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**A BILL TO BE ENTITLED**

AN ORDINANCE OF THE CITY OF NEPTUNE BEACH AMENDING CHAPTER 2, ADMINISTRATION, ARTICLE V, EMPLOYEE BENEFITS, DIVISION 4, POLICE OFFICERS' RETIREMENT SYSTEM, SECTIONS 2-345 THROUGH 2-349.25, INCLUSIVE, OF THE CODE OF ORDINANCES OF THE CITY OF NEPTUNE BEACH; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Neptune Beach Police Officers are presently provided pension and certain other benefits under Ordinances of the City of Neptune Beach and;

WHEREAS, the City Council desires to clarify and restate the provisions of the Police Officers' Retirement System to consolidate all prior ordinances and Code provisions and to incorporate Federal law and the applicable provisions of Chapter 185, Florida Statutes;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEPTUNE BEACH, FLORIDA;

SECTION 1: That Chapter 2, Administration, Article V, Employee Benefits, Division 4, Police Officers' Retirement System, Sections 2-345 through 2-349.25, inclusive, of the Code of Ordinances of the City of Neptune Beach are hereby amended and restated as set forth in the document designated CITY OF NEPTUNE BEACH POLICE OFFICERS' RETIREMENT SYSTEM, attached hereto and made a part hereof.

SECTION 2: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Neptune Beach.

SECTION 3: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 5: That this Ordinance shall become effective upon its adoption.

**VOTE RESULTS OF FIRST READING:**

Mayor Harriet Pruette  
Vice Mayor John Weldon  
Councilor Fred Lee  
Councilor Eric Pardee  
Councilor Kara Tucker

Passed on First Reading this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**VOTE RESULTS OF SECOND AND FINAL READING:**

Mayor Harriet Pruette  
Vice Mayor John Weldon  
Councilor Fred Lee  
Councilor Eric Pardee  
Councilor Kara Tucker

Passed on Second and Final Reading this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Harriet Pruette  
MAYOR

ATTEST:

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Lisa Volpe, CMC  
CITY CLERK

Approved as to form and correctness:

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Christopher A. White  
CITY ATTORNEY

## CITY OF NEPTUNE BEACH POLICE OFFICERS' RETIREMENT SYSTEM

### Sec. 2-345. Definitions.

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

*Accumulated contributions* means a member's own contributions without interest. For those members who purchase credited service with interest or at no cost to the system, any payment representing the amount attributable to member contributions based on the applicable member contribution rate, 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* means a benefit or amount of equal value, based upon the 1983 Group Annuity Mortality Table and an interest rate of eight (8) 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* means one-twelfth ( 1/12) of the average salary of the five (5) best years of the last ten (10) years of credited service prior to retirement, termination, or death, or the career average as a full-time police officer, whichever is greater. A year shall be twelve (12) consecutive months.

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

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

*City* means City of Neptune Beach, Florida.

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

*Credited service* means the total number of years and fractional parts of years of service as a 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 accumulated contributions in the fund for a period of five (5) 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 was a member of the system. If a vested member leaves the employ of the police department, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a police officer with the police department within five (5) years, his accumulated contributions, if one thousand dollars (\$1,000.00) or less, shall be returned. If a member who is not vested is not reemployed within five (5) years, his accumulated contributions, if more than one thousand dollars (\$1,000.00), will be returned only upon the written request of the member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the board. Upon return of a member's accumulated contributions, all of his rights and benefits under the system are forfeited and terminated. Upon any reemployment, a police officer shall not receive credit for the years and fractional parts of years of service for which he has withdrawn his accumulated contributions from the fund, unless the police

officer repays into the fund the contributions he has withdrawn, with interest, as determined by the board, within ninety (90) days after his reemployment.

The years or fractional parts of a year that a member ~~serves 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~~ 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 years of credited service for all purposes, including vesting, provided that:

- (1) The member is entitled to reemployment under the provisions of USERRA.
- (4 2) The member ~~must~~ returns to his employment as a police officer within one (1) year from the earlier of the date of his military discharge or his release from active service., unless otherwise required by USERRA
- ~~(2) The member is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), (P.L.103-353).~~
- (3) The maximum credit for military service pursuant to this paragraph shall be five (5) 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.

*Effective date* means September 2, 1997.

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

*Member* means 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* means the twelve-month period beginning October 1 and ending September 30 of the following year.

*Police officer* means an actively employed full-time person, employed by the city, including his 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.

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

*Retirement* means 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* means 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, tax sheltered, or tax exempt items of income derived from elective employee payroll deductions or salary reductions. Compensation in excess of the limitations set forth in section 401(a)(17) of the Code ~~shall be disregarded 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, 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* means the lawful wife or husband of a member or retiree at the time benefits become payable.

*System* means the City of Neptune Beach Police Officers' Retirement System as contained herein and all amendments thereto.

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

## **Sec. 2-346. 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 three (3) months of the adoption of this provision and all future police chiefs may, within the first three (3) months of employment as 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 and any contributions made after employment and prior to opting out shall be refunded. Thereafter, contributions to the system shall not be required, he shall not be eligible to be elected as a member trustee on the board or vote for a member trustee and shall not be eligible for any other benefits from the plan.

(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 providing for the designation of a beneficiary or beneficiaries.

**Sec. 2-347. Board of trustees.**

(a) The sole and exclusive administration of and responsibility for the proper operation of the system and for making effective the provisions of this division is hereby vested in a board of trustees. The board is hereby designated as the plan administrator. The board shall consist of five (5) trustees, two (2) of whom, unless otherwise prohibited by law, shall be legal residents of the city, who shall be appointed by the Neptune Beach City Council, and two (2) 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 (4) trustees as provided for herein, and such person's name shall be submitted to the city council. Upon receipt of the fifth person's name, the city council shall, as a ministerial duty, appoint such person to the board as its fifth trustee. The fifth trustee shall have the same rights as each of the other four (4) trustees appointed or elected as herein provided and shall serve a ~~two-year~~ four (4) year term unless he sooner vacates the office. Each resident trustee shall serve as trustee for a period of ~~two~~ four (4) years, unless he sooner vacates the office or is sooner replaced by the city council at whose pleasure he shall serve. Each member trustee shall serve as trustee for a period of ~~two (2)~~ four (4) years, unless he sooner leaves the employment of the city as a police officer or otherwise vacates his office as trustee, whereupon a successor shall be chosen in the same manner as the departing trustee. Each trustee may succeed himself in office. DROP participants can be elected as but not vote for elected trustees. The board shall establish and administer the nominating and election procedures for each election. The board shall meet at least quarterly each year. The board shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.

(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 (1) vote on the board. Three (3) affirmative votes shall be necessary for any decision by the trustees at any meeting of the board. A trustee shall have the right to abstain from voting as the result of a conflict of interest provided that trustee complies 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 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 to, the following:

- (1) To construe the provisions of the system and determine all questions arising thereunder.
- (2) To determine all questions relating to eligibility and membership.
- (3) To determine and certify the amount of all retirement allowances or other benefits hereunder.

