

POMPANO BEACH POLICE & FIREFIGHTERS' RETIREMENT SYSTEM

CITY OF POMPANO BEACH CODE OF ORDINANCES

SECTIONS 34.045 THROUGH 34.073

Current through Ordinance No. 2010-36, passed 06-22-2010

POLICE AND FIREFIGHTERS' RETIREMENT SYSTEM

§ 34.045 DEFINITIONS.

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACTUARIAL EQUIVALENCE or ***ACTUARIALLY EQUIVALENT***. Any benefit payable under the terms of this Retirement System in a form other than the normal benefit shall have the same actuarial present value on the date payment commences as the normal form of benefit. For purposes of establishing the actuarial present value of any form of payment all future payments shall be discounted for interest and mortality by using 7% interest and the 1971 Group Annuity Mortality Table for Males, with ages set ahead five years in the case of disability retirees.

AGREEMENT. This subchapter setting forth the provisions of the retirement system.

AVERAGE MONTHLY EARNINGS. One-twelfth of the arithmetic average of annual earnings for the highest three years preceding the actual retirement or termination date of a member.

BENEFICIARY. The person or persons entitled to receive any benefits hereunder at the death of a member who has or have been designated in writing by the member and filed with the Board. If no designation is in effect at the time of death of the member, or if no person so designated is living at that time, the Board shall make any required payments to the deceased member's estate.

BOARD. The Board of Pension Trustees, which shall hold the plan assets for the city and shall supervise, administer, and manage the system herein provided and serve as trustee of the fund.

CITY. Pompano Beach, Florida; and the then currently sitting City Commissioners. The city shall have the responsibility for this retirement system and plan.

CONTINUOUS SERVICE. Uninterrupted service by a member (expressed as years and completed months), from the date he last entered employment as an employee until the date his employment is terminated by death, retirement, or discharge; however, the continuous service of any member shall not be deemed to be interrupted by the following.

(1) Any authorized leave of absence or vacation, provided all members similarly situated in similar circumstances are treated alike pursuant to uniform, nondiscriminatory rules.

(2) Any service, voluntary or involuntary in the armed forces of the United States, provided the member is legally entitled to reemployment under the provisions of the Universal Training and Service Act, and any amendments thereto, or any law applicable to such reemployment, and provided further, that the member applies for reemployment within three months following termination of service.

(3) No credit for benefit computation purposes under the plan shall be allowed in any case in excess of six months wherein a member has been on an authorized leave of absence or vacation. As regards any member of the system as of August 15, 1972, his total years of continuous service from date of employment with the city to date of retirement or termination as a member shall be included for benefit computation purposes under the system.

COST OF LIVING ADJUSTMENT (COLA). A permanent increase in the retiree's monthly benefit calculated by multiplying the COLA amount by the retiree's existing monthly pension benefit immediately prior to the time the COLA takes effect.

EARNINGS. Basic wages and regular longevity bonuses paid to a member, excluding nonregular overtime for firefighter members, excluding nonregular overtime in excess of 25 hours per year for police officer members who retire on or after October 1, 2001, and excluding bonuses, but including the one-time lump sum 3.5% payment paid to firefighter members for Fiscal Year 2008/2009, and any other nonregular payments. The limitation on compensation for an "eligible employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. "Eligible employee" is an individual who was a member before the first plan year beginning after December 31, 1995. For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, ***COMPENSATION*** shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in § [34.0571\(A\)](#), compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code.

EFFECTIVE DATE. The date on which this section is effective.

EMPLOYEE. All regular and probationary employees of the city under the city's classification plan as in effect on October 1, 1972, as a member of the Fire Department, or as a member of the Police Department with the job title of dispatcher, patrolman, sergeant, lieutenant, captain, or chief. For this purpose, the term ***REGULAR EMPLOYEE*** shall include those who work for 20 hours or more per week and five months or more per year. In the event of amendment or modification of the classification plan, until this subchapter is amended specifically, ***EMPLOYEE*** shall mean all regular and probationary employees whose duties most nearly coincide with the duties of the classifications set forth above, including all sworn City employees transferred to the Broward County Sheriff's Office on August 1, 1999 via Resolution No. 99-223 and Ordinance No. 99-46, and excluding those whose duties most nearly coincide with the duties of the classifications excluded by the above definition, and excluding those in the Fire or Police Department having a civilian rank. When used herein, the term ***FIREFIGHTER*** shall mean any member of the Fire Department as defined above.

FISCAL AGENT. Any person or entity designated to serve as investment agent, or custodian of the fund of the retirement system.

FUND. The trust fund established herein as part of the plan.

MEMBER. An employee who fulfills the prescribed participation requirements.

PLAN ADMINISTRATOR and ***ASSISTANT PLAN ADMINISTRATOR.*** The then current and serving Chairman and Vice-Chairman, respectively, of the Board.

RETIRED. Retirees who are receiving monthly benefits from Police and Firefighters' Pension Plan or participating in the DROP.

RETIREE. A retired employee or, after the retired employee's death, the retired employee's survivor or beneficiary, who is receiving monthly benefits (normal retirement, early retirement, disability, or

remainder of ten- year certain or survivor) from the Police and Firefighters Pension Plan. A DROP participant is considered a "retiree" for purposes of this subchapter. For purposes of this subchapter, a retired employee and, after the retired employee's death, the retired employee's survivor or beneficiary who is receiving monthly benefits on account of the retired employee's death, shall be considered the same retiree.

RETIREMENT DATE. The date the employee retired, entered the DROP, or if the employee died before retiring, the date of death.

SUFFICIENTLY FUNDED.

(1) With respect to firefighters, the most recent annual actuarial valuation performed by the pension fund actuary and approved by the Pension Board of Trustees shows that the required city contribution for firefighters is less than zero and after payment of any variable cost of living adjustment remains less than zero; or shows that there is an actuarial gain attributable to firefighters sufficient to fully fund the cost of any variable cost of living- adjustment. The required city contribution may be found in the Discussion of Valuation Results section of the annual actuarial report. The actuarial gain attributable to firefighters may be found in the annual actuarial report in the exhibit entitled Liquidation of the Unfunded Actuarial Liability. Actuarial gains and losses for each year shall be determined based on the funding methods and actuarial assumptions used in the most recent annual actuarial valuation and shall include the cost of any minimum benefits required by law.

