

The cost of the physical examination and/or re-examination of the member claiming or the retiree receiving disability benefits shall be borne by the fund. All other reasonable costs as determined by the board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the fund.

If the retiree recovers from disability and reenters the service of the city as a general employee, 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.

(d) *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, the payment due next preceding the date of such recovery; or
- (2) If the retiree dies without recovering from disability, the payment due next preceding his death.

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 section 54-35, subsection (a)(1) or (a)(2), which shall be the actuarial equivalent of the normal form of benefit.

(e) *Benefit offsets.* When a retiree is receiving a disability pension and workers' compensation benefits pursuant to F.S. ch. 440 or Social Security disability benefits, for the same disability, and the total monthly benefits received from each

combined exceed 100 percent of the member's average monthly wage, as defined in F.S. ch. 440, the disability pension benefit shall be reduced so that the total monthly amount received by the retiree does not exceed 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 years certain by dividing the lump sum amount by 83.9692. Social Security disability cost of living increases shall not be used to further offset disability benefits.

(Ord. No. 11-33, § 1, 10-27-11; Ord. No. 17-01, § 6, 4-13-17; Ord. No. 19-09, § 1, 2-14-19)

Sec. 54-34. Vesting.

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

- (1) If the member has less than five years credited service upon termination, the member shall be entitled to a refund of his accumulated contributions, if any, or the member may leave it deposited with the fund.
- (2) If the member has five 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 member's otherwise normal or early retirement date, determined based upon his actual years of credited service, provided he does not elect to withdraw his accumulated contributions, if any, and provided the member survives to his otherwise normal or early retirement date. If the member does not withdraw his accumulated contributions, if any, and does not survive to his otherwise normal or early retirement date, his

beneficiary shall be entitled to a benefit as provided herein for a deceased vested member under section 54-32.

(Ord. No. 11-33, § 1, 10-27-11)

Sec. 54-35. Optional forms of benefits.

(a) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified herein, a member, upon written request to the board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

- (1) A retirement income of a monthly amount payable to the retiree for his lifetime, but with 120 monthly payments guaranteed in any event.
- (2) A retirement income of a modified monthly amount, payable to the retiree during the lifetime of the retiree and following the death of the retiree, 100 percent, 75 percent, $66\frac{2}{3}$ percent or 50 percent of such monthly amount payable to a joint pensioner for his lifetime. Except where the retiree's joint pensioner is his spouse, 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 54-49 a member may elect a percentage of benefit in a lump sum as follows:

- a. Ten percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining 90 percent paid under the normal form or as per subsection (1), (2) or (3) above.
- b. Fifteen percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining 85 percent paid under the normal form or as per subsection (1), (2) or (3) above.
- c. Twenty percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining 80 percent paid under the normal form or as per subsection (1), (2) or (3) above.
- d. Twenty-five percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining 75 percent paid under the normal form or as per subsection (1), (2) or (3) above.

(b) The member, upon electing any option of this section, will designate the joint pensioner (subsection (a)(1) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a member has elected an option with a joint pensioner or beneficiary and member's retirement income benefits have commenced, the member may thereafter change his designated beneficiary at any time, but may only change his joint pensioner if the designated joint pensioner and the member were married at the time of member's retirement and are divorced subsequent thereto and the joint pensioner is alive at the time of the change; provided however, in no event may a member change his designated joint

pensioner more than twice. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume that the joint pensioner has deceased for purposes of calculating the new payment.

(c) The consent of a member's or retiree's joint pensioner or beneficiary to any such change shall not be required. The rights of all previously designated beneficiaries to receive benefits under the system shall thereupon cease.

(d) Upon change of a retiree's joint pensioner in accordance with this section, the amount of the retirement income payable to the retiree shall be actuarially determined to take into account the age and sex of the former joint pensioner, the new joint pensioner and the retiree. Any such retiree shall pay the actuarial recalculation expenses. Each request for a change will be made in writing on a form prepared by the board and on completion will be filed with the board. In the event that no designated beneficiary survives the retiree, such benefits as are payable in the event of the death of the retiree subsequent to his retirement shall be paid as provided in section 54-36.

(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 54-32.
- (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) above, 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 54-36.
- (4) If a member continues beyond his normal retirement date pursuant to the provisions of subsection 54-31(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 the member's required beginning date, as provided under section 54-40.