- (4) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system.
- (5) To distribute to members, at regular intervals, information concerning the system.
- (6) To receive and process all applications for benefits.
- (7) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund.
- (8) To have performed actuarial studies and valuations, at least as often as required by law, to have performance monitoring reports reflecting the manager's comparative performance, performed at least once every three (3) years, 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.

**Sec. 2-348. Finances and fund management.**

*Establishment and operation of fund:*

- (1) 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.
- (2) 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.
- (3) All funds of the system may be deposited by the board with the finance director of the city, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he is liable for the safekeeping of funds for the city. However, any funds so deposited with the finance director of the city shall be kept in a separate fund by the finance director or clearly identified as such funds of the police officers' retirement system. In lieu thereof, the board shall deposit the funds of the police officers' retirement system in a qualified public depository as defined in F.S. § 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of Chapter 280, Florida Statutes. In order to fulfill its investment responsibilities as set forth herein, the board may retain the services of a custodian bank, an investment advisor registered under the Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of 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.
- (4) 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:
  - a. Current amounts of accumulated contributions of members on both an individual and aggregate account basis, and

- b. Receipts and disbursements, and
  - c. Benefit payments, and
  - d. Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city, and
  - e. All interest, dividends and gains (or losses) whatsoever, and
  - f. Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.
- (5) 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.
- (6) 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 council 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 limited to:
    - 1. Annuity and life insurance contracts with life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the members in the fund shall be entitled under the provisions of this system and pay the initial and subsequent premium thereon.
    - 2. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings/building and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.
    - 3. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States or by an agency of the government of the United States.

4. Bonds issued by the State of Israel.
5. Stocks, commingled funds administered by national or state banks, mutual funds and bonds or other evidences of indebtedness, provided that:
  - (i) Except as provided in subparagraph (ii) below, all individually held securities and all securities in a commingled or mutual fund must be issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia and, in the case of bonds only, shall ~~hold a rating in one (1) of the three (3) highest classifications of a major rating service~~ be investment grade.
  - (ii) Up to ~~ten (10)~~ twenty-five (25) percent of the assets of the fund at market value may be invested in foreign securities.
  - (iii) The board shall not invest more than five (5) percent of its assets in the common stock, capital stock, or convertible securities of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five (5) percent of the outstanding capital stock of that company; nor shall the aggregate of its investments in common stock, capital stock and convertible securities at cost exceed sixty (60) percent of the assets of the fund.
- c. At least once every three (3) 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 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 power 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 or other person having an interest in the fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.
- 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.

#### **Sec. 2-349. 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 (8) percent of his salary. Member contributions withheld by the city on behalf of the member shall be deposited with the board immediately after each pay period. The contributions made by each member to the fund shall be designated as employer contributions pursuant to

section 414(h) of the Code. Such designation is contingent upon the contributions being excluded from the members' gross income for federal income tax purposes. For all other purposes of the system, such contributions shall be considered to be member contributions.

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

(b) *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 fund comprising part of this system immediately and under no circumstances more than five (5) 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 fund in an amount equal to the ~~difference in each year, between the total aggregate member contributions for the year, plus state contributions for such year, and the total cost for the year~~ required city contribution, as shown by the ~~most recent~~ applicable actuarial valuation of the system. ~~The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded past service liability as provided in Part VII of Chapter 112, Florida Statutes.~~

(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.

### **Sec. 2-349.1. Benefit amounts and eligibility.**

(a) *Normal retirement date.* A member's normal retirement date shall be the first day of the month coincident with, or next following the earlier of the attainment of age fifty-five (55) and the completion of ten (10) years of credited service, or the completion of twenty-five (25) years of credited service, regardless of age. A member may retire on his normal retirement date or on the first day of any month thereafter, and each member shall become one hundred (100) percent vested in his accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date.

(b) *Normal retirement benefit.* A member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his retirement and be continued thereafter during member's lifetime, ceasing upon death, but with one hundred twenty (120) monthly payments guaranteed in any event. The monthly retirement benefit shall equal two and three-quarters (2.75) percent of average final compensation, for each year of credited service.

(c) *Early retirement date.* A member may retire on his early retirement date which shall be the first day of any month coincident with or next following the attainment of age fifty (50) and the completion of ten (10) 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.

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

- (1) A deferred monthly retirement benefit which shall commence on what would have been his normal retirement date had he continued employment as a police officer and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement on his normal retirement date except that credited service and average final compensation shall be determined as of his early retirement date; or
- (2) An immediate monthly retirement benefit which shall commence on his early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in paragraph (d)(1) above, reduced by three (3) percent for each year by which the commencement of benefits precedes the date which would have been the member's normal retirement date had he continued employment as a police officer.

(e) *Cost-of-living adjustment.* Effective retroactively to January 1, 1998, the monthly benefit being received by every retiree, including disability retirees, joint pensioners and beneficiaries who began receiving monthly benefits before January 1, 1998, shall be increased by three (3) percent.

(f) *Required distribution date.* The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70½) or the calendar year in which the member terminates employment with the city.

#### **Sec. 2-349.2. Pre-retirement death.**

(a) *Prior to vesting or eligibility for retirement.* The beneficiary of a deceased member who was not receiving monthly benefits or who was not yet vested or eligible for early or normal retirement shall receive a refund of one hundred (100) percent of the member's accumulated contributions.

(b) *Deceased members vested or eligible for retirement with spouse as beneficiary.* This subsection (b) applies only when the member's spouse is the sole designated beneficiary. The spouse beneficiary of any member who dies and who, at the date of his death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:

- (1) If the member was vested, but not eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten (10) years, beginning on the date that the deceased member would have been eligible for early or normal retirement, at the option of the spouse beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable. The spouse beneficiary may also elect to receive an immediate benefit, payable for ten (10) years, which is actuarially reduced to reflect the commencement of benefits prior to the early retirement date.
- (2) If the deceased member was eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten (10) years, beginning on the first day of the month following the member's death or at the deceased member's otherwise normal or early retirement date, at the option of the spouse beneficiary. The benefit shall be calculated as for normal retirement based on the deceased

member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable.

- (3) A spouse beneficiary may not elect an optional form of benefit, however, the board may elect to make a lump sum payment pursuant to 2-349.5(g).
- (4) A spouse beneficiary may, in lieu of any benefit provided for in subsection (b)(1) or (2) above, elect to receive a refund of the deceased member's accumulated contributions.
- (5) Notwithstanding anything contained in this section to the contrary, in any event, distributions to the spouse beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by a date selected pursuant to the above provisions in this section that must be on or before December 31 of the calendar year in which the member would have attained 70½.
- (6) If the surviving spouse beneficiary commences receiving a benefit under subsection (1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the spouse beneficiary's estate in a lump sum.