(2) With respect to police officers, the most recent annual actuarial valuation performed by the pension fund actuary and approved by the Pension Board of Trustees shows that the required employer contribution for police officers is less than zero and after payment of any variable cost of living adjustment remains less than zero; or shows that there is an actuarial gain attributable to police officers sufficient to fully fund the cost of any variable cost of living adjustment. The required employer contribution may be found in the Discussion of Valuation Results section of the annual actuarial report. The actuarial gain attributable to police officers may be found in the annual actuarial report in the exhibit entitled Liquidation of the Unfunded Actuarial Liability. Actuarial gains and losses for each year shall be determined based on the funding methods and actuarial assumptions used in the most recent annual actuarial valuation and shall include the cost of any minimum benefits required by law. This definition shall become effective as of October 1, 2006.

SURVIVING SPOUSE. A lawfully-wedded spouse of the member at the time of the member's death.

SYSTEM. The Pompano Beach Police and Firefighters' Retirement System as contained herein and all amendments thereto.

('58 Code, § 11.39) (Ord. 72-59, passed 8-15-72; Am. Ord. 75-84, passed 9-16-75; Am. Ord. 80-30, passed 12-26-79; Am. Ord. 85-23, passed 2-5-85; Am. Ord. 93-50, passed 6-8-93; Am. Ord. 95-21, passed 11-22-94; Am. Ord. 96-27, passed 12-26-95; Am. Ord. 99-61, passed 7-27-99; Am. Ord. 2000-73, passed 9-12-00; Am. Ord. 2001-43, passed 3-13-01; Am. Ord. 2006-25, passed 2-28-06; Am. Ord. 2008-07, passed 10-23-07; Am. Ord. 2010-12, passed 11-24-09; Am. Ord. 2010-36, passed 6-22-10)

§ 34.046 ESTABLISHMENT.

The City Commission determines that the city should establish and adopt an actuarially-sound retirement and pension plan limited to eligible members of the City Police Department and Fire Department. Accordingly, there is hereby established a retirement system for eligible members of the

City Police Department and Fire Department to be known as The Police and Firefighters' Retirement System.

('58 Code, § 11.38) (Ord. 73-11, passed 1-3-73; Am. Ord. 2003-5, passed 10-8-02)

§ 34.047 BOARD OF TRUSTEES.

(A) The general administration and responsibility for the proper operation of the pension system and for making effective the provisions of this section are hereby vested in a Board of Trustees consisting of nine persons, as follows: three members other than firefighters or police officers, to be appointed as hereinafter provided; three members of the Fire Department (who may include a participant in the DROP plan), to be elected as hereinafter provided; three members of the Police Department (who may include a participant in the DROP plan, or a retired police officer as provided in F.S. § 185.05(d)), to be elected as hereinafter provided. If there are no active or retired police officers remaining in the system or capable of serving as a trustee, the remaining trustees may elect an individual to serve in a police officer trustee's position, and the City Commission shall, as a ministerial act, appoint this individual to the Board of Trustees, as provided in F.S. § 185.05(c).

(1) The term of office of each trustee shall be three years; however, the initial terms of the trustees of each class shall respectively be for one, two, and three years. The initial terms shall commence on the 30th day after the ordinance approving and authorizing this agreement shall become law. Initially in each elective category, the trustee receiving the most votes shall serve the three-year term, the second most votes the two-year term. The City Commission shall determine the term of office of each appointive trustee.

(2) The appointive trustees shall be appointed by the City Commission.

(3) The elective trustees shall be elected in the following manner: by per capita vote of all members of each of the respective departments who come within the purview of this section, both active and retired, at meetings to be held at places designated by the Board of Pension Trustees, where all qualified members entitled to vote shall be notified in person or by mail ten days in advance of the meeting. The candidate receiving the highest number of votes for each 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 each year not more than 30 and not less than ten days prior to the commencement of the terms for which trustees are to be elected in that year. The Board of Pension Trustees shall meet, organize, and elect one of their members as Chairman, and one member as Vice-Chairman, within ten days after trustees are elected and duly qualified.

(4) 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.

(5) The trustees shall serve without compensation but they may be reimbursed from the expense fund for all necessary, reasonable, and proper expenses, such as travel, which they may actually expend in the performance of their duties as a member of the Board; the expenditure shall not exceed the limits placed by law including but not limited to, F.S. § 112.061.

(6) 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 certified by the Clerk and filed in his office.

(7) Each trustee shall be entitled to one vote on the Board. Five 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.

(8) Subject to the limitations of this section the Board of Trustees shall from time to time establish uniform rules and regulations for the administration of funds created by this section and for transacting its business, including provisions for compulsory attendance of its members, which shall have the force of law. Board meetings shall be held in accordance with Robert's Rules of Order.

(9) The Board of Trustees shall by majority vote of its members appoint a Secretary, who may, but need not be, one of its members. It shall engage any actuarial and other services 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 at those rates and in those amounts the Board of Trustees shall agree upon, but in no case shall the expenditures for the services or operations exceed 3% of the maximum in the fund each fiscal year. All funds shall be disbursed by the Board of Trustees. The Secretary and any trustee authorized to handle or disburse funds or assets, or sign checks shall be bonded for a minimum of 10% of the assets of the fund, with a maximum bond limit of \$100,000, the premium for the bond to be paid out of this fund.

(10) Any trustee who neglects the duties of his office shall be removed by the Board of Trustees upon affirmative vote of seven members of the Board.

(11) The city may appoint employees to the Board to provide secretarial and clerical assistance; however, the Board shall reimburse the full cost of the employees to the city.

('58 Code, § 11.56) (Ord. 78-79, passed 9-26-78; Am. Ord. 2000-73, passed 9-12-00; Am. Ord. 2002-71, passed 9-24-02)

(B) The duties, responsibilities and powers of the Board of Trustees shall include the following.

- (1) Construe the provisions of the system and determine all questions arising thereunder.
- (2) Determine all questions relating to eligibility and participation.
- (3) Determine and certify the amount of all retirement allowances or other benefits hereunder.
- (4) Establish uniform rules and procedures to be followed for administrative purposes, benefit applications, and all matters required to administer the plan.
- (5) Distribute at regular intervals to employees, information concerning the plan.
- (6) Receive and process all applications for participation and benefits.
- (7) Authorize all payments whatsoever from the fund.
- (8) Approve any and all changes in the provisions of the system.

