

Board Members' Handbook

For

FORT PIERCE RETIREMENT BOARD

City of Fort Pierce, Florida

09.01.10

**Board Members’ Handbook
For
Fort Pierce Retirement Board**

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Chapter 13 - PENSIONS AND RETIREMENT*

Editor's note—

Ord. No. K-469, § 1, adopted Feb. 20, 2007, amended Ch. 13 in its entirety to read as herein set out. Former Ch. 13, §§ 13-16, 13-19—13-29, 13-31—13-47, 13-49, 13-52, 13-55, 13-56, 13-59—13-64, 13-71—13-77, 13-91—13-98, 13-111—13-118, 13-131—13-138, 13-151—13-156, 13-161—13-169, pertained to similar subject matter. See the Code Comparative Tables at the end of this Code for a complete derivation of these former provisions.

Editor's note—

At the direction of the city, the following ordinances have been recodified into Ch. 13 as they appeared to be superseded by Ord. No. K-469: Ord. No. K-52, § 2, adopted Jan. 2, 2001; Ord. No. K-383, § 1, adopted Oct. 4, 2005; Ord. No. K-414, §§ 1, 2, adopted March 20, 2006; and Ord. No. K-442, §§ 1, 2, adopted Oct. 16, 2006.

Charter reference—Retirement and pensions for persons in service of city, §§ 15—17.

Cross reference—Administration, Ch. 2.

State law reference—Florida Retirement System, F.S. Ch. 121; financial matters pertaining to political subdivisions, F.S. Ch. 218.

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ARTICLE I. - IN GENERAL

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ARTICLE II. - RETIREMENT SYSTEM FOR OFFICERS AND EMPLOYEES OF PARTICIPATING EMPLOYERS

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DIVISION 1. - GENERALLY

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Sec. 13-16. - Definitions.

As used in this article:

Accumulated member contributions means the balance in a member's individual account in the member's deposit fund.

Annuity means a series of monthly payments to a retired participant or annuity beneficiary from the retirement system.

Annuity beneficiary means an individual who is being paid an annuity or has been designated to be paid an annuity from the retirement system on account of the death of a member or retired member.

Compensation means the salary or wages paid an employee for personal services rendered a participating employer. "Compensation" includes:

(1)

- Base pay;
- (2) Incentive pay;
- (3) Longevity pay, shift premiums and police incentive pay;
- (4) Overtime pay;
- (5) Base salary or wages while absent from work on account of vacation, holiday, illness or other authorized paid leave;
- (6) Payments in consideration of unused sick and vacation time;
- (7) City contributions on behalf of the employee to a deferred compensation program maintained pursuant to section 457 of the Internal Revenue Code.

"Compensation" shall not include any salary, wage or other remuneration not specifically designated in this definition as included in compensation.

Credited service means the years of service, to the nearest one-twelfth (1/12) year, in an individual's credited service account.

Employee means any person who: (1) is employed by a participating employer in a position normally requiring seven hundred (700) or more hours of work per annum, and (2) is compensated on a regular participating employer payroll in a position subject to withholding of federal income and FICA taxes. The term "employee" shall include elected officers of participating public employers who satisfy the requirements of the preceding sentence. The term "employee" shall not include any person whose service is compensated wholly on a contractual or fee basis.

Final average salary means one-sixtieth (1/60) of the compensation paid a member during the five (5) consecutive years of the member's credited service producing the highest total compensation paid and contained within the member's ten (10) years of credited services immediately preceding termination of membership. If a member has less than five (5) years of credited service, final average salary means the total compensation paid the member divided by the member's credited service. For utilities authority and police officer members, the five (5) years need not be consecutive and a year shall be twelve (12) consecutive months or such other consecutive period of time as is used and consistently applied.

General employee means any employee except a utilities employee or a police officer.

Member means an employee who is a member of the retirement system.

Participating employer means the city and the Fort Pierce Utilities Authority .

Police officer means an employee of the city who is certified or required to be certified as a law enforcement officer in compliance with F.S. § 943.14 holding the rank of patrol officer, including probationary patrol officer, or higher rank. The term "police officer" shall not include (1) any person who is employed in a civilian position in the police department, nor (2) any person who is temporarily employed as a police officer for an emergency, nor (3) any person who is privately employed as a police officer.

Retired member means a former member who is being paid an annuity by the retirement system.

Refund beneficiary means the person or persons designated by a member or former member to receive payment of all or a portion of the member's or former member's accumulated member contributions as provided in this article.

Retirement board means the retirement board provided for in this article.

Retirement system means the retirement and benefit system of the city created and established by this article.

Utilities employee means an employee of the Fort Pierce Utilities Authority.

Vested former member means an individual who at the time of termination of membership met the requirements of section 13-32 for vested former member status and who has not subsequently forfeited credited service by electing payment of accumulated member contributions.

Vested member means a member who meets the credited service requirement for vested termination specified in the coverage plan applicable to the member.

Workers' compensation period means the period a member, retired member or beneficiary is in receipt of worker's compensation on account of a member's disability or death arising out of and in the course of participating employer employment. If the member, retired member or beneficiary is paid a single sum in lieu of future weekly worker's compensation, the worker's compensation period shall be the period, if any, the member, retired member or beneficiary was in receipt of weekly workers' compensation plus the period arrived at by dividing said single sum by the member's, retired member's or beneficiary's weekly workers' compensation award.

(Ord. No. K-414, § 1, 3-20-06; Ord. No. K-469, § 1, 2-20-07)

Editor's note—

See the editor's note at the beginning of this chapter.

Secs. 13-17, 13-18. - Reserved.

Sec. 13-19. - Retirement system established.

There is hereby established the retirement and benefit system of the city to provide for the retirement of officers and employees of the city and participating employers who become superannuated due to age or disability; to provide conditions of membership; to provide annuities and other benefits to be payable upon the retirement of members and under certain conditions to the dependents of members and retired members; to provide for the financing of the retirement system by contributions to be made by participating employers and members; to provide for the return of members' accumulated member contributions under certain conditions; to provide a retirement board to administer the retirement system; to provide for the investment of moneys of the retirement system and to delegate certain authority and responsibilities to the retirement board.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-20. - Exemption of benefits from city tax.

No annuity or other benefit under this article shall ever be subject to any city tax or process, but shall be exempt therefrom.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-21. - Composition of fund; payment by city and utilities authority.

The trust fund created under this article, together with the monies hereby retroactively brought into same, and the subsequent accumulations to same from participating employers shall constitute the trust hereby created. Each participating employer shall at the end of each biweekly period pay a sum of money into the trust determined in accordance with section 13-49.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-22. - Assessments against land for city's contribution.

No tax shall ever be assessed against any land to raise the city's contribution to the retirement fund.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-23. - Fund held as separate trust; direction; supervision; bond.

The trust fund provided for in this article shall be deemed to be held in separate trust from all municipal moneys, under the direction and in the discretion of the retirement board, subject to supervision by the city commission. All payments by the retirement system shall be authorized by a specific or continuing resolution of the retirement board and shall be made by check signed by the city finance director and countersigned by the chairperson of the retirement board.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-24. - Membership—Requirements for; exclusions from.

(a)

Each employee of a participating employer shall be a member of the retirement system unless excluded from membership by subsections (b) or (c). Elected officials must file written application for membership with the retirement board. If any question arises about the membership status of any person, the retirement board shall resolve the question and such resolution shall be final.

(b)

An employee holding an excludable position may be elected to be excluded from membership. The election shall be in writing and to be valid must be filed with the retirement board within thirty (30) days of assuming an excludable position. Excludable positions are:

(1)

The city manager;

(2)

The chief of police;

(3)

The director of the Fort Pierce Utilities Authority;

(4)

The director of the code enforcement and building department;

(5)

The director of planning.

(c)

A former employee of a participating employer, who is presently receiving regular or disability retirement benefits under this chapter, who is subsequently reemployed by a participating employer, shall not be a member of the retirement system. For the purpose of this subsection, the term "employee" is given the meaning imposed by general law governing agency principals, not as such term is otherwise defined in section 13-16.

(Ord. No. K-442, § 1, 10-16-06; Ord. No. K-469, § 1, 2-20-07; Ord. No. K-512, § 1, 10-1-07)

Editor's note—

See the editor's note at the beginning of this chapter.

Sec. 13-25. - Same—Termination.

The membership of an employee shall cease upon termination of employee status or upon becoming employed in a position excluded from membership as provided in subsection (b) of section 13-24.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-25.1. - Employment after retirement.

(a)

Benefits shall not be paid, but shall be suspended, under this chapter for any period that membership or employment is reinstated with any member employer following termination of such membership or retirement from employment, nor shall benefits under this chapter be paid during any period where the former member or retiree performs services as an independent contractor, as such term is defined and construed under general Florida law, for the member employer unless such independent contracting services commence more than thirty (30) days after termination of membership or retirement, and provided also that such independent contracting agreement is furnished to the board for prior review and approval, based upon determination that such contract is for a bona fide independent contracting relationship.

(b)

Any person who is receiving regular or disability retirement benefits under this chapter and who becomes reemployed in any capacity with a participating employer, as "employment" is construed in general law according to agency principals, shall give timely notice of such reemployment in writing to the board, and such person's retirement benefits shall be suspended for the balance of the period of reemployment. Any person employed in violation of this subsection and any participating employer which knowingly employs or appoints such person without notifying the board to suspend retirement benefits shall be jointly and severally liable for reimbursement to the retirement system of any benefits paid during the period of reemployment. To avoid liability, the participating employer shall have a written statement from the retiree, at the time the employee becomes reemployed, that notice of reemployment was given to the board in accordance with this subsection. Any retirement benefits received by such person while reemployed shall be repaid to the retirement system and the retirement benefits shall remain suspended until such repayment has been made. Any benefits suspended in accordance with this section shall apply toward the repayment of benefits received in violation hereof.

(Ord. No. K-442, § 2, 10-16-06)

Editor's note—

See the editor's note at the beginning of this chapter.

Sec. 13-26. - Service credit; requirements for; forfeiture of; reinstatement.

(a)

Service rendered a participating employer by a member shall be credited to the member's credited service account in accordance with retirement board rules and regulations:

(1)

Service shall be credited to the nearest one-twelfth (1/12) year; and

(2)

In no case shall less than ten (10) months of service rendered in any calendar year be credited as a year of service; nor shall more than one year of service be credited for all service rendered in any calendar year.

(b)

Credited service shall be forfeited if either:

(1)

Membership terminates prior to retirement, death or satisfaction of the requirements for vested termination provided in section 13-32; or

(2)

Accumulated member contributions are paid to the former member, former member's refund beneficiary or legal representative.

(c)

The last forfeited credited service of a member may be reinstated, following reemployment of such member, if the following requirements are satisfied:

(1)

If the member is a police officer, the member repays the retirement system, following reemployment, the accumulated member contributions previously paid by the police officer member, plus interest determined by the board; or

(2)

If the member is not a police officer, the member pays the full actuarial cost of such previously forfeited service credit so that no part of the cost will be paid by the employer or the retirement system. In addition, the member requesting reinstatement shall be responsible for paying the actuary's fee for providing the cost information; and

(3)

Credited service shall be reinstated and become effective immediately following payment of the monies provided for in this subsection by the police officer members or other members.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. K-471, § 1, 3-5-07; Ord. No. K-513, § 1, 10-1-07)

Sec. 13-26.1. - Service purchase options for the city manager.

The person who is the city manager at the time the ordinance from which this section derives is adopted by the city commission shall be given the option to purchase any or all of the following:

- (1) The period of time from the city manager's date of employment to the date he became a member of the retirement system;
- (2) One year of military service in addition to the three (3) years authorized by section 13-28.

The money required to be paid for the purchase of any or all of these periods shall be due and payable when the purchase is requested. The city manager will pay the full actuarial cost of said requested service so that no part of the cost will be paid by the city or the retirement system. The retirement system may accept a transfer of assets from a 457 plan or another 401(a) plan as part of any purchase.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-27. - Credit for intervening military service.

A member who left the employ of a participating employer to enter the armed forces of the United States during any period of compulsory military service, and who reenters the employ of a participating employer and again becomes a member, shall have such armed service, not to exceed a total of five (5) years, credited as participating employer service; if the following conditions are satisfied:

- (1) The member makes application within one year after release from duty under honorable conditions;
- (2) The member's reemployment is on the basis of the personnel rules and regulations of the member's participating employer;
- (3) The member pays the retirement system the amount of accumulated member contributions the member may have withdrawn, together with six (6) per cent annual compound interest from the date of withdrawal to the date of repayment. In any case of doubt as to the period of military service to be credited a member, the retirement board shall have final power to determine the period. During the period of such armed service, contributions to the retirement system shall be suspended; and
- (4) The same period of service has not been used to obtain or increase a benefit from another retirement program.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-28. - Purchase of active duty military service time.

A member with military time on active duty for the United States forces may purchase up to four (4) years of active duty military time if the following requirements are satisfied:

- (1) The member has been employed by participating employers for at least five (5) years and is vested in the retirement system as provided in section 13-32; and
- (2) The purchase is completed by the member's retirement date.

The money required to be paid for the purchase of military time as provided in this section shall be due when the purchase is requested. The employee will pay the full cost of the purchase of said military credit, and no part of the cost will be paid by the employer. If an employee is already receiving retirement benefits from the military services of the United States, the employee will not be eligible to purchase military service credit under this provision. The cost of purchasing the military service credit will be determined by percentages based on current annual base salary of the employee at the time that option is exercised.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-29. - Normal retirement; conditions for.

A member or vested former member may retire upon written application filed with the retirement board setting forth at what time, not less than thirty (30) days, nor more than ninety (90) days subsequent to the execution and filing thereof, the member or vested former member desires to be retired if the following conditions are satisfied:

- (1) Employment by all participating employers is terminated prior to the selected date of retirement; and
- (2) The member or vested former member meets an age and/or credited service requirement specified in the coverage plan applicable to the member or vested former member.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-30. - Reserved.**Sec. 13-31. - Retirement annuity.**

- (a) Except as otherwise provided by the retirement ordinance and the provisions of section 415 of the Internal Revenue Code applicable to public employee retirement plans, the amount of annuity under the standard form of payment shall be determined in accordance with the provisions of the coverage plan under which the member or vested former member has been covered. If the member has been covered under more than one coverage plan, the amount of annuity shall be determined as follows:
Step (1). Calculate the amount of annuity for each coverage plan as if the member or vested former member had acquired all credited service under the coverage plan.
Step (2). Multiply the amount of each annuity calculated in Step (1) by the ratio of credited service acquired while covered under the coverage plan to the member's or vested former member's total credited service.
- (b) A member or vested former member may elect to be paid the annuity under a form of payment option provided in section 13-33 in lieu of the standard form of payment.
- (c) If the member last became a member on or after January 1, 1980, the amount of standard form of annuity shall not exceed one hundred (100) per cent of the member's average final compensation as defined in F.S. § 112.65.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-32. - Vested termination of membership.

- (a) A member who ceases to be a member for a reason other than retirement or death shall be a vested former member if the following requirements are satisfied:
 - (1) The member meets the credited service requirement for vested termination specified in the coverage plan applicable to the member; and
 - (2) The member's accumulated member contributions are left on deposit with the retirement system.
- (b) Eligibility for normal retirement and the amount of normal retirement annuity shall be determined according to the provisions of the retirement ordinance in effect on the date of termination of membership. Determination of the amount of annuity under a form of payment option shall be made using the assumptions in effect at the time of retirement.
- (c) An election by a member or vested former member to be paid accumulated member contributions shall cause forfeiture of credited service and all rights to any benefits of the retirement system other than payment of the accumulated member contributions.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-33. - Form of payment options.

(a)

A member or vested former member may elect to have annuity payments made under one of the form of payment options provided in this section and name a survivor pension beneficiary. The election of a form of payment option and naming of survivor annuity beneficiary shall be made on a form furnished by and filed with the retirement system prior to the date the first annuity check is issued. The election of form of payment option and/or survivor annuity beneficiary can be changed up to and until the issuance of the first annuity check. After the date that the first annuity check is issued, no change can be made in the election of form of payment option. If option A, option B, option D, or option E has been elected, no change can be made in the survivor annuity beneficiary, except as provided in subsection (d) of this section. If form of payment option C has been elected, more than one survivor annuity beneficiary may be selected. Each selected survivor beneficiary shall share equally in any benefit that becomes payable to a survivor annuity beneficiary unless the retired member has specified and filled with the retirement system, in writing, a different sharing. Payment shall be made under the standard form of payment if there is no timely election of an option form of payment. The amount of annuity under a form of payment option shall have the same actuarial present value as the amount of annuity under the standard form of payment.

(b)

The form of payment options available for election are:

Option A. Lifetime payments with one hundred per cent lifetime continuation to survivor annuity beneficiary. The retired member is paid a reduced annuity for life under form of payment option A. The last payment to the retired member is the payment for the month in which the retired member dies. The named survivor annuity beneficiary, if living on the first day of the month following the death of the retired member, is then paid one hundred (100) per cent of the reduced annuity for life. The first payment to the survivor annuity beneficiary is for the month following the month in which the retired participant dies. The last payment to the survivor annuity beneficiary is for the month in which the survivor annuity beneficiary dies. No payment is made to the survivor pension beneficiary if the death of the retired participant and the death of the survivor annuity beneficiary occur in the same month and year. If the named survivor annuity beneficiary dies prior to the first month in which the retired member dies, the amount of the retired member's annuity shall change to the amount that would have been payable under the standard form of payment. The change in amount shall commence with the payment for the month following the month of death of the survivor annuity beneficiary.

Option B. Lifetime payments with fifty per cent lifetime continuation to survivor annuity beneficiary. The retired member is paid a reduced annuity for life under form of payment option B. The last payment to the retired member is the payment for the month in which the retired member dies. The named survivor annuity beneficiary, if living on the first day of the month following the death of the retired member, is then paid fifty (50) per cent of the reduced annuity for life. The first payment to the survivor is for the month following the month in which the retired participant dies. The last payment to the survivor annuity beneficiary is for the month in which the survivor annuity beneficiary dies. No payment is made to the survivor pension beneficiary if the death of the retired participant and the death of the survivor annuity beneficiary occur in the same month and year. If the named survivor annuity beneficiary dies prior to the first of the month in which the retired member dies, the amount of the retired member's annuity shall change to the amount that would have been payable under the standard form of payment. The change in amount shall commence with the payment for the month following the month of death of the survivor annuity beneficiary.

Option C. Annuity for ten years certain and life thereafter. The retired member is paid a reduced annuity for life under form of payment option C. If the retired member dies before being paid one hundred twenty (120) monthly annuity payments, the monthly annuity payment shall be continued for the remainder of the period of one hundred twenty (120) months to the retired member's survivor annuity beneficiary(ies). If there is no surviving survivor annuity beneficiary, the actuarial present value of the remaining annuity payments in the one-hundred-twenty-month period shall be paid to the estate of the last to survive of the retired member and the last surviving designated survivor annuity beneficiary.