(c) *Deceased Members Vested or Eligible for Retirement with Non-Spouse Beneficiary.* This subsection applies only when the member's spouse is not the beneficiary or is not the sole designated beneficiary, but there is a surviving beneficiary. The beneficiary of any member who dies and who, at the date of his death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:

- (1) If the member was vested, but not eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten (10) years. The benefit will begin by December 31 of the calendar year immediately following the calendar year in which the member died. The benefit will be calculated as for normal retirement based on the deceased member's credited service and average final compensation and actuarially reduced to reflect the commencement of benefits prior to the normal retirement date.
- (2) If the deceased member was eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten (10) years, beginning on the first day of the month following the member's death. The benefit will be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced for early retirement, if applicable.
- (3) A beneficiary may not elect an optional form of benefit, however the board may elect to make a lump sum payment pursuant to Sec. 2-349.5, subsection (g).
- (4) A beneficiary, may, in lieu of any benefit provided for in (1) or (2) above, elect to receive a refund of the deceased member's accumulated contributions.
- (5) If a surviving beneficiary commences receiving a benefit under subsection (1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the surviving beneficiary's estate by December 31 of the calendar year of the beneficiary's death in a lump sum.

- (6) If there is no surviving beneficiary as of the member's death, and the estate is to receive the benefits, the actuarial equivalent of the member's entire interest must be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.
- (7) The Uniform Lifetime Table in Treasury Regulations § 1.401(a)(9)-9 shall determine the payment period for the calendar year benefits commence, if necessary to satisfy the regulations.

### **Sec. 2-349.3. Disability.**

(a) *Disability benefits in-line of duty.* Any member who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a police officer, which disability was directly caused by the performance of his 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 and three-quarter (2.75) percent of his average final compensation multiplied by the total years of credited service, but in any event the minimum amount paid to the member shall be forty-two (42) percent of the average final compensation of the member. Terminated, vested or non-vested persons are not eligible for disability benefits, except that those terminated by the city for medical reasons may apply for a disability within thirty (30) days after termination.

(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 subparagraph shall apply only to those conditions described in this subparagraph that are diagnosed on or after January 1, 1996.

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

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

2. "Emergency rescue or public safety member" means any member employed full time by the city as a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who, in the course of employment, runs a high

risk of occupational exposure to hepatitis, meningococcal meningitis, or tuberculosis and who is not employed elsewhere in a similar capacity. However, the term "emergency rescue or public safety member" does not include any person employed by a public hospital licensed under Chapter 395, Florida Statutes, or any person employed by a subsidiary thereof.

3. "Hepatitis" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C, or any other strain of hepatitis generally recognized by the medical community.
4. "High risk of occupational exposure" means that risk that is incurred because a person subject to the provisions of this subsection, in performing the basic duties associated with his employment:
  - (i) Provides emergency medical treatment in a non-health-care setting where there is a potential for transfer of body fluids between persons;
  - (ii) 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;
  - (iii) 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
  - (iv) 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.
5. "Occupational exposure," in the case of hepatitis, meningococcal meningitis, or tuberculosis, means an exposure that occurs during the performance of job duties that may place a worker at risk of infection.

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

1. In the case of a medical condition caused by or derived from hepatitis, he has not:
  - (i) Been exposed, through transfer of bodily fluids, to any person known to have sickness or medical conditions derived from hepatitis, outside the scope of his employment;

- (ii) Had a transfusion of blood or blood components, other than a transfusion arising out of an accident or injury happening in connection with his present employment, or received any blood products for the treatment of a coagulation disorder since last undergoing medical tests for hepatitis, which tests failed to indicate the presence of hepatitis;
    - (iii) Engaged in unsafe sexual practices or other high-risk behavior, as identified by the Centers for Disease Control or the Surgeon General of the United States or had sexual relations with a person known to him to have engaged in such unsafe sexual practices or other high-risk behavior; or
    - (iv) Used intravenous drugs not prescribed by a physician.
  - 2. In the case of meningococcal meningitis, in the ten (10) days immediately preceding diagnosis he was not exposed, outside the scope of his employment, to any person known to have meningococcal meningitis or known to be an asymptomatic carrier of the disease.
  - 3. In the case of tuberculosis, in the period of time since the member's last negative tuberculosis skin test, he has not been exposed, outside the scope of his employment, to any person known by him to have tuberculosis.
- c. Immunization. Whenever any standard, medically recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is granted under this section, if medically indicated in the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the U.S. Public Health Service, an emergency rescue or public safety member may be required by the 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. This paragraph 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 actively employed member with ten (10) years or more credited service who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a police officer, which disability is not directly caused by the performance of his 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 and three-quarter(2.75) percent of his average final compensation multiplied by the total years of credited service. Terminated, vested or non-vested persons are not eligible for disability benefits, except that those terminated by the city for medical reasons may apply for a disability within thirty (30) days after termination.

(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 employment as a police officer with the City of Neptune Beach 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.* A member shall not become eligible for disability benefits until and unless he undergoes a physical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the board for that purpose. The board shall not select the member's treating physician or surgeon for this purpose except in an unusual case where the board determines that it would be reasonable and prudent to do so.

Any retiree receiving disability benefits under provisions of this division may be required by the board to submit sworn statements of his condition accompanied by a physician's statement (provided at the retiree's expense) to the board annually and may be required by the board to undergo additional periodic re-examinations by a qualified physician or physicians and/or surgeon or surgeons who shall be selected by the board, to determine if such disability has ceased to exist. If the board finds that the retiree is no longer permanently and totally disabled to the extent that he is unable to render useful and efficient service as a police officer, the board shall recommend to the city that the retiree be returned to performance of duty as a police officer, and the retiree so returned shall enjoy the same rights that member had at the time he was placed upon pension. In the event the retiree so ordered to return shall refuse to comply with the order within thirty (30) days from the issuance thereof, he shall forfeit the right to his pension.

The cost of the physical examination and/or reexamination of the member claiming or the retiree receiving disability benefits shall be borne by the fund. All other reasonable costs as

determined by the board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the fund.

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

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

(f) *Disability payments.* The monthly benefit to which a member is entitled in the event of the member's disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be:

- (1) If the retiree recovers from the disability ~~prior to his normal retirement date~~, the payment due next preceding the date of such recovery, or
- (2) If the retiree dies without recovering from disability ~~or attains his normal retirement date while still disabled~~, the payment due next preceding his death or the 120th monthly payment, whichever is later.

Provided, however, the disability retiree may select, at any time prior to the date on which benefit payments begin, an optional form of benefit payment as described in subsection 2-349.5(a)(1) or (2), which shall be the actuarial equivalent of the normal form of benefit.

