

**Chapter 46**

**PERSONNEL**

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ARTICLE I. IN GENERAL

Secs. 46-1 thru 46-30. Reserved.

ARTICLE II. PENSION PLAN FOR GENERAL EMPLOYEES

Sec. 46-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accumulated contributions* means a member's own contributions to the system on or before December 31, 1985, plus deferred compensation contributed by the city on behalf of the member on and after January 1, 1986, as prescribed in IRS Code section 414(h), along with interest at the rate of 5 1/2 percent per year, compounded annually.

*Actuarial equivalence* means a form of benefit differing in time, period or manner of payment from a specific benefit provided under this article but having the same value when computed using UP 1984 Mortality Table and eight percent interest.

*Agreement* means this written instrument (this article) setting forth the provisions of the retirement system.

*Average monthly earnings* means one-twelfth of the arithmetic average of annual earnings for the three highest years of credited service during the ten years preceding termination of employment or retirement.

*Beneficiary* means the person entitled to receive benefits under this article at the death of a member and filed with the board. If no such designation is in effect at the time of death of the member, or if no person so designated is living at that time, the beneficiary shall be the estate of the member.

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

*City* means the City of Satellite Beach, Florida.

*Credited service* means the total number of years and completed months of actual service with the city as an employee. Members shall not receive credit for service for which accumulated contributions have been refunded. No credit will be given toward credited service for service during which an employee was eligible for participation in the system but elected not to become a member. Credited service shall include prior service with the city purchased in accordance with section 46-42.

*Earnings* means base pay, including commissions, bonuses, maintenance and overtime pay, but excluding accrued sick leave and vacation pay.

*Effective date* means October 1, 1987.

*Employee* means all actively employed employees of the city, including those in their initial probationary employment period, but excluding those classified as full-time firefighters, full-time sworn police officers, and any temporary or contract employees.

*Fund* means the trust fund established in this article as part of the system.

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*Member* means an actively employed employee who fulfills the prescribed participation requirements and all terminated employees who are receiving or are entitled to receive benefits under this article.

*Spouse* means the lawful wife or husband of a member at the time of preretirement death or retirement.

*System* means the city general employees' retirement system as contained in this article and all amendments thereto.

(Code 1976, §17.1-1; Ord. 909, §1, 7-20-05)

**Sec. 46-32. Membership.**

(a) *Conditions and eligibility.* All members of this system as of September 30, 1996, shall continue participating hereunder. Future new employees who are not classified as sworn police officers or certified firefighters who are hired after September 30, 1996, and whose customary employment is for 40 or more hours per week shall not become members of this system but shall instead participate in a city-sponsored replacement defined contribution program to be effective October 1, 1996. Notwithstanding any provision of this plan to the contrary, the city manager may elect to participate in this system within 30 calendar days following the adoption of this section by submitting a written election to the board on a form provided by the city. The city manager's written election to participate in this system shall be irrevocable.

(b) *Application for membership.* Each eligible employee shall complete an application form covering the following items, as well as such other items as may be prescribed by the board:

- (1) Acceptance of the terms and conditions of the retirement system.
- (2) Designation of a beneficiary or beneficiaries.

(c) *Change in designation of beneficiary.* A member may from time to time change his designated beneficiary by written notice to the board upon forms provided by the board. Upon such change the rights of all previously designated beneficiaries to receive any benefits under the system shall cease.

(Code 1976, §17.1-12; Ord. 655, §1, 9-18-96; Ord. 909, §2, 7-20-05)

**Sec. 46-33. Benefit amounts and eligibility.**

(a) *Retirement dates.*

(1) *Normal retirement.* A member's normal retirement date shall be the first day of the month coincident with or next following the attainment of his 62nd birthday and the completion of five years of participation in the plan, if later. A member may retire on his normal retirement date or on the first day of any month thereafter.

(2) *Early retirement.* A member may retire on an early retirement date the first day of any month coincident with or next following:

- a. The attainment of age 55 and ten years of credited service; or
- b. The completion of 35 years of credited service.

(3) *Delayed retirement.* Age 70 years. At the option of the employee he may remain in the active employ of the city beyond the normal retirement date, and with the consent of the board, beyond age 70 provided, however, that no person shall be entitled to remain in employment, regardless of age, if in the opinion of the city such person is incapable of or fails to satisfactorily perform his assigned job functions, for reasons of physical infirmity, emotional or mental impairment, lack of aptitude for the position held or for other cause. However, discharge, forced retirement, refusal to

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hire or denial of promotion may not be determined solely on the basis of age. The delayed retirement date shall be the first day of the month coincident with, or next following actual retirement. Nothing contained in this subsection shall be construed to give the employee the right to be retained in the employ of the city or to interfere with the right of the city to terminate the employment of any employee at any time, nor upon dismissal or upon his voluntary termination of employment, to have any right or interest in the fund other than as is provided in this article.

- (4) *Full vesting at retirement.* A member shall become 100 percent vested in his accrued benefit on any stated retirement date or upon reaching the age of 62, and completion of at least five years of service as a member.
- (b) *Retirement benefit.*
  - (1) *Normal or delayed.* A member retiring under this article on or after his normal retirement date shall receive a monthly benefit which shall commence on his retirement date and be continued thereafter during his lifetime, with the first 120 payments guaranteed payable in any event. The monthly retirement benefit shall equal three percent of average monthly earnings for each year of credited service.
  - (2) *Early.* A member retiring under this article on his early retirement date may receive either a deferred or an immediate monthly retirement benefit payable for life, but with the first 120 payments guaranteed payable as follows:
    - a. A deferred monthly retirement benefit which shall commence on what would have been his normal retirement date had he remained as an employee and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement at his normal retirement date except that credited service and average monthly earnings shall be determined as of his early retirement date; or
    - b. An immediate monthly retirement benefit which shall commence on his early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in subsection (b)(2)a of this section, reduced by one-fifteenth for each of the first five years and one-thirtieth for each of the next five years by which the commencement of benefits precedes the normal retirement date.
  - (3) Beginning with the monthly payment paid on the first day of October 1997, the monthly benefit currently being received by every retired member, joint pensioner or beneficiary who is receiving benefits on October 1, 1997, shall be increased one time by one percent.
- (c) *Disability.*
  - (1) *Eligibility.* Any member who is found by the board upon examination to be mentally or physically incapacitated so as to be wholly unable to properly perform his duties as an employee of the city, may be retired for disability if the member meets the following service requirement:
    - a. Service-incurred disability (as determined by the board): No service requirement. Members are covered from date of employment.
    - b. Non-service-incurred disability (as determined by the board): Member is eligible following completion of ten years of credited service.
  - (2) *Exclusions.* A member will be considered totally disabled if, in the opinion of the board, he is wholly prevented from rendering useful and efficient service as an employee; and a member will

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be considered permanently disabled if, in the opinion of the board of trustees, such member is likely to remain so disabled continuously and permanently from a cause other than is specified below:

- a. Excessive and habitual use by the member of drugs, intoxicants or narcotics.
  - b. Injury or disease sustained by the member while willfully and illegally participating in fights, riots, civil insurrections, or while committing a crime.
  - c. Injury or disease sustained by the member while serving in any armed forces.
  - d. Injury or disease sustained by the member after his employment has terminated.
  - e. Self-inflicted injury.
- (3) *Determination of disability.* No member shall be permitted to retire under the provisions of this section until such member examined by a duly qualified physician or surgeon, to be selected by the board for that purpose, and is found to be disabled in the degree and in the manner specified in this section. Any member 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 for that purpose, to determine if such disability has ceased to exist.
- (4) *Benefit amount.* The benefit payable to a member who retires with a total and permanent disability which is determined to be non-service-incurred shall be an amount equal to three percent of his average monthly earnings multiplied by his years of credited service. In no event, however, shall the non-service-incurred disability benefit be less than 25 percent of the member's average monthly earnings. The monthly benefit payable to a member who retires with a service-incurred disability shall be an amount determined as for non-service-incurred disability but not less than 42 percent of average monthly earnings.
- (5) *Benefit offsets.* If the disability benefit described in this subsection (c), plus other amounts to which the disabled member is entitled under worker's compensation or any other city-financed disability or salary continuation program (excluding social security), exceeds 100 percent of the member's average monthly earnings in effect on the date of disability, the disability benefits provided in this subsection (c) shall be reduced so that the total of all such regular monthly amounts does not exceed 100 percent of such average monthly earnings.
- (6) *Payment of benefits.* The monthly retirement income to which a member is entitled in the event of his disability retirement will be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date of board approval and any portion due for a partial month shall be paid together with the first payment. The last payment will be on the earlier of the following:
- a. The first day of the month preceding the member's date of death; or
  - b. The first day of the month preceding the member's recovery as determined by the board.
- (7) *Recovery.* If the board finds that a member who is receiving a disability retirement income is no longer disabled, as provided in this subsection, the board shall direct that the disability retirement income be discontinued. Recovery from disability as used herein shall mean the ability of the member to render useful and efficient service as an employee. If the member recovers from disability, his service beginning with the first month for which he received a disability retirement income payment and ending with the date of recovery shall not be considered in determining the retirement benefit commencing on or after his normal retirement date.