Option D. Lifetime payments with seventy-five per cent lifetime continuation to survivor annuity beneficiary. The retired member is paid a reduced annuity for life under form of payment option D. The last payment to the retired member is the payment for the month in which the retired member dies. The named survivor annuity beneficiary, if living on the first day of the month following the death of the retired member, is then paid seventy-five (75) per cent of the reduced annuity for life. The first payment to the survivor annuity beneficiary is for the month following the month in which the retired participant dies. The last payment to the survivor annuity beneficiary is for the month in which the survivor annuity beneficiary dies, no payment is made to the survivor pension beneficiary if the death of the retired participant and the death of the survivor annuity beneficiary occur in the same month and year. If the named survivor annuity beneficiary dies prior to the first month in which the retired member dies, the amount of the retired member's annuity shall change to the amount that would have been payable under the standard form of payment. The change in amount shall commence with the payment for the month following the month of death of the survivor annuity beneficiary.

Option E. Lifetime payments with sixty-six and two-thirds per cent lifetime continuation to survivor annuity beneficiary. The retired member is paid a reduced annuity for life under form of payment option E. The last payment to the retired member is the payment for the month in which the retired member dies. The named survivor annuity beneficiary, if living on the first day of the month following the death of the retired member, is then paid sixty-six and two-thirds ($66\frac{2}{3}$) per cent of the reduced annuity for life. The first payment to the survivor annuity beneficiary is for the month following the month in which the retired participant dies. The last payment to the survivor annuity beneficiary is for the month in which the survivor annuity beneficiary dies. No payment is made to the survivor pension beneficiary if the death of the retired participant and the death of the survivor annuity beneficiary occur in the same month and year. If the named survivor annuity beneficiary dies prior to the first month in which the retired member dies, the amount of the retired member's annuity shall change to the amount that would have been payable under the standard form of payment. The change in amount shall commence with the payment for the month following the month of death of the survivor annuity beneficiary.

- (c) If all annuity payments permanently terminate before the retirement system has paid an aggregate amount equal to the former member's accumulated member contributions, the difference between the amount of accumulated member contributions and the aggregate amount of annuity payments made shall be paid to the legal representative or administrator of the estate of the former member.
- (d) If a retired member has elected option A, option B, option D, or option E, and such retired member's annuity payments have commenced, the retired member may thereafter change the designated beneficiary up to two (2) times. Upon receipt of a completed change of joint annuity form or such other notices the board may prescribe, the member's monthly benefit shall be readjusted by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the members current benefit, taking into account the ages of the former beneficiary, the new beneficiary and the member. The member shall be responsible for payment of the cost incurred for any such actuarial calculations. The consent of the member's beneficiary to such change shall not be required.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-110, § 1, 2-1-10)

Sec. 13-34. - Death of member; survivor annuities; named beneficiary; spouse.

- (a) A member who either (1) has twenty (20) or more years of credited service, or (2) is age fifty-five (55) years or older and has five (5) or more years of credited service may elect form of payment option A and name a survivor annuity beneficiary. At any time prior to retirement, the member may revoke or change the election of option A and nomination of survivor annuity beneficiary. Upon the death of a member who has a form of payment option A election in effect the name survivor annuity beneficiary shall be paid an annuity. The amount of annuity shall be computed in the same manner in all respects as if the member had retired the day preceding the date of the member's death, even though the member might not have met the applicable conditions for retirement. Payment to a survivor annuity beneficiary under this subsection shall terminate upon the survivor annuity beneficiary's death.

If a member has form of payment option A election in effect at the time of retirement pursuant to this subsection, the election and naming of survivor annuity beneficiary shall continue in effect.

- (b) The spouse of a member who (1) has five (5) or more years of credited service, (2) does not have a form of payment option A election in effect pursuant to section 13-37(a), and (3) dies while in the employ of a participating employer, shall be paid an annuity. The amount of annuity shall be computed in the same manner as if the deceased member had retired the day preceding death, elected form of payment option A named the spouse as beneficiary; even though the member might not have met the conditions for retirement. A spouse's annuity shall terminate upon the death of the spouse.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-35. - Death of member in line of duty; survivor annuities.

- (a) If a member dies and the retirement board finds (1) that the member's death is the result of a personal injury or disease arising solely and exclusively out of and in the course of the member's actual performance of duty in the employ of a participating employer, and (2) that worker's compensation is granted on account of the member's death, the applicable annuities provided in subsections (1), (2) and (3) below shall be paid, subject to subsection (b) of this section.
- (1) The surviving spouse of the deceased member shall be paid an annuity equal to his or her weekly workers' compensation award converted to a monthly basis. Payment of the annuity shall begin with the month following termination of the surviving spouse's workers' compensation period and shall terminate with the payment for the month in which occurs the surviving spouse's death.
- (2) The deceased member's unmarried child or children under age eighteen (18) years shall each be paid an annuity equal to the child's weekly workers' compensation award converted to a monthly basis. Payment of a child's annuity shall begin with the payment for the month following the month of termination of the child's worker's compensation period and shall terminate with the payment for the month in which occurs the child's adoption, marriage, attainment of age eighteen (18) years or death, whichever occurs first.
- (3) The deceased member's financially dependent parents shall each be paid an annuity equal to the parent's weekly workers' compensation award converted to a monthly basis. Payment of a parent's annuity shall begin with the

payment for the month following the month of termination of the parent's workers' compensation period and shall terminate with the payment for the month in which occurs the parent's remarriage or death.

- (b) No annuities shall be paid under this section on account of the death of a member if any annuities become payable under section 13-37 on account of the member's death.
- (c) If an annuity becomes payable under this section on account of the death of a member, the member's accumulated member contributions shall continue to be credited with interest until payment of an annuity begins. Accumulated member contributions shall be transferred to the annuity reserve fund when payment of an annuity starts.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-36. - Disability retirement; conditions for.

The retirement board may retire a member on account of disability if all of the following requirements have been met:

- (1) The member has five (5) or more years of credited service;
- (2) The member was a member at the time the disability was incurred;
- (3) A written application for disability retirement, in the form and containing the information prescribed by the retirement board, has been filed with the retirement system by the member or the member's department head;
- (4) Membership is terminated prior to the selected date of disability retirement;
- (5) The participant submits to all medical examinations and tests and furnishes copies of all medical reports requested by the retirement board;
- (6) The retirement board determines the member to be totally and permanently incapacitated for duty in the employ of the member's participating employer, by reason of a personal injury or disease;
- (7) Two (2) physicians, one of whom shall be selected by the retirement board and paid by the retirement system, and one of whom shall be selected by the member and paid by the member, both report to the retirement board, in writing, that the member is mentally or physically totally incapacitated for duty in the employ of the member's participating employer, the incapacity will probably be permanent, and the member should be retired.

The five (5) years of credited service requirement contained in this section shall be waived in the case of a member whom the retirement board finds to be in receipt of weekly workers' compensation on account of disability arising out of and in the course of his employment by a participating employer.

(Ord. No. K-414, § 2, 3-20-06; Ord. No. K-469, § 1, 2-20-07)

Editor's note—

See the editor's note at the beginning of this chapter.

Sec. 13-37. - Disability annuity; amount of.

- (a) The amount of a disability retirement annuity under the standard form of payment shall be calculated as provided in section 13-31, subject to subsections (b) and (c) below.
- (b) If a member is retired on account of disability as provided in section 13-36 for a disability arising out of and in the course of the member's employment by a participating employer, the following additional provisions shall apply:
- (1)

Subject to subsection (c), the amount of disability annuity under the standard form of payment during the member's duty disability period shall be seventy-five (75) per cent of the member's final average salary for all coverage plans.

(2)

The member's duty disability retirement period begins on the date of the member's disability retirement.

(3)

The member's duty disability retirement period ends on the first to occur of the following dates: the date the pension is terminated as provided in section 13-38; or the end of the month in which the retired member dies; or, the date the annuity has been paid for the maximum duty disability retirement period.

(4)

The maximum duty disability retirement period is the number of months in the period from the date of the member's duty disability retirement and the first to occur of the following dates: The date the member would have acquired twenty-five (25) years of credited service had employment continued with a participating employer; the date the member attains age sixty-five (65) years but not prior to the date which is sixty (60) months after the date of duty disability retirement.

(5)

Credited service shall not be projected for the purpose of calculating the amount of a disability annuity.

(6)

At the end of the disability period the disability benefit would convert to a regular retirement benefit with service credit granted for the duty disability period.

(c)

The amount of a disability retirement annuity shall not exceed the difference between one hundred (100) per cent of the member's final average salary and the monthly equivalent of any weekly worker's compensation paid the retired member.

(d)

In no case shall the amount of the duty disability annuity under the standard form of payment for a police officer member be less than forty-two (42) per cent of final salary, nor shall the amount of the non-duty disability annuity under the standard form of payment for a police officer member who has ten (10) or more years of service be less than twenty-five (25) per cent of final salary.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. K-472, § 1, 3-5-07)

Sec. 13-38. - Reexamination of disability retired member.

(a)

At least once each year during the first five (5) years following a member's retirement on account of disability, and at least once in every three-year period thereafter, the retirement board may require a disability retired member who has not attained age fifty-five (55) years to undergo a medical examination to be made by or under the direction of a physician designated by the board. If the retired member refuses to submit to the medical examination, payment of the retired member's disability annuity may be suspended by the board until refusal is withdrawn. Should refusal continue for one year, all the retired member's rights in and to a disability annuity may be revoked by the retirement board. If the physician reports to the retirement board that the retired member is physically able and capable of resuming employment with the participating employer from which retired, and the retirement board concurs, the retired member shall be returned to employment and the disability annuity shall terminate. In returning the retired member to employment, reasonable latitude shall be allowed the participating employer in placing the retired member in a position commensurate to the retired member's type of work and compensation at the time of retirement.

(b)

A disability retired member who is returned to employment, shall again become a member and the credited service at the time of retirement shall be reinstated. The member shall be given credited service for the period the disability annuity was paid if within payment period weekly workers' compensation was paid on account of the same disability arising out of and in the course of employment by a participating employer; otherwise credited service shall not be given for the payment period.

(c)

In the event a disability retired member who has not attained age fifty-five (55) years becomes engaged in a gainful occupation, business or employment paying more than the difference between the retired member's final average salary and disability annuity, the annuity shall be reduced to an amount which together with the amount so earned equals but does not exceed the final average salary. However, for a police officer member, the reduced amount can not be less than the minimums specified in subsection 13-37(d). Should the retired member's earnings change, the reduction of the annuity shall be adjusted accordingly. Gainful occupation, business or employment existing at the time of disability retirement, other than with a participating preceding disability retirement other than with a participating employer, shall not be considered to the extent of the amount of earnings in the calendar year preceding disability retirement. The retirement system may periodically request substantiated income information from retired members subject to this subsection. Failure

to provide requested information within ninety (90) days of the request shall cause suspension of payment of the disability annuity until the information is provided.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-39. - General coverage plan; applicability; credited service and/or age and credited service requirements for normal retirement; amount of normal retirement annuity; member contribution rate.

- (a) The general coverage plan is applicable to all members to whom a different coverage plan is not specifically made applicable.
- (b) The credited service and/or age and credited service requirement for normal retirement are:
 - (1) Twenty-five (25) or more years of credited service; or
 - (2) Age sixty (60) years or older and five (5) or more years of credited service.
- (c) The amount of a normal retirement annuity under the standard form of payment is:
 - (1) For general employees who are covered by a collective bargaining agreement, three (3) per cent of the member's final average salary times the member's credited service, not to exceed the applicable maximums set forth in sections 13-31 and 13-64;
 - (2) For general employees who are not covered by a collective bargaining agreement, three (3) per cent of the member's final average salary times the member's credited service, not to exceed the applicable maximums set forth in sections 13-31 and 13-64.
- (d) The member contribution rate is seven and sixteen-one-hundredths (7.16) per cent shall be the following per cent of compensation:
 - (1) Five and sixteen one-hundredths (5.16) per cent for general employees employed by the city who are subject to collective bargaining.
 - (2) Five and sixteen one-hundredths (5.16) per cent for general employees employed by the city who are not subject to collective bargaining.
- (e) The credited service requirement for vested termination of membership is five (5) years. A vested former member may make application for benefit commencement on or after attainment of age sixty (60) years.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-40. - Utilities authority coverage plan; applicability; credited service and/or age and credited service requirements for normal retirement; amount of normal retirement annuity; member contribution rate.

- (a) The utilities authority coverage plan is applicable to all members employed by the Ft. Pierce Utilities Authority.
- (b) The credited service and/or age and credited service requirement for normal retirement are:
 - (1) Twenty-five (25) or more years of credited service; or
 - (2) Age sixty (60) years or older and five (5) or more years of credited service.
- (c)

The amount of a normal retirement annuity under the standard form of payment is three (3) per cent of final average compensation times credited service, subject to the applicable maximums set forth in sections 13-31 and 13-64.

(d)

The member contribution rate is six and sixteen-one-hundredths (6.16) per cent of compensation.

(e)

The credited service requirement for vested termination of membership is five (5) years. A vested former member may make application for benefit commencement on or after attainment of age sixty (60) years.

(Ord. No. K-52, § 2, 1-2-01; Ord. No. K-383, § 1, 10-4-05; Ord. No. K-469, § 1, 2-20-07)

Editor's note—

See the editor's note at the beginning of this chapter.

Sec. 13-40.1. - Deferred Retirement Option Program (DROP).

(a)

Generally.

(1)

In general, and subject to the provisions of this section, the deferred retirement option program, hereinafter referred to as the DROP, is a program under which an eligible member of the retirement system may elect to retire, participate, and become a retirant of the retirement system, deferring receipt of retirement benefits while continuing employment with the participating employer. The deferred monthly benefits of a DROP participant shall accrue in the retirement system on behalf of the DROP participant, plus earnings (losses) at the rate of investment return earned (or lost) during the period of DROP participation. DROP assets are self-directed by the member and are subject to administrative expenses.

(2)

During the period of DROP participation, neither the participating employer nor the DROP participant is obligated to make additional contributions to the retirement system on behalf of the DROP participant. Upon termination of employment and participation in the DROP, the DROP participant shall receive his or her total DROP benefits and begin to receive his or her previously determined normal retirement benefits under the option elected prior to DROP participation. Employment while participating in the DROP does not guarantee employment for any specified period. A DROP participant is a retired member of the retirement system.

(b)

Eligibility to participate in the DROP.

(1)

Any member who is eligible to receive a normal retirement annuity and is employed by a participating employer may participate in the DROP and there is no break in service between the member's last working day as an employee and first day as a retired member and DROP participant. The member shall advise the participating employer and the retirement system in writing of the date on which DROP shall begin.

(2)

Election to participate shall be forfeited if not exercised within the first thirty (30) years of credited service. However, participation in the first year of enactment will be extended to all eligible members.

(3)

The total years of participation in the DROP shall not exceed five (5) years.

(4)

Upon a member's election to participate in the DROP, he or she shall cease to be a member and shall no longer accrue any benefits under the retirement system. For all retirement system purposes, the member becomes, a retired member. The amount of credited service and final average salary freeze as of the date of entry into the DROP. Retirement system amendments which become effective after the date of participation in the DROP will not be applicable to the DROP participant, unless expressly stated by the amendment.

(5)

Upon electing to participate in the DROP, the member shall submit on forms required by the retirement system and/or the third-party administrator:

a.

A written election to retire;

b.

A written election to participate in the DROP;

c.

An irrevocable resignation from service to the town and withdrawal from the DROP effective after no more than sixty (60) months participation in the DROP;

- d. A properly completed DROP application for normal retirement as provided in this section; and
- e. Any other information required by the retirement system or by the third-party administrator or provider.

(6) Re-employed retired members of the town's retirement system are not eligible to participate in DROP.

(c)

Amounts payable upon election to participate in DROP.

- (1) Monthly retirement benefits that would have been payable had the member terminated employment with the participating employer and elected to receive monthly pension payments will be paid into the DROP and credited to the retired member. Payments into the DROP will be made monthly over the period the retired member participates in the DROP, up to a maximum of sixty (60) months.
- (2) Each DROP participant shall have a DROP account to which his or her monthly retirement benefits will be transferred. The participating employer shall select a third party administrator or provider for this purpose. Payments to the DROP shall be directly deposited with a third party administrator or provider. Each DROP participant shall direct the manner in which the amounts in his or her DROP account shall be invested from options selected by the participating employer and approved by the board of trustees. The DROP account will be responsible for investment expenses and the DROP participant will be responsible for the risks associated with investment outcomes. If a retired member does not terminate employment at the end of participation in the DROP, all future DROP transfers shall cease and be permanently forfeited.
- (3) No payments will be made to a retired member until he or she terminates employment with the Fort Pierce Utilities Authority.
- (4) Employee benefits, other than benefits under the retirement system, which are granted to employees, will be provided to DROP participants.
- (5) Upon termination of employment, the retired member, or if deceased, such retired member's named beneficiary, and verification of same to the board of trustees, a retired member or named beneficiary will receive the balance of the DROP in accordance with the option listed below:
Direct rollover. All accrued DROP benefits, plus interest and earnings, if any, shall be paid from the DROP directly to the custodian of an eligible retirement plan as defined in section 402(c)(8)(B) of the United States Internal Revenue Code. However, in the case of an eligible rollover distribution to the surviving spouse of a deceased DROP participant, an eligible retirement plan is an individual retirement account or an individual retirement annuity as described in section 402(c)(9) of the United States Internal Revenue Code.
- (6) Any form of payment selected must comply with the minimum distribution requirements of the IRC 401(a)(9).
- (7) The accrued benefits of any DROP participant, and any contributions accumulated under such program, shall not be subject to assignment, execution, attachment, or to any legal process whatsoever, except for income deduction orders and federal income tax levies.
- (8) DROP participants shall not be eligible for disability retirement benefits as provided under the retirement system. In the event a DROP participant becomes incapacitated for employment by the participating employer, the DROP participation will terminate, and the former DROP participant will elect one of the alternatives under subsection 5 of this section.
- (9) Death benefits under the DROP.
 - a. Upon the death of a DROP participant, the named beneficiary shall be entitled to apply for and receive the accrued benefits in the DROP as provided under subsection 5 of this section.
 - b. The monthly retirement benefit transferred to the DROP account during the month of a DROP participant's death shall be the final transfer for such DROP account.
 - c.

Eligibility to participate in the DROP terminates upon the death of a DROP participant. A DROP participant's annuity beneficiary shall not be eligible for retirement system death benefits as provided in sections 13-34 or 13-35, unless the DROP participant dies on or after the effective date of enrollment in the DROP, but prior to the first monthly benefit being transferred to the DROP.

- (10) Cost of living adjustment. The DROP participants' monthly retirement benefit shall be increased as provided in section 13-43.