(g) *Workers' compensation.* When a retiree is receiving a disability pension and workers' compensation benefits pursuant to Chapter 440, Florida Statutes, for the same disability, and the total monthly benefits received from both exceed one hundred (100) percent of the member's average monthly wage, as defined in Chapter 440, Florida Statutes, the disability pension benefit shall be reduced so that the total monthly amount received by the retiree does not exceed one hundred (100) percent of such average monthly wage. The amount of any lump sum workers' compensation payment shall be converted to an equivalent monthly benefit payable for ten (10) years certain by dividing the lump sum amount by 83.9692. Notwithstanding the foregoing, in no event shall the disability pension benefit be reduced below the greater of forty-two (42) percent of average final compensation or two (2) percent of average final compensation times years of credited service.

#### **Sec. 2-349.4. Vesting.**

If a member terminates his 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 (10) years credited service upon termination, the member shall be entitled to a refund of his accumulated contributions or the member may leave it deposited with the fund.
- (2) If the member has ten (10) or more 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 commencing at the member's otherwise normal or early retirement date, determined as if he had remained employed, provided he does not elect to withdraw his accumulated contributions and provided the member survives to his otherwise normal or early retirement date. If the member does not withdraw his accumulated contributions and does not survive to his otherwise normal or early retirement date, his designated beneficiary shall be entitled to a benefit as provided herein for a deceased member, vested or eligible for retirement under pre-retirement death.

#### **Sec. 2-349.5. 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 (1) of the following options:

- (1) A retirement income of a monthly amount payable to the retiree for his lifetime only.
- (2) A retirement income of a modified monthly amount, payable to the retiree during the lifetime of the retiree and following the death of the retiree, one hundred (100) percent, seventy-five (75) percent, sixty-six and two-thirds ( $66 \frac{2}{3}$ ) percent or fifty (50) percent of such monthly amount payable to a joint pensioner for his lifetime. Except where the retiree's joint pensioner is his spouse, the 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 2-349.24, the member may elect a percentage of benefit in a lump sum as follows:
  - a. Ten (10) percent of the total actuarial equivalent value of the benefit paid as a lump sum benefit with the remaining ninety (90) percent paid under the normal form or as per (1), (2) or (3) above.
  - b. Fifteen (15) percent of the total actuarial equivalent value of the benefit paid as a lump sum benefit with the remaining eighty-five (85) percent paid under the normal form or as per (1), (2) or (3) above.
  - c. Twenty (20) percent of the total actuarial equivalent value of the benefit paid as a lump sum benefit with the remaining eighty (80) percent paid under the normal form or as per (1), (2) or (3) above.

- d. Twenty-five (25) percent of the total actuarial equivalent value of the benefit paid as a lump sum benefit with the remaining seventy-five (75) percent paid under the normal form or as per (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 member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. A member may change his beneficiary at any time. If a member has elected an option with a joint pensioner and the member's retirement income benefits have commenced, the member may thereafter change his designated beneficiary at any time, but may only change his joint pensioner 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 retirement shall be paid as provided in section 2-349.6.

(e) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:

- (1) If a member dies prior to his normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under section 2-349.2.
- (2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the member's retirement under the system, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the member upon his retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the member prior to his retirement.
- (3) If both the retiree and the beneficiary (or beneficiaries) designated by member or retiree die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection (a), the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 2-349.6.
- (4) If a member continues beyond his normal retirement date pursuant to the provisions of section 2-349.1(a), and dies prior to his actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the

option to a beneficiary (or beneficiaries) designated by the member in the amount or amounts computed as if the member had retired under the option on the date on which his death occurred.

(5) The Member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70½) or the calendar year in which the member terminates employment with the city.

(f) A retiree may not change his retirement option after the date of cashing or depositing his first retirement check.

(g) Notwithstanding anything herein to the contrary, the board in its discretion, may elect to make a lump sum payment to a member or a member's beneficiary in the event that the ~~monthly benefit amount is less than one hundred dollars (\$100.00) or the total commuted value of the remaining monthly income payments to be paid do not exceed five thousand dollars (\$5,000.00)~~ total commuted value of the monthly income payments to be paid do not exceed one thousand dollars (\$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.

#### **Sec. 2-349.6. Beneficiaries.**

(a) Each member or retiree may, on a form provided for that purpose, signed and filed with the board, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his death. Each designation may be revoked or changed by such member or retiree by signing and filing with the board a new designation-of-beneficiary form. Upon such change, the rights of all previously designated beneficiaries to receive any benefits under the system shall cease.

(b) If a deceased member or retiree failed to name a beneficiary in the manner prescribed in subsection (a), or if the beneficiary (or beneficiaries) named by a deceased member or retiree predeceases the member or retiree, the death benefit, if any, which may be payable under the system with respect to such deceased member or retiree, shall be paid to the estate of the member or retiree and the board, in its discretion, may direct that the commuted value of the remaining monthly income benefits be paid in a lump sum.

(c) Any payment made to any person pursuant to this section shall operate as a complete discharge of all obligations under the system with regard to the deceased member and any other persons with rights under the system and shall not be subject to review by anyone but shall be final, binding and conclusive on all persons ever interested hereunder.

#### **Sec. 2-349.7. 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.

#### **Sec. 2-349.8. Reports to division of retirement.**

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

#### **Sec. 2-349.9. Roster of retirees.**

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

#### **Sec. 2-349.10. Reserved.**

Editor's note: Ord. No. 2000-05, adopted July 3, 2000, repealed section 2-349.10, board attorney and professionals, in its entirety. The former provision derived from Ord. No. 1997-10, § 15, adopted Sept. 2, 1997.

#### **Sec. 2-349.11. Maximum pension.**

~~(a) — *Basic limitation.* Subject to the adjustments hereinafter set forth, the maximum amount of annual retirement income payable with respect to a member under this system shall not exceed one hundred sixty thousand dollars (\$160,000.00).~~

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

- ~~(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 section 415(b)(1) of the Code.~~

~~(b) — *Participation in other defined benefit plans.* The limitation 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 section 414(j) of the Code) maintained by the city shall apply as if the total benefits payable under all defined benefit plans in which the member has been a member were payable from one (1) plan.~~

~~(c) — *Adjustments in limitations.*~~

- ~~(1) — In the event the member's retirement benefits become payable before age sixty-two (62), the one hundred sixty thousand dollar (\$160,000.00) limitation 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 limitation (as so reduced) equals an annual benefit (beginning when such~~

~~retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000.00) annual benefit beginning at age sixty-two (62).~~

~~(2) — In the event the member's benefit is based on at least fifteen (15) years of credited service, the adjustments provided for in (1) above shall not apply.~~

~~(3) — The reductions provided for in (1) above shall not be applicable to disability benefits paid pursuant to section 2-349.3 or pre-retirement death benefits paid pursuant to section 2-349.2.~~

~~(4) — In the event the member's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the limitation set forth in subsection (a) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). This adjustment shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.~~

~~(d) — *Less than ten years of service.* The maximum retirement benefits payable under this section to any member who has completed less than ten (10) 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 (10). This reduction shall be applicable to disability benefits paid pursuant to section 2-349.3 or pre-retirement death benefits paid pursuant to section 2-349.2.~~

~~(e) — *Ten-thousand-dollar limit.* Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the limitations set forth in this section 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 ten thousand dollars (\$10,000.00) for the applicable plan year and for any prior plan year and the city has not at any time maintained a qualified defined contribution plan in which the member participated.~~

~~(f) — *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.~~

~~(g) — *Cost of living adjustments.* The limitations as stated in subsections (a), (b) and (c) herein shall be adjusted to the time payment of a benefit begins in accordance with any cost of living adjustments prescribed by the Secretary of the Treasury pursuant to section 415(d) of the Code.~~

~~(h) — *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 one hundred (100) percent of his average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost of living increases or adjustments.~~

- ~~(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.~~

(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), 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.

