Fifteen percent lump-sum benefit with 85 percent paid under the normal form or as per [subsections] (1), (2) or (3) above.
 - c. Twenty percent lump-sum benefit with 80 percent paid under the normal form or as per [subsections] (1), (2) or

- (3) above.
- d. Twenty-five percent lump sum benefit with 75 percent paid under the normal form or as [per subsections] (1), (2) or (3) above.
- (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 his or her death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. A member may change his or her beneficiary at any time. If a member has elected an option with a joint pensioner and his or her retirement income benefits have commenced, he or she may thereafter change his or her designated beneficiary at any time, but may only change his or her joint pensioner twice. Subject to the restriction in the previous sentence, a member may substitute a new joint pensioner for a deceased joint pensioner.
- (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 redetermined to take into account the age of the former joint pensioner, the new joint pensioner and the retiree and to ensure that the benefit paid is the actuarial equivalent of the present value of the retiree's then current benefit at the time of the change. Any such retiree shall pay the actuarial recalculation expenses. Each request for a change will be made in writing on a form prepared by the board and on completion will be filed with the board. In the event that no designated beneficiary survives the retiree, such benefits as are payable in the event of the death of the retiree subsequent to his or her retirement shall be paid as provided in section 2-265.
- (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 or her normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under section 2-261.
 - (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 or her retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the member prior to his or her retirement.
 - (3) If both the retiree and the beneficiary (or beneficiaries) designated by the 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 2-265.
 - (4) If a member continues beyond his or her normal retirement date pursuant to the provisions of section 2-260(a), and dies prior to his or her 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 or her 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 city.
- (f) A retiree may not make any change in his or her retirement option after the date of cashing or depositing his or her first

retirement check.

- (g) *[Lump sum payment.]* 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.

(Code 1990, § 49-25; Ord. No. 07-04, § 1, 2-12-2007; Ord. No. 08-25, § 3, 5-27-2008; Ord. No. 2010-07, § 6(6.01), 2-8-2010)

State Law reference— Optional forms of retirement income, F.S. § 185.161.

Sec. 2-265. - 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 or her 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.

(Code 1990, § 49-26)

State Law reference— Beneficiaries, F.S. § 185.162.

Sec. 2-266. - 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.

(Code 1990, § 49-27)

Sec. 2-267. - Reports to division of retirement.

Each year and no later than March 15, the board shall file an annual report with the division of retirement containing the documents and information required by F.S. § 185.221.

(Code 1990, § 49-28)

Sec. 2-268. - Roster of retirees.

The secretary of the board shall keep a record of all persons enjoying a pension under the provisions of this division 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 such employment is terminated.

(Code 1990, § 49-29; Ord. No. 07-04, § 1, 2-12-2007)

Sec. 2-269. - 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 section 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 section 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 section 415(b)(1)(A) (\$160,000.00), subject to the applicable adjustments in code section 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 section 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 section 415(n) and to rollover contributions (as defined in code section 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 section 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 Regulation section 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 section 417(e)(3) of the code 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 Regulation section 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 section 417(e)(3)(B) of the code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the code); or
- (2) For a benefit paid in a form to which section 417(e)(3) of the code 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 Regulation section 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 section 417(e)(3)(B) of the code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the code); 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 Regulation section 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 Regulation section 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 section 417(e)(3)(B) of the code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 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 section 415(b)(2) of the code and Regulations thereunder to be taken into account for purposes of the limitation of code section 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 section 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 section 415(b)(1)(A) dollar limit under code section 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 section 415(d) and the regulations thereunder.