- (d) *Pre-retirement death.*
- (1) *Prior to eligibility for retirement.* The designated beneficiary of any member who dies prior to becoming eligible for early, normal or delayed retirement hereunder shall receive the larger of:
- a. A refund of the member's accumulated contributions, with interest; or
  - b. A monthly benefit equal to the vested portion of the amount payable as though the member had terminated employment on his or her date of death, with the resulting amount being payable to said beneficiary on a monthly basis for ten years beginning on the date the deceased member would have been eligible to receive said benefit, or on such other actuarially equivalent basis as approved by the board.
- (2) *After becoming eligible for retirement.* The designated beneficiary of any member who dies after becoming eligible for retirement shall receive a monthly benefit equal to the amount payable as though the deceased member had retired on his or her date of death, with the resulting amount being payable to the beneficiary on a monthly basis for ten years, or on such other actuarially equivalent basis as approved by the board.
- (e) *Vesting.* If a member terminates his employment, either voluntarily or by discharge, and is not eligible for any retirement benefits under this system, he shall be entitled to the following:
- (1) *Five or more years of credited service.* The monthly benefit accrued at his date of termination. Credited service under the police officers' and firefighters' retirement system is included in determining years of service for vesting. Such vested accrued benefit shall be payable in the same annuity form as for normal retirement and shall commence at member's election on the normal retirement date, or actuarially reduced and paid at the early retirement date, provided he does not elect to withdraw his accumulated contributions, and provided he survives until benefit payments actually begin. However, the board of trustees may, in its sole discretion and according to uniform, nondiscriminatory guidelines, authorize an alternative form or method of payment provided actuarial equivalence is maintained. The benefit rate per year of service shall be the same as determined for early or normal retirement, and shall depend upon the time of commencement of benefit payments. Forfeitures arising from terminations of employment shall serve only to reduce future city contributions and shall remain as a part of the assets of the fund.
- (2) *Fewer than five years of credited service.* Refund of accumulated contributions, with interest.  
(Code 1976, §17.1-13; Ord. 615, §1, 12-22-94; Ord. 654, §§1, 3--5, 4-3-96; Ord. 690, §1, 9-3-97)

**Sec. 46-34. Optional forms of benefits.**

Each member entitled to early, normal or delayed retirement benefit shall have the right at any time prior to the date on which benefit payments begin to elect to have his benefit payable under any of the options set forth in this section in lieu of the benefits provided in this article. Each such member shall further have the right to revoke any such elections and make a new election at any time prior to the actual commencement of payments. The value of payable optional benefits shall be actuarially equivalent to the value of benefits otherwise payable, and the present value of payments to the retiring member must be at least equal to 50 percent of the total present value of payments to the retiring member and his beneficiary. The member shall make such an election by written request to the board with such request being retained in the board's files. Such optional benefits are as follows:

- (1) *Option 1: Joint and last survivor option.* The member may elect to receive a benefit during his lifetime and have 100 percent, 75 percent, 66 2/3 percent, or 50 percent of such benefit continued after his death to and during the lifetime of his spouse or a relative other than his spouse. The

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election of option 1 shall be null and void if the designated beneficiary dies before the member's benefit payments commence.

- (2) *Option 2: Life annuity.* The member may elect to receive an increased benefit payable for life only, ceasing upon death.
- (3) *Option 3: Other.* In lieu of the other optional forms enumerated in this section, benefits may be paid in any form approved by the board so long as actuarial equivalence with the benefits otherwise payable is maintained.

(Code 1976, §17.1-14)

**Sec. 46-35. Contributions.**

(a) *Member contributions.*

- (1) *Amount.* Effective October 1, 1990, the city shall contribute to the fund, on behalf of each member, amounts representing deferred compensation pursuant to IRS Code section 414(h) at the rate of eight percent of earnings. Such contributions shall be collected and deposited no less frequently than monthly.
- (2) *Guaranteed refund.* All benefits payable under this system are in lieu of a refund of accumulated contributions, with interest. In any event, however, each member shall be guaranteed the payment of benefits at least equal to the total amount of his accumulated contributions, with interest.

(b) *City contributions.* So long as this system is in effect, the city shall make quarterly contributions to the fund in an amount equal to the total cost for the year as shown by the most recent actuarial valuation of the system. The total cost for any year shall be the total normal cost plus any additional amount required to amortize the unfunded actuarial accrued liability over not more than a 30-year period.

(c) *Other.* Donations, gifts and contributions from sources other than the city may be deposited to the fund. Such deposits, at the discretion of the board, may be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used for additional benefits for members, as determined by the board.

(Code 1976, §17.1-15)

**Sec. 46-36. Administration.**

(a) The sole and exclusive administration and responsibility for the proper operation of the retirement system and for making effective the provisions of this article are hereby vested in a board of trustees which shall be designated as the plan administrator for the system. The board shall consist of five persons as follows:

- (1) Three members shall be appointed by the city council to serve for a period of two years, unless sooner replaced by city council. An appointed member may succeed himself. At the time of appointment, the three appointed members may be designated and appointed to serve simultaneously as members of the police and firefighters retirement board of trustees.
- (2) Two employee members of the system to be elected as provided in this section.

(b) The regular term of office of each elected trustee shall be two years. Each employee trustee may succeed himself if reelected as provided in this section. Appointed trustees shall serve for two years.

(c) Employee trustees shall be elected by a majority vote of all actively employed members of the system at places designated by the board. All qualified members entitled to vote shall be notified in person or by written notice ten days in advance of the election. The candidate who receives the highest number of votes for

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office shall be declared elected and shall take office immediately upon commencement of the term of office for which elected or as soon thereafter as he shall qualify therefor. An election shall be held not more than 30 days and not less than ten days prior to the commencement of the term for which a trustee is to be elected. The board shall establish and administer the nominating and election procedure for each election.

(d) The board of trustees shall elect from among its members, on an annual basis, a chairman, vice-chairman and secretary. Provided, however, if a vacancy shall occur among any of these three positions of the board, a reelection to fill the vacant position shall be held at the next regularly scheduled meeting of the board following the election or appointment of the vacated seat.

(e) If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(f) The trustees shall serve without compensation, but they may be reimbursed from the fund for all necessary expenses which they may actually expend through service on the board.

(g) Each trustee shall, within ten days after his appointment or election, take an oath of office before the city clerk, that so far as it develops upon him he will diligently and honestly administer the affairs of the board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system. The oath shall be subscribed to by the members making it and shall be certified by the clerk filed in the office of the city clerk.

(h) Each trustee shall be entitled to one vote on the board. A quorum shall consist of at least three members, and three affirmative votes shall be necessary for a decision by the trustees at any meeting of the board. The chairman shall have the right to one vote only. Trustees may not cast proxy votes.

(i) Subject to the limitations of this article, the board of trustees shall from time to time establish uniform rules and regulations for the administration of funds created by this article and for transactions of its business, including provisions for expulsion due to nonattendance of its elected members which could result in a vacancy.

(j) The board of trustees shall engage such actuarial, accounting, legal and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by the board of trustees and all other expenses of the board necessary for the operation of the retirement system shall be paid by the city or from the fund at such rates and in such amounts as the board of trustees shall agree. Funds may be distributed by a disbursing agent only upon approval of the board of trustees followed by written authorization of two of the board's officers.

(k) Any elected or appointed trustee who neglects the duties of his office, as determined by the board, may be removed by four concurring votes among the board of trustees.

(l) For all acts and determinations of the board, the secretary shall prepare minutes.

(m) The duties and responsibilities of the board of trustees shall include, but not necessarily be limited to, the following:

- (1) Construe the provisions of the system and determine all questions arising under this article.
- (2) Determine all questions relating to eligibility for benefits under this article.
- (3) Determine and certify the amount of all retirement allowances or other benefits under this article.
- (4) Establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system.

- (5) Distribute to the members annually pertinent financial information concerning the system.
- (6) Receive and process all applications for participation and benefits.
- (7) Authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund.
- (8) Have actuarial studies and actuarial valuations performed and make recommendations regarding any and all changes in the provisions of the system.
- (9) Make the final determination of a member's eligibility for the disability benefits provided in this article.
- (10) Perform such other duties as are specified in this article.

(n) The board of trustees shall furnish to the city auditor such available investment and actuarial information regarding the system as shall be requested.

*(Code 1976, §17.1-16; Ord. 615, §§3, 5, 12-22-94; Ord. 968, §1, 7-18-07)*

**Sec. 46-37. Finances and fund management.**

(a) All of the contributions and assets whatsoever attributable to the system shall be deposited to the fund.

(b) The actual custody and supervision of the fund, and assets thereof, shall be vested in the board of trustees. Funds may be distributed by a disbursing agent only upon approval of the board of trustees followed by written authorization of two of the board's officers.

(c) The board shall be required to appoint a national or state bank with trust powers for the purpose of serving as custodian of the fund, and all assets of the fund shall be promptly and continually deposited therewith. In order to fulfill its investment responsibilities as set forth in this article, the board shall be required to retain the services of the custodian bank, an investment advisor registered under Investment Advisory Act of 1940, an insurance company, or a combination of these, for purposes of investment decisions and management. Such investment manager shall have full discretion in the investment of assets subject to limitation of this article and any guidelines as prescribed by the board.

(d) All funds and securities of the system may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:

- (1) Receipts and disbursements of the fund.
- (2) Benefit payments.
- (3) All cash investments realized and unrealized gains or losses whatsoever.
- (4) All interest, dividends and capital gains (or losses) whatsoever attributable to contributions and deposits to the fund.
- (5) Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.

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- (e) The board of trustees shall have the following investment powers and authority:
  - (1) The board of trustees shall be vested with full legal title to the fund, subject, however, and in any event to the authority and power of the city council to amend or terminate this trust, provided that no amendment or termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this system. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund, and the board shall not be required to segregate or invest separately any portion of the fund.
  - (2) The fund may be invested and reinvested in such securities or property, real or personal, wherever situated and whatever kind, as shall be approved by the board of trustees, including but not limited to stocks, common or preferred, and bonds, and other evidences of indebtedness or ownership. The board of trustees is authorized to transfer from time to time to a common, collective or pooled trust fund maintained by any bank, all or such part of the trust fund hereunder as the board of trustees may deem advisable, and such part or all the trust fund so transferred shall be subject to all of the terms and provisions of such common, collective or pooled trust fund which contemplates the commingling for investment purposes of such trust assets with assets of other trusts. The board of trustees is also authorized to withdraw from such common, collective or pooled trust fund from time to time all or such part of the trust fund as the board of trustees may deem advisable.
  - (3) The board of trustees may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the system.
  - (4) No person or entity shall be liable for the making, retention or sale of any investment or reinvestment made as provided in this section nor for any loss or diminishment of the fund, except that due to his own negligence, willful misconduct or lack of good faith.
  - (5) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the trust fund.
  - (6) The board is empowered, but is not required, to vote upon any stocks, bonds or securities of any corporation, association or trust and to give general or specific proxies of power of attorney with or without power of substitutions; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the power of an owner with respect to stocks, bonds or other investments comprising the fund which it may deem to be in the best interest of the fund to exercise.
  - (7) The board shall not be required to make any inventory or appraisal or report of any court, nor to secure any order of court for the exercise of any power contained in this section.
  - (8) Where any action which the board is required to take or any duty or function which it is required to perform, either under the terms in this section or under the general law applicable to it as trustee under this article, can reasonably be taken or performed only after receipt by it from a member, the city or any other entity, of specific information, certification, direction or instructions, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.