(d) *Administration of the program.*

- (1) The board of trustees shall make such rules as are necessary for the effective and efficient administration of this subsection. The board of trustees shall not be required to advise members of the federal tax consequences of an election related to the DROP but may advise members to seek qualified independent advice.

- (2) The DROP will be cost-neutral to the city. To maintain the cost-neutral basis to the city, any increase or decrease in the cost of administering the DROP will be absorbed by the participating employer and/or the DROP accounts on a proportionate basis as determined by the participating employer.

(Ord. No. K-511, § 1, 10-1-07; Ord. No. L-85, § 1, 10-19-09)

Sec. 13-41. - Reserved.

Sec. 13-42. - Police officer coverage plan; applicability; credited service and/or age and credited service requirements for normal retirement; amount of normal retirement annuity; member contribution rate.

- (a) The police officer coverage plan is applicable to all members who are a police officer employed by the city.
- (b) The credited service and/or age and credited service requirement for normal retirement are:
 - (1) Twenty-five (25) or more years of credited service; or
 - (2) Age fifty-five (55) years or older and five (5) or more years of credited service.
- (c) The amount of a normal retirement annuity under the standard form of payment is three (3) per cent of the member(s) final average salary times the member(s) credited service, not to exceed the applicable maximum set forth in sections 13-31 and 13-64.:
 - (1) For police officers who are covered by a collective bargaining agreement, three (3) per cent of the member's final average salary times the member's credited service, not to exceed the applicable maximums set forth in sections 13-31 and 13-64;
 - (2) For police officers who are not covered by a collective bargaining agreement, three (3) per cent of the member's final average salary times the member's credited service, not to exceed the applicable maximums set forth in sections 13-31 and 13-64.
- (d) The member contribution rate shall be the following per cent of compensation:
 - (1) Five and sixteen one-hundredths (5.16) per cent for police officers employed by the city who are subject to collective bargaining;
 - (2) Five and sixteen one-hundredths (5.16) per cent for police officers employed by the city who are not subject to collective bargaining.
- (e) The credited service requirement for vested termination of membership is five (5) years. A vested former member may make application for benefit commencement on or after attainment of age sixty (60) years.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-43. - Cost of living adjustment pertaining to COLA.

The board may, but is not required, with the advice of the plan's actuary, to adjust the pensions of retired members annually to reflect the change in the cost of living as measured by the Consumer Price Index or such other index approved by the board, provided that such adjustments may only be made from investment return of the fund in excess of that required to satisfy the actuarial interest assumption used in the most recent actuarial valuation of the plan. The adjustment shall be subject to a maximum in any plan year of three (3) per cent of the current benefit amount. The cumulative value of any cost of living adjustments granted pursuant to this section shall not be greater than the cumulative net actuarial gains and losses incurred after the effective date of this section. The procedures and methods to be followed in the determination of any adjustments shall be established from time to time by the board.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-44. - Accounting.

The mandatory accounting funds of the retirement system are the member's deposit fund, the employer accumulation fund and the annuity reserve fund. The retirement board may establish such additional funds and accounts as it from time to time deems appropriate. The maintenance of separate funds and accounts does not require the actual segregation of retirement system assets among the funds and accounts. The accounting records of the retirement system shall be maintained in a manner which permits determination of the equity of each participating employer in the assets of the retirement system.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-45. - Members' deposit fund.

(a)

The member's deposit fund is hereby created. It shall be the fund in which shall be accumulated the contributions of members, and from which shall be made refunds and transfers of accumulated member contributions, as provided in this article.

(b)

A member's contributions to the retirement system shall be as provided by the coverage plan applicable to the member.

(c)

Each participating employer shall cause the contributions provided for in subsection (b) of this section to be deducted from the compensation of each member on each payroll. The members' contributions provided for herein shall be made notwithstanding that the minimum compensation provided by law for any member is thereby changed. Each member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of the member's compensation less the deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the member during the period covered by such payment, except as to benefits provided by the retirement system. When deducted, the contributions shall be paid to the retirement system within five (5) working days and shall be credited to the member's accumulated member contribution account.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-46. - Accumulated member contributions—Transfer.

Upon retirement, a member's accumulated member contributions shall be transferred to the annuity reserve fund. Except as otherwise provided in this article, at the expiration of a period of four (4) years following the date a member ceases to be a member, any balance of the member's accumulated member contributions unclaimed by the member or the member's legal representative, shall be transferred to the employer accumulation fund.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-47. - Same—Refund of.

- (a) The accumulated member contributions of a member or a vested former member who has not met a credited service and/or credited service and age requirement for normal retirement shall be paid to the former member or vested former member upon written request to the retirement system.
- (b) If a member, vested former member or former member dies prior to retirement and no annuity becomes payable by the retirement system on account of the death, the deceased's accumulated member contributions shall be paid to the deceased's refund beneficiary. If there is no refund beneficiary surviving the deceased, the accumulated member contributions shall be paid to the estate of the deceased.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-48. - Reserved.**Sec. 13-49. - Employer accumulation fund; funding objective; contributions by participating employers.**

- (a) The employer accumulation fund is the fund in which shall be accumulated the contributions made by participating employers. The funding objective for the retirement system is to establish and receive contributions during each plan year which are sufficient to:
- (1) Fund the actuarial cost of benefits likely to be paid on account of service rendered by members during the plan year (normal cost); and
 - (2) Liquidate the unfunded actuarial cost for benefits likely to be paid on account of service rendered by members prior to the plan year (unfunded actuarial accrued liability) over not more than thirty (30) years from the date of establishment of each increment to the unfunded actuarial accrued liability but in no case over a longer period than the maximum period established by Florida Statute or the maximum period established by the governmental accounting standards board for the purpose of determining pension expense.
- (b) Participating employer contributions shall be determined by annual actuarial valuation using a level per cent of compensation actuarial cost method. A separate contribution rate shall be determined for each coverage plan. Each participating employer shall appropriate or budget the contributions so determined and pay the contribution to the retirement system.
- (c) Administrative expense incurred in the operation of the retirement system shall be charged to the employer accumulation fund and paid on a current basis in addition to the annual funding costs otherwise determined.

(Ord. No. K-469, § 1, 2-20-07)

Secs. 13-50, 13-51. - Reserved.**Sec. 13-52. - Investment of monies.**

- (a) The retirement board shall be the trustees of the monies and assets of the retirement system and shall have full and unrestricted discretionary power and authority to invest and reinvest such portion of the monies and assets as in its judgment is not immediately required for the payment of pensions, refunds of accumulated contributions and expenses. The retirement board shall have full and unrestricted discretionary power and authority to hold, sell, assign, transfer or otherwise dispose of any securities and investments in which any monies of the retirement system have been invested, as well as the proceeds of such investments. In exercising its discretionary power and authority with respect to the management of the monies and assets of the retirement system, the retirement board shall have in mind the responsibilities which are attached to such office and shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs, considering probable income and appreciation as well as the probable safety of capital. Within the limitations of the foregoing standards, investments may be made in accordance with the provisions of applicable state law, if any.

- (b) The board may employ investment counsel to advise in the making and disposition of investments and may delegate discretionary authority to its investment counsel within the framework of a duly adopted investment policy.
- (c) The board may employ the services of a bank, insurance company or other investment company in the execution of its investment transactions.

(Ord. No. K-469, § 1, 2-20-07)

Secs. 13-53, 13-54. - Reserved.

Sec. 13-55. - Allowance of regular interest.

All interest and other earnings on monies and investments of the retirement system shall be credited to the employer accumulation fund. The retirement board may use a portion of the earnings of the system to defray the costs of investing and managing the assets of the system. The retirement board shall, at the end of each fiscal year credit interest to accumulated member contributions and to the annuity reserve fund. Interest shall be calculated on the accumulated member contribution balance at the beginning of the fiscal year and on the mean balance in the annuity reserve fund. The interest so credited shall be charged to the employer accumulation fund.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-56. - Right to annuity not subject to garnishment; assignment.

- (a) The right of a person to annuity payments, to the return of accumulated member contributions, the annuity itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this article and any monies belonging to the retirement system shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law or any process of law whatsoever, and shall be unassignable except as is specifically provided in this article. The city shall have the right of setoff from the employee's retirement and benefit system for any claim arising from larceny, embezzlement by or fraud of a member.
- (b) If a member or a survivor annuity beneficiary is covered by a group insurance or prepayment plan participated in by a participating employer and should the member or survivor annuity beneficiary be permitted to and elect to continue such coverage, the annuity recipient may authorize the retirement board to have deducted from his/her annuity the payments required to continue coverage under the group insurance or prepayment plan.

(Ord. No. K-469, § 1, 2-20-07)

Secs. 13-57, 13-58. - Reserved.

Sec. 13-59. - Annuity reserve fund created.

The annuity reserve fund shall be the fund from which shall be paid all annuities. In the event a disability annuity is terminated as provided in section 13-38 and the retired member returns to employment with a participating employer, the annuity reserve at that time shall be transferred from the annuity reserve fund to the member's deposit fund, and the employer accumulation fund in the same proportion as was originally transferred from the said funds to the annuity reserve fund.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-60. - Gifts, devises, etc., to retirement system.

All gifts, devises and bequests to the retirement system shall be credited to the employer accumulation fund division or divisions as the retirement board shall determine.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-61. - Subrogation.

In the event a person becomes entitled to an annuity or other benefit payable from funds of the retirement system, as a result of an accident or injury caused by the act of a third party, the participating employer shall be subrogated to the rights of the said person against such third party to the extent of the benefits which the retirement system pays or becomes liable to pay.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-62. - Correction of errors.

The retirement board shall correct errors in the records of the retirement system and in the actions of the retirement board and/or its agents and staff. The retirement board shall seek to recover overpayments and shall make up underpayments. Recovery of overpayments may be accomplished by reducing future payments so that the actuarial present value of actual payments is equal to the actuarial present value of correct payments.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-63. - Member contribution pickup.

- (a) Upon implementation, a member's participating employer shall, solely for the purpose of compliance with section 41724(h) of the Internal Revenue Code, pick up, for the purposes specified in that section, member contributions required by this chapter for all compensation of the member after implementation. Member contributions picked up under the provisions of this section shall be treated as participating employer contributions for purposes of determining income tax obligations under the Internal Revenue Code; however, such picked up member contributions shall be included in the determination of the member's compensation for all other purposes under federal and state laws.
- (b) Member contributions picked up under this section shall continue to be designated member contributions for all purposes of this chapter and shall be considered as part of the member's compensation for purposes of determining the amount of a member contribution. The provisions of this section are mandatory with respect to all employees of a participating employer, and the individual member shall have no option concerning the pickup or to receive the contributed amounts directly instead of having them paid by the participating employer to the retirement system.
- (c) Implementation of this section shall be by resolution of the governing body of a participating employer adopted subsequent to receipt of a letter of determination from the Internal Revenue Service as to the qualified status of the retirement system.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-64. - Qualified plan.

- (a) The city intends the retirement system to be a qualified pension plan under section 401 of the Internal Revenue Code, as amended, and that the trust be an exempt organization under section 501 of the Internal Revenue Code. The retirement board shall administer the retirement system so as to fulfill this intent.
- (b) Employer financed benefits limitations:

- (1) Except as provided in the remainder of this subsection, employer financed benefits provided by the retirement system shall not exceed ten thousand dollars (\$10,000.00) per year, except the ten thousand dollar (\$10,000.00) limitation shall be fifty thousand dollars (\$50,000.00) for members who are police officers or firefighters with at least fifteen (15) years of credited service as a police officer or firefighter.
- (2) The limitation provided in subsection (1) shall apply unless application of subsections (3), (4) and (5) would produce a higher limitation, in which case such higher limitation shall apply.
- (3) For retirements occurring at age sixty-two (62) or older, the upper limit is the lesser of ninety thousand dollars (\$90,000.00) and one hundred (100) per cent of the member's three-year highest average earnings calculated according to section 415 of the Internal Revenue Code.
- (4) For retirements occurring prior to age sixty-two (62), the amount of ninety thousand dollars (\$90,000.00) is actuarially reduced to reflect payment prior to age sixty-two (62). In calculating the reduction, the interest shall be five (5) per cent. If this subsection produces a limitation of less than seventy-five thousand dollars (\$75,000.00) at age fifty-five (55) or older, the limitation at such ages shall be seventy-five thousand dollars (\$75,000.00) and the limitations for ages under age fifty-five (55) shall be calculated from a limitation of seventy-five thousand dollars (\$75,000.00) at age fifty-five (55).
- (5) Section 415(d) of the Internal Revenue Code provides that the fifty thousand dollar (\$50,000.00) limitation in subsection (1) and the ninety thousand dollars (\$90,000.00) limitation in subsection (3) is to be adjusted by the commissioners of the Internal Revenue Service to reflect cost-of-living increases, commencing with calendar year 1988. The provisions of this subsection shall be administered using the adjusted limitations applicable to each year.
- (c) The provisions of this retirement ordinance notwithstanding, the retirement board shall at all times administer the retirement system in compliance with the provisions of section 415 of the Internal Revenue Code which are applicable to public employee retirement plans.
- (d) It is the intent of the city that the retirement system be permanent and remain in effect for an indefinite period. The city, however, reserves the right to modify, amend or discontinue the retirement system at any time. The city expressly reserves the right to amend the retirement system in order to take advantage of or comply with any statute, rule or regulation of the federal government of the state or any duly constituted agency thereof.
- (e) In the event the retirement system is discontinued or terminated, all members shall immediately become fully vested in their benefits. The discontinuance or termination shall be carried out in all respects in conformance with applicable statute, rule or regulation of the federal government or the state or any duly constituted agency thereof.
- (f) Actuarial equivalencies shall be calculated using such rates of interest and mortality tables as the retirement board shall from time to time adopt. In no case shall a rate of interest be less than five (5) per cent a year, compounded yearly. No change in interest rate or mortality table shall reduce the accrued benefit of any member. In the event the makeup of the retirement board is changed in a manner that brings the board under the direct control of an employer, actuarial equivalencies shall be calculated using the 1974 Group Annuity Mortality Table (Male) and an interest rate of five (5) per cent a year, compounded yearly.
- (g) All assets of the retirement system shall be held and invested for the sole purpose of meeting the legitimate obligations of the retirement system and shall be used for no other purpose. No part of the assets shall be used for or diverted to purposes other than for the exclusive benefit of participants and beneficiaries prior to satisfaction of all retirement system obligations.
- (h) Members of the retirement board and its employees and agents are prohibited from:
- (1) Having a beneficial interest, direct or indirect, in an investment of the retirement system; and
 - (2) Borrowing from the retirement system; and
 - (3) Receiving any pay or emolument from any individual or organization providing services to the retirement system.
- (i) Reserved.
- (j)

Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for eligible employees' shall not be less than the amount which was allowed to be taken into account under the system as in effect on July 1, 1993. For the purpose, an eligible employee is an individual who was a member of the retirement system before the first plan year beginning after September 30, 1996.

(Ord. No. K-469, § 1, 2-20-07)

Secs. 13-65—13-70. - Reserved.

Fort Pierce, Florida, Code of Ordinances >> - CODE OF ORDINANCES >> Chapter 13 - PENSIONS AND RETIREMENT >> ARTICLE II. - RETIREMENT SYSTEM FOR OFFICERS AND EMPLOYEES OF PARTICIPATING EMPLOYERS >> DIVISION 2. - RETIREMENT BOARD >>

DIVISION 2. - RETIREMENT BOARD

Sec. 13-71. - Created; composition.

Sec. 13-72. - Meetings; quorum; rules; records.

Sec. 13-73. - Officers; actuary; contracts.

Sec. 13-74. - Annual reports.

Sec. 13-75. - Adoption of experience tables and regular interest.

Sec. 13-76. - Vacancies.

Sec. 13-77. - Terms of office.

Secs. 13-78—13-90. - Reserved.

Sec. 13-71. - Created; composition.

There is hereby created a retirement board in which is vested the power and authority to administer, manage and operate the retirement and benefit system, and to construe and make effective the provisions of this article. The board shall consist of the following persons:

- (1) Two (2) members of the city commission to be designated by the city commission.
- (2) Two (2) members from the general membership, one of these to be elected by members covered by the utilities authority coverage plan and the other to be elected by the members covered by the general coverage plan.
- (3) One member to be elected by the members covered by the police officer coverage plan.
- (4) The director of finance.
- (5) A member to be designated by the Fort Pierce Utilities Authority.

The elections of members to the retirement board shall be held under such rules and regulations as the retirement board shall from time to time adopt.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-72. - Meetings; quorum; rules; records.

The retirement board shall hold at least four (4) meetings each year at a time and place designated by the board, and as many other meetings that are deemed necessary to transact the business of the retirement system. At any meetings of the retirement board, four (4) members shall constitute a quorum. Each retirement board member shall be entitled to one vote on each question and at least four (4) concurring votes shall be required for a decision by the board at any of its meetings. The board shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the board shall be public. As to F.S. Ch. 185, all acts and decisions shall be effectuated by vote of a majority of the members of the board.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-73. - Officers; actuary; contracts.

- (a) The retirement board, at its first meeting in October, shall designate from its own number a chairperson and vice chairperson.
- (b) The director of finance of the city shall be treasurer and secretary of the retirement system and the custodian of its assets.
- (c) The city attorney shall be legal advisor to the retirement board.
- (d) The retirement board shall designate an actuary who shall be technical advisor to the board and who shall perform such other duties as the retirement board shall from time to time designate.
- (e) The retirement board is authorized and empowered to employ such professional and other services as are required for the proper administration of the retirement system. Such services shall be employed on a contractual or fee basis and persons performing such services shall not be considered employees of the city. Compensation for such services shall be fixed by the retirement board, subject to approval by the city commission.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-74. - Annual reports.

The secretary-treasurer shall keep, or cause to be kept, such data as shall be necessary for an actuarial valuation of the assets and liabilities of the retirement system. The retirement board shall annually report to the mayor and city commission showing the fiscal transactions of the retirement system for the preceding fiscal year. The board shall furnish the mayor and the city commission such additional information regarding the operation of the system as the mayor or the city commission shall from time to time request.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-75. - Adoption of experience tables and regular interest.

The retirement board shall from time to time adopt such mortality and other tables of experience, and a rate or rates of regular interest, as are necessary in the operation of the retirement system on an actuarial basis.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-76. - Vacancies.

A retirement board member provided for in subsections 13-71(2) or (3) who ceases to be a member shall be considered to have resigned from the retirement board and the board shall, by resolution declare the office vacant. A vacancy on the retirement board shall be filled, for the unexpired term, in the same manner as the office was previously filled. In the event the retirement board member provided for in subsection 13-71(4) ceases to be director of finance, the retirement board shall appoint an employee from the department of finance to serve on the board until such time as the director of finance takes office.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-77. - Terms of office.