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

section 415(b) of the code, 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 city, the adjustments provided for in (e)(1) above shall not apply.
 - (3) The reductions provided for in (e)(1) above shall not be applicable to disability benefits pursuant to section 2-262, or pre-retirement death benefits paid pursuant to section 2-261.
 - (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 city 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 disability benefits paid pursuant to section 2-262, or pre-retirement death benefits paid pursuant to section 2-261.
- (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 section 414(j) maintained by the city shall apply as if the total benefits payable under all city defined benefit plans in which the member has been a member were payable from one plan.
- (h) *\$10,000.00 limit; less than ten years of service.* Notwithstanding anything in this section 2-269, 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 2-269 if the benefits payable, with respect to such member under this system and under all other qualified defined benefit pension plans to which the city contributes, do not exceed \$10,000.00 for the applicable limitation year and for any prior limitation year and the city 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 city, the limit under this subsection (h) of section 2-269 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 2-277 and 2-284, then the requirements of this section will be treated as met only if:
 - a. The requirements of code section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of code section 415(b), or

- b. The requirements of code section 415(c) are met, determined by treating all such contributions as annual additions for purposes of code section 415(c).

For purposes of applying subparagraph (j)(1)a., the system will not fail to meet the reduced limit under code section 415(b)(2)(C) solely by reason of this subparagraph and for purposes of applying subparagraph (j)(1)b. the system will not fail to meet the percentage limitation under section 415(c)(1)(B) of the code solely by reason of this subparagraph e.

- (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 clause (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 section 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 section 1.415(c)-2, or successor regulations. Unless another definition of compensation that is permitted by Treasury Regulations section 1.415(c)-2, or successor regulation, is specified by the system, compensation will be defined as wages within the meaning of code section 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 sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under code section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in code section 3401(a)(2)).
 - 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 sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning after December 31, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of code section 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 two and one-half 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 section 1.415(c)-2(g)(8), shall be treated as compensation

for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

- (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 section 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 sections 415(c) or 415(n).
 - b. If payment pursuant to subparagraph (k)(2)a. will not avoid a contribution in excess of the limits imposed by code section 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 section 415(c) of the code, 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 section 401(a)(17) of the code.
- (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.

(Code 1990, § 49-30; Ord. No. 07-04, § 1, 2-12-2007; Ord. No. 2010-07, § 7(7.01), 2-8-2010; Ord. No. 2013-17, § 3, 9-9-2013)

Sec. 2-270. - 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 [Internal Revenue] Code section 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of [Internal Revenue] Code section 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 section 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 section 242(b) (2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that related to section 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 city.

- (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 section 401(a)(9) of the [Internal Revenue] Code and Treasury regulations. Any part of the member's interest which is in the form of an individual account described in section 414(k) of the [Internal Revenue] Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the [Internal Revenue] 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 section 2-260, section 2-261, section 2-263, or section 2-264 (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 2-261) 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 [Internal Revenue] Code section 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 section 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 [Internal Revenue] Code section 401(a)(9)(G) and Treasury Regulation section 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 section 401(a)(9) of the [Internal Revenue] Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(2) *distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the 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 2-261.

(Code 1990, § 49-32; Ord. No. 07-04, § 1, 2-12-2007; Ord. No. 2010-07, § 8(8.01), 2-8-2010)

Sec. 2-271. - 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 City Commission of the City of North Port which shall have the effect of reducing the then-vested accrued benefits of members or a member's beneficiary.

(c) *Qualification of system.* It is intended that the system will constitute a qualified pension plan under the applicable provisions of the [Internal Revenue] Code for a qualified plan under [Internal Revenue] Code section 401(a) and a governmental plan under [Internal Revenue] Code section 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 [Internal Revenue] Code as now in effect or hereafter amended, or any other applicable provisions of the United States 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 city contributions.
- (e) *Prohibited transactions.* Effective as of January 1, 1989, a board may not engage in a transaction prohibited by [Internal Revenue] Code section 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 [Internal Revenue] Code section 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) 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 [Internal Revenue] 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 Regulation section 1.401(a)-21.
- (i) *Compliance with F.S. ch. 185.* It is intended that the system will continue to qualify for funding under F.S. § 185.08. Accordingly, unless otherwise required by law, any provision of the system which violates the requirements of F.S. ch. 185, as amended from time to time, shall be superseded by and administered in accordance with the requirements of such chapter.
- (j) *Missing benefit recipients.* The system shall follow the procedures outlined in the IRS Employee Plans Compliance Resolution System (EPCRS) Program and other applicable IRS guidance to locate any missing individuals to whom a full unreduced benefit payment is due and if, at the conclusion of such efforts, the individual cannot be located, the existing procedure of cancelling payments otherwise due (provided that, if the individual is later located, the benefits due shall be paid) will apply.