(9) Have performed an annual independent audit of the system's financial operations, books, and fund.

(10) Sue and be sued.

('58 Code, § 11.57) (Ord. 75-80, passed 9-16-75)

(Ord. 72-59, passed 8-15-72; Am. Ord. 73-11, passed 1-3-73)

§ 34.048 PENSION BOARD.

(A) As part of the system there is hereby established the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the system. The actual custody and supervision of the fund, and assets thereof, shall be vested in the Pension Board. Payment of benefits and disbursements from the fund shall be made only on authorization from the Pension Board.

('58 Code, § 11.58)

(B) The Pension Board may hire and appoint those persons, agents, entities, including corporate fiduciaries, or attorneys as in its discretion may be required or advisable to enable it to perform its custodial and investment duties hereunder. Further, the Pension Board may enter into agency, investment, advisory, and custodial agreements for the purpose of securing investment and custodianship services for the system and fund.

('58 Code, § 11.59) (Ord. 75-80, passed 9-16-75)

(C) All funds and securities of the system may be commingled in the fund, provided 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) Current amounts of accumulated contributions of employees on both an individual and aggregate account basis.

(2) Receipts and disbursements.

(3) Payments to retirees.

(4) Current amounts clearly reflecting all moneys, funds, and assets whatsoever attributable to contributions and deposits from the city, including a valuation of all these, as well as other, assets of the fund on a market value basis.

(5) All interest, dividends, gains, or losses whatsoever.

(6) Other entries properly required so as to reflect a clear and complete financial report of the fund.

('58 Code, § 11.60) (Ord. 75-84, passed 9-16-75)

(D) The Board of Pension Trustees shall have the following investment powers and authority.

(1) The trustee shall invest and reinvest the funds in those securities or in that property, real or personal, wherever situated, as the trustee shall deem advisable, including but not limited to, stocks, common or preferred, bonds, and mortgages, and other evidences of indebtedness or ownership, although these may not be of the character permitted for trustees' investment by the laws of the state. The Board shall identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in Florida Statutes, Section 215.473, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in such company beginning January 1, 2010 and shall thereafter be prohibited from purchasing or holding such securities. The divestiture of any such security must be completed by September 30, 2010. In accordance with Ch. 2009-97, Laws of Florida, no person may bring any civil, criminal, or administrative action against the Board or any employee, officer, director or advisor of such Board based upon the divestiture of any security pursuant to this paragraph. The Board of Pension Trustees shall be vested with full legal title to the fund. 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 Board may retain in cash and keep unproductive of income that amount of the fund as it may deem advisable, having regard for the cash requirements of the system.

(3) Neither the Board nor any person or entity shall be liable for the making, retention, or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the fund, except that due to his or its own negligence, willful misconduct, or lack of good faith.

(4) 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 the nominee it may direct, or it may retain them unregistered and in the form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.

(5) The Board is empowered, but is not required, to vote on any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to the securities; to deposit the stock or other securities in any voting trust or any protective or like committee or with the trustees or with depositaries 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 powers of an owner with respect to stocks, bonds, or other investments comprising the fund which it may deem to be to the best interest of the fund to exercise.

(6) The Board shall not be required to make any inventory or appraisal or report to any court, not to secure any order of court for the exercise of any power herein contained.

(7) 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 herein or under the general law applicable to it as trustee under this agreement, can reasonably be taken or performed only after receipt by it from a member, the city or any person or entity, of specific information, certification, direction, or instructions, the Board shall incur no liability in failing to take the action or perform the duty or function until the information, certification, direction, or instruction has been received by it.

(8) Any overpayments or underpayments from the fund to a retired member or beneficiary caused by errors of computation shall be adjusted with interest at the rate per annum approved by the

Board. Overpayments shall be charged against retirement payments next succeeding the correction. Underpayments shall be made up from the trust fund.

(9) The Board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits herein provided for and shall be under no duty or obligation to inquire into the sufficiency of the payments made into the fund by the city.

(10) 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 or process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.

('58 Code, § 11.61)

(E) Any of the foregoing powers and functions reposed in the Board may be performed and carried out by the Board through duly-authorized agents, provided the Board at all times maintains supervision over the acts of any agent. Further, legal title to the fund shall always remain in the Board of Pension Trustees.

('58 Code, § 11.62)

(F) No change in any of the provisions of the system shall be made without the approval of a majority of the Board of Trustees.

('58 Code, § 11.63)

(Ord. 72-59, passed 8-15-72; Am. Ord. 73-11, passed 1-3-73; Am. Ord. 2010-33, passed 6-22-10)

Cross-reference:

Required state reports, see § [34.072](#)

§ 34.049 EXAMINATIONS.

The Board of Trustees shall designate physicians, psychologists and other medical, vocational and occupational professionals who shall conduct all medical examinations required under the provisions of this subchapter and shall report in writing to the Board of Pension Trustees their conclusions and recommendations. The payment for these services shall be determined by the Board of Trustees.

('58 Code, § 11.64) (Ord. 72-59, passed 8-15-72; Am. Ord. 73-11, passed 1-3-73; Am. Ord. 2002-40, passed 3-12-02)

§ 34.050 CONDITIONS OF ELIGIBILITY.

(A) Police officers and dispatchers and firefighters who are members of the city's employee's pension plan at the time of adoption of this retirement system shall be eligible to become members of this system. Any other police officer, dispatcher, or firefighter shall be eligible to become a member if at least 18 years of age provided the following standards are met.

(1) The employee satisfactorily completes all required medical examinations for an employee of his classification.

(2) The employee meets all requirements of the Civil Service Board of the city except the probationary period.

(B) Each employee who is eligible to become a member of this system in accordance with the eligibility provisions above shall, if required by state law, be required to become a member as a condition of continued employment by the city as an employee. Reentry into the system after discontinuance of prior participation shall be permitted on a uniform, nondiscriminatory basis and upon compliance with the provisions of subsection (A)(1) and subsection (A)(2) above. However, any person who was previously a member of the system and who is rehired as a classified employee on or after January 1, 1977, shall be eligible for reentry into the system, notwithstanding the age limitation of subsection (A) above; further provided, however, no credit shall be given for any period of time during the interruption of service. Credit for prior service shall be granted only upon repayment in full of all monies previously refunded to the member, together with such interest at the rate or rates assumed for actuarial purposes as shall be certified by the actuary to be due, payable one-half of the total amount due within three months from the date of reentry and the balance of total amount due within six months from date of reentry. If repayment in full is not made as aforesaid, any monies paid pursuant to this section shall be refunded plus interest at the rate set forth in § 34.061(D), and there shall be no further opportunity to obtain credit for prior service.

