

- to the employee while the employee continued in employment with the employer; or
2. The payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.
 - c. Back pay, within the meaning of Treasury Regulations Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.
- (2) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Code Section 415 by using the following methods:
 - a. If the law requires a lump sum payment for the purchase of service credit, the board may establish a periodic payment deduction plan for the member to avoid a contribution in excess of the limits under Code Section 415(c) or 415(n).
 - b. If payment pursuant to subparagraph (k)(2)a. will not avoid a contribution in excess of the limits imposed by Code Section 415(c), the board may either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.
 - (3) If the annual additions for any member for a limitation year exceed the limitation under Section 415(c) of the Code, the excess annual addition will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).
 - (4) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of this subsection (k) shall not exceed the annual limit under Section 401(a)(17) of the Code.
 - (1) *Additional limitation on pension benefits.* Notwithstanding anything herein to the contrary:
 - (1) The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1, 1980, shall not exceed 100% 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 1223, Title 10, U.S. Code.
 - (m) *Effect of direct rollover on 415(b) limit.* If the plan accepts a direct rollover of an employee's or former employee's benefit from a defined contribution plan qualified under Code Section 401(a) which is maintained by the employer, any annuity resulting from the rollover amount that is determined using a more favorable actuarial basis than required under Code Section 417(e) shall be included in the annual benefit for purposes of the limit under Code Section 415(b). (Ord. No. 00-22, § 1, 2-24-00; Ord. No. 02-43, § 3, 9-26-02; Ord. No. 09-03, § 8, 3-12-09; Ord. No. 13-60, § 2, 9-26-13; Ord. No. 16-60, § 8, 11-10-16)
- Sec. 54-201. Minimum distribution of benefits.**
- (a) *General rules.*
 - (1) *Effective date.* Effective as of January 1, 1989, the plan will pay all benefits in

accordance with a good faith interpretation of the requirements of Internal Revenue Code Section 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Internal Revenue Code Section 414(d). Effective on and after January 1, 2003, the plan is also subject to the specific provisions contained in this Section. The provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

- (2) *Precedence.* The requirements of this section will take precedence over any inconsistent provisions of the plan.
- (3) *TEFRA Section 242(b)(2) elections.* Notwithstanding the other provisions of this section other than this subsection (a)(3), distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that related to Section 242(b)(2) of TEFRA.
- (b) *Time and manner of distribution.*
 - (1) *Required beginning date.* The member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date. For a member who attains age 70½ prior to January 1, 2020, the member's required beginning date is April 1 of the calendar year following the later of (i) the calendar year in which the member attains age 70½ or (ii) the calendar year in which the member terminates employment with the City. For a member who attains age 70½ on or after January 1, 2020, the member's required beginning date is April 1 of the calendar year following the later of (i) the calendar year in which the member attains age 72 or (ii) the calendar year in which the member terminates employment with the city.

- (2) *Death of member before distributions begin.* If the member dies before distributions begin, the member's entire interest will be distributed, or begin to be distributed no later than as follows:

- a. If the member's surviving spouse is the member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by a date on or before December 31 of the calendar year in which the member would have attained age 70½, (or age 72 for a member who would have attained age 70½ after December 31, 2019) 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), distributions are considered to begin on the member's required beginning date or, if subsection (b)(2)d. applies,

the date of distributions are required to begin to the surviving spouse under subsection (b)(2)a. If annuity payments irrevocably commence to the member before the member's required beginning date (or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(2)a. the date distributions are considered to begin is the date distributions actually commence.

- (3) *Death after distributions begin.* If the member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.
- (4) *Form of distribution.* Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with this section. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the 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 requirements.* If the member's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:
 - a. The annuity distributions will be paid in periodic payments made at intervals not longer than one year.
 - b. The member's entire interest must be distributed pursuant to section 54-191, section 54-192, section 54-194 or section 54-195 (as applicable) and in any event over a period equal to or less than the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary. The life expectancy of the member, the member's spouse, or the member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.
 - (2) Amount required to be distributed by required beginning date. The amount that must be distributed on or before the member's required beginning date (or, if the member dies before distributions begin, the date distributions are required to begin under section 54-192 is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., monthly. All of the member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.
 - (3) *Additional accruals after first distribution calendar year.* Any additional benefits accruing to the member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
 - (d) *General distribution rules.*
 - (1) The amount of an annuity paid to a member's beneficiary may not exceed the

maximum determined under the incidental death benefit requirement of Internal Revenue Code Section 401(a)(9)(G), and effective for any annuity commencing on or after January 1, 2008, the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

- (2) The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in Internal Revenue Code Section 401(a)(9)(G) and Treasury Regulation Section 1.401-1(b)(1)(I) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25 percent of the cost for all of the members' benefits received from the retirement system.