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

(g) Notwithstanding anything herein to the contrary, the board in its discretion, may elect to make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the monthly income payments to be paid do not exceed \$1,000.00. Any such payment made to any person pursuant to the power and discretion conferred upon the board by the preceding sentence shall operate as a complete discharge of all obligations under the system with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons. (Ord. No. 11-33, § 1, 10-27-11; Ord. No. 17-01, § 7, 4-13-17; Ord. No. 21-10, § 3, 4-22-21)

Sec. 54-36. 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) above, or if the beneficiary (or beneficiaries) named by a deceased member or retiree predeceased the member or retiree, the death benefit, if any, which may be payable under the system with respect to such deceased member or retiree, shall be paid to the estate of the member or retiree and the board, in its discretion, may direct that the commuted value of the remaining monthly income benefits be paid in a lump sum.

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

(Ord. No. 11-33, § 1, 10-27-11)

Sec. 54-37. Claims procedures.

(a) The board shall establish administrative claims procedures to be utilized in processing written requests ("claims"), on matters which affect the substantial rights of any person ("claimant"), including members, retirees, beneficiaries, or any person affected by a decision of the board.

(b) The board shall have the power to subpoena and require the attendance of witnesses and the production of documents for discovery prior to and at any proceedings provided for in the board's claims procedures. The claimant may request in writing the issuance of subpoenas by

the board. A reasonable fee may be charged for the issuance of any subpoenas not to exceed the fees set forth in Florida Statutes.

(Ord. No. 11-33, § 1, 10-27-11)

Sec. 54-38. Roster of retirees.

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

(Ord. No. 11-33, § 1, 10-27-11)

Sec. 54-39. Maximum pension.

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

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

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

- (1) For a benefit paid in a form to which Section 417(e)(3) of the Code does not

apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

- a. The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or
 - b. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Code); or
- (2) For a benefit paid in a form to which Section 417(e)(3) of the Code applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:
- a. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
 - b. The annual amount of the straight life annuity commencing at the annu-

ity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Code); or

- c. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Code (Notice 2008-85 or any

subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Code), divided by 1.05.

- (3) The actuary may adjust the 415(b) limit at the annuity starting date in accordance with subsections (1) and (2) above.

(c) *Benefits not taken into account.* For purposes of this section, the following benefits shall not be taken into account in applying these limits:

- (1) Any ancillary benefit which is not directly related to retirement income benefits;
- (2) Any other benefit not required under Section 415(b)(2) of the Code and Regulations thereunder to be taken into account for purposes of the limitation of Code Section 415(b)(1); and
- (3) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity.

(d) *COLA effect.* Effective on and after January 1, 2003, for purposes of applying the limits under Code Section 415(b) (the "limit"), the following will apply:

- (1) A member's applicable limit will be applied to the member's annual benefit in the member's first limitation year of benefit payments without regard to any automatic cost of living adjustments;
- (2) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable benefit limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Code Section 415(d), and the regulations thereunder; but
- (3) In no event shall a member's benefit payable under the system in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d) and the regulations thereunder.

Unless otherwise specified in the system, for purposes of applying the limits under Code

Section 415(b), a member's applicable limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code and applicable treasury regulations.

(e) *Other adjustments in limitations.*

- (1) In the event the member's retirement benefits become payable before age 62, the limit prescribed by this section shall be reduced in accordance with regulations issued by the secretary of the treasury pursuant to the provisions of 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 \$160,000.00 annual benefit beginning at age 62.
- (2) In the event the member's benefit is based on at least 15 years of credited service as a full-time employee of the fire department of the city, the adjustments provided for in subsection (e)(1) above shall not apply.
- (3) The reductions provided for in subsection (e)(1) above shall not be applicable to disability benefits pursuant to section 54-33, or pre-retirement death benefits paid pursuant to section 54-32.
- (4) In the event the member's retirement benefit becomes payable after age 65, for purposes of determining whether this benefit meets the limit set forth in subsection (a) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age 65. This adjustment shall be made in accordance with regulations promulgated by the secretary of the treasury or his delegate.

(f) *Less than ten years of participation.* The maximum retirement benefits payable under this section to any member who has completed less than ten years of participation 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 participation and the denominator of which is