The term of office of a retirement board member provided for in subsections 13-71(2) and (3) shall be for three (3) years. The retirement board members provided for in subsections 13-71(1) and (4) shall serve for the term of their tenure in office. The Fort Pierce Utilities Authority member shall serve for a term of three (3) years.

(Ord. No. K-469, § 1, 2-20-07)

Secs. 13-78—13-90. - Reserved.

Fort Pierce, Florida, Code of Ordinances >> - CODE OF ORDINANCES >> Chapter 13 - PENSIONS AND RETIREMENT >> ARTICLE III. - SOCIAL SECURITY >>

ARTICLE III. - SOCIAL SECURITY

DIVISION 1. - GENERALLY
DIVISION 2. - RESERVED
DIVISION 3. - POLICEMEN

Fort Pierce, Florida, Code of Ordinances >> - CODE OF ORDINANCES >> Chapter 13 - PENSIONS AND RETIREMENT >> ARTICLE III. - SOCIAL SECURITY >> DIVISION 1. - GENERALLY >>

DIVISION 1. - GENERALLY

Sec. 13-91. - Policy and purpose.
Sec. 13-92. - Agreements to extend benefits to city officers and employees.
Sec. 13-93. - Terms and conditions of Social Security Act adopted.
Sec. 13-94. - Scope of extension of benefits.
Sec. 13-95. - Salary withholdings.
Sec. 13-96. - Custodian of funds; withholding and reporting agent.
Sec. 13-97. - Appropriation of matching funds; disposition.
Sec. 13-98. - Records and reports.
Secs. 13-99—13-110. - Reserved.

Sec. 13-91. - Policy and purpose.

It is the policy and purpose of the city to extend effective as of January 1, 1960, to certain employees and officials thereof, not excluded by law, nor excepted in this article, the benefits of the system of old age and survivors insurance as authorized by the federal Social Security Act and amendments thereto, and by F.S. Ch. 650, as amended; and to cover by such plan all services which constitute employment as defined in F.S. § 650.02, performed in the employ of said city by such employees and officials thereof, except service of an emergency nature, service in any class or classes of elective positions, service in any class or classes of part-time positions, service in any class or classes of positions the compensation of which is on a fee basis, employees presently employed who do not elect coverage and nonmembers of the retirement and benefit system of the city.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-92. - Agreements to extend benefits to city officers and employees.

The mayor-commissioner is hereby authorized and directed to execute all necessary agreements and amendments thereto with the division of retirement of the state department of administration, as state agency, and to request the governor to authorize an employee referendum, for the purpose of extending the benefits provided by the system of old age and survivors insurance to the employees and officials of this city designated in sections 13-91 and 13-94, which agreement shall provide for such methods of administration of the plan by the city as are found by the state agency to be necessary and proper and, subject to employee

referendum, shall be effective with respect to services in employment covered by such agreement performed on and after the first day of October, A.D., 1959.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-93. - Terms and conditions of Social Security Act adopted.

The city does hereby adopt the terms, conditions, requirements, reservations, benefits, privileges and other conditions thereunto appertaining, of Title II of the Social Security Act as amended, for and on behalf of all officers and employees of its departments and agencies to be covered under the agreement.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-94. - Scope of extension of benefits.

There shall be included in any agreement entered into under section 13-92 only services in positions of:

(1)

Officers and employees who are members of retirement and benefit system of the city, except firemen and policemen, who have, prior to date of federal approval of such coverage, filed written election to become covered.

(2)

Officers and employees, except firemen and policemen, who, on or after said date of federal approval, become members of the above named retirement system.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-95. - Salary withholdings.

Withholdings from salaries, wages or other compensation of employees and officials for the purpose provided in section 13-91 are hereby authorized to be made, and shall be made, in the amounts and at such times as may be required by applicable state or federal laws or regulations, and shall be paid over to the state agency designated by said laws or regulations to receive such amounts.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-96. - Custodian of funds; withholding and reporting agent.

The director of finance is hereby designated the custodian of all sums withheld from the compensation of officers and employees and of the appropriated funds for the contribution of the city, and he is hereby made the withholding and reporting agent and charged with the duty of maintaining personnel records for the purposes of this division.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-97. - Appropriation of matching funds; disposition.

There shall be appropriated from available funds, derived from city general fund, city electric and water department fund, such amounts, at such times, as may be required to pay promptly the contributions, assessments and referendum costs required of the

city as applicant or employer by state or federal laws or regulations, which shall be paid over to the lawfully designated state agency at the times and in the manner provided by law and regulation.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-98. - Records and reports.

The city shall keep such records and make such reports as may be required by applicable state or federal laws or regulations, and shall adhere to the regulations of the state agency.

(Ord. No. K-469, § 1, 2-20-07)

Secs. 13-99—13-110. - Reserved.

Fort Pierce, Florida, Code of Ordinances >> - CODE OF ORDINANCES >> Chapter 13 - PENSIONS AND RETIREMENT >> ARTICLE III. - SOCIAL SECURITY >> DIVISION 2. - RESERVED >>

DIVISION 2. - RESERVED

Secs. 13-111—13-130. - Reserved.

Secs. 13-111—13-130. - Reserved.

Fort Pierce, Florida, Code of Ordinances >> - CODE OF ORDINANCES >> Chapter 13 - PENSIONS AND RETIREMENT >> ARTICLE III. - SOCIAL SECURITY >> DIVISION 3. - POLICEMEN >>

DIVISION 3. - POLICEMEN

Sec. 13-131. - Policy and purpose.

Sec. 13-132. - Authority to execute agreements to extend benefits.

Sec. 13-133. - Terms and conditions of Social Security Act adopted.

Sec. 13-134. - Scope of extension of benefits.

Sec. 13-135. - Salary withholdings.

Sec. 13-136. - Appropriation of matching funds; disposition.

Sec. 13-137. - Records and reports.

Sec. 13-138. - Custodian of funds; withholding and reporting agent.

Secs. 13-139—13-150. - Reserved.

Sec. 13-131. - Policy and purpose.

It is hereby declared to be the policy and purpose of the city to extend effective as of January 1, 1960, to certain employees and officials thereof in the position of policeman and not excluded by law nor excepted herein, the benefits of the system of old age and survivors insurance as authorized by the federal Social Security Act and amendments thereto, and by F.S. Ch. 650, as amended; and to cover by such plan all of their services which constitute employment as defined in F.S. § 650.02, performed in the employ of said city, except employees presently employed who do not elect coverage, and nonmembers of the retirement benefit system of the city.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-132. - Authority to execute agreements to extend benefits.

The mayor-commissioner is hereby authorized and directed to execute all necessary agreements and amendments thereto with the state agency, and to request the governor to authorize an employee referendum, for the purpose of extending the benefits provided by said system of old age and survivors insurance to the employees and officials of said city designated in sections 13-131 and 13-134, which agreement shall provide for such methods of administration of the plan by said city as are found by the state agency to be necessary and proper, and, subject to employee referendum, shall be effective with respect to services in employment covered by such agreement performed on and after the first day of October, A.D., 1959.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-133. - Terms and conditions of Social Security Act adopted.

The city does hereby adopt the terms, conditions, requirements, reservations, benefits, privileges and other conditions thereunto appertaining, of Title II of the Social Security Act as amended, for and on behalf of all its officers and employees to be covered under the agreement.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-134. - Scope of extension of benefits.

There shall be included in any agreement entered into under section 13-132 only services in positions of:

- (1) Policemen who are members of the retirement and benefit system of city or police officer's retirement fund who have, prior to date of federal approval of old age and survivors insurance coverage, filed written election to become covered.
- (2) Policemen who, on or after said date of federal approval, become members of police officers retirement fund or the retirement and benefit system of city.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-135. - Salary withholdings.

Withholdings from salaries, wages or other compensation of employees and officials for the purpose provided in section 13-131 are hereby authorized to be made, and shall be made, in the amounts and at such times as may be required by applicable state or federal laws or regulations, and shall be paid over to the state agency designated by said laws or regulations to receive such amounts.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-136. - Appropriation of matching funds; disposition.

There shall be appropriated from available funds, derived from city general fund, such amounts, at such times, as may be required to pay promptly the contributions, assessments, and referendum costs required of the city as applicant or employer by state or federal laws or regulations, which shall be paid over to the lawfully designated state agency at the times and in the manner provided by law and regulation.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-137. - Records and reports.

The city shall keep such records and make such reports as may be required by applicable state or federal laws or regulations, and shall adhere to the regulations of the state agency.

(Ord. No. K-469, § 1, 2-20-07)

Sec. 13-138. - Custodian of funds; withholding and reporting agent.

The director of finance is hereby designated the custodian of all sums withheld from the compensation of officers and employees and of the appropriated funds for the contribution of the city, and he is hereby made the withholding and reporting agent and charged with the duty of maintaining personnel records for the purposes of this division.

(Ord. No. K-469, § 1, 2-20-07)

Secs. 13-139—13-150. - Reserved.

Fort Pierce, Florida, Code of Ordinances >> - CODE OF ORDINANCES >> Chapter 13 - PENSIONS AND RETIREMENT >> ARTICLE IV. - POLICEMEN'S RETIREMENT/PENSION FUNDS >> ARTICLE IV. - POLICEMEN'S RETIREMENT/PENSION FUNDS

DIVISION 1. - GENERALLY
DIVISION 2. - POLICE OFFICERS' RETIREMENT TRUST FUND

Fort Pierce, Florida, Code of Ordinances >> - CODE OF ORDINANCES >> Chapter 13 - PENSIONS AND RETIREMENT >> ARTICLE IV. - POLICEMEN'S RETIREMENT/PENSION FUNDS >> DIVISION 1. - GENERALLY >>

DIVISION 1. - GENERALLY

Secs. 13-151—13-154. - Reserved.
Sec. 13-155. - State contribution fund created—Policemen.
Secs. 13-156—13-160. - Reserved.

Secs. 13-151—13-154. - Reserved.

Sec. 13-155. - State contribution fund created—Policemen.

The policemen state contribution fund is hereby created. It shall be the fund in which shall be accumulated the monies received from the state for policemen members. In no case shall the city contribute to the said fund and in no case shall disbursements from the fund exceed the balance credited to the fund.

(Ord. No. K-469, § 1, 2-20-07)

Secs. 13-156—13-160. - Reserved.

Fort Pierce, Florida, Code of Ordinances >> - CODE OF ORDINANCES >> Chapter 13 - PENSIONS AND RETIREMENT >> ARTICLE IV. - POLICEMEN'S RETIREMENT/PENSION FUNDS >> DIVISION 2. - POLICE OFFICERS' RETIREMENT TRUST FUND >>

DIVISION 2. - POLICE OFFICERS' RETIREMENT TRUST FUND

Sec. 13-161. - Definitions.

Sec. 13-162. - Police officers retirement law and rules adopted.

Sec. 13-163. - Established; purpose; effective date.

Sec. 13-164. - Excise tax on casualty insurance premiums.

Sec. 13-165. - Records; accounts; disbursements; deposits; contributions; actions.

Sec. 13-166. - Retirement.

Sec. 13-167. - Death benefits.

Sec. 13-168. - Employee withdrawal from the plan.

Sec. 13-169. - Members deposit fund.

Sec. 13-170. - Forfeiture of pension; conviction and forfeiture.

Sec. 13-171. - Pension validity.

Sec. 13-172. - Claims procedure.

Sec. 13-173. - Required distributions.

Sec. 13-174. - Rollover distributions.

Sec. 13-175. - Internal Revenue Code limits.

Sec. 13-176. - Termination of plan and distribution of fund.

Sec. 13-161. - Definitions.

The following words and phrases as used in this division shall have the following meanings, unless a different meaning is plainly required by the context:

Actuarial equivalence or actuarially equivalent means that any benefit payable under the terms of this plan in a form other than the normal form of benefit shall have the same actuarial present value on the date payment commences as the normal form of benefit. For purposes of establishing the actuarial present value of any form of payment, all future payments shall be discounted for interest and mortality by using seven and one-half (7.5) percent interest and the 1983 Group Annuity Mortality Table for Males, with ages set ahead five (5) years in the case of disability retirees.

Average salary means the average regular monthly salary of the police officer during his best three (3) years of the last ten (10) years of credited service prior to retirement, termination, or death. Such average salary shall include amounts paid a differential wages while a member was deployed from employment to active duty military service.

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

Credited service means that period of continuous uninterrupted employment with the city as a policeman from the effective date of this retirement plan, or his last date of employment, if later, and the earlier of his date of termination of service or his normal retirement date, as hereinafter described. An authorized temporary leave of absence, granted by the employing authority, whether paid or unpaid, shall not be construed as a break in credited service provided the police officer's credited benefits remain in the plan. Time spent in compulsory service of the United States by the police officer will be credited, provided the police officer reenters the service of the city as a police officer within twelve (12) months after the date of release from such military service except that members who die or become disabled while serving on active duty military service shall be entitled to the rights of this section even though such member was not reemployed by the city. Members who die or become disabled while on active duty military service shall be treated as though reemployed the day before the member became disabled or died, was credited with the service they would have been entitled to under this section, and then either died a nonduty death while employed or became disabled from a nonduty disability.

Police officer means any duly appointed and enrolled policeman in the regular full-time employ of the city.

Police officers' retirement plan, herein called the plan, means a special plan created exclusively for the purposes herein provided.

Salary means the regular monthly salary paid to a police officer for services rendered. For purposes of applying the limitations of [Internal Revenue] Code section 415(b), compensation includes base pay, incentive pay, longevity pay, shift premiums, police incentive pay, overtime pay, base salary or wages while absent from work on account of vacation, holiday, illness or other authorized paid leave, payments in consideration of unused sick and vacation time, and city contributions on behalf of the employee to a deferred compensation program maintained pursuant to section 457 of the [Internal Revenue] Code. Additionally, this limitation

specifically includes the crediting of compensation while absent from service for military duty; such crediting shall not exceed the compensation that would have been credited under the system if system services had continued.

Total disability means as defined in F.S. § 185.18(2), as amended.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08; Ord. No. L-84, § 1, 7-20-09; Ord. No. L-118, § 1, 5-3-10)

Sec. 13-162. - Police officers retirement law and rules adopted.

The provisions thereof and all rules and regulations promulgated pursuant to F.S. ch. 185, known as "Municipal Police Officers Retirement Trust Funds" are hereby adopted by the city except as inconsistent with the provisions of city ordinances or portions thereof.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08)

Sec. 13-163. - Established; purpose; effective date.

(a)

There is hereby established a retirement plan for the members of the city police department. The purpose of this plan is to establish the terms and conditions under which supplementary retirement benefits will be provided to eligible members of the police department. The benefits under this plan shall be in addition to the amounts to which eligible members are entitled under the City of Fort [Pierce] Employees' Pension Plan and in addition to amounts received as social security benefits or from any other pension plan. The effective date of this plan shall be the anniversary date of the plan. This system is intended to be a tax qualified plan under [Internal Revenue] Code section 401(a) and meet the requirements of a governmental plan as defined in [Internal Revenue] Code section 414(d).

(b)

There is hereby created a board of trustees of the retirement plan for the members of the city police department which shall be solely responsible for administering the trust fund. The membership of the board of trustees consists of five (5) members, two (2) of whom, unless otherwise prohibited by law, must be legal residents of the city and must be appointed by the legislative body of the municipality, and two (2) of whom must be police officers as defined in [F.S.] § 185.02 who are elected by a majority of the active police officers who are members of such plan. The fifth member shall be chosen by a majority of the previous four (4) members, and such person's name shall be submitted to the legislative body of the city. Upon receipt of the fifth person's name, the legislative body shall, as a ministerial duty, appoint such person to the board of trustees. The fifth member shall have the same rights as each of the other four (4) members appointed or elected, shall serve as trustee for a period of four (4) years and may succeed himself or herself in office. Each resident member shall serve as trustee for a period of four (4) years unless sooner replaced by the legislative body at whose pleasure the member serves and may succeed himself or herself as a trustee. Each police officer member shall serve as trustee for a period of four (4) years unless he or she sooner leaves the employment of the municipality as a police officer, whereupon a successor shall be chosen in the same manner as an original appointment. Each police officer may succeed himself or herself in office.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08; Ord. No. L-111, § 1, 2-1-10; Ord. No. L-118, § 2, 5-3-10)

Sec. 13-164. - Excise tax on casualty insurance premiums.

There is hereby assessed and levied on every insurance company, corporation or other insurer now engaged in or carrying on, or which shall hereafter engage in or carry on the business of insuring with respect to casualty risks, as shown by the records of the state department of insurance, an excise or license tax in addition to any lawful license or excise tax now levied by the city, amounting to eighty-five hundredths (0.85) per cent of the gross amount of receipts of premiums from policyholders on all premiums collected on casualty insurance policies covering property within the corporate limits of the city.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08)

Sec. 13-165. - Records; accounts; disbursements; deposits; contributions; actions.

- (a) The board of trustees shall keep and maintain a full and complete permanent record of all accounts, receipts, disbursements, deposits, and all other official actions of the board. These records shall be available to all members participating in the plan.
- (b) The trustees, if they so desire, may designate any one of their members to execute all instruments requiring execution by the board of trustees and/or they may designate the chairman to execute such instruments or exercise such powers as they may determine. The members of the board of trustees shall be free from any, liability for any action taken or omitted in carrying out their duties of administering the plan, except that result from their own willful misconduct.
- (c) The board of trustees may employ a money manager to advise the board in the making and disposition of investments and may delegate discretionary authority to its money manager within the framework of a duly adopted investment policy. The board of trustees may also employ the services of a bank, insurance company, or other investment company in the execution of its investment transactions.
- (d) All monies and investments of the plan shall be held for the sole purpose of meeting disbursements for annuities and other payments authorized, and shall be used for no other purpose. Available cash on deposit shall not exceed ten (10) per cent of the total assets of the plan.
- (e) In addition to all other powers of the board of trustees as provided by law, the board of trustees may invest and re-invest the assets of the plan in:
- (1) Any investments permitted by F.S. ch. 185.
 - (2) Stocks, bonds, or other evidences of indebtedness 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; provided:
 - a. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ stock market and, in the case of bonds only, holds a rating in one of the four (4) highest classifications by a major rating service; and
 - b. The board of trustees shall not invest more than five (5) per cent of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five (5) per cent of the outstanding capital stock of the company or the aggregate of its investments under this subsection at cost exceed sixty (60) per cent of the fund's assets.
 - (3) Marketable, investment grade real estate investment trusts, but not to include investments in private mortgages, land, private equity or other illiquid real estate investments.
 - (4) Notwithstanding anything else in this subsection and as provided in F.S. § 215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section. Beginning January 1, 2010, the board must proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have directly in that company. The divestiture of any such security must be completed by September 10, 2010. The board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by F.S. § 215.473 as provided for in F.S. § 185.06(7) and the manner of the disposition, if any, is reasonable as to the means chosen. For purposes of determining which companies are scrutinized companies, the board may utilize the list of scrutinized companies as developed by the Florida State Board of Administration. No person may bring any civil, criminal or administrative action against the board of trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this subsection.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08; Ord. No. L-111, § 2, 2-1-10)

Sec. 13-166. - Retirement.

