

Chapters 51—53

**RESERVED**



## Chapter 54

### PENSIONS AND RETIREMENT\*

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- Sec. 54-199. Roster of retirees.

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\***Cross reference**—Officers and employees, § 2-101 et seq.

**State law reference**—Actuarial soundness of retirement systems, F.S. § 112.60 et seq.

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- Sec. 54-200. Maximum pension.
- Sec. 54-201. Minimum distribution of benefits.
- Sec. 54-202. Miscellaneous provisions.
- Sec. 54-203. Repeal or termination of system.
- Sec. 54-204. Domestic relations orders; retiree directed payments; exemption from execution, nonassignability.
- Sec. 54-205. Pension validity.
- Sec. 54-206. Forfeiture of pension.
- Sec. 54-207. Conviction and forfeiture; false, misleading or fraudulent statements.
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- Sec. 54-209. Direct transfers of eligible rollover distributions.
- Sec. 54-210. Family and Medical Leave Act.
- Sec. 54-211. Military service prior to employment.
- Sec. 54-212. Prior police and fire service.
- Sec. 54-213. Reemployment after retirement.
- Sec. 54-214. Deferred retirement option plan.
- Sec. 54-215. Supplemental benefit component for special benefits; chapters 175 and 185 share accounts.

## ARTICLE I. IN GENERAL

**Secs. 54-1—54-25. Reserved.**

## ARTICLE II. PENSION PLAN FOR GENERAL EMPLOYEES\*

### Sec. 54-26. Definitions.

(a) *General definitions.* 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 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 on the RP-2000 Combined Healthy Unisex Mortality Table and an interest rate equal to the investment return assumption set forth in the last actuarial valuation approved by the board. 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.

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

*Beneficiary* means the person or persons entitled to receive benefits hereunder at the death of a member who has or have been designated in writing by the member and filed

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\***Editor's note**—Ord. No. 11-33, § 1, adopted October 27, 2011, amended and restated §§ 54-26—54-53 to read as herein set out. Section 5 of said ordinance states that the provisions of this ordinance shall become effective November 1, 2011. See Code Comparative Table for history.

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 Winter Garden, 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 general employee with member contributions, when required, omitting years or fractional parts of years when such member was not employed by the city as a general employee. A member may voluntarily leave his accumulated contributions in the fund for a period of five years after leaving the employ of the city pending the possibility of being reemployed as a general employee, without losing credit for the time that he was a member of the system. If a vested member leaves the employ of the city, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a general employee with the city within five years, his accumulated contributions, if \$1,000.00 or less, shall be returned. If a member who is not vested is not reemployed within five years, his accumulated contributions, if more than \$1,000.00, will be returned only upon the written request of the member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the board. Upon return of a member's accumulated contributions, all of his rights and benefits under the system are forfeited and terminated.

In the event that a former general employee who was employed as a full-time employee for a period prior to November 1, 2011, when member contributions were not required, is reemployed as a general employee on or after November 1, 2011 (notwithstanding the plan provisions in effect at the time of termination), such reemployed general employee shall receive credited service for such prior full time employment as a general

employee, without being required to purchase such prior service as provided in section 54-51, prior government service.

In the event that a member of this system has also accumulated credited service in another pension system maintained by the city, then such other credited service shall be used in determining vesting as provided for in section 54-34, and for determining eligibility for early or normal retirement. Such other credited service will not be considered in determining benefits under this system. Only his credited service under this system on or after his date of membership in this system will be considered for benefit calculation. In addition, any benefit calculation for a member of this system who is or becomes eligible for a benefit from this system after he has become a member of another pension system maintained by the city, shall be based upon the member's average final compensation, credited service and benefit accrual rate as of the date the member ceases to be a general employee.

The years or parts of a year that a member performs "qualified military service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L.103-353), after separation from employment as a general employee to perform training or service, shall be added to his years of credited service for all purposes, including vesting, provided that:

- (1) The member is entitled to reemployment under the provisions of USERRA.
- (2) The member returns to his employment as a general employee within one year following the earlier of the date of his military discharge or his release from service, unless otherwise required by USERRA.
- (3) The member deposits into the fund the same sum that the member would have contributed, if any, if he had remained a general employee during his absence. The maximum credit for military service pursuant to this subdivision shall be five years. The member must deposit all missed contributions within a period equal

to three times the period of military service, but not more than five years, following re-employment or he will forfeit the right to receive credited service for his military service pursuant to this paragraph.