(Code 1990, § 49-33; Ord. No. 2010-07, § 9(9.01), 2-8-2010; Ord. No. 2020-35, § 2.01, 10-13-2020)

Sec. 2-272. - Repeal or termination of system.

- (a) This division 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 division 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 division, 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 division 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 city if additional assets are required, in which event the city 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 police officer 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 police officer's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the police officer.
 - (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 city, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the city and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the city and the state.
 - (5) The board shall distribute, in accordance with subsection (2), the amounts determined under subsection (3).

If, after 24 months after the date the plan terminated or the date the board received written notice that the contributions thereunder were being permanently discontinued, the city or the board of the fund affected has not complied with all the provisions in this section, the Florida Department of Management Services will effect the termination of the fund in accordance with this section.

(Code 1990, § 49-34; Ord. No. 07-04, § 1, 2-12-2007; Ord. No. 2010-07, § 10(10.01), 2-8-2010)

State Law reference— Termination of plan and distribution of fund, F.S. § 185.37.

Sec. 2-273. - Domestic relations orders; retiree directed payments; exemption from execution; nonassignability.

- (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 City to pay the certified bargaining agent of the City to make payments to insurance companies for insurance premiums if permitted by F.S. ch. 185, and to make any payments for child support or alimony.

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

(Code 1990, § 49-35; Ord. No. 07-04, § 1, 2-12-2007; Ord. No. 08-25, § 4, 5-27-2008)

Sec. 2-274. - 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 division 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 division 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.

(Code 1990, § 49-36; Ord. No. 07-04, § 1, 2-12-2007)

Sec. 2-275. - 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.

(1) Specified offenses are as follows:

- a. The committing, aiding or abetting of an embezzlement of public funds.
- b. The committing, aiding or abetting of any theft by a public officer or employee from employer.
- c. Bribery in connection with the employment of a public officer or employee.
- d. Any felony specified in F.S. ch. 838.
- e. The committing of an impeachable offense.
- f. The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which he or she acts or in which he or she is employed, of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains or attempts to 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 or her public office or employment position.
- g. 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.

(2) Definitions. As used in this section, the following terms shall have the meanings indicated:

Conviction. 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.

Court. 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 of trustees 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 or her case against forfeiture.

(b) Any member who has received benefits from the system in excess of his accumulated contributions after the 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 of trustees may implement all legal action necessary to recover such funds.

(c) Reserved.

(Code 1990, § 49-37; Ord. No. 07-04, § 1, 2-12-2007; Ord. No. 2010-07, § 11(11.01), 2-8-2010)

Sec. 2-276. - Conviction and forfeiture; false, misleading or fraudulent statements.

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

(Code 1990, § 49-38)

Sec. 2-277. - Military service prior to employment.

The years or fractional parts of years that a member serves or has served 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, prior to first and initial employment with the city police department shall be added to his or her years of credited service provided that:

- (1) The member contributes to the fund the sum that he or she would have contributed had he or she been a member of the system for the years or fractional parts of years for which he or she 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.
- (2) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.
- (3) Payment by the member of the required amount shall be made within six months of his or her 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.
- (4) The maximum credit under this section shall be four years.
- (5) Credited service purchased pursuant to this section shall count for all purposes, except vesting and eligibility for not-in-line of duty disability benefits.

(Code 1990, § 49-39; Ord. No. 07-04, § 1, 2-12-2007)

Sec. 2-278. - Indemnification.