(a)

Normal retirement date. The normal retirement date for participants retiring on or after October 1, 1999, shall be age fifty-five (55) or older with ten (10) or more years service. With the consent of the board of trustees, a participant may retire within the ten-year period prior to his normal retirement date and in such an event the cash accumulated under this plan may be applied to purchase an actuarially reduced pension at such earlier retirement date. A participant may also retire with no reduction in pension benefits after obtaining twenty-five (25) or more years of credited service.

(b)

Amount of retirement income. Each police officer who is a participant in the plan shall be entitled to two (2) per cent of his average monthly salary for each year of service from the effective date (July 29, 1958) until his normal retirement date, subject to the following limitations:

(1)

Credited service is limited to a maximum of thirty (30) years; and

(2)

Retirement income under this section is limited to a maximum of the greater figure as computed by either two (2) per cent of average monthly salary with a one thousand dollar (\$1,000.00) per month maximum (based on thirty (30) years' credited service) or one per cent of average monthly salary with no maximum per month (based on thirty (30) years' maximum service).

The normal retirement income at normal retirement date provided under this plan shall be a retirement annuity guaranteed payable for ten (10) years certain and for lifetime thereafter. The benefit provided under this plan shall be increased to the extent required to ensure that the benefit provided under this plan and the benefit provided under the retirement system for officers and employees of participating employers are actuarially equivalent to a retirement annuity of two (2) per cent per year of service guaranteed for ten (10) years certain and for lifetime thereafter. If a retired member has elected an option with a joint pensioner or beneficiary and his or her retirement income benefits have commenced, he or she may thereafter change the designated joint pensioner or beneficiary up to twice in accordance with F.S. § 185.341 without the approval of the board of trustees or the current joint annuitant or beneficiary. The retired member is not required to provide proof of the good health of the joint [annuitant or beneficiary] being removed and the joint annuitant or beneficiary being removed need not be living. Any retired member who desires to change his or her joint annuitant or beneficiary shall file with the board of trustees a notarized notice of such change. Upon receipt of a completed change of joint annuitant form or such other notice, the board of trustees shall adjust the retired member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit and there is no impact to the plan. No retired member's current benefit shall be increased as a result of the change of beneficiary.

(c)

Disability benefits.

(1)

Duty disability. The benefit provided in the event of under this plan shall be increased to the extent required to ensure that the benefit provided under this plan and the benefit provided under the retirement system for officers and employees of participating employers are actuarially equivalent to a retirement annuity of at least two (2) per cent of average monthly salary per year of service guaranteed for ten (10) years certain and life.

(2)

Non-duty disability. The benefit provided under this plan shall be increased to the extent required to ensure that the benefit provided under this plan and the benefit provided under the retirement system for officers and employees of participating employers are actuarially equivalent to a retirement annuity guaranteed for ten (10) years certain.

(3)

Disability process.

a.

A police officer will be considered totally disabled if, in the opinion of the board of trustees, he or she is wholly prevented from rendering useful and efficient service as a police officer; and a police officer will be considered permanently disabled if, in the opinion of the board of trustees, such police officer is likely to remain so disabled continuously and permanently from a cause other than as specified in subparagraph b.

b.

A police officer will not be entitled to receive any disability retirement income if the disability is a result of:

1.

Excessive and habitual use by the police officer of drugs, intoxicants, or narcotics;

2.

Injury or disease sustained by the police officer while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime;

3.

Injury or disease sustained by the police officer while serving in any armed forces. This exclusion does not affect members who have become disabled as a result of intervening

military service under the federal Heroes Earnings Assistance and Relief Tax Act of 2008 (H.R. 6081; P.L. 110-245);

4.

Injury or disease sustained by the police officer after employment has terminated;

c.

No police officer shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, to be selected by the board of trustees for that purpose, and is found to be disabled in the degree and in the manner specified in this section. Any police officer retiring under this section may be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons to be selected by the board of trustees for that purpose, to determine if such disability has ceased to exist.

(4)

[Additional provisions.] Any condition or impairment of health of any police officers employed in the city caused by tuberculosis, hypertension, heart disease, hardening of the arteries, hepatitis, or meningococcal meningitis resulting in total or partial disability or death, shall be presumed to be accidental and suffered in line of duty unless the contrary be shown by competent evidence. Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the police officer, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty, provided that such police officer shall have successfully passed a physical examination upon entering such service, which physical examination including electrocardiogram failed to reveal any evidence of such condition, and, further, that such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance. In order to be entitled to the presumption in the case of hepatitis, meningococcal meningitis, or tuberculosis, the member must meet the requirements of F.S. § 112.181. The final decision as to whether a member meets the requirements for duty disability pension rests with the board and shall be based on substantial competent evidence on the record as a whole.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08; Ord. No. L-84, § 3, 7-20-09; Ord. No. L-111, § 3, 2-1-10)

Sec. 13-167. - Death benefits.

Upon the death of a plan member who dies with ten (10) years credited service, and vested in the plan, the beneficiary or beneficiaries shall be entitled to a lump sum payment, in cash, equal to the pension benefit the deceased member would have been entitled to receive at his normal retirement date of age fifty-five (55), actuarially reduced. A plan member's beneficiary or beneficiaries shall be designated in accordance with the provisions of F.S. § 185.162. The benefit provided under this section and in conjunction with the benefit provided under the retirement system for officers and employees of participating employers shall in all cases provide at a minimum a benefit that is the actuarial equivalent of the benefit required under F.S. § 185.21.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08)

Sec. 13-168. - Employee withdrawal from the plan.

(a)

Employees who terminate employment prior to ten (10) years' continuous service in the police department shall not be eligible for benefits.

(b)

Employees who terminate with ten (10) or more years continuous service with the police department shall be entitled to a benefit equal to the purchase of an annuity equal to the value of the lump sum payment at age fifty (50) as computed in section 13-166(c) actuarially reduced by three (3) per cent for each year that the member retires early. The member can elect to wait to receive the benefit until age fifty-five (55) without an actuarial reduction. Employees hired after December 17, 1984, shall not be eligible to receive lump sum benefits and may only accept the purchase of an annuity as provided herein. The benefit provided under this section and in conjunction with the benefit provided under the retirement system for officers and employees of participating employers shall in all cases provide at a minimum a benefit that is the actuarial equivalent of the benefit required under F.S. §§ 185.16(4) and 185.19.

(c)

Employees who become totally and permanently disabled after ten (10) or more years of continuous service shall be entitled to one hundred (100) per cent of the lump sum amount accumulated on their behalf as of date of disability as computed in section 13-166(c). The lump sum shall be equal in value to the amount of monthly benefits to which the member is entitled.

- (d) Notwithstanding any of the provisions hereof, if the early monthly retirement income payable to any person entitled to benefits hereunder is less than seventy-five dollars (\$75.00) per month, the trustees in the exercise of their discretion may specify that the actuarial equivalent of such retirement income be paid in a lump sum.
- (e) Notwithstanding any of the provisions hereof, if the monthly retirement annuity from the municipal retirement system is equal to fifty (50) per cent of the average monthly salary of the retiring police officer, or if the combined monthly annuity from the municipal retirement system, federal social security retirement and the Fort Pierce Police Retirement Fund is equal to fifty (50) per cent of the retiring police officer's average monthly salary, the trustees may, in the exercise of their discretion, specify that the actuarial equivalent of the monthly benefit in excess of fifty (50) per cent of such average monthly salary be paid in a lump sum.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08)

Sec. 13-169. - Members deposit fund.

- (a) The police members deposit fund is hereby created. It shall be the fund in which shall be accumulated, at regular interest, the contribution of members, and from which shall be made refunds and transfers of accumulated contributions as provided in this article.
- (b) A member's contribution to the retirement system, specifically to the municipal police officers retirement system as set up in accordance with F.S. ch. 185, shall be as follows: After the effective date of this section [Ordinance Number I-272], three and one-half (3.5) per cent of the compensation of each member of this municipal police officers retirement trust fund set up in accordance with F.S. ch. 185, shall be paid by each member to said system.
- (c) The officer or officers responsible for making up the payroll shall cause the contributions provided for in subsection (b) of this section to be deducted from the compensation of each member on each payroll, for each payroll period, so long as he is a member of his retirement system. Each member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of his compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by him during the period covered by such payment, except as to benefits provided by the retirement system. When deducted, each of said contributions shall be paid into the members deposit fund and shall be credited to the individual account therein of the member from whose compensation said deduction was made.
- (d) Should any police officer leave the service of the municipality before accumulating aggregate time of ten (10) years toward retirement and before being eligible to retire under the provisions of this chapter, such police officer shall be entitled to a refund of all his contributions made to the municipal police officers retirement trust fund without interest, less any benefits paid to him.
- (e) Should any police officer who has been in the service of the municipality for at least ten (10) years and has contributed to the municipal police officers retirement trust fund for at least ten (10) years elect to leave his accrued contributions in the municipal police officers retirement trust fund, such police officer, upon attaining the age of retirement authorized under this Code, may retire at the amount of such retirement income otherwise payable to him.
- (f) Should any police officer die before being eligible to retire under the provisions of this chapter, the heirs, legatees, beneficiaries or personal representative of said deceased police officer shall be entitled to a refund of one hundred (100) per cent, without interest, of the contributions made to the municipal police officers retirements trust fund by such deceased police officer.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08)

Sec. 13-170. - Forfeiture of pension; conviction and forfeiture.

Any participant who is convicted of any 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 plan, except for the return of his accumulated contributions as of the date of termination:

- (1)

Specified offenses are as follows:

- a. The committing, aiding or abetting of an embezzlement of public funds;
- b. The committing, aiding or abetting of any theft by a public officer or employee from the employer;
- c. Bribery in connection with the employment of a public officer or employee;
- d. Any felony specified in F.S. ch. 838;
- e. The committing of an impeachable offense.
- f. The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he 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.
- g. The committing on or after October 1, 2008, of any felony defined in [F.S.] § 800.04 against a victim younger than sixteen (16) years of age, or any felony defined in [F.S.] chapter 794 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.

(2) Conviction shall be defined as follows: 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.

(3) Court shall be defined as follows: 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 police officer whose benefits are being considered for forfeiture. Said police officer shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the police officer shall be afforded a full opportunity to present his case against forfeiture.

(4) Any police officer who has received benefits from the plan in excess of his accumulated contributions after police officer's rights were forfeited pursuant to this section 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.

(5) 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 plan.

a. A person who violates subsection (5) of this section, commits a misdemeanor of the first degree, punishable as provided in F.S. §§ 775.082 or 775.083.

b. In addition to any applicable criminal penalty upon conviction for a violation described in subsection (5) of this section, a police officer or beneficiary of the plan 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 plan. For purposes of subsection (7) of this section, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(Ord. No. L-34, § 1, 8-18-08; Ord. No. L-84, § 3, 7-20-09)

Sec. 13-171. - 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 plan 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 plan be erroneously, improperly or illegally classified. Any overpayments or under payments shall be corrected and paid or repaid in a reasonable manner determined by the board.

(Ord. No. L-34, § 1, 8-18-08)

Sec. 13-172. - Claims procedure.

- (a) The applicant for benefits under this plan may, within twenty (20) days after being informed of the denial of his or her request for pension benefits, appeal the denial by filing a reply to the proposed denial with the pension plan board of trustees. If no appeal is filed within the time period specified, then the denial is final.
- (b) The board shall hold a hearing within forty-five (45) days after receipt of the appeal. Written notice of the hearing shall be sent by certified mail to the applicant ten (10) days prior to the hearing, at the address listed on the application.
- (c) The board shall have the power to subpoena, require the attendance of witnesses, and the production of documents for discovery, prior to and at any proceedings provided for in the plan. 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 the Florida Statutes.
- (d) The procedures at the hearing shall be as follows:
- (1) All parties shall have an opportunity to respond, to present physical and testimonial evidence and argument, on all issues involved, to conduct cross-examination, to submit rebuttal evidence, and to be represented by counsel. Medical depositions may be accepted in lieu of live testimony, at the board's discretion.
 - (2) All witnesses shall be sworn.
 - (3) The applicant and the board shall have an opportunity to question all witnesses.
 - (4) The formal rules of evidence and the formal rules of civil procedures shall not apply. The proceedings shall comply with the essential requirements of due process of law.
 - (5) The record in a case governed by this subsection shall consist only of:
 - a. A tape recording of the hearing, to be taped and maintained as part of the official files of the board of trustees by the pension's secretary.
 - b. Evidence received or considered.
 - c. All notices, pleadings, motions and intermediate rulings.
 - d. Any decisions, opinions, proposed or recommended orders or reports by the board of trustees.
- (e) Within ten (10) days after the hearing, the board shall take one of the following actions:
- (1) Grant the pension benefits by overturning the denial by majority vote;
 - (2) Deny the benefits and confirm the denial.
- The board's decision shall be in writing set forth as an order.
- (f)

Findings of fact by the board shall be based on competent, substantial evidence on the record.

- (g) Upon rendering its order, the board shall send by certified mail a copy of the order to the applicant.
- (h) The applicant may seek review of the order of the board by filing a petition for writ of certiorari with the circuit court within thirty (30) days of the order being rendered.

(Ord. No. L-34, § 1, 8-18-08)

Sec. 13-173. - Required distributions.

- (a) In accordance with IRC Section 401(a)(9), all benefits under this plan will be distributed, beginning not later than the required beginning date set forth below, over a period not extending beyond the life expectancy of the participant or the life expectancy of the participant and a beneficiary designated in accordance with the provisions of F.S. § 185.162.
- (b) Any and all benefit payments shall begin by April 1 of the calendar year following the calendar year of the member's retirement date; provided however, all participants who will reach seventy (70) before December 31, 1999 may, at participant option, elect to begin benefits on April 1 of the calendar year following the calendar year in which the member attains age seventy and one-half (70.5).
- (c) If an employee or elected officer dies before his entire vested interest has been distributed to him, the remaining portion of such interest will be distributed at least as rapidly as provided for under section 13-166.

(Ord. No. L-34, § 1, 8-18-08; Ord. No. L-118, § 3, 5-3-10)

Sec. 13-174. - Rollover distributions.

- (a) *[Applicability.]* This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (b) *Definitions.*
 - (1) *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 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 (10) years or more and any distribution to the extent such distribution is required under section 401(a)(9) of the [Internal Revenue] Code. This definition is effective January 1, 2003.
 - (2) *Eligible retirement plan.* An eligible retirement plan is an individual retirement account described in section 408(a) of the [Internal Revenue] Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust, an annuity plan described in section 403(a) of the [Internal Revenue] Code, an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(c)(1)(A) of the [Internal Revenue] Code or an annuity contract described in 403(b) of the [Internal Revenue] Code, that accepts in the distributee's eligible rollover distribution.
 - (3) *Distributee.* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is entitled to payment for alimony and child support under an income deduction order, are distributees with regard to the interest of the spouse or former spouse.
 - (4) *Direct rollover.* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(Ord. No. L-34, § 1, 8-18-08; Ord. No. L-118, § 4, 5-3-10)

Sec. 13-175. - Internal Revenue Code limits.

(a)

[Limits on compensation.] Compensation in excess of limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. 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.

(b)

415 Internal Revenue Code limits.

(1)

Basic limitations. Subject to the adjustments in paragraph (3), the maximum amount of the actual annual retirement income paid in any year with respect to a participant under this plan attributable to employer provided benefits shall not exceed the dollar amount allowable for any calendar year pursuant to section 415(b) of the [Internal Revenue] Code, as adjusted in such calendar year for increases in the cost of living in accordance with regulations issued by the Secretary of the Treasury under section 415(d) of the [Internal Revenue] Code. For purposes of applying the basic 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 subsection, the following benefits shall not be taken into account:

a.

Any ancillary benefit which is not directly related to retirement income benefits;

b.

Any other benefit not required under section 415(b)(2) of the [Internal Revenue] Code and Treasury regulations thereunder to be taken into account for purposes of the limitation of section 415(b)(1) of the [Internal Revenue] Code.

(2)

Participation in other defined benefit plans. The limitation of this subsection with respect to any participant who at any time has been a participant in any other defined benefit plan (as defined in section 414(j) of the [Internal Revenue] Code) maintained by the city shall apply as if the total benefits payable under all defined benefit plans in which the participant has been a participant where payable from one plan.

(3)

Adjustments in limitations.

a.

In the event the participant's retirement benefits become payable before age sixty-two (62), the maximum amount of annual retirement income limitation prescribed by this article shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of section 415(b) of the [Internal Revenue] Code limitation (as reduced) equals an annual benefit (beginning when such retirement income begins) which is equivalent to the [Internal Revenue] Code section 415(b) maximum amount of annual retirement income beginning at age sixty-two (62). This limitation shall not apply to qualified police or firefighters as that term is defined in [Internal Revenue] Code section 415(b)(2)(G).

b.

In the event the participant's benefit is based on at least fifteen (15) years of credited service, the adjustments provided for in subparagraph a. above shall not apply.

c.

The reductions provided for in subparagraph a. above shall not be applicable to disability benefits or preretirement death benefits.

d.

In the event the participant's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the basic limitation set forth in paragraph (1) 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 using an assumed interest rate of five (5) per cent and shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

e.

Less than ten (10) years of service. The maximum retirement benefits payable under this article to any participant who has completed less than ten (10) years of credited service with the city shall be the amount determined under paragraph (1) multiplied by a fraction, the numerator of which is the number of the participant's years of credited service and the denominator of which is ten (10). The

reduction provided for in this subparagraph shall not be applicable to disability benefits of preretirement death benefits.

f.

Ten thousand dollar (\$10,000.00) limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a participant shall be deemed not to exceed the limitations in this subsection if the benefits payable with respect to such participant under this plan 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 contributions plan in which the participant participated.

g.

Reduction of benefits. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the participant's benefit under any defined benefit plans in which participant participated, such reduction to be made first with respect to the plan in which participant 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 participant participated, such reduction to be made first with respect to the plan in which the participant 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 different manner and priority pursuant to the agreement of the board and the plan administrator of all other plans covering such participant.

h.

Cost-of-living adjustments. The limitations as stated herein shall be adjusted annually in accordance with any cost-of-living adjustments prescribed by the Secretary of the Treasury pursuant to section 415(d) of the [Internal Revenue] Code.

i.

For any person who first becomes a participant in any plan year beginning on or after January 1, 1996, compensation for any plan year shall not include any amounts in excess of the Internal Revenue Code section 401(a)(17) limitation (as amended by the Omnibus Budget Reconciliation Act of 1993), which limitation of two hundred thousand dollars (\$200,000.00) shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code section 401(a)(17)(B). For any person who first became a participant prior to the first plan year beginning on or after January 1, 1996, the limitation on compensation shall be not less than the maximum compensation amount that was allowed to be taken into account under the plan as in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code section 401(a)(17)(1991).

j.