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- (9) Any overpayments or underpayments from the fund to a member or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board. Overpayments shall be charged against payments next succeeding the correction. Underpayments shall be made up from the trust fund.
- (10) The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits provided for in this article.
- (11) In any application to or proceeding or action in the courts, only the city and the board shall be necessary parties, and no member or other person having an interest in the fund shall be entitled to any notice of service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.

(f) Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agent; provided, further, that legal title to the fund shall always remain in the board of trustees.

*(Code 1976, §17.1-17; Ord. 615, §7, 12-22-94)*

**Sec. 46-38. Repeal or termination of system.**

(a) This article establishing the system and fund, and subsequent articles pertaining to the system and fund, may be modified, terminated or amended in whole or in part; provided, that if this or any subsequent article shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any such alteration, amendment or repeal shall have accrued to the member or beneficiary shall not be affected thereby, except to the extent that the assets of the fund may be determined to be inadequate.

(b) If this article shall be repealed, or if contributions to the system are discontinued, the board shall continue to administer the system in accordance with the provisions of this article, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future person entitled to receive benefits under one of the options provided for in this article who are designated by any of the members. In the event of repeal, or if contributions to the system are discontinued, there shall be full vesting (100 percent) of benefits accrued to date of repeal and the assets of the system shall be allocated to provide benefits on a proportionate basis to the persons so entitled to benefits in accordance with the provisions thereof.

(c) The following shall be the order of priority for purposes of allocating the assets of the system upon repeal of this article or if contributions to the system are discontinued:

- (1) Members already retired under the early, normal or delayed retirement or disability provisions of the system and those eligible for such retirement or disability provisions of the system and those eligible for such retirement, active or deceased, but not actually retired, and their beneficiaries, in proportion to and to the extent of the then actuarially determined present value of the benefits payable less amounts received. If any funds remain, then
- (2) Members who are fully vested under the provisions of this system, and their beneficiaries, in the same manner as in subsection (c)(1) of this section. If any funds remain, then
- (3) Other members with accumulated contributions in the same manner as in subsection (c)(1) of this section. If any funds remain, then
- (4) To all other members and their beneficiaries in the same manner as subsection (c)(1) of this section but based upon credited service and average monthly earnings as of the date of termination of the system.

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

(d) After all the vested accrued benefits provided under this article have been paid and after all other liabilities have been satisfied, then and only then shall any remaining funds revert to the general fund of the city. (Code 1976, §17.1-18)

### Sec. 46-39. Miscellaneous provisions.

(a) *Medical board.* The board of trustees may at its discretion designate a medical board to be composed of up to three physicians, but limited to either M.D.'s and/or D.O.'s, who shall arrange for and pass upon all medical examinations required under the provisions of this article, shall investigate all essential statements or certifications made by or on behalf of a member in connection with an application for disability or retirement and shall report in writing to the board of trustees its conclusions and recommendations upon all matters referred to it. The payment for such services shall be determined by the board of trustees.

(b) *Discharged members.* Members entitled to a pension shall not forfeit the same upon dismissal by the city, but shall be retired as described in this article.

(c) *Nonassignability.* No benefit provided for in this article shall be assignable or subject to garnishment for debt or for other legal process.

(d) *Pension validity.* The board of trustees shall have the power to examine the facts upon which any pension shall have been granted under any prior or existing law, or which may hereafter be granted or obtained, to determine whether it was erroneously, fraudulently or illegally granted or obtained. The board is empowered to purge the pension rolls of any person heretofore granted a pension under prior or existing law or heretofore granted under this article if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any pensioner who has heretofore under any prior or existing law or who shall hereafter under this article be erroneously, improperly or illegally classified.

(e) *Incompetents.* If any member or beneficiary is a minor or is, in the judgment of the board, otherwise incapable of personally receiving and giving a valid receipt for any payment due him under the system, the board may, unless and until claims shall have been made by a duly appointed guardian or committee of such person, make such payment or any part thereof to such person's spouse, children or other person deemed by the board to have incurred expenses or assumed responsibility for the expenses of such person. Any payment so made shall be a complete discharge of any liability under the system for such payment.

(Code 1976, §17.1-19)

### Sec. 46-40. Direct transfer of eligible rollover distributions.

(a) *Generally.* This section 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 section, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) *Definitions.*

*Direct rollover* means a payment by the plan to the eligible retirement plan specified by the distributee.

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*Distributee* includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse.

*Eligible retirement plan* means 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 Internal Revenue Code, an annuity plan described in section 403(a) of the Internal Revenue Code or a qualified trust described in section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

*Eligible rollover distribution* means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includable in gross income.

(c) *Rollovers or transfers into the fund.* On and after the effective date of this subsection [July 20, 2005], the system will accept member rollover cash contributions and/or direct cash rollovers of distributions for the purchase of credited service for prior employment pursuant to section 46-42, as follows:

- (1) *Direct rollovers or member rollover contributions from other plans.* The system will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in section 401(a) or section 403(a) of the Internal Revenue Code, from an annuity contract described in section 403(b) of the Internal Revenue Code, or from an eligible plan under section 457(b) of the Internal Revenue Code, which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The system will also accept legally permissible member requested transfers of funds from other retirement plans.
- (2) *Member rollover contributions from IRAs.* The system will accept a member rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includable in the member's gross income.

(Ord. 615, §9, 12-22-94; Ord. 909, §3, 7-20-05)

**Sec. 46-41. Deferred retirement option plan (DROP).**

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

*DROP* shall mean the City of Satellite Beach Pension Plan for General Employees' Deferred Retirement Option Plan as set forth in this section.

*DROP account* shall mean the account established for each DROP participant under subsection (c).

(b) *Participation.*

- (1) *Eligibility to participate.* In lieu of terminating his employment as a general employee, any member who is eligible for normal retirement or who has attained 57 years of age and is otherwise eligible for early retirement under the system may elect to defer receipt of such service retirement pension and to participate in the DROP.

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- (2) *Election to participate.* A member's election to participate in the DROP must be made in writing in a time and manner determined by the board and shall be effective on the first day of the first calendar month which is 15 business days after it is approved by the board.
- (3) *Period of participation.* A member who elects to participate in the DROP under subsection (b)(2) shall participate in the DROP for a period no less than 12 months and not to exceed 60 months beginning at the time of his election to participate in the DROP becomes effective. A member may participate only once.
- (4) *Termination of participation.*
  - a. A member participating in the DROP shall cease participating in the DROP by:
    1. Electing in writing, in a time and manner determined by the board, to cease participating in the DROP;
    2. Continuing to be employed as a general employee at the end of his period of participation in the DROP as determined under subsection (b)(3); or
    3. Terminating employment as a general employee.
  - b. Upon the member's termination of participation in the DROP, pursuant to subsection a.1. or a.2. above, all amounts provided for in subsection (c)(2), including monthly benefits and investments earnings or losses, shall cease to be transferred from the system to his DROP account. Any amounts remaining in his DROP account shall be forfeited, and the member will receive only his accrued monthly pension from the retirement plan when he terminates his employment as a general employee. Such member shall not be permitted to again become a participant in the DROP.
- (5) *Effect of DROP participation on the system.*
  - a. A member's credited service and his accrued benefit under the system shall be determined on the date his election to participate in the DROP first becomes effective. The member shall not accrue any additional credited service or any additional benefits under the system (except for any additional benefits provided under any cost-of-living adjustments in the system) while he is a participant in the DROP. After a member commences participation, he shall not be permitted to again contribute to the system, nor shall he be eligible for disability or pre-retirement death benefits.
  - b. No amounts shall be paid to a member from the system while the member is a participant in the DROP. Unless otherwise specified in the system, amounts transferred from the system to the member's DROP account shall be paid directly to the member only upon the termination of his employment as a general employee.

(Ord. 1007, §2, 3-4-09)

- (c) *Funding.*
  - (1) *Establishment of DROP account.* A DROP account shall be established for each member participating in the DROP. A member's DROP account shall consist of amounts transferred to the DROP under subsection (c)(2) and any earnings or losses on those amounts.
  - (2) *Transfers from retirement system.* As of the first day of each month of a member's period of participation in the DROP, the monthly retirement benefit he would have received under the system had he terminated his employment as a police officer or firefighter and elected to receive

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monthly benefit payments thereunder shall be transferred to his DROP account. A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (b)(3) and (b)(4), but in no event shall it continue past the date he terminates his employment as a police officer or firefighter.