- (a) To the extent not covered by insurance contracts in force from time to time, the city 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 the 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 city 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 city immunity from any suit, in whole or part, or waive any other substantive or procedural rights the city may have.
- (c) This section shall not apply nor shall the city be responsible in any manner to defend or pay for claims arising out of acts or omissions of members of the board of trustees which constitute felonies or gross malfeasance or gross misfeasance in office.

(Code 1990, § 49-40; Ord. No. 07-04, § 1, 2-12-2007)

Sec. 2-279. - Excise or license tax.

- (a) There is hereby assessed and imposed upon every insurance company, corporation or other insurer now engaged in or carrying on or who shall hereafter engage in or carry on the business of casualty insurance as shown by the records of the department of insurance an excise or license tax, in addition to any lawful license or excise tax now levied, amounting to 0.85 percent of the gross amount of the receipts of premiums from policyholders on all premiums collected on casualty insurance policies covering property within the corporate limits of the City of North Port.
- (b) In the case of multiple-peril policies with single premium for both property and casualty coverages in such policies, 30 percent of such premium shall be used as a basis for the 85-hundredths-percent tax above.
- (c) Said excise or license tax shall be made payable annually on March 1 of each year.

(Code 1990, § 49-41)

State Law reference— Tax authorized, F.S. § 185.08.

Sec. 2-280. - Cost-of-living adjustment.

Beginning with the effective date hereof, October 1, 1991, all current service retirees and members receiving disability benefits shall receive a benefit increase of 20 percent of the amount of benefit currently being received.

(Code 1990, § 49-42)

Sec. 2-281. - 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.*

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

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 [Internal Revenue] Code section 401(a)(9)(E). However, a nonspouse beneficiary may roll over 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.

Eligible retirement plan. An eligible retirement plan is an individual retirement account described in section 408(a) of the [Internal Revenue] Code; an individual retirement annuity described in section 408(b) of the [Internal Revenue] Code; an annuity plan described in section 403(a) of the [Internal Revenue] Code; effective January 1, 2002, an eligible deferred compensation plan described in section 457(b) of the [Internal Revenue] Code which is maintained by an eligible employer described in section 457(e)(1)(A) of the [Internal Revenue] Code and which agrees to separately account for amounts transferred into such plan from this plan; effective January 1, 2002, an annuity contract described in section 403(b) of the [Internal Revenue] Code; a qualified trust described in section 401(a) of the [Internal Revenue] Code; or effective January 1, 2008, a Roth IRA described in section 408A of the [Internal Revenue] 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.

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 section 401(a)(9) of the [Internal Revenue] 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 [Internal Revenue Code] section 408(a); to an individual retirement annuity described in [Internal Revenue Code] section 408(b); to a qualified defined contribution plan described in [Internal Revenue Code] section 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 [Internal Revenue] Code section 401(a) or to an annuity contract described in [Internal Revenue] Code Section 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) *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 section 401(a) or 403(a) of the [Internal Revenue] Code, from an annuity contract described in section 403(b) of the Code or from an eligible plan under section 457(b) of the [Internal Revenue] Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. 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 section 408(a) or 408(b) of the [Internal Revenue] 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.

(Code 1990, § 49-42.1; Ord. No. 07-04, § 1, 2-12-2007; Ord. No. 2010-07, § 12(12.01), 2-8-2010)

Sec. 2-282. - Family and Medical Leave Act time.

The fractional parts of the 24-month period ending each March 1 that a member is on leave without pay from the city pursuant to the Family and Medical Leave Act (FMLA) shall be added to his or her credited service provided that:

- (1) The member contributes to the fund the sum that he or she would have contributed, based on his or her salary and the member contribution rate in effect at the time that the credited service is requested, had he or she been a member of the system for the fractional parts of the 24 months ending each March 1 for which he or she 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.
- (2) The request for credited service for FMLA leave time for the 24-month period prior to each March 1 and payment of professional fees shall be made on or before March 31.
- (3) Payment by the member of the required amount shall be made on or before April 30 for the preceding 24-month period ending March 1 and shall be made in one lump sum payment upon receipt of which credited service shall be issued.
- (4) Credited service purchased pursuant to this section shall not count toward vesting.