(b) *Adjustments to Basic Limitation for Form of Benefit.* If the form of benefit without regard to any benefit increase feature is not a straight life annuity, then the Code Section 415(b) limit applicable at the annuity starting date is reduced 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 death benefits under the form of benefit.

(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 §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).

(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 calendar year of benefit payments without regard to any automatic cost of living adjustments;
- (2) thereafter, in any subsequent calendar 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 calendar 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 sixty-two (62), the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Code 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 one hundred sixty thousand dollar (\$160,000) annual benefit beginning at age sixty-two (62).
- (2) In the event the member's benefit is based on at least fifteen (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 Sec. 2-349.3, or pre-retirement death benefits paid pursuant to Sec. 2-349.2.
- (4) In the event the member's retirement benefit becomes payable after age sixty-five (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 sixty-five (65). This adjustment shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

(f) *Less than Ten (10) Years of Service.* The maximum retirement benefits payable under this section to any member who has completed less than ten (10) 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 (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10%. The reduction provided for in this subsection shall not be applicable to disability benefits paid pursuant to Sec. 2-349.3, or pre-retirement death benefits paid pursuant to Sec. 2-349.2.

(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) *Ten Thousand Dollar (\$10,000) Limit.* Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this section 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 ten thousand dollars (\$10,000) for the applicable plan year and for any prior plan year and the City has not any time maintained a qualified defined contribution plan in which the member participated.

(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 2-349.22 and 2-349.23, 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).
- 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 c., 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 c.

(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.

- (3) For purposes of applying the limits in this subsection (j), only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a calendar 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 calendar 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 calendar 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 calendar year will also include compensation paid by the later of 2½ months after an employee's severance from employment or the end of the calendar 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.
- (4) 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 (j)(4)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.

(k) 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 one hundred percent (100%) 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.

#### **Sec. 2-349.12. Minimum distribution of benefits.**

(a) *General rules.*

(1) *Effective date.* Effective as of January 1, 1989, the plan will pay all benefits in accordance with a good faith interpretation of the requirements of Code Section 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of 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) *Requirements of treasury regulations incorporated.* All distributions required under this section will be determined and made in accordance with the treasury regulations under Section 401(a)(9) of the Code.~~

(4 ~~3~~) *TEFRA Section 242(b)(2) elections.* Notwithstanding the other provisions of this section other than this subsection ~~(a)(4)~~ (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 seventy and one-half (70 1/2) or the calendar year in which the member ~~retires unless otherwise provided for in the plan or required by law~~ 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 seventy and one-half (70 1/2), 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.
- (3 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 ~~of subsections (c), (d) and (e) of~~ with this section. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions there under will be made in accordance with the

requirements of Section 401(a)(9) of the Code and Treasury regulations. Any part of the member's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and Treasury regulations that apply to individual accounts.

- (c) *Determination of amount to be distributed each year.*
- (1) *General ~~annuity~~ 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 (1) year.
  - b. ~~The distribution period will be over a life (or lives) or over a period certain not longer than the period described in subsection (d) or (e). The member's entire interest must be distributed pursuant to Sec. 2-349.1, Sec. 2-349.2, Sec. 2-349.4, or Sec. 2-349.5 (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.~~
  - c. ~~Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted.~~
  - d. ~~Payments will either be nonincreasing or increase only as follows:~~
    - 1. ~~By an annual percentage increase that does not exceed the cumulative annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics or by a fixed annual increase of five (5) percent or less.~~
    - 2. ~~To the extent of the reduction in the amount of the member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in subsection (d) dies or is no longer the member's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p).~~
    - 3. ~~To provide cash refunds of accumulated contributions upon the member's death.~~
    - 4. ~~To pay increased benefits that result from a plan amendment.~~
- (2) *Amount required to be distributed by required beginning date.* The amount that must be distributed on or before the member's required beginning date (or, if the member dies before distributions begin, the date distributions are required to begin under ~~subsection (b)(2) Sec. 2-349.2~~) is the payment that is required for one (1) payment interval. The second payment need not be made until the end of the next

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

(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) — Requirements for annuity distributions that commence during a member's lifetime.~~

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

~~(2) — Period certain annuities.~~ Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime may not exceed the applicable distribution period for the member under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the member reaches age seventy (70), the applicable distribution period for the member is the distribution period for age seventy (70) under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the treasury regulations plus the excess of seventy (70) over the age of the member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the member's applicable distribution period, as determined under this subsection (d)(2), or the joint life and last survivor expectancy of the member and the member's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the treasury regulations, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

~~(e) — Requirements for minimum distributions where member dies before date distributions begin.~~

~~(1) — Member survived by designated beneficiary.~~ If the member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the member's entire interest will be distributed, beginning no later than the time described in subsection (b)(2)a. or (b)(2)b., over the life of the designated beneficiary or over a period certain not exceeding:

- a. ~~Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death.~~
- b. ~~If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year the contains the annuity starting date.~~
- (2) ~~*No designated beneficiary.* If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.~~
- (3) ~~*Death of surviving spouse before distributions to surviving spouse begin.* If the member dies before the date distribution of his interest begins, the member's surviving spouse is the member's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this subsection (e) will apply as if the surviving spouse were the member, except that the time by which distributions must begin will be determined without regard to subsection (b)(2)a.~~
- (d) *General distribution rules.*
- (1) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Code 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 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% 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 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 ~~subsection (b)(2)~~ Sec. 2-349.2.

~~(3) *Life expectancy.* Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the treasury regulations.~~

~~(4) *Required beginning date.* The date specified in subsection (b)(1).~~

### **Sec. 2-349.13. Miscellaneous provisions.**

(a) *Interest of members in system.* ~~At~~ 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 council of the city which shall have the effect of reducing the then vested accrued benefits of members or a member's beneficiaries.

(c) *Qualification of system.* It is intended that the system will constitute a qualified public pension plan under the applicable provisions of the Code for a qualified plan under Code Section 401(a) and a governmental plan under 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 Code as now in effect or hereafter amended, or any other applicable provisions of the U.S. Federal Tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder.