- (3) *DROP account earnings.*
- a. Determination of stable return investment vehicle. On the effective date of this ordinance, March 15, 2006, the board shall determine and designate a stable return investment vehicle for the remainder of the current fiscal year. Thereafter, on or before August 1st of each year, the board shall determine and designate a stable return investment vehicle for the next fiscal year that begins on the October 1st and ends on September 30th.
  - b. Investment election. Upon entering the DROP, a member shall irrevocably elect whether the earnings credited to the member's DROP account for the fiscal year in which the member enters the DROP shall be either: (i) the actual quarterly net investment return realized by the System or (ii) the actual quarterly investment return realized by the stable return investment vehicle designated by the board for the fiscal year. Thereafter, on or before September 1st of each year, members shall make an annual irrevocable investment election for the following fiscal year that begins on October 1st between (i) the actual quarterly net investment return realized by the System or (ii) the actual quarterly investment return realized by the stable return investment vehicle designated by the board for that fiscal year. Members who are current DROP participants on the effective date of this ordinance, March 15, 2006, shall elect whether the earnings to be credited to the member's DROP account beginning on the next full calendar quarter and for the remainder of the current fiscal year shall be either (i) the actual quarterly net investment return realized by the system or (ii) the actual quarterly investment return realized by the stable return investment vehicle designated by the board. All investment elections shall be in writing and submitted to the board. If a member fails to timely submit a written investment election to the board, the default investment election for the member's DROP account will be the member's investment election for the prior fiscal year or, if no prior election was made, the investment election shall be the actual quarterly net investment return realized by the system.
  - c. A member's DROP account will be credited or debited quarterly based upon the member's election as set forth in subsection (b) above. A member's DROP account shall only be credited or debited with earnings and monthly benefits while the member is a participant in the DROP.
  - d. The average daily balance in a member's DROP account shall be credited or debited at a rate equal to the actual net rate of investment return realized by either the system or the stable return investment vehicle for that quarter. "Net investment return" for the purpose of this paragraph is the total return of the assets in which the member's DROP account is invested by the board net of brokerage commissions, investment management fees, transaction costs, and other investment-related charges.
- (d) *Distribution of DROP accounts on termination of employment.*
- (1) *Eligibility for benefits.* A member shall receive the balance in his DROP account in accordance with the provisions of this subsection (d), upon his termination of employment as a general employee. Except as provided in subsection (d)(4), no amounts shall be paid to a member from the DROP prior to his termination of employment as a general employee.

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- (2) *Form of distribution.*
- a. Distribution of the member's DROP account shall be made in a cash lump sum.
  - b. If a member dies before his benefits commence, his DROP account shall be paid to his beneficiary in a cash lump sum. If no beneficiary designation is made, the DROP account shall be distributed to the member's estate.
- (3) *Date of payment of distribution.* Except as otherwise provided in this subsection (d), distribution of a member's DROP account shall begin as soon as administratively practicable following the member's termination of employment.
- (4) *Age 70 1/2 required distribution.* In no event shall the provisions of subsection (d) operate so as to allow the distribution of a member's DROP account to begin later than April 1 following the later of the calendar year in which he terminates his employment as a general employee or he attains age 70 1/2. In the event a member is required to receive payment while in service under the provisions of this subsection (4), he shall receive one lump sum payment on or before his required beginning date equal to his entire DROP account during each calendar year. Upon the member's subsequent termination of employment, payment of his DROP account shall be made in accordance with the provisions of subsection (d)(2).
- (5) *Proof of death and right of beneficiary or other person.* The board may require and rely upon such proof of death and such evidence of the right of any beneficiary or other person to receive the value of a deceased member's DROP account as the board may deem proper and its determination of the right of that beneficiary or other person to receive payments shall be conclusive.
- (6) *Distribution limitation.* Notwithstanding any other provision of subsection (d), all distributions from the DROP shall conform to the regulations issued under Section 401(a)(9)(G) of the Code. Further, such regulations shall override any DROP provision that is inconsistent with Section 401(a)(9) of the Code.
- (7) *Direct rollover of certain distributions.* This paragraph applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the DROP 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, to have any portion of an eligible rollover distribution paid directly by the DROP to an eligible retirement plan specified by the distributee in a direct rollover.
- (e) *Administration of DROP.*
- (1) *Board administers the DROP.* The responsibility for carrying out the provisions of the DROP and the responsibility of overseeing the investment of the DROP's assets shall be placed in the board. The members of the board may appoint from their number such subcommittees with such powers as they shall determine; may adopt such administrative procedures and regulations as they deem desirable for the conduct of their affairs; may authorize one or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical, accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP; and may allocate among themselves or delegate to other persons all or such portion of their duties under the DROP, other than those granted to them as trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A trustee shall not vote on any question relating exclusively to himself.

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- (2) *Individual accounts, records and reports.* The board shall maintain, or cause to be maintained, records showing the operation and condition of the DROP, including records showing the individual balances in each member's DROP account, and the board shall keep, or cause to be kept, in convenient form, such data as may be necessary for the valuation of the assets and liabilities of the DROP. The board shall prepare or cause to be prepared and distributed to members participating in the DROP and other individuals or filed with the appropriate government agencies, as the case may be, all necessary descriptions, reports, information returns, and data required to be distributed or filed for the DROP pursuant to the Code, the applicable portions of the act and any other applicable laws.
- (3) *Establishment of rules.* Subject to the limitations of the DROP, the board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The board shall have discretionary authority to construe and interpret the DROP (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in the DROP). The determination of the board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law. The board shall also oversee the investment of the DROP'S assets.
- (4) *Limitation of liability.*
- a. The trustees shall not incur any liability individually or on behalf of any other individuals for any act or failure to act made in good faith in relation to the DROP or the funds of the DROP.
  - b. Neither the board nor any trustee of the board shall be responsible for any reports furnished by any accountant or an actuary, and on all opinions of counsel. The board shall be fully protected with respect to any action taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.
- (5) *Expenses.* To compensate the system for the expenses of administering and operating the DROP, each member's DROP account shall be reviewed and subject to increase or decrease annually. The initial expense charge of three-quarters of one percent of the account balance shall be deducted from the member's DROP account after each fiscal year quarter at the rate of 0.1875 percent of the account's average daily balance during that quarter.
- (f) *General provisions.*
- (1) *Amendment of DROP.* The DROP may be amended by an ordinance of the city at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, benefits other than the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP account of any member.
  - (2) *Facility of payment.* If the board shall find that a member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or is a minor, the board may direct that any benefit due him, unless claim shall have been made for the benefit by a duly appointed legal representative, be paid to his spouse, a child, a parent other blood relative, or to a person with whom he resides. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.

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- (3) *Information.* Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the DROP, shall file with the board the information that it shall require to establish his rights and benefits under the DROP.
- (4) *Prevention of escheat.* If the board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the board may, no earlier than three years from the date such payment is due, mail a notice of such due owing payment to the last known address of such person, as shown on the records of the board or the city. If such person has not made written claim therefor within three months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the DROP, direct that such payment otherwise due such person be canceled on the records of the DROP. Upon such cancellation, the DROP shall have no further liability therefor except that, in the event such person or his beneficiary later notifies the board of his whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.
- (5) *Written elections, notification.*
  - a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the board in a time and manner determined by the board under rules uniformly applicable to all employees similarly situated. The board reserves the right to change from time to time the manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.
  - b. Each member or retiree who has a DROP account shall be responsible for furnishing the board with his current address and any subsequent changes in his address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him at the last such address given to the board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the board of his address.

(Ord. 721, §1, 4-15-98; Ord. 739, §1, 11-4-98; Ord. 933, §2, 3-15-06)

**Sec. 46-42. Purchase of prior service.**

(a) Notwithstanding any provision of this plan to the contrary, the city manager may elect to purchase credited service under this system for all years of prior service with the city, or a portion thereof. Such election must be made in writing on a form provided by the city and submitted to the board within 30 days following the effective date of this section. If the city manager elects to purchase credited service for prior city employment, he shall pay fifty and one-tenth percent (50.1%) of the full actuarial cost of such credited service, as determined by the plan actuary. The city shall pay the remaining unfunded liability over a ten-year-period through additional employer contributions. Payment by the city manager for the purchase of such prior service may be made in one or more of the following manners:

- (1) Cash lump sum payment.
- (2) Direct transfer or rollover of an eligible rollover distribution from another plan, in accordance with section 46-40.

(b) Other governmental prior service: Credited service for benefit calculation shall also include service purchased by a member in accordance with this section:

- (1) Participants who were employed in a position covered by the plan prior to the effective date of this ordinance, may purchase up to five years of credited service under the plan for all or a portion of their previous full-time or part-time employment with any state, county, city or federal government, including any military service. Any participant who elects to purchase previous credited service shall pay the full actuarial cost of such credited service as determined by the plan actuary, within a period of time equal to the amount of credited service being purchased, and in accordance with subsection (c) below. Where part-time prior service is purchased, it shall be prorated for purposes of determining credited service under the plan.
- (2) No service credit will be allowed if the participant is receiving or will receive any other retirement benefit based on this prior governmental service. Credited service that has been purchased under this provision shall be for the benefit calculation only and does not reduce the required numbers of years of service needed for vesting, early or normal retirement.
- (3) Payment for the purchase of credited service authorized in subsection (b)(1) above shall be made in one of the following manners:
  - a. Cash lump sum payment.
  - b. Direct transfer or rollover of an eligible rollover distribution from a qualified plan.
  - c. Periodic contributions in accordance with the methodology set forth in section 46-35(a).

Full payment for the purchase of past service credit must be made by time of separation, otherwise there shall be no credited service deemed purchased and all monies paid for such purchase shall be refunded.

- (4) The board of trustees shall set, through board motion, general policies for the administration and implementation of this section.

(Ord. 909, §4, 7-20-05; Ord. 918, §1, 11-16-05)

**Secs. 46-43 thru 46-55. Reserved.**

### **ARTICLE III. PENSION PLAN FOR POLICE OFFICERS AND FIREFIGHTERS**

*Cross References: Casualty insurance premium tax levied for police officers pension plan, §58-46 et seq.; property insurance premium tax levied for firefighters pension plan, §58-66 et seq.*

#### **Sec. 46-56. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accumulated contributions* means a member's own contributions to the system on or before December 31, 1985, plus deferred compensation contributed by the city on behalf of the member on and after January 1, 1986, as prescribed in IRS Code section 414(h), along with interest at the rate of 5 1/2 percent per year, compounded annually.

*Actuarial equivalence* means a form of benefit differing in time, period, or manner of payment from a specific benefit provided under this article but having the same value when computed using UP 1984 Mortality Table and eight percent interest.

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*Agreement* means this written instrument (this article) setting forth the provisions of the retirement system.

*Average monthly earnings* means one-twelfth of the arithmetic average of annual earnings for the three highest years of credited service during the ten years preceding termination of employment or retirement.

*Beneficiary* means the person entitled to receive benefits under this article at the death of a member and filed with the board. If no such designation is in effect at the time of death of the member, or if no person so designated is living at that time, the beneficiary shall be the estate of the member.