(C) All employees in similar circumstances shall be treated alike on a uniform, nondiscriminatory basis.

(D) It is the intention of the City Commission that Ordinance 84-66 have retroactive effect such that any police officer, dispatcher, or firefighter currently employed on the effective date of Ordinance 84-66 who was not more than 46 years of age on his date of employment shall become a member of the Police and Firefighters Retirement System retroactive to said date of employment.

('58 Code, § 11.40) (Ord. 72-59, passed 8-15-72; Am. Ord. 85-27, passed 2-5-85; Am. Ord. 86-30, passed 1-7-86; Am. Ord. 86-81, passed 7-29-86; Am. Ord. 95-19, passed 11-22-94; Am. Ord. 2000-73, passed 9-12-00; Am. Ord. 2001-31, passed 1-23-01; Am. Ord. 2003-5, passed 10-8-02)

§ 34.051 APPLICATION FOR MEMBERSHIP.

Each eligible employee shall complete an application form covering the following points, as well as other points or items prescribed by the Board: the employee's acceptance of the terms and conditions of the pension plan and pension trust agreement; and the employee's designation of a beneficiary or beneficiaries.

('58 Code, § 11.41) (Ord. 72-59, passed 8-15-72; Am. Ord. 73-11, passed 1-3-73; Am. Ord. 85-23, passed 2-5-85)

§ 34.052 CHANGE IN BENEFICIARY.

A member may from time to time change his designated beneficiary by written notice to the Board of Pension Trustees on forms provided by the Board. No change of beneficiary shall be effective until the written notice has been received by the Board. Upon change, the rights of all previously-designated beneficiaries to receive any benefit under the plan shall cease.

('58 Code, § 11.42) (Ord. 72-59, passed 8-15-72; Am. Ord. 73-11, passed 1-3-73)

§ 34.053 NORMAL RETIREMENT DATE.

(A) A member may elect to retire on or after the day of attainment of age 47 and the completion of 20 years of continuous service or attainment of age 55 and the completion of ten years of continuous service. However, employees who are eligible to, and become, members as of the effective date of this system shall be eligible to retire on the attainment of age 47 regardless of the number of years of continuous service. A police officer Member who attains 25 years of continuous service prior to attaining 47 years of age may elect to purchase, at the Member's sole expense, a normal retirement age and unreduced normal benefit commencing the first of the month following or coincident with completion of 25 years of continuous service. In order to purchase this earlier normal retirement age, the police officer Member must pay to the Fund the full actuarial cost of the earlier normal retirement age, as determined by the Fund's actuary. Payment shall be made by cash lump sum payment, direct transfer or rollover of an eligible rollover distribution from a qualified or eligible plan in accordance with Section [34.0602](#) herein, or a combination of both.

(B) Any employee with 18 or more years of credited service as a member of this system or a total of 18 or more years of combined credited service as a member of this system and of the general employees retirement system as of May 1, 1984, whose position is eliminated may, if approved by the City Commission, be paid his/her normal retirement benefit projected for all purposes as though employment continues until the normal retirement date.

('58Code, § 11.43) (Ord.72-59, passed 8-15-72; Am. Ord. 73-11, passed 1-3-73; Am.Ord.77-49, passed 6-21-77; Am. Ord. 84-71, passed 6-26-84; Am. Ord. 85-23, passed 2-5-85; Am. Ord. 2001-71, passed 7-10-01; Am. Ord. 2002-41, passed 3-12-02; Am. Ord. 2008-54, passed 7-8-08)

§ 34.054 EARLY RETIREMENT DATE.

A member may retire on the first day of any month following the completion of 20 years of continuous service or following attainment of age 50 and the completion of 10 years of continuous service.

('58 Code, §11.45) (Ord.72-59, passed 8-15-72; Am.Ord.73-11, passed 1-3-73; Am. Ord. 2000-73, passed 9-12-00)

§ 34.055 NORMAL RETIREMENT BENEFIT.

(A) *Police officer.* A police officer retiring on his or her normal retirement date shall receive a monthly benefit which shall commence on his or her normal retirement date and be continued thereafter during his or her lifetime. If the member dies after retirement but before he or she has received benefits for a period of ten years, the same monthly benefit will be paid to the beneficiary (or beneficiaries) as designated by the member for the balance of such ten-year period. Upon reaching normal retirement age a member's benefits shall be fully vested. The amount of the normal retirement benefit is 3% of average monthly earnings for each year of continuous service, subject in any event to a maximum of 75% of average monthly earnings, plus 2% of average monthly earnings for each year of continuous service in excess of 37.5 years. However, members who are eligible for normal retirement as of the effective date provided in § [34.053](#), shall receive the greater of the benefit provided by the formula of this subsection or 50% of average monthly earnings.

(B) *Firefighters.*

(1) A firefighter retiring on his or her normal retirement date shall receive a monthly benefit which shall commence on his or her normal retirement date and be continued thereafter during his or her lifetime. If the member dies after retirement but before he or she has received benefits for a period of ten years, the same monthly benefit will be paid to the beneficiary (or beneficiaries) as designated by the member for the balance of such ten-year period. Upon reaching normal retirement age a member's benefits shall be fully vested.

(2) For firefighters who separated from city employment or who were not part of the DROP prior to September 1, 2003, the amount of the normal retirement benefit is 3.0% of average monthly earnings for each year of continuous service, subject in any event to a maximum of 75% of average monthly earnings, plus 2% of average monthly earnings for each year of continuous service in excess of 37.5 years. However, members who are eligible for normal retirement as of the effective date provided in §34.053 shall receive the greater of the benefit provided by the formula of this subsection or 50% of average monthly earnings.

(3) For firefighters who separate from city employment or who were part of the DROP on or after September 1, 2003, the amount of the normal retirement benefit is 3.0% of average monthly earnings for each year of continuous service for the first ten years of service, 4.0% of average monthly earnings for each year of continuous service for the second ten years of service, and 2% of average monthly earnings for each year of continuous service for the next five years of service subject in any event to a maximum of 80% of average monthly earnings upon attaining 25 years of continuous service, plus 2% of average monthly earnings for each year of continuous service in excess of 40 years; subject to the limitations contained in City Ordinance [34.0571](#) or as may be limited by the Internal Revenue Code.