(d) *Use of forfeitures.* Forfeitures arising from terminations of service of members shall serve only to reduce future city contributions.

(e) *Prohibited Transactions.* Effective as of January 1, 1989, a board may not engage in a transaction prohibited by 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 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% 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% vested in all accrued benefits, to the extent funded, if the plan is terminated or experiences a complete discontinuance of employer contributions.

(h) *Electronic Forms.* In those circumstances where a written election or consent is not required by the plan or the Code, an oral, electronic, or telephonic form in lieu of or in addition to a written form may be prescribed by the board. However, where applicable, the board shall comply with Treas. Reg. § 1.401(a)-21.

(e 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.

#### **Sec. 2-349.14. 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 benefitting 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, ~~except to the extent that the assets of the fund may be determined to be inadequate.~~

(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 Chapter 121, Florida Statutes, 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 ordinance 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 ~~the assets of the system shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled in accordance with the provisions thereof~~ such benefits shall be nonforfeitable.

~~(c) — The following shall be the order of priority for purposes of allocating the assets of the system as of the date of repeal of this division, or if contributions to the system are discontinued with the date of such discontinuation being determined by the board.~~

~~(1) — Apportionment shall first be made in respect of each retiree receiving a retirement or disability benefit hereunder on such date, each person receiving a benefit on such date on account of a retired or disabled (but since deceased) member, and each member who has, by such date, become eligible for normal retirement but has not yet retired, an amount which is the actuarial equivalent of such benefit, provided that, if such asset value be less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.~~

~~(2) — If there be any asset value remaining after the apportionment under paragraph (c)(1), apportionment shall next be made in respect of each member in the service of the city on such date who is vested and who is not entitled to an apportionment under paragraph (c)(1), in the amount required to provide the actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions), based on the credited service and average final compensation as of such date, and each vested former member then entitled to a deferred benefit who has not, by such date, begun receiving benefit payments, in the amount required to provide said actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions), provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~(3) — If there be any asset value after the apportionments under paragraphs (c)(1) and (2), apportionment shall be made in respect of each member in the service of the city on such date who is not entitled to an apportionment under paragraphs (c)(1) and (2) in the amount equal to member's accumulated contributions, provided that, if such remaining asset value be less than the~~

~~aggregate of the amounts apportioned hereunder such latter amount shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~(4) — If there be any asset value remaining after the apportionments under subsections (c)(1), (2), and (3), apportionment shall lastly be made in respect of each member included in subsection (c)(3) above to the extent of the actuarial equivalent of the nonvested accrued normal retirement benefit, less the amount apportioned in subsection (c)(3), based on the credited service and average final compensation as of such date, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such amounts shall be reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~(5) — In the event that there be asset value remaining after the full apportionment specified in subsections (c)(1), (2), (3), and (4), such excess shall be returned to the city, less return of the state's contributions to the state, provided that, if the excess is less than the total contributions made by the city and the state to the date of termination such excess shall be divided proportionately to the total contributions made by the city and the state.~~

~~The allocation of the fund provided for in this subsection may, as decided by the board, be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this subsection. The fund may be distributed in one (1) sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the board may direct. The fund may be continued in existence for purposes of subsequent distributions.~~

~~If, at any time during the first ten (10) years after the effective date of the division originally establishing this system, the system shall be terminated or the full current costs of the system shall not have been met, anything in the system to the contrary notwithstanding, city contributions which may be used for the benefit of any one (1) of the twenty five (25) highest paid members on the effective date, whose anticipated annual retirement allowance provided by the city's contributions at member's normal retirement date would exceed one thousand five hundred dollars (\$1,500.00), shall not exceed the greater of either a) twenty thousand dollars (\$20,000.00), or b), an amount computed by multiplying the smaller of ten thousand dollars (\$10,000.00) or twenty (20) percent of such member's average annual earnings during his last five (5) years of service by the number of years of service since the effective date. In the event that it shall hereafter be determined by statute, court decision, ruling by the Commissioner of Internal Revenue, or otherwise, that the provisions of this paragraph are not then necessary to qualify the system under the Code, this paragraph shall be ineffective without the necessity of further amendment of this division.~~

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

(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 twenty-four (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.

**Sec. 2-349.15. 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~~ as permitted by Chapter 185, Florida Statutes, and to make any payments for child support or alimony.
- (c) *Exemption from execution, non-assignability.* Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to any person under the

provisions of 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.

**Sec. 2-349.16. 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 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.

**Sec. 2-349.17. Forfeiture of pension.**

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

- (1) The committing, aiding or abetting of an embezzlement of public funds;
- (2) The committing, aiding or abetting of any theft by a public officer or employee from employer;
- (3) Bribery in connection with the employment of a public officer or employee;
- (4) Any felony specified in Chapter 838, Florida Statutes.
- (5) The committing of an impeachable offense.
- (6) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he acts or in which he is employed, of the right to receive the faithful performance of his duty as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his public office or employment position.
- (7) The committing on or after October 1, 2008, of any felony defined in Section 800.04, Florida Statutes, against a victim younger than sixteen (16) years of age, or any felony defined in Chapter 794, Florida Statutes, against a victim younger than eighteen (18) years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

(b) Conviction shall be defined as an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or a nolo contendere; a jury verdict of guilty when adjudication of

guilt is withheld and the accused is placed on probation; or a conviction by the senate of an impeachable offense.

(c) Court shall be defined as any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the board shall hold a hearing on which notice shall be given to the member whose benefits are being considered for forfeiture. Said member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the member shall be afforded a full opportunity to present his case against forfeiture.

(d) Any member who has received benefits from the system in excess of his accumulated contributions after member's rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his accumulated contributions. The board may implement all legal action necessary to recover such funds.

**Sec. 2-349.17.1. Conviction and forfeiture; false, misleading or fraudulent statements.**

(a) It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement or withhold or conceal material information to obtain any benefit from the system.

(b) A person who violates subsection (a) commits a misdemeanor of the first degree, punishable as provided in F.S. §§ 775.082 or 775.083.

(c) In addition to any applicable criminal penalty, upon conviction for a violation described in subsection (a), a member or beneficiary of the system may, in the discretion of the board, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled under the system. For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

**Sec. 2-349.18. 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 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 which constitute felonies or gross malfeasance or gross misfeasance in office.

**Sec. 2-349.19. Direct transfers of eligible rollover distributions.**

(a) *Rollover distributions.*

(1) *General.* This section applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the system to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) *Definitions.*

a. *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income. Any 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 section 408(a); to an individual retirement annuity described in section 408(b); or to a qualified defined contribution plan described in 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 Code Section 401(a) or to an annuity contract described in 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. *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in section 408(a) of the Code; an individual retirement annuity described in section 408(b) of the Code; an annuity plan described in section 403(a) of the Code; effective January 1, 2002, an eligible deferred compensation plan described in section 457(b) of the Code which is maintained by an eligible employer described in section 457(e)(1)(A) of the Code and which agrees to separately account for amounts transferred into such plan from this plan; effective January 1, 2002, an annuity contract described in section 403(b) of the Code; or a

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

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

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

- (1) Transfers and direct rollovers or member rollover contributions from other plans. The system will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in section 401(a) or 403(a) of the Code, from an annuity contract described in section 403(b) of the Code or from an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. 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 Code that is eligible to be rolled over ~~and would otherwise be includable in gross income.~~

(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 one thousand dollars (\$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.