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

*City* means the City of Satellite Beach, Florida.

*Credited service* means the total number of years and completed months of actual service with the city as a police officer or firefighter. Members shall not receive credit for service for which accumulated contributions have been refunded. No credit will be given toward credited service for service during which an employee was eligible for participation in the system but elected not to become a member.

*Earnings* means base pay, including commissions, bonuses, maintenance, overtime pay, payment of accrued sick leave and payment of accrued annual leave.

*Effective date* means October 1, 1987.

*Employee or police officer or firefighter* means all actively employed employees of the city, including those in their initial probationary employment period, classified as full-time firefighters or full-time sworn police officers, but excluding any civilian members of the police and fire departments and any temporary or contract employees.

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

*Member* means an actively employed employee who fulfills the prescribed participation requirements and all terminated employees who are receiving or are entitled to receive benefits under this article.

*Spouse* means the lawful wife or husband of a member at the time of preretirement death or retirement.

*System* means the city police officers' and firefighters' retirement system as contained in this article and all amendments thereto.

(Code 1976, §17.1-31; Ord. 890, §1, 12-1-04; Ord. 919, §1, 11-16-05)

**Sec. 46-57. Membership.**

(a) *Conditions and eligibility.* All members of the police officers' and firefighters' retirement system as it existed on the effective date of this article shall continue participating hereunder as a condition of employment. Those employees of the city who were eligible to participate under this article on the effective date but had elected to waive participation or opted to discontinue participation may make a one-time irrevocable election to reenter the system on October 1, 1990. All active employees who have completed fewer than six months of credited service on the effective date or who have completed six months of credited service and were otherwise scheduled to enter the system on January 1, 1990, shall enter the system effective October 1, 1990. Future new employees who are hired after the effective date and whose customary employment is for 40 or more hours per week shall become members of the system as a condition of employment. Notwithstanding any provision of this section or any section of this plan to the contrary, any police officer or firefighter who was employed as a police officer or firefighter on October 1, 1990, and at that time chose not to enter the system may

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elect to participate in this system within 30 days following the adoption of this ordinance by submitting a written election to the board on a form provided by the city. The written election by an eligible police officer or firefighter to participate in this system shall be irrevocable. The date of election into the Plan shall be considered the date credited service begins for the purpose of pension benefits.

(b) *Application for membership.* Each eligible employee shall complete an application form covering the following items, as well as such other items as may be prescribed by the board:

- (1) Acceptance of the terms and conditions of the retirement system; and
- (2) Designation of a beneficiary or beneficiaries.

(c) *Change in designation of beneficiary.* A member may from time to time change his designated beneficiary by written notice to the board upon forms provided by the board. Upon such change the rights of all previously designated beneficiaries to receive any benefits under the system shall cease.

*(Code 1976, §17.1-32; Ord. 942, §1, 6-7-06)*

**Sec. 46-58. Benefit amounts and eligibility.**

(a) *Retirement dates.*

(1) *Normal retirement.* A member's normal retirement date shall be the first day of the month coincident with or next following the attainment of his 52nd birthday and the completion of five years of participation in the plan, if later. A member may retire on his normal retirement date or on the first day of any month thereafter.

(2) *Early retirement.* A member may retire on his early retirement date which shall be the latter of the first day of the month:

- a. In which the member attains the age of 50 years; or
- b. Has completed ten years of credited service.

(3) *Delayed retirement. Age 70 years.* At the option of the employee he may remain in the active employ of the city beyond the normal retirement date, and with the consent of the board, beyond age 70 provided, however, that no person shall be entitled to remain in employment, regardless of age, if in the opinion of the city such person is incapable of or fails to satisfactorily perform his assigned job functions, for reasons of physical infirmity, emotional or mental impairment, lack of aptitude for the position held or for other cause. However, discharge, forced retirement, refusal to hire or denial of promotion may not be determined solely on the basis of age. The delayed retirement date shall be the first day of the month coincident with, or next following actual retirement. Nothing contained in this subsection shall be construed to give any employee the right to be retained in the employ of the city or to interfere with the right of the city to terminate the employment of any employee at any time, nor upon dismissal or upon his voluntary termination of employment, to have any right or interest in the fund other than as is provided in this article.

(4) *Full vesting at retirement.* A member shall become 100 percent vested in his accrued benefit on any stated retirement date or upon reaching the age of 52, and completion of at least five years of service as a member.

(b) *Retirement benefit.*

(1) *Normal or delayed.* A member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on his retirement date and be continued

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thereafter during his lifetime, with the first 120 payments guaranteed payable in any event. The monthly retirement benefit shall equal three percent of average monthly earnings for each year of credited service.

- (2) *Early.* A member retiring under this article on his early retirement date may receive either a deferred or an immediate monthly retirement benefit payable for life, but with the first 120 payments guaranteed payable as follows:
- a. A deferred monthly retirement benefit which shall commence on what would have been his normal retirement date had he remained as an employee and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement at his normal retirement date except that credited service and average monthly earnings shall be determined as of his early retirement date; or
  - b. An immediate monthly retirement benefit which shall commence on his or her early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be determined in subparagraph a. above, reduced by three percent for each year by which the commencement of benefits precedes the normal retirement date.
- (3) Beginning with the monthly payment paid on the first day of October 1997, the monthly benefit currently being received by every retired member, joint pensioner or beneficiary who is receiving benefits on October 1, 1997, shall be increased one time by one percent.
- (c) *Disability.*
- (1) *Eligibility.* Any member who is found by the board upon examination to be mentally or physically incapacitated so as to be wholly unable to properly perform his duties as a police officer or firefighter of the city, may be retired for disability if the member meets the following service requirement:
- a. *Service-incurred disability* (as determined by the board): No service requirement. Members are covered from date of employment.
  - b. *Non-service-incurred disability* (as determined by the board): Member is eligible following completion of ten years of credited service.
- (2) *Exclusions.* A member will be considered totally disabled if, in the opinion of the board, he is wholly prevented from rendering useful and efficient service as a police officer or firefighter; and a member will be considered permanently disabled if, in the opinion of the board of trustees, such member is likely to remain so disabled continuously and permanently from a cause other than is specified below:
- a. Excessive and habitual use by the member of drugs, intoxicants or narcotics.
  - b. Injury or disease sustained by the member while willfully and illegally participating in fights, riots, civil insurrections, or while committing a crime.
  - c. Injury or disease sustained by the member while serving in any armed forces.
  - d. Injury or disease sustained by the member after his employment has terminated.
  - e. Self-inflicted injury.

- (3) *Determination of disability.* No member shall be permitted to retire under the provisions of this section until such member examined by a duly qualified physician or surgeon, to be selected by the board for that purpose, and is found to be disabled in the degree and in the manner specified in this section. Any member 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 for that purpose, to determine if such disability has ceased to exist.
- (4) *Benefit amount.* The benefit payable to a member who retires with a total and permanent disability which is determined to be non-service-incurred shall be an amount equal to three percent of his average monthly earnings multiplied by his years of credited service. In no event, however, shall the non-service-incurred disability benefit be less than 25 percent of the member's average monthly earnings. The monthly benefit payable to a member who retires with a service-incurred disability shall be an amount determined as for non-service-incurred disability but not less than 42 percent of average monthly earnings.
- (5) *Benefit offsets.* If the disability benefit described in this subsection (c), plus other amounts to which the disabled member is entitled under worker's compensation, or any other city-financed disability or salary continuation program (excluding social security), exceeds 100 percent of the member's average monthly earnings in effect on the date of disability, the disability benefits provided in this subsection (c) shall be reduced so that the total of all such regular monthly amounts does not exceed 100 percent of such average monthly earnings.
- (6) *Payment of benefits.* The monthly retirement income to which a member is entitled in the event of his or her disability retirement will be payable on the first day of the first month after the earlier of following:
- a. The date the member terminates employment, or
  - b. The date the board determines such entitlement.
- However, the monthly retirement income shall be payable as of the date of board approval and any portion due for a partial month shall be paid together with the first payment. The last payment will be on the earlier of the following:
- a. The latter of: 1) the first day of the month preceding the member's date of death, or 2) the 120th monthly payment; or
  - b. The first day of the month preceding the member's recovery as determined by the board.
- (7) *Recovery.* If the board finds that a member who is receiving a disability retirement income is no longer disabled, as provided in this subsection, the board shall direct that the disability retirement income be discontinued. Recovery from disability as used herein shall mean the ability of the member to render useful and efficient service as a police officer or firefighter. If the member recovers from disability, his service beginning with the first month for which he received a disability retirement income payment and ending with the date of recovery shall not be considered in determining the retirement benefit commencing on or after his normal retirement date.
- (d) *Pre-retirement death.*
- (1) *Prior to eligibility for retirement.* The designated beneficiary of any member who dies prior to becoming eligible for early, normal or delayed retirement hereunder shall receive the larger of:

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- a. A refund of the member's accumulated contributions, with interest; or
  - b. A monthly benefit equal to the vested portion of the amount payable as though the member had terminated employment on his or her date of death, with the resulting amount being payable to the beneficiary on a monthly basis for ten years beginning on the date the deceased member would have been eligible to receive said benefit, or on such other actuarially equivalent basis as approved by the board.
- (2) *After becoming eligible for retirement.* The designated beneficiary of any member who dies after becoming eligible for retirement shall receive a monthly benefit equal to the amount payable as though the deceased member had retired on his date of death, with the resulting amount being payable to the beneficiary on a monthly basis for ten years, or on such other actuarially equivalent basis as approved by the board.
- (e) *Vesting.* If a member terminates his employment, either voluntarily or by discharge, and is not eligible for any retirement benefits under this system, he shall be entitled to the following:
- (1) *Five or more years of credited service.* The monthly benefit accrued at his date of termination. Credited service under the general employees retirement system is included in determining years of service for vesting. Such vested accrued benefit shall be payable in the same annuity form as for normal retirement and shall commence at member's election on the normal retirement date, or actuarially reduced and paid at the early retirement date, provided he does not elect to withdraw his accumulated contributions, and provided he survives until benefit payment actually begin. However, the board of trustees may, in its sole discretion and according to uniform, nondiscriminatory guidelines, authorize an alternative form or method of payment provided actuarial equivalence is maintained. The benefit rate per year of service shall be the same as determined for early or normal retirement, and shall depend upon the time of commencement of benefit payments. Forfeitures arising from terminations of employment shall serve only to reduce future city contributions and shall remain as a part of the assets of fund.
  - (2) *Fewer than five years of credited service.* Refund of accumulated contributions with interest. (Code 1976, §17.1-33; Ord. 615, §2, 12-22-94; Ord. 654, §2, 4-3-96; Ord. 690, §2, 9-3-97; Ord. 787, §§1, 2, 7-19-00; Ord. 848, §3, 1-15-03)