(4) The adjustment in the maximum benefit percentage under subsection (B)(3) above shall be effective beginning on October 1, 2004, and shall be implemented based upon meeting all of the following conditions and requirements:

(a) No change to the minimum retirement age;

(b) Employee contributions shall be reduced to 0.5% after 25 years of service and upon reaching the maximum benefit of 80% and shall be increased to 11.6% if the member continues in employment and does not enter the DROP upon reaching the normal retirement date;

(c) A service connected disability pension of a minimum of 75% or the vested pension amount, whichever is greater;

(d) The recurring allowable Chapter 175 credit amount to the City of Pompano Beach to provide benefits is increased from \$567,754 to \$732,754 (\$165,000);

(e) Any additional Chapter 175 monies beyond the \$165,000 the amount specified in subsection (B)(4)(d) above will remain in reserve to be used for additional member benefits; and

(f) Beginning the first full pay period that includes October 1, 2004, the employee contributions paid by the members of the plan shall increase from 8.6% to 11.6% except as otherwise provided in subsection (B)(4)(b) above.

(C) Limitation of benefits. The normal retirement benefit or pension payable to a retiree who becomes a member of this retirement system or plan and who has not previously participated in the plan, on or after January 1, 1980, shall be limited in the following manner.

(1) If the member does not receive Social Security benefits, his pension benefit shall not exceed 100% of his average final compensation.

(2) Nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.

(D) No member of this retirement system or plan who was not a member of the plan on October 1, 1978, shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from another retirement system or plan. However, this restriction does not apply to Social Security coverage or benefits.

(‘58Code, § 11.44) (Ord.72-59, passed 8-15-72; Am. Ord. 73-11, passed 1-3-73; Am.Ord.80-30, passed 12-26-79; Am. Ord. 2000-73, passed 9-12-00; Am. Ord. 2001-71, passed 7-10-01; Am. Ord. 2002-41, passed 3-12-02; Am. Ord. 2006-9, passed 12-13-05)

§ 34.056 EARLY RETIREMENT BENEFIT.

A member retiring on his early retirement date may receive either a deferred or an immediate monthly retirement benefit as follows.

(A) A deferred monthly retirement benefit which shall commence on his normal retirement date and shall be continued on the first day of each month thereafter during his lifetime. The amount of each deferred monthly retirement benefit shall be determined in the same manner as for retirement at his normal retirement date; however, continuous service and average monthly earnings shall be determined as of his early retirement date.

(B) In the alternative, 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 during his lifetime. The maximum benefit payable, as determined in subsection (A) above, shall be reduced actuarially so that actuarially-equivalent benefits shall be payable in all cases wherein actual retirement date precedes a member’s regular normal retirement date; provided, however, in the case of a member who retires on or after age 50, the actuarial reduction shall not exceed 3% for each year by which actual retirement date precedes such member’s regular normal retirement date.

(‘58 Code, §11.46) (Ord.72-59, passed 8-15-72; Am. Ord. 73-11, passed 1-3-73; Am. Ord. 2000-73, passed 9-12-00)

§ 34.057 DISABILITY.

(A) Service incurred. Any member who receives a service-connected injury, disease, or disability, which totally and permanently incapacitates him or her, physically or mentally, from regular and continuous duty as a firefighter, police officer, or dispatcher, and any other duty or duties available through the Fire or Police Departments respectively to the firefighter, police officer, or dispatcher, shall receive in equal monthly installments an amount equal to 75% of monthly earnings in effect on date disability is granted by the Board. The disability pension shall be effective immediately and the first payment shall be made on the first day of the month coincident with or next following such granting and shall be payable until the earlier of death or recovery from disability. If the member dies after retirement but before recovery from disability and before he or she has received benefits for a period of ten years, the

same monthly benefit will be paid to the beneficiary (or beneficiaries) as designated by the member for the balance of such ten-year period.

(B) Nonservice incurred. Any member with ten years of service who receives a nonservice-incurred injury, disease, or disability, which totally and permanently incapacitates him or her, physically or mentally, from regular and continuous duty as a firefighter, police officer, or dispatcher, and any other duty or duties available through the Fire or Police Departments respectively to the firefighter, police officer, or dispatcher, shall receive in equal monthly installments an amount equal to 3% of his or her average monthly earnings for each year of continuous service, subject in any event to a maximum of 60% of monthly earnings in effect on date disability is granted by the Board plus 2% of monthly earnings for each year of continuous service in excess of 25 years. However, in the case of a member, the minimum benefit shall be 25% of such member's average monthly earnings. The disability pension shall be effective immediately and the first payment shall be made on the first day of the month coincident with or next following such granting and shall be payable until the earlier of death or recovery from disability. If the member dies after retirement but before recovery from disability and before he or she has received benefits for a period of ten years, the monthly benefit will be paid to the beneficiary (or beneficiaries) as designated by the member for the balance of such ten-year period.

(C) Determination of disability. All questions relating to eligibility for continuance of disability benefits shall be determined by the Board of Trustees, which may refer disability benefit recipients for medical examinations pursuant to [§ 34.049](#).

(D) Service-incurred aggravation of non-service incurred condition. Any benefit payable under this section by virtue of service-incurred aggravation of an injury, disease, disability, impairment, or condition which existed at the time of a member's entry into the plan or of an injury, disease, disability, impairment, or condition which itself was not service-incurred, shall be deemed to be a non-service incurred benefit, regardless of whether or not the injury, disease, disability, impairment, or condition was known or was symptomatic prior to the service-incurred aggravation.

('58 Code, § 11.47) (Ord. 72-59, passed 8-15-72; Am. Ord. 78-36, passed 3-15-78; Am. Ord. 82-18, passed 12-15-81; Am. Ord. 85-23, passed 2-5-85; Am. Ord. 2000-73, passed 9-12-00; Am. Ord. 2001-71, passed 7-10-01; Am. Ord. 2002-40, passed 3-12-02; Am. Ord. 2002-41, passed 3-12-03)

§ 34.0571 INTERNAL REVENUE CODE COMPLIANCE.