This section shall be effective for distributions after December 31, 2001.

k.

For purposes of applying the limitations of [Internal Revenue] Code section 415(b), compensation includes base pay, incentive pay, longevity pay, shift premiums, police incentive pay, overtime pay, base salary or wages while absent from work on account of vacation, holiday, illness or other authorized paid leave, payments in consideration of unused sick and vacation time, and city contributions on behalf of the employee to a deferred compensation program maintained pursuant to section 457 of the [Internal Revenue] Code. Additionally, this limitation specifically includes the crediting of compensation while absent from service for military duty; such crediting shall not exceed the compensation that would have been credited under the system if system services had continued.

(Ord. No. L-34, § 1, 8-18-08; Ord. No. L-118, § 5, 5-3-10)

Sec. 13-176. - Termination of plan and distribution of fund.

Upon termination of the plan by the city for any reason, or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in [F.S.] chapter 121, or upon written notice to the board of trustees by the city that contributions under the plan are being permanently discontinued, the rights of all employees to benefits accrued to the date of such termination or discontinuance and the amounts credited to the employees' accounts are nonforfeitable. The fund shall be distributed in accordance with the following procedures:

(a)

The board of trustees 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.

(b)

The board of trustees 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 (c).

(c)

The board of trustees 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 (b) 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 employee's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.

(d)

If there is asset value remaining after the full distribution specified in subsection (c), and after payment of any expenses incurred with such distribution, such excess shall be returned to the municipality, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the municipality and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the municipality and the state.

(e)

The board of trustees shall distribute, in accordance with the manner of distribution determined under subsection (b), the amounts under subsection (c).

(Ord. No. L-111, § 4, 2-1-10)

Rules of Procedure

FORT PIERCE RETIREMENT BOARD

City of Fort Pierce, Florida

09-01-10

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**Rules of Procedure
For the
Fort Pierce Retirement Board**

Rule 1. Miscellaneous.

Section (a). **Name.** The name of this BOARD shall be the Fort Piece Retirement BOARD as created by Chapter 13, Division II, of the Code of Ordinances of the City of Fort Pierce.

Section (b). **Interpretation.** These rules shall be interpreted so as to be consistent with state law and local ordinances. In the event any rule or portion hereof is declared by a court of competent jurisdiction to be invalid, then, in such event, the invalid portion thereof shall be severed and the remaining rules and parts thereof shall remain in full force and effect.

Section (c). **Definitions.** Unless otherwise required by context, the following words shall have the meanings herein provided for:

- (1) “Applicant” shall mean any individual who petitions the BOARD for relief.
- (2) “BOARD” shall refer to the Fort Pierce Retirement BOARD.
- (3) “Code” shall refer to the Code of Ordinances of the City of Fort Pierce.

Section (d) Making of Informal Notations.

Informal notations may be made and kept by Board members, whether made by handwriting, electronic stylus or other means. If the notation is solely for the use of the individual member making the note as an aid to recollection, it should be kept confidential and not shared with any other person. But if any notation of the Board member is intended to communicate, perpetuate or formalize knowledge of some type then, in such event, a copy of the notation should be given to the Board Secretary as soon as practicable, as a public record. If the Board member displays, shows or shares the notation at any time with any other person then, in that event, it will be presumed that the note is or was intended as a means of communication, whereupon a copy of the notation should be given to the Board Secretary as soon as practicable following the display, showing or sharing of the notation.

Rule 2. Jurisdiction.

The BOARD shall have jurisdiction over administration, management and operation of the Retirement and Benefits System as provided by Chapter 13 of the Fort Pierce Code of Ordinances, and to further construe and make effective the provisions of that chapter.

Rule 3. Election of Board Members.

Section (a). Generally. This rule is intended to establish procedures for the election of elected board members, as provided by Code Section 13-71.

Section (b). Prior to Election. Prior to election, the secretary and treasurer of the Retirement Board shall:

- (1) Send written notice to the member employer stating:
 - (i) that such member employers position on the board is, or will be, open due to departure of its representative employee;
 - (ii) when the current representative is leaving;
 - (iii) how long the replacement board members term of office will be;
 - (iv) that the member employer should seek three employees to serve as a nominating committee and outlining the duties of the nominating committee, including the committees appointment of a Chair, and further including a timetable for the election;
- (2) Provide the names of the nominating committees membership to the member employers human resources officer;
- (3) Provide the nominating committee with a nominating form, to be signed by the Chair of the member employers nominating committee, and to then oversee distribution of the nominating form to each of those employees of the employer who are members of the retirement system;
- (4) Receive from the nominating committee a tabulation of nominees and resumes for each of the three nominees who received the most votes;

- (5) Prepare an election ballot setting out the names of the top three nominees, including a short description or resume of each, as approved by the candidate nominee.

Section (c). **Conduct of Elections.** Election of board members shall be conducted as follows:

- (1) The Chair of the nominating committee should coordinate activities of the committee and schedule such dates of meeting as are necessary to meet the timetable of election;
- (2) The Secretary and Treasurer of the board shall provide numbered election ballots to the member employer for distribution to its employees who are members of the retirement system;
- (3) The nominating committee should prepare boxes and place them in controlled areas for collection of ballots;
- (4) The nominating committee shall collect and count the ballots in the presence of a member of the Retirement Board, other than a board member whose position is the subject of the election;
- (5) The Chair of the nominating committee shall submit a written memorandum of the election results to the Secretary and Treasurer of the board, no later than one week before the next regular meeting of the Retirement Board following the election;
- (6) The Secretary and Treasurer of the board shall direct correspondence to the candidates, member employer and members of the nominating committee confirming the results and thanking each for his or her participation in the selection process;

The nominee with the highest number of votes, whether a majority or not, shall be seated as the member employers representative on the Retirement Board.

Rule 4. **Officers.**

Section (a). **Chair.** The Chair shall preside at all meetings and hearings of the BOARD and shall have the duties normally conferred by parliamentary usage on such officers.

Section (b). **Vice Chair:** The Vice Chair shall act in the absence of the Chair. In the absence of the Chair and the Vice Chair, a majority of the BOARD members present may designate a temporary Chair to serve in such absence.

Section (c). **Treasurer and Secretary.** The Fort Pierce Director of Finance shall serve as Secretary and treasurer of the BOARD and shall further serve as the BOARD's Custodian of assets. Said officer shall cause a record to be maintained of proceedings, prepare and deliver meeting agendas and to perform any duties more specifically provided in these rules or the Code of Ordinances. So as to protect the reasonable privacy expectations of applicants, such officer shall redact from all application materials the home addresses, home phone numbers, and social security numbers of the applicants from all application materials before the materials are provided to Board members. The Secretary and Treasurer shall further, at the close of meetings, gather up from Board members any medical records of the applicant.

Section (d). **Board Attorney.** The Office of the Fort Pierce City Attorney shall provide counsel for the BOARD to serve as a legal advisor.

Section (e). **Actuary.** The BOARD shall designate an actuary who shall serve as technical advisor to the BOARD, shall present annually the report otherwise rendered pursuant to Fla. Stat. Section 112.63 (or as renumbered), and shall perform such other duties or provide such other reports as the BOARD from time to time may require.

Rule 5. **Election of Officers.**

The Chair and Vice Chair of the BOARD shall be elected by and from the membership of the BOARD at its first meeting in October. Nominations for office shall be made from the floor and the election shall be held immediately thereafter. Candidates receiving a majority vote shall be declared elected and shall serve a term of one (1) year, or until a successor shall take office. Vacancies shall be filled by the election procedure as described in this part at any regularly scheduled meeting when a vacancy is declared.

Rule 6. **Education of Board Members.**

Section (a). **Generally.** The Board is charged as fiduciary to competently administer, manage and operate the retirement system. Such task requires that the Boards individual members acquire a level of knowledge reasonably sufficient to discharge this fiduciary obligation and to further permit them to maintain a vigilant oversight of professional service providers who are retained by the Board. Education is therefore recognized as an important incident of Board membership.

Section (b). **Mandatory Education.** At least annually, the members of the Board shall meet with the Board's consultant to review the Board's investment policies and to receive instruction relating to the investment practices of

the Board's fund managers. The secretary shall be responsible for setting a time and place for the meeting, in consultation with the consultant and members of the Board. Interested administrative staff employees of the member employers shall be invited to attend.

Section (c). **Recommended Education.** Individual Board members are encouraged to attend at least one retirement-related conference, seminar or school annually, whereat such conference, seminar or school offers substantial educational opportunities relating to principles of pension management and prudent fund investment.

Section (d). **Retirement Administrative Staff Education.** City Administrative staff that performs retirement related duties only, may attend at least one retirement-related conference, seminar or school annually.

Rule 7. **Meetings.**

Section (a). **Regular Meetings.** Regular meetings shall be held at a rate of no fewer than four (4) a year, though normally on a monthly basis on the third Thursday of the month at 2:00 p.m. in the Engineering conference room on the first floor of City Hall, unless the Chair shall declare a different date, time or place.

Section (b). **Special Meeting.** Special meetings may be called by the Chair or by written request of three (3) or more BOARD members.

Section (c). **Notice.** Notice of all meetings, both regular and special, shall be given to BOARD members by the Secretary/Treasurer at least twenty-four (24) hours in advance of the meeting. Notice of all meetings shall be provided by the Secretary/Treasurer to the City Clerk for inclusion in the City's schedule of meetings and events.

Section (d). **Attendance.** Members shall notify the Secretary/Treasurer in the event they are unable to attend a meeting. If a member is absent from two (2) of three (3) consecutive meetings, or more than twenty-five percent (25%) of all meetings during the year, without being excused for cause by vote of the BOARD, the Secretary/Treasurer shall notify in writing such agency as elected or designated the member pursuant to Section 13-71, except that members elected by the general membership of the City shall be reported to the City Commission.

Section (e). **Quorum.** A quorum of the seven (7) member BOARD shall consist of four (4) or more members and an affirmative vote of four or more shall be necessary to pass any motion or to adopt any order. Each BOARD member shall be entitled to one vote on each question.

Section (f). **Voting and Abstention.** Voting on the disposition of any matter shall be by either voice vote or roll call vote except that in the event the vote is less than unanimous then, in order to preserve clarity in the record, the Chair shall conduct the vote by roll call.

Pursuant to Fla. Stat. §112.3143, a member may not vote in any official capacity on any matter which would inure to the private member's private gain or on any measure which inures to the special gain of any principal by whom the member is retained, or to the gain of a parent organization or subsidiary of a corporate principal by which the member is retained, or any matter which the member knows may inure to the special private gain of a relative or business associate. In the event of any such conflict, the member shall, prior to the vote being taken, publicly state the nature of the interest giving rise to the voting abstention and, within fifteen (15) days after the vote occurs, file a written disclosure of the interest on form 8B memorandum of voting conflict for county, municipal and other local public offices, with the Secretary/Treasurer who shall incorporate such declaration as part of the minutes. Except for such reasons of conflict, a member may not abstain from voting, as provided by Fla. Stat. §286.012.

Acts and decisions of the BOARD within the scope of Fla. Ch. 175 (Firefighter Pensions) or 185 (Municipal Police Officers Pensions) shall be effected by a majority vote of the members of the BOARD, anything else herein notwithstanding.

Rule 8. **Sunshine.**

No member shall discuss the merits of any matter pending for BOARD consideration with any other BOARD member outside the meeting wherein the matter is scheduled to be heard.

Rule 9. **Application for Benefits.**

Section (a). **Application.** Any employee of a participating employer or member of the City of Fort Pierce Retirement and Benefit System who seeks benefits under Chapter 13 (Pensions and retirement) of the Code of Ordinances for the City of Fort Pierce may make written application therefore, through the participating employer or such employer's designee, on a form prescribed by the BOARD.

When application is made for disability retirement the Secretary/Treasurer shall refer the applicant to a physician of the applicant's choice and at the applicant's expense for a report to be addressed to the BOARD in accordance with Code Section 13-36(7). Upon receipt of such report, the Secretary/Treasurer shall then refer the applicant to a physician selected by the Secretary/Treasurer from a list approved by the BOARD, with such

examination to be paid for by the BOARD. When the reports of both physicians are received and the application is otherwise complete, the application shall then be referred to the BOARD for a hearing upon notice.

Section (b). **Notice.** If the form is complete, the Secretary/Treasurer shall schedule a public hearing before the BOARD on such benefit application and shall give the applicant written notice of said public hearing at least fifteen (15) days in advance, by regular mail. The notice shall include this highlighted statement: *“A copy of the Rules of Procedures for the Retirement BOARD may be obtained upon request from the City of Fort Pierce Department of Finance.”* The notice shall also include the following statement in compliance with Fla. Stat. §286.0105 *“In the event a decision is made to appeal any ruling or order of the BOARD, a record of the proceedings would be needed for any such appeal, for that purpose, you may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which any such appeal was to be based.”* Further the notice shall state that the applicant may be represented by counsel, may present relevant evidence, and will be given opportunity to cross-examine witnesses.

Section (c). **Subsequent Proceedings.** Notification of subsequent proceedings provided for by these rules shall be by regular mail, at least seven (7) days in advance of the Board’s meeting.

Section (d). **Continuance.** Any party may request continuance of a scheduled hearing, prior to the hearing, in the event circumstances arise so as to constitute good cause for postponement of a hearing. Such party shall file a written request for continuance or postponement with the Secretary/Treasurer. The request must be made within a reasonable time following the date the party became aware of the circumstances which form the basis of the request. The request must specify the justifying circumstances with particularity. In the event the Secretary/Treasurer agrees with the request, the Secretary/Treasurer shall reschedule the hearing. In the event the Secretary/Treasurer disagrees with the request, there shall be immediately scheduled a hearing before the Board Chair or the Chair’s designee, with notice to all parties. Present at the hearing shall be the Secretary/Treasurer, and counsel for the Board. After hearing both sides, the Chair or the Chair’s designee shall determine whether there is good cause for the postponement. The request will then be either granted or denied.

Rule 10. **Order of Business.**

Section (a). **Agenda.** Matters will be called in the order in which they appear on the Agenda, as prepared in advance at the direction of the Chair, except that

the Chair may take matters out of order as appropriate. A BOARD Member may request inclusion of additional matters in the agenda prior to the date the agenda is sent to BOARD members.

Section (b). **Order.** The outline for the regular meeting agenda shall be as follows:

1. Call to Order
2. Roll Call
3. Comments from the public (limited to four minutes a speaker, unless extended by Chair)
4. Consideration of Minutes
5. Consideration of Staff Reports
6. Public Hearings on Benefit Applications
7. Reconsiderations
8. Old or unfinished Business
9. New Business
10. Consideration of Absences
11. Next Meeting Date
12. Adjournment

Rule 11. **Conduct of Hearings.**

Section (a). **Procedural Rules.** Generally accepted parliamentary procedures shall prevail except as may otherwise be provided for in these rules.

Section (b). **Minutes.** Minutes shall be kept of all meetings of the BOARD by the Secretary/Treasurer and all hearings and proceedings shall be open to the public.

Section (c). **Conduct of Hearing on Benefit Application.** Any application for benefits shall be heard as a public hearing. The Chair shall introduce the request and then declare a public hearing, whereupon any interested person may speak for or against the application. The applicant may be represented by counsel and may present sworn testimony through witnesses and may cross-examine witnesses. Formal rules of evidence shall not apply but fundamental due process shall be observed. Hearsay evidence may be used to the extent consistent with due process. Medical records shall be freely admissible, except that they shall be controlled and disposed of in the manner provided for by law. For normal retirement, the BOARD shall determine that the applicant meets the requirements of Code Section 13-29. For disability retirement the BOARD shall determine whether the applicant meets all conditions required by Section 13-36. Members of the BOARD may question any witness or call any witness believed necessary. The BOARD may, in its discretion, continue a hearing in the interest of justice should it determine that further information is necessary from either party, whereupon the Chair shall

declare a date certain for continuation of the proceeding. The Chair may act to exclude irrelevant material, or unduly repetitious evidence but all other evidence of the type commonly relied upon by reasonable prudent persons in the conduct of their affairs shall be admissible. If the applicant fails to appear at the public hearing, the BOARD may nevertheless either approve or disapprove the request for benefits depending upon whether it determines that the information contained within the application, together with any attachments, is sufficient or not to demonstrate compliance with code requirements for entitlement. Upon presentation of all evidence, the Chair shall close the hearing.

Section (d). **Disposition of Request.** Deliberations of the BOARD on any request for benefits shall be conducted in open session immediately following the public hearing. It shall then orally issue findings of fact, based on record evidence, and conclusions of law, and shall issue an order upon motion. The BOARD's order shall be reduced to writing by the Secretary who shall then send the original by regular mail to the applicant.

Rule 12. **Reconsideration.**

Section (a). **Request by Applicant.** Within ten (10) days of the date the BOARD's written order is mailed to the applicant, the applicant may file with the Department of Finance a written request for reconsideration. The request shall include a description of new evidence or circumstances not presented or considered at the original hearing. The request should also state why any such new information was not presented at the original hearing. The Department shall schedule the request for reconsideration by the BOARD at its next regular meeting consistent with due notice to the applicant.

Section (b). **Initiated by Board.** In the event the BOARD determines at any time that there is a reasonable likelihood that an applicant may not in fact be entitled to benefits previously awarded including, as provided by code Section 13-63, benefits previously awarded through error, or elects to require reexamination of a disability retired member pursuant to code Section 13-38(a) then, in such event, the BOARD shall give notice to the applicant of its intent to reconsider the applicants entitlement to benefits, or to subject the member to reexamination. The notice shall be as provided by Rule 7(a) and a public hearing shall be conducted in accordance with Rule 9. Any record relied upon by the BOARD in making the determination provided in this subsection shall be made part of the record of proceedings conducted hereafter pursuant to Rule 9.

Rule 13. Appeals.

Section (a) Any ruling of the BOARD is appealable as an administrative, quasi-judicial decision in a manner provided for by the Florida Rules of Appellate Procedure.

Rule 14. Board Vacancies.

A Retirement BOARD member provided for in Section 13.71 (2) or (3) of the Code who ceases to be a member of the Retirement System shall be considered to have resigned from the Retirement BOARD and the BOARD shall, by resolution declare the office vacant. A vacancy on the Retirement BOARD shall be filled, for the remaining term, in the same manner as the office was previously filled. In the event the Retirement BOARD member provided for in Section 13-71 (4) ceases to be Director of Finance, the Director's Assistant or, if different, the acting director of finance, shall serve temporarily on the board until such time as the Director of Finance takes office.

Rule 15. Amendments.

Section (a). These rules may be amended upon motion of any as passed at two consecutive meetings.