(e) *Definitions.*

- (1) *Designated beneficiary.* The individual who is designated as the beneficiary under the plan and is the designated beneficiary under section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.
- (2) *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section 54-192.

(Ord. No. 00-22, § 1, 2-24-00; Ord. No. 06-26, § 4, 7-27-06; Ord. No. 09-03, § 9, 3-12-09; Ord. No. 16-60, § 9, 11-10-16; Ord. No. 22-03, § 6, 2-24-22)

Sec. 54-202. Miscellaneous provisions.

(a) *Interest of members in system.* All assets of the fund are held in trust, and at no time prior to the satisfaction of all liabilities under the system with respect to retirees and members and their spouses or beneficiaries, shall any part of the

corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

(b) *No reduction of accrued benefits.* No amendment or ordinance shall be adopted by the city commission 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 Internal Revenue Code Section 503(b).

(f) *USERRA.* Effective December 12, 1994, notwithstanding any other provision of this system, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended. To the extent that the definition of "credited service" sets forth contribution requirements that are more favorable to the member than the minimum compliance requirements, the more favorable provisions shall apply.

(g) *Vesting.*

- (1) Member will be 100 percent vested in all benefits upon attainment of the plan's age and service requirements for the plan's normal retirement benefit; and

- (2) A member will be 100 percent vested in all accrued benefits, to the extent funded, if the plan is terminated or experiences a complete discontinuance of employer contributions.

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

(i) *Compliance with F.S. chs. 175 and 185.* It is intended that the system will continue to qualify for funding under F.S. §§ 175.101 and 185.08. Accordingly, unless otherwise required by law, any provision of the system which violates the requirements of F.S. chs. 175 and 185, as amended from time to time, shall be superseded by and administered in accordance with the requirements of such chapter.

(j) *Missing benefit recipients.* The system shall follow the procedures outlined in the IRS Employee Plans Compliance Resolution System (EPCRS) Program and other applicable IRS guidance to locate any missing individuals to whom a full unreduced benefit payment is due and if, at the conclusion of such efforts, the individual cannot be located, the existing procedure of cancelling payments otherwise due (provided that, if the individual is later located, the benefits due shall be paid) will apply.

(Ord. No. 00-22, § 1, 2-24-00; Ord. No. 02-43, § 4, 9-26-02; Ord. No. 09-03, § 10, 3-12-09; Ord. No. 19-08, § 2, 2-14-19)

Sec. 54-203. Repeal or termination of system.

(a) This article 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.

(b) If this article shall be repealed, or if contributions to the system are discontinued or if there is a transfer, merger or consolidation of government units, services or functions as provided in F.S. ch. 121, the board shall continue to administer the system in accordance with the provisions of this ordinance, 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 such benefits shall be nonforfeitable.

(c) The fund shall be distributed in accordance with the following procedures:

- (1) The board shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits after taking into account the expenses of such distribution. The board shall inform the city if additional assets are required, in which event the city shall continue to financially support the plan until all nonforfeitable benefits have been funded.
- (2) The board shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each police officer or firefighter 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 or firefighter'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 or firefighter.

- (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.

(Ord. No. 00-22, § 1, 2-24-00; Ord. No. 09-03, § 11, 3-12-09; Ord. No. 11-18, § 2, 8-25-11)

**Sec. 54-204. 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 con-

nection 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 as permitted by F.S. Chs. 175 and 185, 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 article and the accumulated contributions and the cash securities in the fund created under this article are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable.

(Ord. No. 00-22, § 1, 2-24-00; Ord. No. 09-03, § 12, 3-12-09; Ord. No. 11-18, § 3, 8-25-11)

Sec. 54-205. Pension validity.

The board shall have the power to examine into the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. The board is empowered to purge the pension rolls or correct the pension amount of any person heretofore granted a pension under prior or existing law or any person hereafter granted a pension under this article 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 article be erroneously, improperly or illegally classified. Any overpayments or underpayments shall be corrected and paid or repaid in a reasonable manner determined by the board.

(Ord. No. 00-22, § 1, 2-24-00)

Sec. 54-206. 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, if any, as of the date of termination. Specified offenses are as follows:

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

(b) Conviction shall be defined as an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or a nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.

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

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

(Ord. No. 00-22, § 1, 2-24-00; Ord. No. 09-03, § 13, 3-12-09)

Sec. 54-207. 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) above, 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) above, a member or beneficiary of the system may, in the discretion of the board, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled under the system. For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(Ord. No. 00-22, § 1, 2-24-00)