**Sec. 46-59. Optional forms of benefits.**

Each member entitled to early, normal or delayed retirement benefit shall have the right at any time prior to the date on which benefit payments begin to elect to have his benefit payable under any of the options set forth in this section in lieu of the benefits provided in this article. Each member shall further have the right to revoke any such elections and make a new election at any time prior to the actual commencement of payments. The value of payable optional benefits shall be actuarially equivalent to the value of benefits otherwise payable, and the present value of payments to the retiring member must be at least equal to 50 percent of the total present value of payments to the retiring member and his beneficiary. The member shall make such an election by written request to the board, with such request being retained in the board's files. Such options are as follows:

- (1) *Option 1: Joint and last survivor option.* The member may elect to receive a benefit during his lifetime and have 100 percent, 75 percent, 66 2/3 percent, or 50 percent of such benefit continued after his death to and during the lifetime of his spouse or a relative other than his spouse. The election of option 1 shall be null and void if the designated beneficiary dies before the member's benefit payments commence.
- (2) *Option 2: Life annuity.* The member may elect to receive an increased benefit payable for life only, ceasing upon death.

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- (3) *Option 3: Other.* In lieu of the other optional forms enumerated in this section, benefits may be paid in any form approved by the board so long as actuarial equivalence with the benefits otherwise payable is maintained.

(Code 1976, §17.1-34)

**Sec. 46-60. Contributions.**

- (a) *Member contributions.*

- (1) *Amount.* Effective October 1, 1990, the city shall contribute to the fund, on behalf of each member, amounts representing deferred compensation pursuant to IRS Code section 414(h) at the rate of eight percent of earnings. Such contributions shall be collected and deposited no less frequently than monthly.

- (2) *Guaranteed refund.* All benefits payable under this system are in lieu of a refund of accumulated contributions, with interest. In any event, however, each member shall be guaranteed the payment of benefits at least equal to the total amount of his accumulated contributions, with interest.

(b) *State contributions.* Any monies received by reason of the laws of the state, for the purpose of funding and paying for retirement benefits for the police officers and firefighters of the city shall be deposited to the fund within five days of receipt.

(c) *City contributions.* So long as this system is in effect, the city shall make quarterly contributions to the fund in an amount equal to the total cost for the year as shown by the most recent actuarial valuation of the system. The total cost for any year shall be the total normal cost plus any additional amount required to amortize the unfunded actuarial accrued liability over not more than a 30-year period.

(d) *Other.* Donations, gifts and contributions from sources other than the city may be deposited to the fund. Such deposits, at the discretion of the board, may be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used for additional benefits for members, as determined by the board.

(Code 1976, §17.1-35)

**Sec. 46-61. Administration.**

(a) The sole and exclusive administration and responsibility for the proper operation of the retirement system and for making effective the provisions of this article are hereby vested in a board of trustees which shall be designated as the plan administrator for the system. The board shall consist of five persons as follows:

- (1) Two legal residents of the city who shall be appointed by the city council to serve for a period of two years unless sooner replaced by the city council. An appointed member may succeed himself. The two appointed members may also serve simultaneously as members of the general employees retirement board of trustees.
- (2) Two employees, one member of the fire department and one member of the police department to be elected as provided in this section; and
- (3) A fifth member, elected by the other four members of the board, to be appointed by city council as a ministerial duty for a two-year term. Such fifth member shall be allowed to succeed himself in office for additional two year terms, and may also be designated and appointed to serve simultaneously as a member of the general employees retirement board of trustees.

(b) The regular term of office of each elected or appointed trustee shall be two years. Each employee trustee may succeed himself if reelected as provided in this section.

(c) Employee trustees shall be elected in the following manner: One member of the board shall be a firefighter and one member of the board shall be a police officer, respectively elected by a majority of the active firefighters or police officers who are members of the plan. All qualified members entitled to vote shall be notified in person or by written notice ten days in advance as to the time and place for the election. The two candidates receiving the highest number of votes for office shall be declared elected and shall take office immediately upon commencement of the term of office for which elected or as soon thereafter as he shall qualify therefor. An election shall be held not more than 30 days and not less than ten days prior to the commencement of the term for which a trustee is to be elected. After the initial election, the board shall establish and administer the nominating and election procedure for each election.

(d) The board of trustees shall elect from among its members, on an annual basis, a chairman, vice-chairman and secretary. Provided, however, if a vacancy shall occur among any of these three positions of the board, a reelection to fill the vacant position shall be held at the next regularly scheduled meeting of the board following the election or appointment of the vacated seat.

(e) If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(f) The trustees shall serve without compensation, but they may be reimbursed from the fund for all necessary expenses which they may actually expend through service on the board.

(g) Each trustee shall, within ten days after his appointment or election, take an oath of office before the city clerk, that so far as it develops upon him he will diligently and honestly administer the affairs of the board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system. Such oath shall be subscribed to by the members making it and shall be certified by the clerk filed in the office of the city clerk.

(h) Each trustee shall be entitled to one vote on the board. A quorum shall consist of at least three members and three affirmative votes shall be necessary for a decision by the trustees at any meeting of the board. The chairman shall have the right to one vote only. Trustees may not cast proxy votes.

(i) Subject to the limitations of this article, the board of trustees shall from time to time establish uniform rules and regulations for the administration of funds created by this article and for transactions of its business, including provisions for expulsion due to nonattendance of its elected members which could result in a vacancy.

(j) The board of trustees shall engage such actuarial, accounting, legal and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by the board of trustees and all other expenses of the board necessary for the operation of the retirement system shall be paid by the city or from the fund at such rates and in such amounts as the board of trustees shall agree. Funds may be distributed by a disbursing agent only upon approval of the board of trustees followed by written authorization of two of the board's officers.

(k) Any elected or appointed trustee who neglects the duties of his office, as determined by the board, may be removed by four concurring votes among the board of trustees.

(l) For all acts and determinations of the board, the secretary shall prepare minutes.

(m) The duties and responsibilities of the board of trustees shall include, but not necessarily be limited to, the following:

(1) Construe the provisions of the system and determine all questions arising under this article.

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- (2) Determine all questions relating to eligibility for benefits under this article.
- (3) Determine and certify the amount of all retirement allowances or other benefits under this article.
- (4) Establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system.
- (5) Distribute to the members annually pertinent financial information concerning the system.
- (6) Receive and process all applications for participation and benefits.
- (7) Authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund.
- (8) Have actuarial studies and actuarial valuations performed and make recommendations regarding any and all changes in the provisions of the system.
- (9) Make the final determination of a member's eligibility for the disability benefits provided in this article.
- (10) Perform such other duties as are specified in this article.

(n) The board of trustees shall furnish to the city auditor such available investment and actuarial information regarding the system as shall be requested. At its option, the board may select the city's independent auditor for purposes of preparing an independent audit of the system provided the auditor meets the requirements of F.S. chs. 175 and 185.

*(Code 1976, §17.1-36; Ord. 615, §§4, 6, 12-22-94; Ord. 898, §1, 12-1-04; Ord. 968, §2, 7-18-07)*

**Sec. 46-62. Finances and fund management.**

(a) All of the contributions and assets whatsoever attributable to the system shall be deposited to the fund.

(b) The actual custody and supervision of the fund, and assets thereof, shall be vested in the board of trustees. Funds may be distributed by a disbursing agent only upon approval of the board of trustees followed by written authorization of two of the board's officers.

(c) The board shall be required to appoint a national or state bank with trust powers for the purpose of serving as custodian of the fund, and all assets of the fund shall be promptly and continually deposited therewith. In order to fulfill its investment responsibilities as set forth in this section, the board shall be required to retain the services of the custodian bank, an investment advisor registered under Investment Advisory Act of 1940, an insurance company, or a combination of these, for purposes of investment decisions and management. Such investment manager shall have full discretion in the investment of assets subject to limitation of this article and any guidelines as prescribed by the board.

(d) All funds and securities of the system may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:

- (1) Receipts and disbursements of the fund.
- (2) Benefit payments.

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- (3) All cash investments realized and unrealized gains or losses whatsoever.
- (4) All interest, dividends and capital gains (or losses) whatsoever attributable to contributions and deposits to the fund.
- (5) Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.
- (e) The board of trustees shall have the following investment powers and authority:
  - (1) The board of trustees shall be vested with full legal title to the fund, subject, however, and in any event to the authority and power of the city council to amend or terminate this trust, provided that no amendment or termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this system. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund, and the board shall not be required to segregate or invest separately any portion of the fund.
  - (2) The fund may be invested and reinvested in such securities or property, real or personal, wherever situated and whatever kind, as shall be approved by the board of trustees, including but not limited to stocks, common or preferred, and bonds, and other evidences of indebtedness or ownership. The board of trustees is authorized to transfer from time to time to a common, collective or pooled trust fund maintained by any bank, all or such part of the trust fund hereunder as the board of trustees may deem advisable, and such part or all the trust fund so transferred shall be subject to all of the terms and provisions of such common, collective or pooled trust fund which contemplates the commingling for investment purposes of such trust assets with assets of other trusts. The board of trustees is also authorized to withdraw from such common, collective or pooled trust fund from time to time all or such part of the trust fund as the board of trustees may deem advisable.
  - (3) The board of trustees may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the system.
  - (4) No person or entity shall be liable for the making, retention or sale of any investment or reinvestment made as provided in this section nor for any loss or diminishment of the fund, except that due to his own negligence, willful misconduct or lack of good faith.
  - (5) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the trust fund.
  - (6) The board is empowered, but is not required, to vote upon any stocks, bonds or securities of any corporation, association or trust and to give general or specific proxies of power of attorney with or without power of substitutions; to participate in mergers, reorganizations, recapitalizations, consolidations and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the power of an owner with respect to stocks, bonds or other investments comprising the fund which it may deem to be in the best interest of the fund to exercise.
  - (7) The board shall not be required to make any inventory or appraisal or report of any court, nor to secure any order of court for the exercise of any power contained in this section.