Rule 16. Qualified Domestic Relations Orders (QDROs).

Section (a). **Prepayment of Cost.** In the event there is received by the BOARD a QDRO issued by a court of competent jurisdiction designating the BOARD as a payor for purposes of Section 414(p) of the United States Internal Revenue Code, the BOARD shall determine whether actuarial calculation is necessary to determine the amount actually payable as provided by the QDRO. If such calculation is necessary, the payee shall be notified of the actuaries' reasonable fee and the QDRO shall be further considered upon receipt of the fee.

Section (b). **Alimony and Child Support.**

In the event the QDRO states that the obligations secured thereby is for payment of alimony or child support, the QDRO shall immediately be honored in the manner provided for by law upon receipt of prepayment if such prepayment is required as above.

Section (c). **Other Obligation.**

In the event the QDRO states that the obligation secured thereby is for an obligation other than alimony or child support, such as for equitable distribution of marital assets, then, upon receiving prepayment as

necessary, the BOARD shall give notice pursuant to Rule 7(b) to the employee or plan participant of its intent to honor the QDRO unless there be any valid reason it should not do so. Failure of the employee or plan participant to respond or appear will be construed as a waiver of any objection to the QDRO and agreement that payment thereof is appropriate. Following a public hearing, the BOARD will then either accept or reject the QDRO. A copy of the BOARD's written order will be sent by regular mail to the employee or plan participant, and the payee. Only normal retirement benefits are subject to this section. Disability retirement benefits are not subject to QDROs except as provided by Section 14(b) above.

HISTORY OF RULE AMENDMENTS

On 8/18/05 and 9/15/05 the Board approved two amendments. The first provided for amendment to Rule 8(b) by adding consideration of staff reports as an additional item of business in the order of business for the regular meeting agendas. The second amendment was to Rule 9(c) which eliminated a requirement that benefit applicants are responsible for furnishing a notary or other person qualified to administer oaths.

On 3/23/06 and 4/20/06 the Board approved an amendment which creates a new Rule 3 relating to election of members. Such rule sets out a procedure for election of members, as authorized by Code Section 13-71. The then-current Rule 3 was renumbered as Rule 4 and all subsequent rules were renumbered accordingly.

On 4/19/07 and 5/17/07 the Board approved amendments to Rule 6(e) and Rule 13. Rule 6(e) was changed to modify the quorum from nine members to seven members and to reduce the affirmative voting requirement from five members to four members, for any motion or to adopt any order. This amendment was based upon the City Commission's adoption of Ordinance K-469 which reduced the size of the Retirement Board based upon removal of employees of the Fire District from the system. Rule 13 was amended so as to provide that in the event the Board seat of the Director of Finance becomes vacate, then, in that event, such vacancy shall be temporarily filled by either the Director's Assistant or the Acting Director, until a permanent director is appointed by the City.

On 1/15/09 and 2/26/09, the Board approved adoption of a new Rule 6, renumbering the currently existing rule and following rules accordingly. Rule 6 was amended to provide for Board member education, setting out general educational expectations, a mandatory educational requirement, and recommendations for further education. The amendment also provided for education of City administrative staff performing retirement related duties exclusively.

On 5/15/14 and 6/19/14 the Board approved adoption of new Rule 1(f)(Making of Informal Notations), which clarifies Board Member responsibilities regarding the making, use and preservation of informal notations as public records.

On 6/19/14 and 7/17/14 the Board approved adoption of new Rule 9(d)(Continuance). Such rule provides a means and procedure whereby a Petitioner may seek a postponement of any hearing set on the Petitioner's application. It is recognized that inconvenience may result to the Petitioner, to City staff and individual board members if a need for postponement is not brought up until the actual date of the scheduled hearing. The rule encourages submission and disposition of the postponement request prior to the scheduled hearing date, in a setting which does not require involvement by the full board.



CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Paul Williams, Retirement Board Chair
FROM: James T. Walker, Assistant City Attorney
SUBJECT: Pension Entitlement Following Criminal Conviction
DATE: April 8, 2009

PENSION ENTITLEMENT FOLLOWING CRIMINAL CONVICTION

This memorandum serves as response to request that the legal principles relating to pension forfeiture be reviewed with the Board, where the following information is now received: One Officer Toombs was recently convicted of battery, lewd and lascivious molestation, attempted lewd or lascivious molestation, sexual battery on a person 12 years of age or older by a government agent, and lewd or lascivious battery and lewd or lascivious conduct. These offenses were allegedly committed while he was on duty as a certified police officer.

Based upon what follows, it is recommended that the Board consider whether there is reason to believe that any pension entitlement of Officer Toombs should be forfeit, based upon consideration of the constitutional, statutory and decisional authorities discussed hereafter.

1. **The Constitution and Statutes.**

The Florida Constitution provides as follows, at Article II, Section 8 (d)

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust *shall* be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law. (e.s.)

This constitutional provision is implemented in state law by Fla. Stat. § 112.3173 (3):

(3) Forfeiture. – Any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense *shall* forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination. (e.s.)

See also code § 13-170.

The foregoing provisions require pension forfeiture in the case of: (1) a public officer or employee, (2) who commits a specified offense, (3) before retirement or during the period of employment. The term “public officer or employee”, means, “... an officer or employee of any public body, political subdivision, or public instrumentality within the state.” See s. 112.3173 (2) (c). The term, “specified offense”, means, s. 112.3173 (2) (e) [see also Code § 13.170 (1)]:

(e) ‘specified offense’ means:

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 his or her employer.
3. Bribery in connection with the employment of a public officer or employee.
4. Any felony specified in Chapter 838 (Bribery; misuse of public office), except ss. 838.15 (commercial bribes) and 838.16 (commercial bribery).
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 the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position; or
7. The committing on or after October 1, 2008, of any felony defined in s. 800.04 (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) against a victim younger than 16 years of age, or any felony defined in Chapter 794 (sexual battery) 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 a position of his or her public office or employment position.

The term “felony” is defined by Fla. Stat. § 775.08 (1) as, “*any* criminal offense that is *punishable* under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in a state penitentiary.” (e.s.)

Procedurally, both the City’s Code of Ordinances and State Statutes set out guidelines on how any question of pension forfeiture is to be addressed. See Code § 13-171 and 13-172; *compare* with Fla. Stat. § 112.3173 (5). But our code addresses generally *any* situation where a pension may have been, or will be, improperly granted or received, whereas the state statute more specifically deals *only* with forfeiture and expressly mandates use of the procedures set out in state law. See s. 112.3173 (5) (a) [“... (The) Board shall give notice and hold a hearing in accordance with ch. 120 ...”]. Hence, only state provisions relating to procedure, not our own code of ordinances, are referred to here.

Fla. Stat. 112.3173 (5) (a) provides this:

(a) Whenever the official or board responsible for paying benefits under a public retirement system receives notice pursuant to § (4), or otherwise has reason to believe that the rights and privileges of any person under such system are required to be forfeited under this section, such official or board shall give notice and hold a hearing in accordance with ch. 120, for the purpose of determining whether such rights and privileges are required to be forfeited. If the official or board determines that such rights and privileges are required to be forfeited, the official or board shall order such rights and privileges forfeited.

This section states that the Fort Pierce Retirement Board must first determine whether, under the facts brought to its attention, there is “reason to believe” that such facts may be grounds to forfeit any rights of pension entitlement otherwise possessed by a member of the retirement system. If the Board makes that preliminary determination, notice complying with requirements of Fla. Stat. § 120.569 (2) (b) is to be sent to the member, who is then to be provided with a hearing meeting the minimum due process requirements of s. 120.569. (A copy of s. 120.569 is attached). At the hearing’s conclusion, any motion to either confirm or forfeit pension entitlement should incorporate sufficient findings of fact and law so that a formal written order based upon the motion may be prepared in compliance with s. 120.569 (2) (l).

2. The Cases.

There is a rapidly growing line of Florida Judicial Decisions construing the foregoing provisions as they relate to forfeiture of a public officer’s pension entitlement. See ex. **Newmans v. State Div. of Retirement**, 701 So2d 573 (Fla. 1st DCA 1997); **Jacobo v. Bd. of Trustees of Miami Police**, 788 So2d 362 (Fla. 3rd DCA 2001); **DeSoto v. Hialeah Police Pension Fund Bd.**, 870 So2d 844 (Fla. 3rd DCA 2003); **Warshaw v. Miami Fire Fighters Retire. Trust**, 885 So2d 892 (Fla. 3rd DCA 2004); **Hames v. City of Miami Fire Fighters**, 980 So2d 1112 (Fla. 3rd DCA 2008); **Simcox v. Hollywood Police Officers Ret.**, 988 So2d 731 (Fla. 4th DCA 2008).

In **Newmans**, supra, a retired sheriff was ordered to repay all retirement benefits previously received, after he was convicted of obstruction of justice. He provided information to drug

traffickers and assisted a group in avoiding detection of their illegal activities by law enforcement. In seeking to avoid pension forfeiture, Officer Newmans argued that such actions were separate and apart from what he was required to do as sheriff, by the court disagreed. It noted a statutory duty as sheriff to cooperate with the enforcement of law relating to cannabis so that the conspiracy to obstruct justice was inseparably intertwined with his official position.

In **Jacobo**, a police officer falsely reported in an affidavit that a suspect who was shot by another officer was carrying a gun at the time of the shooting. In fact, the suspect was then unarmed. The false report resulted in a conviction of official misconduct, a felony. The specific offense of “official misconduct”, has embodied in Fla. Ch. 838, had not yet been enacted into law when his offense occurred. The officer therefore argued that his offense was not a “specified offense” for purposes of s. 112.3173 (2) (e) since, he argued, the definition was limited to offenses where there is pecuniary gain, such as embezzlement, theft, or bribery. The court disagreed, finding it sufficient that his, ... actions constituted a breach of the public trust forbidden by the plain wording of s. 112.3173 (2) (e) 6.” Supra at 364.

In **DeSoto**, supra, forfeiture was upheld in the case of a police officer who, during a six-month period of suspension, committed a series of armed robberies. He admitted the robberies but contended that forfeiture was unwarranted since he was not actually on duty but was on suspension when the robberies occurred. The court found that, the suspension notwithstanding, there was a sufficient nexus between the robberies and his employment. Some of the planning for these holdups occurred before the suspension took place, but in any event, “... DeSoto clearly violated his duty as a public officer to safeguard the public faith in this office. Although suspended for a period of time, DeSoto remained a public servant”. Supra at 846.

In **Warshaw**, a police chief lost his pension after he was convicted of mail fraud, stemming from embezzlement of monies belonging to a not-for-profit corporation that used such funds to honor citizens for their community contributions. Chief Warshaw argued that the conviction was not for a “specified offense” because the monies came from a *private* source, not a *public* entity related to his employment. But the evidence showed that the funds originally came from the city commission, which transferred them, in turn, to the non-profit. The non-profit was required to use those city funds to carry out city functions. In so doing, the non-profit acted, “... effectively as an alter ego of the city, and certainly as its agent. The funds never lost their character as public funds”. Supra at 895. The court therefore concluded that he was guilty of embezzling public funds, a “specified offense” for purposes of s. 112.3173 (2) (e).

In **Hames**, a retired police officer was required to fund all pension benefits previously received. Like Officer Jacobo before, see supra, Officer Hames falsely reported that a fleeing suspect was armed when shot by another officer. Unlike Officer Jacobo, however, Officer Hames’ ensuing conviction was under federal law, not state statute. He was convicted pursuant to 18 USC s. 242, 1512 (b) (3), for conspiring to obstruct justice and deprive Miami citizens of their rights, privileges and immunities under federal law. Hames therefore argued on appeal that the forfeiture ordered by the city board should be set aside because his conviction was not a felony under Florida law and was therefore not a “specified offense”. This was rejected. The court held that while there was no actual conviction under state law, his conduct was nevertheless *punishable* as felonious misconduct under Fla. Stat. s. 839.25. A *conviction* was not required.

The court deemed it sufficient under Florida law that the misconduct is punishable as a felony, or this was held to be equivalent to a breach of the public trust and any such breach of the public trust is a “specified offense” for purposes of both § 112.3173 (2) (e) 6 and 112.3173 (3).

Finally and most recently, in **Simcox**, a police officer resigned and was then convicted under a federal statute of conspiracy to distribute a controlled substance. Apparently in his spare time he was participating in a drug trafficking scheme to transport heroine and was paid to make sure the driver did not encounter any problems. In an effort to save his pension, Officer Simcox argued that in so doing he was not actively exercising his duties as an officer when participating in the scheme, so that his role was merely that of an unlawful citizen. The court disagreed. It found that he used his expertise gained as a law enforcement officer to facilitate the scheme and was therefore exercising the privileges and experience which were all a part of his position as an officer. The “faithful performance” of his “duty” as a police officer did not allow him to traffic in drugs when off-duty and therefore his moonlighting activity amounted to a “specified offense” under s. 112.3173 (2) (e) 6. When these things occurred, he was then enrolled in a DROP program. He therefore alternatively argued that he was technically already “retired” so could not then be deemed to be acting in any official capacity for purposes of the forfeiture statute, which only relates to offenses occurring during the employment, not to misconduct occurring afterward. The court disagreed with that also. It stated that “retirement”, for purposes of the forfeiture law, is understood according to its commonly accepted meaning, applying only when the employee voluntarily terminates his employment or career. Since Officer Simcox remained officially on the payroll and continued to exercise the duties of a police officer while in the DROP program, he was not yet “retired” for purposes of forfeiture liability.

MEMORANDUM

General Principles Governing Award of Nonduty And Duty-Related Disability Retirement Through The Fort Pierce Retirement System

July 2009

This memorandum sets out a discussion of general principles and standards governing Board consideration of a member's entitlement under the Fort Pierce Retirement System to nonduty-related disability retirement benefits, under Code Section 13-36, and duty-related disability retirement benefits under Code Section 13-37. This includes a discussion of relevant statutory provisions and case authorities.

I. Nonduty Disability:

Nonduty disability is awarded if the applicant meets the requirements of Code §13-36 of the Code of Ordinances:

Sec. 13-36. Disability retirement; conditions for.

The retirement board may retire a member on account of disability if all of the following requirements have been met:

- (1) The member has five (5) or more years of credited service;
- (2) The member was a member at the time the disability was incurred;
- (3) A written application for disability retirement, in the form and containing the information prescribed by the retirement board, has been filed with the retirement system by the member or the member's department head;
- (4) Membership is terminated prior to the selected date of disability retirement;
- (5) The participant submits to all medical examinations and tests and furnishes copies of all medical reports requested by the retirement board;
- (6) The retirement board determines the member to be totally and permanently incapacitated for duty in the employ of the member's participating employer, by reason of a personal injury or disease;
- (7) Two (2) physicians, one of whom shall be selected by the retirement board and paid by the retirement system, and one of whom shall be selected by the member and paid by the member, both report to the retirement board, in writing, that the member is mentally or physically totally incapacitated for duty in the employ of the member's participating employer, the incapacity will probably be permanent, and the member should be retired.

The five (5) years of credited service requirement contained in this section shall be waived in the case of a member whom the retirement board finds to be in receipt of weekly workers' compensation on account of disability arising out of and in the course of his employment by a participating employer.

Such provision sets out three (3) elements that must be established by the applicant: first, there must be a total and permanent incapacity for duty; second, the incapacity must disqualify the applicant from duty in the employ of the

applicant's participating employer; third, such incapacity must arise from personal injury or disease. The applicant bears the burden of persuasion on these points. See ex. **Cords v. State Dept. of Environmental Reg.**, 582 So2d 652 (Fla. 1st DCA 1991). That is, it is the task of the petitioner who seeks benefits to go forward with evidence on each of the material elements of the claim and to establish a basis for the claim. See ex. **Environmental Trust v. State Dept. of Environmental Protection**, 714 So2d 493, (Fla. 1st DCA 1998)

For purposes of the first element of recovery, the term "total and permanent disability" is defined to mean that the claimant must be, "... prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee". See Fla. Stat. §121.091(4)(b).

The second standard required for disability entitlement is that claimant be, "incapacitated for duty in the employ of the member's participating employer". This means that the claimant is required only to show that there is no work reasonably available because of the injury, from the participating employer. The claimant is *not* required to show that he or she is unable to do work anywhere else. For example, in **State Dept. of Admin. v. Hissom**, 476 So2d 244 (Fla. 1985) a hearing officer terminated a retireant's disability benefits upon a finding that the

retiree had, "...the ability to engage in some form of employment outside of the system". But the State Retirement Commission determined that the hearing officer used the wrong standard of entitlement. Instead, the issue was held to be whether, "...a retiree has regained the ability to render 'useful and efficient service' in a 'regularly established position' within the Florida retirement system ...". See **Hissom**, id at 244. Moreover, there is no requirement that the disability manifest itself necessarily during the employment. Even if the employee is capable of performing useful and efficient service at the time he or she separates from employment, there may still be entitlement to benefits if, subsequently, the disabling effects of an illness or injury sustained or suffered during the employment become manifest later. See ex. **Drew v. Division of Retirement**, 640 So2d 1190 (Fla. 1st DCA 1994) ("There is no requirement in this statutory scheme that the member of the retirement system be presently employed at the time he or she becomes permanently and totally disabled." Pg. 1192), citing **Brantley v. Division of Retirement**, 463 So2d 1222 (Fla. 1st DCA 1985).

Third, the applicant must show that the disability arises from "personal injury or disease". As to that, it is important to be aware that the term "personal injury" is not the same as "bodily injury". Our code is to be construed broadly with respect to the sorts of physiological problems that may result in disability. See ex. **New**

Amsterdam Casualty Co. v. Hart, 16 So2d 118 (Fla. 1943) (“...there is a distinction between ‘bodily injuries’ and ‘personal injuries’ ... The term ‘personal injuries’ is broader, more comprehensive and significant than the term ‘injuries’ ... personal injuries do not necessarily mean or involve the element of personal contact.” Pg. 120).

When establishing the claim, it may not ordinarily be enough for the applicant to rest his or her claim on a simple reliance upon written medical records. Board Rule 10 states the following: “Hearsay evidence may be used to the extent consistent with due process. Medical records shall be freely admissible ...”. But the use of such evidence is limited and does not, by itself, necessarily suffice to sustain an award. See ex. Pridgeon v. State Dept of Retirement, 662 So2d 1028 (Fla. 1st DCA 1995) (Claimant presented, “... medical records of the other physicians who had been treating him for his back pain since the date of his lower back injury. The latter evidence was hearsay but nevertheless was properly admitted over the Division’s objection *for the limited purpose of supplementing or explaining other competent evidence.*”, pg. 1029-1030). Direct medical testimony from the health care provider, whether given by deposition or live, is additionally required so that the employer, if it opposes the application, may cross-examine the physician. But in the event there is no insistence by a party upon

invocation of the “hearsay rule”, the Board may, if it chooses, waive the requirement for direct medical testimony and base its decision solely on the available medical records if the Board finds that a review of medical records only is sufficient for its purposes.