- (4) This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

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

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

Leave conversions of unused accrued paid time off shall not be permitted to be applied toward the accrual of credited service either during each plan year of a member's employment with the city or in the plan year in which the member terminates employment.

*Effective date* means October 1, 1976.

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

*General employee* means any actively employed person in the regular full-time service of the city, including those in their initial probationary employment period, but not including certified police officers and certified firefighters employed by the city.

*Member* means an actively employed general employee who fulfills the prescribed membership requirements. Benefit improvements which, in the past, have been provided for by amendments to the system adopted by 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 12-month period beginning October 1 and ending September 30 of the following year.

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

*Retirement* means a member's separation from 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 general employee reportable on the member's W-2 form including bonuses and plus all tax deferred, tax sheltered or tax exempt items of income derived from elective employee payroll deductions or salary reductions. For service earned after July 1, 2011 ("the effective date"), salary shall not include more than 300 hours of overtime per calendar year and shall also not include payments for accrued unused sick or annual leave. Provided however, in any event, payments for overtime in excess of 300 hours per year or accrued unused sick or annual leave accrued as of the effective date and attributable to service earned prior to the effective date, may still be included in salary for pension purposes even if the payment is not actually made until on or after the effective date.

Compensation in excess of the limitations set forth in section 401(a)(17) of the Code as of the first day of the plan year shall be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each member taken into account in determining benefits or employee contributions for any plan year beginning on or after January

1, 2002, may not exceed \$200,000.00, as adjusted for cost-of-living increases in accordance with Internal Revenue 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 member's or retiree's spouse under applicable law at the time benefits become payable.

*System* means the city pension plan for general employees 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. (Ord. No. 11-33, § 1, 10-27-11; Ord. No. 13-65, § 1, 9-26-13; Ord. No. 17-01, § 1, 4-13-17)

## **Sec. 54-27. Membership.**

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



(b) *Opt out option.* The city has determined that it will provide a defined contribution plan for the following designated positions:

- (1) Business analyst.
- (2) Assistant city engineer.
- (3) Controller.
- (4) Assistant director of operations.
- (5) Capital improvements project administrator.
- (6) Accountant.
- (7) IT specialist.
- (8) IT Services director.
- (9) Finance director.

Those members who previously opted-out of the system prior to January 28, 2010 whose position is no longer on the eligible position list above, shall remain opted-out.

A new employee who is hired in a designated position may, upon employment, notify the board and the city, in writing, of their election not to be a member of the system. In the event of such election, they shall be barred from participation in the system. Thereafter, contributions to the plan in accordance with section 54-30 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 he shall not be eligible for any other benefits from the plan. Current employees of the city who are promoted to a designated position are not eligible for the opt-out provided for herein.

(c) *Designation of beneficiary.* Each general employee shall complete a form prescribed by the board designating a beneficiary or beneficiaries. (Ord. No. 11-33, § 1, 10-27-11; Ord. No. 17-01, § 2, 4-13-17)

#### **Sec. 54-28. 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 ordinance is hereby vested in a board of trustees. The board is hereby designated as the

plan administrator. The board shall consist of five trustees, two of whom, unless otherwise prohibited by law, shall be appointed by the city commission, and two of whom shall be members of the system, who shall be elected by a majority of the general employees who are members of the system. The fifth trustee shall be chosen by a majority of the previous four trustees as provided for herein, and such person's name shall be submitted to the city commission. Upon receipt of the fifth person's name, the city commission shall, as a ministerial duty, appoint such person to the board of trustees as its fifth trustee. The term of all trustees, beginning with the first term beginning after the effective date of the ordinance adopting the change to this subsection, shall be four years. The fifth trustee shall have the same rights as each of the other four trustees appointed or elected as herein provided and shall serve a four-year term unless he sooner vacates the office. Each commission appointed trustee shall serve as trustee for a period of four years, unless he sooner vacates the office or is sooner replaced by the city commission at whose pleasure he shall serve. Each member trustee shall serve as trustee for a period of four years, unless he sooner leaves the employment of the city as a general employee 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 and 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, vice-chairman and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.

(c) Each trustee shall be entitled to one vote on the board. Three affirmative votes shall be necessary for any decision by the trustees at any