(A) Maximum pension. Notwithstanding any provision of this Plan to the contrary, the annual pension that is accrued by or paid to a participant shall not exceed the dollar limitation set forth below. If the benefit the participant would otherwise accrue in a limitation year would produce an annual pension in excess of the dollar limitation, the benefit shall be limited to a benefit that does not exceed the dollar limitation.

(1) Definitions used in this section.

(a) **ANNUAL PENSION** means the benefits received by a participant under this Plan expressed in the form of a straight life annuity. In determining whether benefits payable exceed the dollar limitation set forth below, benefits payable in any form other than a straight life annuity shall be adjusted to the larger of:

1. The annual amount of the straight life annuity (if any) payable to the participant under the Plan commencing at the same annuity starting date as the form of benefit payable to the participant; or

2. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5% interest assumption and the applicable mortality table described in Section 1.417(e)-1(d)(2) for that annuity starting date.

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits, (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this subsection (A), and the amount payable under the form of benefit in any limitation year shall not exceed the limits of this subsection (A) applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(b) **DOLLAR LIMITATION** means \$160,000 (subject to the annual adjustments provided under Section 415(d) of the IRC). Said amount shall be adjusted based on the age of the participant when benefits begin, as follows:

1. Except with respect to a participant who is a “Qualified Participant” as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code) beginning before age 62 the age-adjusted dollar limitation is equal to the lesser of:

i. The actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a deferred straight life annuity commencing at age 62, where annual payments under the straight life annuity commencing at age 62 are equal to the dollar limitation (as adjusted pursuant to Section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5% interest rate and the applicable mortality table under, Section 1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant’s age based on completed calendar months as of the annuity starting date); and

ii. The dollar limitation (as adjusted pursuant to Section 415(d)) multiplied by the ratio of the annual amount of the straight life annuity under the plan to the annual amount of the straight life annuity under the plan commencing at age 62, with both annual amounts determined without applying the rules of Section 415.

2. For benefits beginning after the age of 65, the age-adjusted dollar limitation is equal to the lesser of:

i. The actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a straight life annuity commencing at age 65, where annual payments under the straight life annuity commencing at age 65 are equal to the dollar limitation of Section 415(b)(1)(A) (as adjusted pursuant to Section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5% interest rate and the applicable mortality table under Section 1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant’s age based on completed calendar months as of the annuity starting date); and

ii. The Section 415(b)(1)(A) dollar limitation (as adjusted pursuant to Section 415(d) and Section 1.415(d)-1 for the limitation year) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan to the adjusted age 65 straight life annuity. The adjusted immediately commencing straight life annuity means the annual amount of the immediately commencing straight life annuity payable to the participant, computed disregarding the participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are applied to offset accruals. For this purpose, the annual amount of the immediately commencing straight life annuity is determined without applying the rules of Section 415. The adjusted age 65 straight life annuity means the annual amount of the straight life annuity that would be payable under the plan to a hypothetical participant who is 65 years old and has the same accrued benefit (with no actuarial increases for commencement after age 65) as the participant receiving the distribution (determined disregarding the participant's accruals after age 65 and without applying the rules of Section 415).

iii. There shall be no age adjustment of the dollar limitation with respect to benefits between the ages of 62 and 65.

(2) The limitations set forth in this subsection (A) shall not apply if the annual pension does not exceed \$10,000 provided the participant has never participated in a defined contribution plan maintained by the city.

(3) Cost-of-living adjustments in the dollar limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Section 415(d) of the Code.

(4) In the case of a participant who has fewer than ten years of participation in the Plan, the dollar limitation set forth in subsection (1)(b) of this subsection (A) shall be multiplied by a fraction - (i) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (ii) the denominator of which is ten.

(5) Any portion of a participant's benefit that is attributable to mandatory employee contributions (unless picked-up by the city) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the Code.

(6) Should any participant participate in more than one defined benefit plan maintained by the city, in any case in which the participant's benefits under all such defined benefit plans (determined as of the same age) would exceed the dollar limitation applicable at that age, the accrual of the participant's benefit under this Plan shall be reduced so that the participant's combined benefits will equal the dollar limitation.

(7) For a participant who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to Section 1.401(a)-20, Q&A 10(d), and with regard to Section 1.415(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

(8) The determination of the annual pension under subsection (1)(a) of this subsection (A) shall take into account (in the manner prescribed by the regulations under Section 415 of the Code) Social Security supplements described in Section 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Section 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.

(9) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the city shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this subsection (A) and the provisions of Section 415 of the Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The value of any benefits forfeited as a result of the application of this subsection (A) shall be used to decrease future employer contributions.

(B) Required beginning date. Notwithstanding any other provision of the Plan, payment of a participant's retirement benefits under the Plan shall commence no later than the participant's **REQUIRED BEGINNING DATE**, which is defined as the later of:

(1) April 1 of the calendar year that next follows the calendar year in which the participant attains or will attain the age of 70 1/2 years; or

(2) April 1 of the calendar year that next follows the calendar year in which the participant retires.

(C) Required minimum distributions.

(1) Required beginning date. The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date as defined in subsection (B) of this section.

(2) Death of participant before distributions begin.

(a) If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

1. If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70 1/2, if later.

2. If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

3. If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(b) The participant's entire interest shall be distributed as follows:

1. Participant survived by designated beneficiary, If the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in subsection (2)(a) above, over the life of the designated beneficiary or over a period certain not exceeding:

i. Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death: or

ii. If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

2. No designated beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(c) Death of surviving spouse before distributions to surviving spouse begin. In any case in which (i) the participant dies before the date distribution of his or her interest begins, (ii) the participant's surviving spouse is the participant's sole designated beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, subsections (2)(a) and (2)(b) above shall apply as though the surviving spouse were the participant.

(3) Requirements for annuity distributions that commence during participant's lifetime.

(a) Joint life annuities where the beneficiary is not the participant's spouse. If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of Section 1.401(a)(9)-6T of the Treasury Regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(b) Period certain annuities. Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this subsection (3)(b) or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

(4) Form of distribution. Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subsections (4)(a), (4)(b)

and (4)(c) below. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury Regulations. Any part of the participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury Regulations that apply to individual accounts.

(a) General annuity requirements. If the participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

1. The annuity distributions will be paid in periodic payments made at intervals not longer than one year;
2. The distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in subsections (2) or (3) above, whichever is applicable, of this subsection (C);
3. Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
4. Payments will either be non-increasing or increase only as follows:
 - i. By an annual percentage increase, that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
 - ii. To the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;
 - iii. To provide cash refunds of employee contributions upon the participant's death; or
 - iv. To pay increased benefits that result from a Plan amendment.