- (8) Where any action which the board is required to take or any duty or function which it is required to perform, either under the terms in this section or under the general law applicable to it as trustee under this article, can reasonably be taken or performed only after receipt by it from a member, the city or any other entity, of specific information, certification, direction or instructions, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.
- (9) Any overpayments or underpayments from the fund to a member or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board. Overpayments shall be charged against payments next succeeding the correction. Underpayments shall be made up from the trust fund.
- (10) The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits provided for in this article.
- (11) In any application to or proceeding or action in the courts, only the city and the board shall be necessary parties, and no member or other person having an interest in the fund shall be entitled to any notice of service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.

(f) Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to the fund shall always remain in the board of trustees.

*(Code 1976, §17.1-37; Ord. 615, §8, 12-22-94)*

**Sec. 46-63. Repeal or termination of system.**

(a) This article establishing the system and fund, and subsequent articles pertaining to the system and fund, may be modified, terminated or amended in whole or in part; provided that if this or any subsequent article shall be amended or repealed in its application to any person benefiting under this article, the amount of benefits which at the time of any such alteration, amendment or repeal shall have accrued to the member or beneficiary shall not be affected thereby, except to the extent that the assets of the fund may be determined to be inadequate.

(b) If this article shall be repealed, or if contributions to the system are discontinued, the board shall continue to administer the system in accordance with the provisions of this article, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future person entitled to receive benefits under one of the options provided for in this article who are designated by any of the members. In the event of repeal, or if contributions to the system are discontinued, there shall be full vesting (100 percent) of benefits accrued to date of repeal and the assets of the system shall be allocated to provide benefits on a proportionate basis to the persons so entitled to benefits in accordance with the provisions thereof.

(c) The following shall be the order of priority for purposes of allocating the assets of the system upon repeal of this article or if contributions to the system are discontinued:

- (1) Members already retired under the early, normal or delayed retirement or disability provisions of the system and those eligible for such retirement or disability provisions of the system and those eligible for such retirement, active or deceased, but not actually retired, and their beneficiaries, in proportion to and to the extent of the then actuarially determined present value of the benefits payable less amounts received. If any funds remain, then
- (2) Members who are fully vested under the provisions of this system, and their beneficiaries, in the same manner as in subsection (c)(1) of this section. If any funds remain, then

- (3) Other members with accumulated contributions in the same manner as in subsection (c)(1) of this section. If any funds remain, then
- (4) To all other members and their beneficiaries in the same manner as subsection (c)(1) of this section but based upon credited service and average monthly earnings as of the date of termination of the system.

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

(d) After all the vested accrued benefits provided hereunder have been paid and after all other liabilities have been satisfied, including a return to the state of funds required under F.S. chs. 175 and 185, then and only then shall any remaining funds revert to the general fund of the city.  
(Code 1976, §17.1-38)

**Sec. 46-64. Miscellaneous provisions.**

(a) *Medical board.* The board of trustees may at its discretion designate a medical board to be composed of up to three physicians, but limited to either M.D.'s and/or D.O.'s, who shall arrange for and pass upon all medical examinations required under the provisions of this article, shall investigate all essential statements or certifications made by or on behalf of a member in connection with an application for disability or retirement and shall report in writing to the board of trustees its conclusions and recommendations upon all matters referred to it. The payment for such services shall be determined by the board of trustees.

(b) *Discharged members.* Members entitled to a pension shall not forfeit it upon dismissal by the city, but shall be retired as described in this article.

(c) *Non-assignability.* No benefit provided for in this article shall be assignable or subject to garnishment for debt or for other legal process.

(d) *Pension validity.* The board of trustees shall have the power to examine the facts upon which any pension shall have been granted under any prior or existing law, or which may hereafter be granted or obtained, to determine whether it was erroneously, fraudulently or illegally granted or obtained. The board is empowered to purge the pension rolls of any person heretofore granted a pension under prior or existing law or heretofore granted under this article if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any pensioner who has heretofore under any prior or existing law or who shall hereafter under this article be erroneously, improperly or illegally classified.

(e) *Incompetents.* If any member or beneficiary is a minor or is, in the judgment of the board, otherwise incapable of personally receiving and giving a valid receipt for any payment due him under the system, the board may, unless and until claims shall have been made by a duly appointed guardian or committee of such person, make such payment or any part thereof to such person's spouse, children or other person deemed by the board to have incurred expenses or assumed responsibility for the expenses of such person. Any payment so made shall be a complete discharge of any liability under the system for such payment.  
(Code 1976, §17.1-39)

**Sec. 46-65. Direct transfer of eligible rollover distributions.**

(a) *Generally.* This section 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

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this section, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) *Definitions.*

*Direct rollover* means a payment by the plan to the eligible retirement plan specified by the distributee.

*Distributee* includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse.

*Eligible retirement plan* means 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 Internal Revenue Code, an annuity plan described in section 403(a) of the Internal Revenue Code, or a qualified trust described in section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

*Eligible rollover distribution* means distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includable in gross income.

(c) *Rollovers or transfers into the fund.* On and after the effective date of this ordinance, the system will accept member rollover cash contributions and/or direct cash rollovers of distributions for the purchase of credited service for prior employment pursuant to section 46-67, as follows:

- (1) *Direct rollovers or member rollover contributions from other plans.* The system will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in section 401(a) or section 403(a) of the Internal Revenue Code, from an annuity contract described in section 403(b) of the Internal Revenue Code, or from an eligible plan under section 457(b) of the Internal Revenue Code, which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The system will also accept legally permissible member requested transfers of funds from other retirement plans.
- (2) *Member rollover contributions from IRAs.* The system will accept a member rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includable in the member's gross income.

(Ord. 615, §10, 12-22-94; Ord. 919, §2, 11-16-05)

**Sec. 46-66. Deferred retirement option plan (DROP).**

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

*DROP* shall mean the City of Satellite Beach Pension Plan for Police Officers and Firefighters' Deferred Retirement Option Plan as set forth in this section.

*DROP account* shall mean the account established for each DROP participant under subsection (c).

- (b) *Participation.*
- (1) *Eligibility to participate.* In lieu of terminating his employment as a police officer or firefighter, any member who is eligible for normal retirement under the system may elect to defer receipt of such service retirement pension and to participate in the DROP.
- (2) *Election to participate.* A member's election to participate in the DROP must be made in writing in a time and manner determined by the board and shall be effective on the first day of the first calendar month which is 15 business days after it is approved by the board.
- (3) *Period of participation.* A member who elects to participate in the DROP under subsection (b)(2) shall participate in the DROP for a period no less than 12 months and not to exceed 60 months beginning at the time of his election to participate in the DROP becomes effective. A member may participate only once.
- (4) *Termination of participation.*
- a. A member participating in the DROP shall cease participating in the DROP by:
1. Electing in writing, in a time and manner determined by the board, to cease participating in the DROP;
  2. Continuing to be employed as a police officer or firefighter at the end of his period of participation in the DROP as determined under subsection (b)(3); or
  3. Termination of employment as a police officer or firefighter.
- Any election made under clause 1 shall be effective on the first day of the first calendar month which is at least 15 business days after it is approved by the board.
- b. Upon the member's termination of participation in the DROP, pursuant to subsection a.1. or a.2. above, all amounts provided for in subsection (c)(2), including monthly benefits and investments earnings or losses, shall cease to be transferred from the system to his DROP account. Any amounts remaining in his DROP account shall be forfeited, and the member will receive only his accrued monthly pension from the retirement plan when he terminates his employment as a police officer or firefighter. Such member shall not be permitted to again become a participant in the DROP.
- (5) *Effect of DROP participation on the system.*
- a. A member's credited service and his accrued benefit under the system shall be determined on the date his election to participate in the DROP first becomes effective. The member shall not accrue any additional credited service or any additional benefits under the system (except for any additional benefits provided under any cost-of-living adjustments in the system) while he is a participant in the DROP. After a member commences participation, he shall not be permitted to again contribute to the system, nor shall he be eligible for disability or pre-retirement death benefits.
- b. No amounts shall be paid to a member from the system while the member is a participant in the DROP. Unless otherwise specified in the system, amounts transferred from the system to the member's DROP account shall be paid directly to the member only upon the termination of his employment as a police officer or firefighter.