#### **Sec. 2-349.20. Family and Medical Leave Act.**

The fractional parts of the twelve-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 credited service provided that:

- (1) The member contributes to the fund the sum that he would have contributed, based on his salary and the member contribution rate in effect at the time that the credited service is requested, had he been a member of the system for the fractional parts of the twelve (12) months ending each March 1 for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of periods of credited service.
- (2) The request for credited service for FMLA leave time for the twelve-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 twelve-month period ending March 1 and shall be made in one (1) 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.

**Sec. 2-349.21. Reserved.**

Editor's note: Ord. No. 2000-05, adopted July 3, 2000, repealed section 2-349.21, separation from employment for military service, in its entirety. The former provision derived from Ord. No. 1997-10, § 26, adopted Sept. 2, 1997.

**Sec. 2-349.22. Military service prior to employment.**

The years or fractional parts of years that a police officer serves or has served on active duty in the active military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily, honorable or under honorable conditions, prior to first and initial employment with the city police department shall be added to his years of credited service provided that:

- (1) The member contributes to the fund the sum that he would have contributed based upon his salary and the member contribution rate in effect at the time the credited service is requested had he been a member of the system for the years or fractional parts of years for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.
- (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 (6) months of his request for credit, but not later than the retirement date, and shall be made in one (1) lump sum payment upon receipt of which credited service shall be given or the member may elect to make payment for the requested credited service over a period of time as provided for in subsection (6) below.
- (4) The maximum credit under this section shall be ~~three (3)~~ five (5) 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.

- (6) In lieu of the lump sum payment provided for in subsection (3) above, a member may elect to make payments over a period of time in order to fully pay the amount provided for in subsection (1). The payment plan provided for in this subsection shall be subject to the following terms:
- a. The principal amount to be paid shall be determined as set forth in subsection (1) above.
  - b. The original principal amount shall be amortized over the period beginning with the first payment and ending no later than sixty (60) months from the date of the first payment.
  - c. Payments shall consist of principal and interest at a rate of eight (8) percent per annum.
  - d. Payments shall be made by payroll deduction from each paycheck on an after-tax basis.
  - e. In the event that a member dies, retires (including entry into any deferred retirement option plan (DROP)) or otherwise terminates his employment, without having made full payment of the principal amount necessary to receive all credited service requested, the member shall receive so much of the credited service requested, determined using procedures established by the actuary, which could be purchased with the amount of principal paid by the member to the date of his death or termination of employment.
  - f. In the event that the member's employment is terminated for any reason and he is not entitled to any benefit from the system other than the return of the amounts he has had deducted from his paycheck as his normal contribution to the system, the amounts which the member has paid pursuant to this subsection to purchase additional credited service, shall be returned to him, less all interest paid.

**Sec. 2-349.23. Prior police officer service.**

Unless otherwise prohibited by law, and except as provided for in subsection (1) below, 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 of Florida shall be added to his years of credited service provided that:

- (1) The member contributes to the fund the sum that he would have contributed, based on his salary and the member contribution rate in effect at the time that the credited service is requested, had he been a member of this system for the years or fractional parts of years for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.
- (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 (6) months of his request for credit, but not later than the retirement date, and shall be made in one (1) lump sum payment upon receipt of which credited service shall be given or the member may elect to make payment for the requested credited service over a period of time as provided for in subsection ~~(6)~~ (7) below.
- (4) The maximum credit under this section for service other than with the city shall be five (5) 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 2-349.11~~(h)(2)~~ (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 Chapter 943, Florida Statutes, 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 Sec. 2-345, above.
- ~~(6)~~ (7) In lieu of the lump sum payment provided for in subsection (3) above, a member may elect to make payments over a period of time in order to fully pay the amount provided for in subsection (1). The payment plan provided for in this subsection shall be subject to the following terms:
- a. The principal amount to be paid shall be determined as set forth in subsection (1) above.
  - b. The original principal amount shall be amortized over the period beginning with the first payment and ending no later than sixty (60) months from the date of the first payment.
  - c. Payments shall consist of principal and interest at a rate of eight (8) percent per annum.
  - d. Payments shall be made by payroll deduction from each paycheck on an after-tax basis.
  - e. In the event that a member dies, retires (including entry into any deferred retirement option plan (DROP)) or otherwise terminates his employment, without having made full payment of the principal amount necessary to receive all credited service requested, the member shall receive so much of the credited service requested, determined using procedures established by the actuary, which could be purchased with the amount of principal paid by the member to the date of his death or termination of employment.

- f. In the event that the member's employment is terminated for any reason and he is not entitled to any benefit from the system other than the return of the amounts he has had deducted from his paycheck as his normal contribution to the system, the amounts which the member has paid pursuant to this subsection to purchase additional credited service, shall be returned to him, less all interest paid.

**Sec. 2-349.24. Deferred retirement option plan.**

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

DROP means the City of Neptune Beach Police Officers' Retirement System Deferred Retirement Option Plan.

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

- (b) *Participation.*

- (1) *Eligibility to participate.* In lieu of terminating his 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 fifteen (15) business days after it is received by the board.

- (3) *Period of participation.* A member who elects to participate in the DROP under subsection (b)(2), shall participate in the DROP for a period not to exceed sixty (60) months beginning at the time his election to participate in the DROP first becomes effective. An election to participate in the DROP shall constitute an irrevocable election to resign from the service of the 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 permissible period of participation in the DROP as determined under subsection (b)(3); or
- 2. Termination of his employment as a police officer.

- b. Upon the member's termination of participation in the DROP, pursuant to subsection 1. above, all amounts provided for in subsection (c)(2), including monthly benefits and investment earnings or losses, shall cease to be transferred from the system to his DROP account. Any amounts remaining in his DROP account shall be paid to him in accordance with the provisions of subsection (d), when he terminates his employment as a police officer.

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

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

- a. A member's credited service and his accrued benefit under the system shall be determined on the date his election to participate in the DROP first becomes effective. For purposes of determining the accrued benefit, the member's salary for the purposes of calculating his average final compensation shall include an amount equal to any lump sum payments which would have been paid to the member and included as salary as defined herein, had the member retired under normal retirement and not elected DROP participation. Member contributions attributable to any lump sums used in the benefit calculation and not actually received by the member shall be deducted from the first payments to the member's DROP Account. The member shall not accrue any additional credited service or any additional benefits under the system (except for any additional benefits provided under any cost-of-living adjustment for retirees in the system) while he is a participant in the DROP. After a member commences participation, he shall not be permitted to again contribute to the system nor shall he be eligible for disability or pre-retirement death benefits, except as provided for in section 2-349.25, 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 employment as a police officer, no amounts shall be paid to him from the system until he terminates his 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 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 on those amounts.