(b) Amount required to be distributed by required beginning date. The amount that must be distributed on or before the participant's required beginning date (or if the participant dies before distributions begin, the date distributions are required to begin under subsection (2)(a)(1) or (2)(a)(2), whichever is applicable) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.

(c) Additional accruals after first distribution calendar year. Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(5) For purposes of this subsection (C), distributions are considered to begin on the participant's required beginning date. If annuity payments irrevocably commence to the participant (or to the participant's surviving spouse) before the participant's required beginning date (or, if to the participant's surviving spouse, before the date distributions are required to begin in accordance with subsection (2)(a) above), the date distributions are considered to begin is the date distributions actually commence.

(6) Definitions.

(a) **DESIGNATED BENEFICIARY.** The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.

(b) **DISTRIBUTION CALENDAR YEAR.** A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first **DISTRIBUTION CALENDAR YEAR** is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first **DISTRIBUTION CALENDAR YEAR** is the calendar year in which distributions are required to begin pursuant to subsection (2) of this subsection (C).

(c) **LIFE EXPECTANCY.** Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury Regulations.

(D) Eligible rollover distributions.

(1) Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) Definitions.

(a) **ELIGIBLE ROLLOVER DISTRIBUTION.** An **ELIGIBLE ROLLOVER DISTRIBUTION** is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover 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 Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(b) **ELIGIBLE RETIREMENT PLAN.** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code or a qualified trust described in section 401(a) of the 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. An eligible retirement plan shall also mean, with respect to distributions made after December 31, 2001, an annuity contract described in Section 403(b) of the Code, and an eligible plan under Section 457(b) of the 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 and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a domestic relation order, as defined in Section 414(p) of the Code.

(c) **DISTRIBUTE.** A distributee includes a participant or former participant.

(d) **DIRECT ROLLOVER.** A direct rollover, is a payment by the Plan to the eligible retirement plan specified by the distributee.

(E) Notwithstanding any other provision of this Plan, the maximum amount of any mandatory distribution, as defined in Section 401(a)(31) of the Code, payable under the Plan shall be \$1,000.

(F) Compensation limitations under 401 (a)(17).

(1) In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual compensation of each participant taken into account under the Plan shall not exceed the EGTRRA annual compensation limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is \$200,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

(2) Any reference in the Plan to the limitation under Section 401(a)(17) of the Code shall mean the EGTRRA annual compensation limit set forth in this provision.

(G) At no time prior to the satisfaction of all liabilities under the plan with respect to members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

(Ord. 93-50, passed 6-8-93; Am. Ord. 2000-73, passed 9-12-00; Am. Ord. 2010-36, passed 6-22-10)

§ 34.058 PRERETIREMENT DEATH.

(A) Service incurred. A death benefit shall be payable in behalf of any member who dies as a direct result of an occurrence arising in the performance of service. The benefit shall be payable as follows.

(1) To the designated beneficiary a lump sum payment of \$5,000; plus

(2) To the surviving spouse, until the earlier of the two events of death or remarriage, a monthly benefit equal to 75% of the member's final earnings (the above provision notwithstanding, the surviving spouse of any member killed in the line of duty shall not lose the survivor retirement benefits set forth herein if the spouse remarries); plus

(3) For each child until he has reached the age of 18 years, and for each child from age 18 until age 22 who is a full-time student in an accredited school, there shall be paid in equal monthly

installments, an amount equal to 7½% of the final earnings subject to an overall limitation of a total of 90% of final earnings for the surviving spouse and children combined. The nonstudent child's pension shall terminate on the earlier of death, marriage, or the attainment of age 18; the pension of a child who is a student shall terminate on the earlier of death, marriage, or the attainment of age 22. Legally-adopted children shall be eligible the same as natural children. In the event there is no surviving spouse or upon remarriage or death of the surviving spouse, the 7½% child allowance shall be increased to 15% for each child, and shall be paid in trust to eligible children, not to exceed a combined total of 50% of a member's final earnings provided, however, that such increase shall not apply when a surviving spouse of a member who was killed in the line of duty remarries. The trusteeship and disbursements of the pension to any child or children shall be determined by the Board of Trustees. No survivor pension shall be paid to any stepchild of a deceased member.

(B) Nonservice incurred. If any member dies in active service from causes not attributable to active duty or service, a death benefit shall be payable as follows.

- (1) With less than one year of continuous service: none.
- (2) With one or more years but less than five years of continuous service: to the designated beneficiary a lump sum payment of \$5,000.
- (3) With five years or more years but less than ten years of continuous service:
 - (a) To the designated beneficiary a lump sum payment of \$5,000; plus
 - (b) To the surviving spouse in equal monthly payments a pension equal to 65% of the member's accrued pension as of date of death, subject to a minimum of 20% of average monthly earnings; plus
 - (c) To the child or children of the deceased member the same benefits as are payable by reason of service-connected death, subject, however, to a maximum combined limitation of monthly payments to the surviving spouse and children of 50% of final earnings.
- (4) With ten or more years of continuous service: the beneficiary may elect to receive the benefits under subsection (3) above, or the benefits accrued to date of death, payable commencing at his otherwise normal retirement date or payable in accordance with [§ 34.056](#).

('58 Code, § 11.48) (Ord.72-59, passed 8-15-73; Am. Ord. 73-11, passed 1-3-73; Am.Ord.74-31, passed 1-29-74; Am. Ord. 95-21, passed 11-22-94; Am. Ord. 2000-73, passed 9-12-00)

§ 34.059 ACCRUED BENEFITS.

(A) If a member terminates his employment with the Police, or Fire Departments, either voluntarily or by lawful discharge, and is not eligible for any other benefits under this system, he shall be entitled to the following.

- (1) With less than ten years of continuous service: refund of member contributions plus 3% interest.

(2) With ten or more years of continuous service: the pension benefit accrued to his date of termination, payable commencing at his otherwise normal retirement date or payable in accordance with § [34.056](#), provided he does not elect to withdraw his member contributions, or refund of member contributions plus 3% interest.