- (c) *Funding.*
- (1) *Establishment of DROP account.* A DROP account shall be established for each member participating in the DROP. A member's DROP account shall consist of amounts transferred to the DROP under subsection (c)(2) and any earnings or losses on those amounts.
  - (2) *Transfers from retirement system.* As of the first day of each month of a member's period of participation in the DROP, the monthly retirement benefit he would have received under the system had he terminated his employment as a police officer or firefighter and elected to receive monthly benefit payments thereunder shall be transferred to his DROP account. A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (b)(3) and (b)(4), but in no event shall it continue past the date he terminates his employment as a police officer or firefighter.
  - (3) *DROP account earnings.*
    - a. *Determination of stable return investment vehicle.* On the effective date of this Ordinance, March 15, 2006, the Board shall determine and designate a stable return investment vehicle for the remainder of the current fiscal year. Thereafter, on or before August 1<sup>st</sup> of each year, the Board shall determine and designate a stable return investment vehicle for the next fiscal year that begins on the October 1<sup>st</sup> and ends on September 30<sup>th</sup>.
    - b. *Investment Election.*
      1. *Bi-annual DROP account investment election.*
        - i. Each member participating in the DROP shall be required to make a bi-annual investment election for the member's DROP account between (1) the actual quarterly net investment return realized by the System and (2) the actual quarterly investment return realized by the stable return investment vehicle designated by the Board. A member's investment election shall be in writing and shall be irrevocable. Each member shall submit the member's written investment election for first and second quarters of the Plan's fiscal year (the period October 1<sup>st</sup> through March 31<sup>st</sup>) to the Board by no later than August 31<sup>st</sup>. Each member shall submit the member's written investment election for third and fourth quarters of the Plan's fiscal year (the period from April 1<sup>st</sup> through September 30<sup>th</sup>) to the Board by no later than February 28<sup>th</sup>. If a member fails to submit a written investment election to the Board, then the default investment election for the member's DROP account will be the member's investment election for the prior bi-annual investment period, or, if no prior election was made, the investment election shall be deemed to be the actual quarterly investment return realized by the System.
        - ii. Members who are current DROP participants on May 1, 2009, shall irrevocably elect, in writing, by no later than May 31, 2009, whether the earnings to be credited to the member's DROP account for the period from June 1, 2009, through August 31, 2009, shall be either (1) the actual quarterly net investment return realized by the System or (2) the actual quarterly investment return realized by the stable return investment vehicle designated by the Board. If a member fails to timely submit a written investment election to the Board, then the default investment

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election for the member's DROP account will be deemed to be the member's investment election for the prior fiscal year, or, if no prior election was made, the investment election shall be deemed to be the actual quarterly investment return realized by the System.

2. *Initial DROP account investment election.* Upon entering the DROP, a member shall irrevocably elect for the remainder of the applicable bi-annual period whether the earnings credited to the member's DROP account shall be either: (1) the actual quarterly net investment return realized by the System or (2) the actual quarterly investment return realized by the stable return investment vehicle designated by the Investment elections shall be in writing and submitted to the Board. If a member fails to timely submit a written investment election to the Board, the default investment election for the member's DROP account will be deemed to be the actual quarterly net investment return realized by the System.

- c. A member's DROP account will be credited or debited quarterly based upon the member's election as set forth in subsection (b) above. A member's DROP account shall only be credited or debited with earnings and monthly benefits while the member is a participant in the DROP.
  - d. The average daily balance in a member's DROP account shall be credited or debited at a rate equal to the actual net rate of investment return realized by either the system or the stable return investment vehicle for that quarter. "Net investment return" for the purpose of this paragraph is the total return of the assets in which the member's DROP account is invested by the board net of brokerage commissions, investment management fees, transaction costs, and other investment-related charges.  
(Ord. 1011, §2, 6-3-09)
- (d) *Distribution of DROP accounts on termination of employment.*
- (1) *Eligibility for benefits.* A member shall receive the balance in his DROP account in accordance with the provisions of this subsection (d), upon his termination of employment as a police officer or firefighter. Except as provided in subsection (d)(4), no amounts shall be paid to a member from the DROP prior to his termination of employment as a police officer or firefighter.
  - (2) *Form of distribution.*
    - a. Distribution of the member's DROP account shall be made in a cash lump sum.
    - b. If a member dies before his benefits commence, his DROP account shall be paid to his beneficiary in a cash lump sum. If no beneficiary designation is made, the DROP account shall be distributed to the member's estate.
  - (3) *Date of payment of distribution.* Except as otherwise provided in this subsection (d), distribution of a member's DROP account shall begin as soon as administratively practicable following the member's termination of employment.
  - (4) *Age 70 1/2 required distribution.* In no event shall the provisions of subsection (d) operate so as to allow the distribution of a member's DROP account to begin later than April 1 following the later of the calendar year in which he terminates his employment as a police officer or firefighter or he attains age 70 1/2. In the event a member is required to receive payment while in service under the provisions of this subsection (4), he shall receive one lump sum payment on or before his required beginning date equal to his entire DROP account during each calendar year. Upon

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the member's subsequent termination of employment, payment of his DROP account shall be made in accordance with the provisions of subsection (d)(2).

- (5) *Proof of death and right of beneficiary or other person.* The board may require and rely upon such proof of death and such evidence of the right of any beneficiary or other person to receive the value of a deceased member's DROP account as the board may deem proper and its determination of the right of that beneficiary or other person to receive payments shall be conclusive.
- (6) *Distribution limitation.* Notwithstanding any other provision of subsection (d), all distributions from the DROP shall conform to the regulations issued under section 401(a)(9)(G) of the Code. Further, such regulations shall override any DROP provision that is inconsistent with section 401(a)(9) of the Code.
- (7) *Direct rollover of certain distributions.* This paragraph applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the DROP 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, to have any portion of an eligible rollover distribution paid directly by the DROP to an eligible retirement plan specified by the distributee in a direct rollover.
- (e) *Administration of DROP.*
  - (1) *Board administers the DROP.* The responsibility for carrying out the provisions of the DROP and the responsibility of overseeing the investment of the DROP's assets shall be placed in the board. The members of the board may appoint from their number such subcommittees with such powers as they shall determine; may adopt such administrative procedures and regulations as they deem desirable for the conduct of their affairs; may authorize one or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical, accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP; and may allocate among themselves or delegate to other persons all or such portion of their duties under the DROP, other than those granted to them as trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A trustee shall not vote on any question relating exclusively to himself.
  - (2) *Individual accounts, records and reports.* The board shall maintain, or cause to be maintained, records showing the operation and condition of the DROP, including records showing the individual balances in each member's DROP account, and the board shall keep, or cause to be kept, in convenient form, such data as may be necessary for the valuation of the assets and liabilities of the DROP. The board shall prepare or cause to be prepared and distributed to members participating in the DROP and other individuals or filed with the appropriate government agencies, as the case may be, all necessary descriptions, reports, information returns, and data required to be distributed or filed for the DROP pursuant to the Code, the applicable portions of the act and any other applicable laws.
  - (3) *Establishment of rules.* Subject to the limitations of the DROP, the board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The board shall have discretionary authority to construe and interpret the DROP (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in the DROP). The determination of the board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law. The board shall also oversee the investment of the DROP'S assets.

- (4) *Limitation of liability.*
- a. The trustees shall not incur any liability individually or on behalf of any other individuals for any act or failure to act made in good faith in relation to the DROP or the funds of the DROP.
  - b. Neither the board nor any trustee of the board shall be responsible for any reports furnished by any accountant or an actuary, and on all opinions of counsel. The board shall be fully protected with respect to any action taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.
- (5) *Expenses.* To compensate the system for the expenses of administering and operating the DROP, each member's DROP account shall be reviewed and subject to increase or decrease annually. The initial expense charge of three-quarters of one percent of the account balance shall be deducted from the member's DROP account after each fiscal year quarter at the rate of 0.1875 percent of the account's average daily balance during that quarter.
- (f) *General provisions.*
- (1) *Amendment of DROP.* The DROP may be amended by an ordinance of the city at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, benefits other than the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP account of any member.
  - (2) *Facility of payment.* If the board shall find that a member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or is a minor, the board may direct that any benefit due him, unless claim shall have been made for the benefit by a duly appointed legal representative, be paid to his spouse, a child, a parent or other blood relative, or to a person with whom he resides. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.
  - (3) *Information.* Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the DROP, shall file with the board the information that it shall require to establish his rights and benefits under the DROP.
  - (4) *Prevention of escheat.* If the board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the board may, no earlier than three years from the date such payment is due, mail a notice of such due owing payment to the last known address of such person, as shown on the records of the board or the city. If such person has not made written claim therefor within three months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the DROP, direct that such payment otherwise due such person be canceled on the records of the DROP. Upon such cancellation, the DROP shall have no further liability therefor except that, in the event such person or his beneficiary later notifies the board of his whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.

- (5) *Written elections, notification.*
- a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the board in a time and manner determined by the board under rules uniformly applicable to all employees similarly situated. The board reserves the right to change from time to time the manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.
  - b. Each member or retiree who has a DROP account shall be responsible for furnishing the board with his current address and any subsequent changes in his address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him at the last such address given to the board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the board of his address.

(Ord. 715, §1, 4-15-98; Ord. 738, §1, 11-4-98; Ord. 932, §2, 3-15-06)

**Sec. 46-67. Purchase of prior service.**

- (a) *Option of purchasing prior service.* Credited service for benefit calculation shall also include service purchased by a member in accordance with this section:
- (1) Participants who were employed in a position covered by the plan prior to the effective date of this ordinance, may purchase up to five years of credited service under the plan for all or a portion of their previous full-time employment as a police officer or their previous full-time or volunteer employment as a firefighter with any state, county, city or federal government, including any military service. Any participant who elects to purchase previous credited service shall pay the full actuarial cost of such credited service as determined by the plan actuary, within a period of time equal to the amount of credited service being purchased, and in accordance with subsection (3) below.
  - (2) Participants with a membership date after the effective date of this ordinance, may purchase up to five years of credited service under the plan for all or a portion of their previous full-time or volunteer employment as a police officer or firefighter with any state, county, city or federal government, including any military service at any time after completing five years of credited service with the City of Satellite Beach; provided the member has paid into the plan, the full actuarial cost of such credited service as determined by the plan actuary, within a period of time equal to the amount of credited service being purchased, and in accordance with subsection (4) below.
  - (3) No additional service credit will be allowed if the participant is receiving or will receive any other retirement benefit based on this prior governmental service. Credited service that has been purchased under this provision shall be for the benefit calculation only and does not reduce the required numbers of years of service needed for vesting, early or normal retirement.
  - (4) Payment for the purchase of credited service authorized in subsection (a)(1) and (2), above, shall be made in one of the following manners:
    - a. Cash lump sum payment.

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- b. Direct transfer or rollover of an eligible rollover distribution from a qualified plan.
- c. Periodic contributions in accordance with the methodology set forth in section 46-60(a).

Full payment for the purchase of past service credit must be made by time of separation, otherwise there shall be no credited service deemed purchased and all monies paid for such purchase shall be refunded.

- (5) The board of trustees shall set, through board motion, general policies for the administration and implementation of this section.

*(Ord. 919, §3, 11-16-05)*

END CHAPTER 46