II In-line-of-duty Disability:

1. Generally

The foregoing principles relating to an award of nonline-of-duty disability benefits also apply in the case of in-line-of duty disability benefits, except that §13-37(b) also applies:

Sec. 13-37. Disability annuity; amount of.

(b) If a member is retired on account of disability as provided in section 13-36 for a disability *arising out of and in the course of the member's employment by a participating employer*, the following additional provisions shall apply ...

Code §13-37(b) provides for duty-related disability retirement if such disability arises “out of and in the course of the member’s employment.” This does not require that the applicant receive worker’s compensation benefits for the same condition for which in-line-of-duty disability is sought. See ex. **City of Tampa v. Lewis**, 488 So2d 860 (Fla. 2nd DCA 1986) (“The fact that Lewis obtained benefits under worker’s compensation law does not automatically entitle him to benefits

under his pension contract. Different standards and procedures are utilized by the Deputy Commissioner and the Board to determine disability and the character of that disability”. Pg. 863). Our code does not specifically define the meaning and affect to be given to the phrase, “arising out of and in the course of a member’s employment”. But it is instructive to look to the Worker’s Compensation Act, which provides benefits for injuries arising out of and in the course of the member’s employment and there,

“the phrase ‘arising out of’ refers to the origin of the cause of the accident, which the phrase ‘in the course of employment’ refers to the time, place and circumstances under which the accident occurs ... Therefore, ‘to be compensable, an injury must arise out of the employment in the sense of causation and be in the course of employment in the sense of continuity of time, space and circumstances.’ ... stated another way, for an injury to arise out of employment (1) it must occur within the period of employment (2) at a place where the employee may reasonably be, and (3) while he is reasonably fulfilling the duties of employment or engaging in something incidental to it.”

Rockhauers, Inc. v. Davis, 554 So2d 654, 655 (Fla. 1st DCA 1989). See also Fla. Stat. §121.021(13), defining the term “disability in-line-of-duty” as, “... an injury or illness arising out of and in the actual performance of duty required by a member’s employment during his or her regularly scheduled hours or irregular working hours as required by the employer”. Under this provision, “the only obligation the law placed on (claimant) was to establish medical causation between his adjustment disorder and his job”. **Viele v. Division of Retirement**, 642 So2d 1124 (Fla. 1st DCA 1994). Various courts have decided that medical evidence

disclosing that an employee suffered a disability, as the result of job stress, was sufficient to establish disability in the line of duty, regardless of the submission of evidence in opposition to the claim showing that other factors may have contributed to the employee's disability. See ex. **Division of Retirement v. Allan**, 395 So2d 1192 (Fla. 1st DCA 1981) (Allan's personality and physical condition combined with job stressors to cause his disability); **Dickson v. Dept. of Admin., Div. of Retirement**, 481 So2d 52 (Fla. 1st DCA 1985) (Dickson's preexisting mental condition was aggravated by employment conditions – problems with a new supervisor – as well as by his brother's death and the loss of a love relationship); **Tingler v. City of Tampa**, 400 So2d 146 (Fla. 2nd DCA), rev. den., 408 So2d 1092 (Fla. 1981) (Tingler's job stress aggravated a preexisting mental condition, resulting in a psychological reaction of his muscular skeletal system, causing his disability). It is necessary only that the employment be a substantial factor in the resulting permanent total disability. See ex. **Burd v. Division of Retirement**, 581 So2d 973 (Fla. 1st DCA 1991) (“The test for an in-line-of-duty disability award is whether an injury or illness, arising out and in the actual performance of a duty required by a member's employment, was the substantial producing cause or an aggravating cause of a member's total and permanent disability.”, pg. 974). In sum, **Pridgeon v. State Div. of Retirement**, 662 So2d 1028 (Fla. 1st DCA 1995)

To establish entitlement to in-line-of-duty disability benefits, an individual must prove that (1) his injury was work-related, and (2) his injury was a substantial, producing cause or an aggravating cause of his permanent total disability.

2. Police Officers

The foregoing applies equally to general employees of the City as well as police officers. But in the case of the latter, Fla. Stat. §185.34 is additionally applicable:

185.34 Disability In-Line-Of-Duty

For any municipality, chapter playing, local law municipality, or local law plan under this Chapter, any condition or impairment of health of any and all police officers employed in the State caused by tuberculosis, hypertension, heart disease, or hardening of the arteries, resulting in total or partial disability or death, shall be presumed to be accidental and suffered in-line-of-duty unless the contrary be shown by competent evidence. Any condition or impairment of health caused directly or proximately be exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the police officer, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty, providing that such police officer shall have successfully passed a physical examination upon entering such service, which physical examination including electrocardiogram failed to reveal any evidence of such condition, and, further, that such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance. This section shall be applicable to all police officers only with reference to pension and retirement benefits under this Chapter.

This statute sets up a presumption that any impairment of a police officer's health caused by certain diseases were suffered in the line of duty, unless the contrary is shown by competent evidence. The statute creates no more than a prima facie presumption that may be overcome by testimony, and when competent evidence is presented to rebut the statutory presumption, the question of whether disability did in fact arise in the line of duty must be determined in light of all of the evidence in support of or opposing the claim. See City of Coral Gables v. Brasher, 120 So2d 5 (Fla. 1960).

Pursuant to Fla. Stat. §185.18, a police officer may not be granted disability retirement status if such disability is a result of:

- a. excessive and habitual use of drugs, intoxicants or narcotics;
- b. injury or disease sustained while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime;
- c. injury or disease sustained while serving in any armed forces;
- d. injury or disease sustained after employment is terminated;
- e. injury or disease sustained while working for anyone other than the City and arising out of such employment.

APPENDIX
To
RULES OF PROCEDURE
For
FORT PIERCE RETIREMENT BOARD

09.01.10

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RETIREMENT BOARD FORMS

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Request for Hearing by the Fort Pierce Retirement Board

City of Fort Pierce

Fort Pierce Utilities Authority
Fort Pierce Police Department

TO: _____
Agency Manager/Chief

THROUGH: _____
Department Head

FROM: _____
(Print Name)

DATE: _____

SUBJECT: REQUEST FOR HEARING

I am requesting a hearing before the Fort Pierce Retirement Board for the following reason:

1. (_____) to approve a request for normal retirement;
2. (_____) to approve a request for disability retirement;
3. (_____) other (please explain)

Date Signed

Signature



MEMORANDUM

CITY OF FORT PIERCE RETIREMENT & BENEFIT

GENERAL & POLICE MEMBERS

TO: _____
City Manager

THROUGH: _____
Department Head

FROM: _____
 General Member
 Police Member

DATE: _____

SUBJECT: **Employee Request to Retire**

INSTRUCTIONS: Complete this memorandum requesting your retirement and turn into your Human Resources/Payroll Office **no less than 30 days** prior to your retirement date.

Employee Request to Retire

1. After _____ years of service with the _____ Department of the City of Fort Pierce, I wish to retire on _____.

2. I will continue employment through the Deferred Retirement Option Plan (DROP).

Yes – Complete Sections A, B, & D No – Complete Sections C & D

A. Sick Leave

I would like to cash in _____ sick leave hours towards retirement. (Maximum 720 hours)

I would like to carry over _____ sick leave hours into the DROP period with the understanding that any unused sick leave hours **will not be** paid out at the end of the DROP period.

B. Accrued Vacation

I would like to cash _____ vacation hours now.

I would like to carry over _____ vacation hours into the DROP period with the understanding that any unused accrued vacation **will be** paid out at the end of the DROP period.

C. Insurance Election

I wish to continue participation with City's Insurance Plans.

Yes – Select the Insurance Coverage to be Continued No

Health: Employee Only Employee + 1 Family

Dental: Employee Only Employee + 1 Family

D. **Complete Retirement Work-up on Next Page**

RETIREMENT WORK-UP INFORMATION

FOR

NAME

SOCIAL SECURITY #:

ADDRESS: (City/ State/ Zip)

PHONE NUMBER:

DATE OF BIRTH:

BENEFICIARY'S NAME:

RELATIONSHIP TO RETIREE:

BENEFICIARY'S DATE OF BIRTH:

BENEFICIARY'S SOCIAL SECURITY #:
(Please Provide a Copy)

BENEFICIARY'S ADDRESS:
(If Different)

Completed by: _____
(Employee Signature)

Date: _____

*In accordance with the provisions of §119.071(5)(a)6g, Florida Statutes, the collection and use of social security numbers is authorized for the purpose of the administration of the pension fund.



City of Fort Pierce Retirement and Benefit System

MEMORANDUM

City of Fort Pierce
Office of Director of Finance
P.O. Box 1480
Fort Pierce, FL 34954
(772) 460-2200 ■ Fax (772) 489-2594

To : Disability Retirement Applicant

From : Gloria J. Johnson/Treasurer

Subject: *DISABILITY RETIREMENT APPLICATION*

The disability retirement application consists of five different forms. It is your responsibility to ensure that each form is completed and signed where indicated, and that all attachments are submitted.

- Read and sign the **Release of Medical Information** form.
- The **Application for Disability Retirement** should be filled out in its entirety and signed by you.
- Fill out and sign your portion of the **Reasonable Accommodation Form** and submit, along with **Statement of Disability by Employer**, to your immediate supervisor, department head, or Human Resources representative for completion and their signature.
- The **Applicant's Physician Report Form** must be completed and signed by your own doctor and submitted along with your medical report, and any laboratory and test results required for the decision-making process.
- Remove the City and State statutes and keep these for your records.

After you submit this application to my office it will be carefully reviewed, and if any unanswered questions or omitted attachments are discovered, the entire application packet will be returned to you for correction and completion. This will result in a delay in the processing of your application. Once the entire application packet has been completed, signed and submitted with the required attachments, we will arrange an appointment with a doctor of the Board's choosing for your examination. After the Board has received a completed form and medical report from its doctor, your application for disability retirement benefits will be placed on the next available agenda.

Encl.



CITY OF FORT PIERCE RETIREMENT AND BENEFIT SYSTEM
DISABILITY RETIREMENT APPLICATION

REASONABLE ACCOMMODATION FORM

Attention: PERSONNEL DEPARTMENT

From: _____

I hereby request a reasonable accommodation as follows:

Current job title: _____

Department or Division: _____

Immediate supervisor: _____

Describe your disability: _____

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CITY OF FORT PIERCE RETIREMENT AND BENEFIT SYSTEM
DISABILITY RETIREMENT APPLICATION

REASONABLE ACCOMMODATION FORM

Describe your current job duties:

Describe job duties or tasks you are unable to perform due to your disability:

Describe the accommodation you believe would help you perform your job duties:

Applicant's Printed Name:

Applicant's Signature:

Dated:



CITY OF FORT PIERCE RETIREMENT AND BENEFIT SYSTEM
DISABILITY RETIREMENT APPLICATION

APPLICATION FOR DISABILITY RETIREMENT

Name: _____

Social Security Number: _____

Date of Birth: _____

Department Name: _____

Job Title: _____

Date of Employment: _____

Date of Entry into Pension Fund: _____

All questions must be completed before the Trustees of the Pension Fund will consider your application. If further space is required on any question, attach additional pages, indicating the item to which the information applies:

Have you asked your employer to make a reasonable accommodation for you within your limitations, as defined by the Americans With Disabilities Act? (Documentation of this inquiry and the response must be attached)

YES

NO

Do you currently have any disciplinary action pending against you? If yes, please explain.

YES

NO

Describe the illness or injury which has caused your disability.



CITY OF FORT PIERCE RETIREMENT AND BENEFIT SYSTEM
DISABILITY RETIREMENT APPLICATION

APPLICATION FOR DISABILITY RETIREMENT

List the names and addresses of all physicians, hospitals, rehabilitation facilities, or any other person who has provided medical treatment in connection with your disability.

Has any physician restricted your activities? If yes, please describe the restrictions.

YES

NO

Summarize why you believe you are disabled and how your illness or injury prevents you from performing your usual job duties.

If you have ever been injured for any reasons requiring medical treatment prior to this date, list the date of the injury, cause, treatment you received, name of the physician attending you, hospital or clinic where treatment was performed, the date of recovery, and any present disability resulting therefrom.

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CITY OF FORT PIERCE RETIREMENT AND BENEFIT SYSTEM
DISABILITY RETIREMENT APPLICATION

APPLICATION FOR DISABILITY RETIREMENT

While you were disabled due to your injury or illness, did you receive any workers' comp benefits? If the answer is yes, please identify the date benefits commenced and the date benefits terminate(d).

YES

NO

If you have any other physical impairments, please describe them and the length of time they have existed.

I hereby apply for a disability retirement and I affirm that all the informational statements contained herein are true and correct to the best of my knowledge. I understand that a false statement knowingly made on my application can serve as grounds for denial of my application.

Applicant's Printed Name:

Applicant's Signature:

Date:

Street Address:

City/State/Zip Code:

Telephone Number:



CITY OF FORT PIERCE RETIREMENT AND BENEFIT SYSTEM
DISABILITY RETIREMENT APPLICATION

STATEMENT OF DISABILITY BY EMPLOYER

Employee's Name:

Social Security Number:

Department:

Date of Hire:

Employee has or will be terminated upon:

Our office has been notified that this employee is applying for a disability retirement for the following reasons:

Present job title and assignment:

Was the employee prior to his/her alleged disability able to perform all of the duties of the position fully and completely? If not, list those duties which could not be performed.



CITY OF FORT PIERCE RETIREMENT AND BENEFIT SYSTEM
DISABILITY RETIREMENT APPLICATION

STATEMENT OF DISABILITY BY EMPLOYER

Does the employee's alleged disability prevent the performance of any of his or her current duties? If so, how does the disability affect his or her performance?

How many days has the employee been absent from work this year?

What percentage of this absence is directly related to the present alleged disability?

What other jobs exist that this employee could perform despite his/her disability?

If there are any other jobs which the employee can perform, has one been offered?

YES

NO

If another job has been offered, why was it not accepted?

Employee satisfies the requirements of the following type of disability retirement benefit:

DUTY

NON-DUTY

NONE

If you regularly evaluate your employees, attach a copy of the last performance evaluation prior to the date of the alleged injury or illness resulting in disability.

What other comments would you make concerning this employee's condition as it relates to his or her continued or restructured employment?

Print Name:

Signature:

Official Position:

Date:



CITY OF FORT PIERCE RETIREMENT AND BENEFIT SYSTEM
DISABILITY RETIREMENT APPLICATION

CHECKLIST

This is to certify that I have received the following documents for the purpose of applying for a disability retirement:

1. Authorization for the use or Disclosure of Protected Health Information (HIPPA)
2. Florida Statute §286.0105
3. Fort Pierce Code Sections 13-36, 13-37 and 13-38
4. Request for Reasonable Accommodation under the Americans With Disabilities Act
5. Application for Disability Retirement
6. Statement of Disability by Employer
7. Physician Report Form

I understand that the above listed forms and documents must be completed in their entirety and returned to the retirement office before my application can be processed.

Applicant's Printed Name: _____

Applicant's Signature: _____

Dated: _____



CITY OF FORT PIERCE RETIREMENT AND BENEFIT SYSTEM
DISABILITY RETIREMENT APPLICATION

**AUTHORIZATION FOR THE USE OR DISCLOSURE
OF PROTECTED HEALTH INFORMATION TO THE
CITY OF FORT PIERCE RETIREMENT BOARD**

I, _____, hereby authorize _____ (health care provider) pursuant to 45 CFR Subtitle A (10/1/02 ed) §164.508 to disclose protected health information to the City of Fort Pierce Retirement Board, through its designated agent(s) as herein below identified, at the offices of the City Finance Director, City Hall, 100 U.S. 1, Fort Pierce, FL 34954, in connection with my pending application to the City for disability retirement benefits. It is understood that my application for disability benefits requires that the City have medical information relating to me for all periods of time as documented by records within the possession of the health care provider designated here. The scope of this authorization specifically extends to all radiographic films, laboratory reports, office progress notes, consultations, medical bills/statements, nurses notes, and any and all other documents and materials maintained by the health care provider in connection with my examination, treatment, evaluation or testing.

This authorization is in full force and effect until such time as final action is taken on my pending application for disability retirement benefits.

I understand that I have the right to revoke this authorization in writing by sending notification to the privacy officer or the health care provider to whom this authorization is addressed. I further understand that when I revoke this authorization, such revocation is not effective to the extent that the health care provider has already relied on it for disclosure as herein requested of the protected health information. I understand that the protected health information released as a result of this authorization may be re-disclosed by the party who is designated here as receiving the information pursuant to this authorization and the re-disclosure may no longer be protected by Federal or State law.

I understand that I have the right to inspect or copy the protected health information to be used or disclosed and to refuse to sign this authorization. In addition, I understand that the health care provider will not condition my treatment or payment on whether I sign this authorization.

Signature (Patient or Legal Representative)

Date

Gloria J. Johnson, Director of Finance
Secretary to the Fort Pierce Retirement and Benefits Board

Date

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CITY OF FORT PIERCE RETIREMENT AND BENEFIT SYSTEM
DISABILITY RETIREMENT APPLICATION

APPLICANT'S PHYSICIAN REPORT FORM

Name of Physician: _____

Street Address: _____

City/State/Zip Code: _____

Telephone Number: _____

Area of Specialization: _____

Board Certification, if any: _____

Florida Medical License No.: _____

I examined _____
NAME OF APPLICANT
in connection with his/her application for disability retirement. The results of my examination are attached. (Attach narrative).

On the basis of the attached findings, it is my opinion that the applicant:

1. _____
IS OR IS NOT
mentally or physically totally incapacitated for duty in the employ of the member's participating employer. (Fill in appropriate response)

2. The incapacity _____ probably
WILL OR WILL NOT
be permanent, and the member _____ be
SHOULD OR SHOULD NOT
retired. (Fill in appropriate responses)

Physician's Signature: _____

Dated: _____



CITY OF FORT PIERCE RETIREMENT AND BENEFIT SYSTEM
DISABILITY RETIREMENT APPLICATION

BOARD'S PHYSICIAN REPORT FORM

Name of Physician: _____

Street Address: _____

City/State/Zip Code: _____

Telephone Number: _____

Area of Specialization: _____

Board Certification, if any: _____

Florida Medical License No.: _____

I examined _____
NAME OF APPLICANT
in connection with his/her application for disability retirement. The results of my examination are attached. (Attach narrative).

On the basis of the attached findings, it is my opinion that the applicant:

1. _____
IS OR IS NOT
mentally or physically totally incapacitated for duty in the employ of the member's participating employer. (Fill in appropriate response)

2. The incapacity _____ probably
WILL OR WILL NOT
be permanent, and the member _____ be
SHOULD OR SHOULD NOT
retired. (Fill in appropriate responses)

Physician's Signature: _____

Dated: _____