(Code 1990, § 49-42.2; Ord. No. 07-04, § 1, 2-12-2007)

Sec. 2-283. - Deferred retirement option plan.

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

DROP. The City of North Port Police Officer's Deferred Retirement Option Plan.

DROP account. The account established for each DROP participant under subsection (c).

- (b) *Participation.*

- (1) *Eligibility to participate.* In lieu of terminating his or her employment as a police officer, 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) on or after the effective date of the ordinance amending this subsection shall participate in the DROP for not more than 60 months beginning at the time his or her 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 city 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 at the earlier of:
 - [1] The end of his or her period of participation in the DROP as determined under subsection (b)(3); or
 - [2] Termination of his or her employment as a police officer.
- b. Upon the member's termination of participation in the DROP, pursuant to subsection a.[1] 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 or her DROP account. Any amounts remaining in his or her DROP account shall be paid to him or her in accordance with the provisions of subsection (d) when he or she terminates his or her employment as a police officer.
- c. A member who terminates his or her 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 or her accrued benefit under the system shall be determined on the date his or her 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 or she is a participant in the DROP. After a member commences participation, he or she shall not be permitted to again contribute to the system nor shall he or she be eligible for disability or preretirement death benefits, except as provided for in section 2-285, Reemployment after retirement.
- 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 or her employment as a police officer, no amounts shall be paid to him or her from the system until he or she terminates his or her employment as a police officer. 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 or her employment as a police officer.

(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 losses 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 or she would have received under the system had he or she terminated his or her employment as a police officer and elected to receive monthly benefit payments thereunder shall be transferred to his or her DROP account, except as otherwise provided 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 (4), but in no event shall it continue past the date he or she terminates his or her employment as a police officer.

- b. Except as otherwise provided in subsection (b)(4)b., a member's DROP account under this subsection (c)(2) shall be credited after each fiscal year quarter with either:

- [1] Interest at an effective rate of six and one-half (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 of investment return realized by the system for that quarter. "Net investment return" for the purpose of this subsection, 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 or her account to be determined as provided above. The member may, in writing, elect to change his or her election only once during his or her 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 with interest or earnings or debited with losses 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 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 first month of employment following the last month of the permissible period of DROP participation, the member's DROP account will no longer be credited with interest or earnings or debited with losses, 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 police department and no cost-of-living adjustment shall be applied to the member's credit during such period of continued employment. A member employed by the police department after the permissible period of DROP participation will be eligible for preretirement death or disability benefits, and will accrue additional credited service only as provided for in [section 2-285](#).

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

- (1) *Eligibility for benefits.* A member shall receive the balance in his or her DROP account in accordance with the provisions of this subsection (d) upon his or her termination of employment as a police officer. Except as provided in subsection (d)(5), no amounts shall be paid to a member from the DROP prior to his or her termination of employment as a police officer.
- (2) *Form of distribution.*
- a. Unless the member elects otherwise, distribution of his or her DROP account shall be made in a 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. If a member dies before his or her benefit is paid, his or her DROP account shall be paid to his or her beneficiary in such an optional form as his or her 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 this 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 2-281.
- (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 or herself.
 - (2) *Individual accounts, records and reports.* The board shall maintain 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 in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The board shall prepare 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 Internal Revenue 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.
 - (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 city 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 a member or other person entitled to a benefit under the DROP is unable to care for his or her affairs because of illness or accident or is a minor, the board shall direct that any benefit due him or her, shall be made only to a duly appointed legal representative. 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 her or on his or her account under the DROP, shall file with the board the information that it shall require to establish his or her rights and benefits under the DROP.
- (4) *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 or her current address and any subsequent changes in his or her address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him or her 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 or her address.
- (5) *Benefits not guaranteed.* All benefits payable to a member from the member's DROP shall be paid only from the assets of the DROP, and neither the city 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.
- (6) *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 2-283 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.
- (7) *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.
- (8) *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.