(2) *Transfers from retirement system.*

- a. As of the first day of each month of a member's period of participation in the DROP, the monthly retirement benefit he would have received under the system had he terminated his employment as a police officer and elected to receive monthly benefit payments thereunder shall be transferred to his DROP account, except as otherwise provided for in subsection (b)(4)b. A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (b)(3) and (b)(4), but in no event shall it continue past the date he terminates his employment as a police officer.
- b. Except as otherwise provided in subsection (b)(4)b., a member's DROP account under this subsection (c)(2) shall be debited or credited with

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

- c. A member's DROP Account shall only be credited or debited with earnings 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 or debited with earnings, nor will monthly benefits be transferred to the DROP account. All such non-transferred amounts shall be forfeited and continue to be forfeited while the member is employed by the police department and no cost-of-living adjustments shall be applied to the member's benefit during such period of continued employment. A member employed by the police department after the permissible period of DROP participation will be eligible for pre-retirement death or disability benefits, and will accrue additional credited service only as provided for in section 2-349.25.

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

- (1) *Eligibility for benefits.* A member shall receive the balance in his DROP account in accordance with the provisions of this subsection, upon his 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 termination of employment as a police officer.

(2) *Form of distribution.*

- a. Unless the member elects otherwise, distribution of his DROP account shall be made in a lump sum subject to the direct rollover provisions set forth in subsection (d)(6). A member may elect, in such time and manner as the board shall prescribe, to receive an optional form of benefit described below.

- ~~4-~~ Until the value of the member's DROP account is completely depleted, payments in approximately equal quarterly or annual installments over a period, designated by the member, not to exceed the life expectancy of the last survivor of the member and his beneficiary. In the event that the member dies before all installments have been paid, the remaining balance in his DROP account shall be paid in an immediate lump sum to his beneficiary, or if none is designated, then to the member's estate.

~~2. The purchase of a nonforfeitable fixed annuity payable in such form as the member may elect. Elections under this clause 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 benefit is paid, his DROP account shall be paid to his beneficiary in such optional form as his beneficiary may select. If no beneficiary designation is made, the DROP account shall be distributed to the member's estate.

(3) *Date of payment of distribution.* Except as otherwise provided in this subsection (d), distribution of a member's DROP account shall be made as soon as administratively practicable following the member's termination of employment. Distribution of the amount in a member's DROP account will not be made unless the member completes a written request for distribution and a written election, on forms designated by the board, to either receive a cash lump sum or a rollover of the lump sum amount.

(4) *Proof of death and right of beneficiary or other person.* The board may require and rely upon such proof of death and such evidence of the right of any Beneficiary or other person to receive the value of a deceased member's DROP account as the board may deem proper and its determination of the right of that beneficiary or other person to receive payment shall be conclusive.

(5) *Distribution limitation.* Notwithstanding any other provision of 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 2-349.19.

(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 (1) or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical, accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP; and may allocate among themselves or delegate to other persons all or such portion of their duties under the DROP, other than those granted to them as trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A trustee shall not vote on any question relating exclusively to himself.

(2) *Individual accounts, records and reports.* The board shall maintain 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 distribute to members participating in the DROP and other individuals or file with the appropriate governmental agencies, as the case may be, all necessary descriptions, reports, information returns, and data required to be distributed or filed for the DROP pursuant to the Code and any other applicable laws.

- (3) *Establishment of rules.* Subject to the limitations of the DROP, the board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The board shall have discretionary authority to construe and interpret the DROP (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in the DROP). The determination of the board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law.
- (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 affairs because of illness or accident or is a minor, the board shall direct that any benefit due him 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 on his account under the DROP, shall file

with the board the information that it shall require to establish his rights and benefits under the DROP.

- (4) *Prevention of escheat.* If the board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the board may, no earlier than three (3) years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the board or the city. If such person has not made written claim therefor within three (3) months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the DROP, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the DROP. Upon such cancellation, the DROP shall have no further liability therefor except that, in the event such person or his beneficiary later notifies the board of his whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.
- (5) *Written elections, notification.*
  - a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the board in a time and manner determined by the board under rules uniformly applicable to all employees similarly situated. The board reserves the right to change from time to time the manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.
  - b. Each member or retiree who has a DROP account shall be responsible for furnishing the board with his current address and any subsequent changes in his address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him at the last such address given to the board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the board of his address.
- (6) *Benefits not guaranteed.* All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP account and neither the 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.
- (7) *Construction.*
  - a. The DROP shall be construed, regulated and administered under the Laws of Florida, except where other applicable law controls.
  - b. The titles and headings of the subsections in this section are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

- (8) *Forfeiture of retirement benefits.* Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.
- (9) *Effect of DROP participation on employment.* Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

#### **Sec. 2-349.25. 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 and, by virtue of that reemployment, is eligible to participate in this system, shall upon being reemployed, discontinue receipt of benefits. Upon reemployment, the member shall be deemed to be fully vested and the additional credited service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon retirement shall be based upon the benefit accrual rate, average final compensation, and credited service (and early retirement reduction factor, if applicable) as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average final compensation (based only on the subsequent employment period and not including any period of DROP participation), and credited service (and early retirement reduction factor, if applicable) as of the date of subsequent retirement. The amount of any death or disability benefit received during a subsequent period of employment shall be reduced by the amount of accrued benefit eligible to be paid for a prior period of employment. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the retiree may select a different optional form and joint pensioner applicable only to the subsequent retirement benefit.

(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. Former DROP participants shall begin receipt of benefits under these circumstances.

(d) *After early retirement.* Any retiree who is retired under early retirement pursuant to this system and who subsequently becomes an employee of the city in any capacity, shall discontinue receipt of benefits from the system. If the reemployed person, by virtue of his reemployment, is eligible to participate in this system, that person shall accrue a second benefit as provided for in subsection (2) above and benefit payments shall remain suspended during any such subsequent employment period. If the reemployed person is not eligible to participate in this system, that person's pension benefit payments shall be suspended until the earlier of termination of employment or such time as the reemployed retiree reaches the date that he would have been eligible for normal retirement under this system had he continued employment and not elected early retirement. A "normal retirement", as used in this subsection, shall be the current normal retirement date provided for under this system.

(e) *Reemployment of terminated vested persons.* Reemployed terminated vested persons shall not be subject to the provisions of this section until such time as they begin to actually receive benefits. Upon receipt of benefits, terminated vested persons shall be treated as normal or early retirees for purposes of applying the provisions of this section and their status as an early or normal retiree shall be determined by the date they elect to begin to receive their benefit.

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