(Code 1990, § 49-42.3; Ord. No. 07-04, § 1, 2-12-2007; Ord. No. 2011-06, § 3, 4-25-2011; Ord. No. 2018-53, § 2, 9-25-2018; Ord. No. 2020-35, § 2.01, 10-13-2020)

Sec. 2-284. - Prior police service.

Unless otherwise prohibited by law, and except as provided for in section 2-255, the years or fractional parts of years that a member previously served as a police officer with the city during a period of previous employment and for which period accumulated contributions were withdrawn from the fund, or the years and fractional parts of years that a member served as a police officer for any other municipal, county or state law enforcement department in the state shall be added to his or her years of credited service provided that:

- (1) The member contributes to the fund the sum that he or she would have contributed, based on his or her salary and the member contribution rate in effect at the time that the credited service is requested, had he or she been a member of the plan for the years or fractional parts of years for which he or she 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.
- (2) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.
- (3) Payment by the member of the required amount shall be made within six months of his or her 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.
- (4) The maximum credit under this section for service other than with the city shall be five years of credited service and shall count for all purposes, except vesting and eligibility for not-in-line of duty disability benefits. There shall be no maximum purchase of credit for prior service with the city and such credit shall count for all purposes, including vesting.
- (5) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal, county or state law enforcement department, if such prior service forms or will form the basis of a retirement benefit or pension from a different employer's retirement system or plan as set forth in subsection 2-269(k)(2).
- (6) For purposes of determining credit for prior service as a police officer as provided for in this section, in addition to service as a police officer in this state, credit may be given for federal, other state, or county service if the prior service is recognized by the criminal justice standards and training commission within the department of law enforcement, as provided under F.S. ch. 943, or the police officer provides proof to the board that such service is equivalent to the service required to meet the definition of a police officer under section 2-255, definitions.

(Code 1990, § 49-42.4; Ord. No. 07-04, § 1, 2-12-2007; Ord. No. 2010-07, § 13(13.01), 2-8-2010)

Sec. 2-285. - Reemployment after retirement.

- (a) Any retiree under this system, except for disability retirement as previously provided for, may be reemployed by any public or private employer, except the city, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this system. Reemployment by the city shall be subject to the limitations set forth in this section.
- (b) *After normal retirement.* Any retiree who is retired under normal (or early) retirement pursuant to this system and who is reemployed as a police officer is ineligible to participate in this system, and his or her benefit shall, upon being reemployed, be discontinued and benefit payments shall remain suspended during any such subsequent employment period. Rehired retirees shall become members of the Florida Retirement System.
- (c) Any retiree who is retired under normal retirement pursuant to this system who is reemployed by the city in a position

other than as a police officer, shall upon being reemployed, continue receipt of benefits for the period of any subsequent employment period.

- (d) *After early retirement.* Any retiree who is retired under early retirement pursuant to this system and who subsequently becomes an employee of the city in any capacity, shall discontinue receipt of benefits from the system. If the reemployed person is reemployed as a police officer, he or she shall become a member of the Florida Retirement System, and benefit payments shall remain suspended during any such subsequent employment period. If the reemployed person is not reemployed as a police officer, that person's pension benefit payments shall be ended until the earlier of termination of employment or such time as the reemployed retiree reaches the date that he or she would have been eligible for normal retirement under this system had he or she 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.
- (e) *After disability retirement.*
- (1) Subject to subsection (2) below, any retiree who is retired under section 2-262 of this Code, (a "disability retiree") may, subject to section 2-262(e), physical examination requirement, be reemployed by any public or private employer, and may receive compensation from that employment without limiting or restricting in any way, the retirement benefits payable under this system.
 - (2) Any disability retiree who subsequently becomes an employee of the city in any capacity, except as a police officer, shall discontinue receipt of disability benefits from the system for the period of any such employment.
 - (3) If a disability retiree is reemployed as a police officer for the city, his or her disability benefit shall cease, section 2-262(e) of this Code shall apply, and upon reemployment, he or she shall become a member of the Florida Retirement System.
- (f) *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.
- (g) *DROP participants.* Retirees who 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. No. 07-04, § 1, 2-12-2007; Ord. No. 2020-35, § 2.01, 10-13-2020)

Sec. 2-286. - Supplemental share plan retirement benefit.

- (a) Effective October 1, 2015, there is hereby created a defined contribution plan component to be known as the "supplemental share plan retirement benefit." The supplemental share plan retirement benefit shall consist of an individual share account for each active police officer (including DROP participants) on September 30, 2015. The supplemental share plan retirement benefit shall be funded solely by premium tax revenues received by the city pursuant to F.S. ch. 185. The total initial amount to be allocated to the members' share accounts as provided herein shall be the premium tax revenues received in 2015 in excess of \$280,000.00. For plan years beginning October 1, 2016 and later, all premium tax revenues received by the city pursuant to F.S. ch. 185, in excess of \$280,000.00 shall be allocated to the members' share accounts as provided herein.
- (b) Members' share accounts shall be credited with premium tax revenues and investment earnings or losses, and interest, and distributed as follows:
 - (1) *Annual crediting to member share accounts.*
 - a. For plan years beginning October 1, 2015 and later, all premium tax revenues received during the preceding plan year in excess of \$280,000.00 shall be allocated to the eligible members' share accounts. On or before April 30,

2016 and each April 30 thereafter, the share account of each share member who was a plan member on the preceding September 30th shall be credited with one share of credited service earned during the plan year ending on the same September 30th. The total number of shares thus determined shall be divided into the premium tax revenues received during that plan year in excess of \$280,000.00, to determine the dollar amount credited to the share account of each eligible share plan member and retiree.

- b. Beginning with the allocation for the plan year ending September 30, 2017 and all subsequent plan years, all premium tax revenues received during the preceding plan year in excess of \$280,000.00 shall be allocated to the eligible members' share accounts. Beginning with the September 30, 2017 allocation, "eligible members" shall include not only all active police officer members (including DROP participants), but shall also include any retired member (normal or early retirement and not terminated vested persons) who received an initial share allocation on October 1, 2015. Retired members shall receive a share allocation based on their years of credited service on the date of their retirement and no share allocation shall be made after the retiree's death. Distribution of the share allocation to retirees shall be made each year following the allocation on April 30 and shall be subject to the maximum pension limitations set forth in section 2-269.
- (2) *Investment earnings and losses.* On December 31, 2016 and each December 31 thereafter, the share account of each share member or retiree shall be credited or debited with earnings or losses based upon the amount in the share account at the close of the immediately preceding calendar year at a rate equal to the pension plan's actual net rate of investment return for the preceding plan year.
- (3) *Distribution of share accounts.* A share plan member with ten or more years of credited service upon termination of employment shall be eligible to receive a distribution of 100 percent of the balance in his or her share account, together with all earnings and losses and interest credited to the share account through the date of termination of employment. No benefit shall be payable to a share plan member who terminates employment with less than ten years of credited service. The share account balances of such non-vested terminated members shall be redistributed among all eligible members' and retirees' share accounts in the same manner as the excess premium tax revenues in the following calendar year, or applied to pay administrative expenses of the system. The designated beneficiary of a share plan member who has died shall receive the accumulated total of the member's share account balance at date of death, regardless of the member's length of service. A share plan member awarded a disability pension from the pension plan shall receive the accumulated total of his or her share account balance. There shall be no forfeiture of a member's share account based on the member's death, disability or termination of employment with ten or more years of credited service. Payment of share account benefits shall be by lump sum, which shall consist of the accumulated total balance of the member's share account, or, at the member's direction, the share account balance may be rolled over to another qualified plan in accordance with section 22-7 of the Internal Revenue Code, with an additional payment made for any amount credited in the year following termination of employment.

(Ord. No. 2015-54, § 5, 1-12-2016; Ord. No. 2018-53, § 2, 9-25-2018)

Secs. 2-287—2-301. - Reserved.