(B) Any member of this system who, for whatever reason, has his employment with the city as a police officer, police dispatcher, or firefighter terminated, but who remains or was previously employed by the city in some other capacity so that his total continuous period of employment with the city is ten years or more, shall have all benefits accrued under this system preserved, provided he does not elect to withdraw his member contributions. The accrued benefits shall be paid at his otherwise normal retirement date in accordance with the provisions of this system or in accordance with § [34.056](#).

(C) For purposes of determining normal retirement age under this accrued benefits provision, continuous service shall include all employment with the city as well as the period of time subsequent to termination as a member of this system; however, benefits shall not be payable under this system during any period of continued employment by the city.

(D) Any amounts attributable to city contributions which are forfeited by reason of nonvested terminations of employment shall remain in the fund and shall serve only to reduce current and future required contributions to the system.

('58 Code, § 11.49) (Ord.72-59, passed 8-15-72; Am. Ord. 73-11, passed 1-3-73; Am.Ord.75-84, passed 9-16-75; Am. Ord. 2000-73, passed 9-12-00)

§ 34.060 OPTIONAL FORMS OF RETIREMENT BENEFITS.

Each member entitled to a retirement benefit shall have the right at any time prior to his actual retirement to elect to have his retirement benefit payable under any one of the options hereinafter set forth in lieu of the retirement benefits otherwise provided herein, and to revoke any elections and make a new election at any time prior to actual retirement. The value of optional retirement benefits shall be actuarially equivalent to the value of benefits otherwise payable. The member shall make an election by written request to the Board of Pension Trustees. A member shall have the right to change his designated beneficiary in accordance with F.S. §§ 175.171 or 185.161.

(A) *Option 1. Joint and last survivor option.* A retiring member may elect to receive a decreased retirement benefit during his or her lifetime and have the decreased retirement benefit, or a designated fraction thereof, continued after his or her death to and during the lifetime of his or her designated beneficiary, subject to any restrictions applicable under federal law. A retired member may change his or her designated beneficiary or joint annuitant up to two times without the approval of the Board or the current designated beneficiary. The retiree member need not provide proof of the good health of the designated beneficiary being removed, and the designated beneficiary being removed need not be living. The election of Option 1 shall be null and void if the designated beneficiary dies before the member's retirement; however, the member may designate another beneficiary. Should a new joint annuitant or beneficiary be elected, the member's retirement benefit shall be actuarially recalculated to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit and that there is no impact to the system. In the event the beneficiary is other than the spouse, the present value of the payments to the retired member must initially be at least 50% of the total combined present value of payments to both the member and beneficiary.

(B) *Option 2. Life Annuity.* A retiring member may elect to receive an increased retirement benefit payable during the member's lifetime. If, after retiring, the member should die before payments equal to the member's accumulated contributions are made, then the balance shall be paid to his or her designated beneficiary.

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

('58Code, § 11.50) (Ord.72-59, passed 8-15-72; Am. Ord. 73-37, passed 4-18-73; Am.Ord. 75-84, passed 9-16-75; Am. Ord. 85-23, passed 2-5-85; Am. Ord. 96-32, passed 1-30-96; Am. Ord. 2000-73, passed 9-12-00; Am. Ord. 2001-71, passed 7-10-01; Am. Ord. 2002-40, passed 3-12-02; Am. Ord. 2002-41, passed 3-12-02; Am. Ord. 2010-12, passed 11-24-09; Am. Ord. 2010-33, passed 6-22-10)

§ 34.0601 (RESERVED).

§ 34.0602 (RESERVED).

§ 34.0603 DEFERRED RETIREMENT OPTION PLAN (DROP).

A deferred retirement option plan (DROP) is hereby authorized. The DROP is to be administered by the Board of Trustees. Police officer members may elect to enter the DROP upon reaching normal retirement as set forth and in accordance with the terms and conditions of the DROP document in existence as negotiated in the collective bargaining agreements between the Broward County Police Benevolent Association of Pompano Beach, Florida and the City or Broward County Sheriff's Office. In no event shall the Board administer a plan which results in the disqualification of the system under the Internal Revenue Code.

(A) *Eligibility.* Any active member of the Pompano Beach Police and Firefighters' Retirement System who is eligible to receive a normal retirement pension, may elect to participate in the DROP. However, said election must be made at or before the employee has attained 25 years of continuous service with the city. Except as provided below, after an employee has exceeded 25 years of continuous service, he or she would no longer be eligible to participate in the DROP. In cases where an employee has reached 25 years of continuous service, but still has not become eligible for normal retirement, that employee will be eligible to elect to participate in the DROP upon (but not after) reaching eligibility for normal retirement. Firefighter members will "retire" for purposes of the pension plan, but may continue their employment with the city for a maximum 96 months from the effective date of the member's DROP election.

(B) *Written election.* A member electing to participate in the DROP must complete and execute the proper forms supplied by the retirement system administrator in a time and manner determined by the Board of Trustees and shall be effective on the first day of the first calendar month which is at least five business days after it is received by the Board. Election in the DROP is irrevocable once payments to the DROP account begin.

(C) *Limitations and disqualifications for other benefits.* A member may participate in the DROP only once. After commencement of participation, the member shall not again have the right to be a contributing member of the retirement system. Police officer members shall not be eligible for disability or pre-retirement death benefits as provided for by the retirement system. Firefighter members shall not be eligible for pre-retirement death benefits, but shall be eligible for service connected or non-service

connected disability retirement when a determination is made by the Pension Board that an existing benefit should be reclassified as a disability benefit subject to Article 16 of the I.A.F.F. Local 1549 Collective Bargaining Agreement.

(D) Cessation of contributions. Upon the effective date of a member's commencement of participation in the DROP, the member's contributions and the city's contributions to the retirement system for the normal cost of the member's service after the effective date will be discontinued.

(E) Benefit calculation.

(1) For all retirement system purposes, the average monthly earnings and continuous service of a member participating in the DROP shall remain as they existed on the effective date of commencement of participation in the DROP. Service, earnings or increases in earnings thereafter shall not be recognized by the retirement system or used for the calculation or determination of any benefits payable by the retirement system.

(2) On the effective date that the member enters the DROP, the city will calculate the member's accrued sick and annual leave payout utilizing existing payout formulas. The city will pay to the firefighter member his or her leave payout in five equal payments over the next five years, with each payment being made on the member's DROP participation anniversary date. However, should the member terminate participation in the DROP and employment with the city before the first five years, the remainder of the member's leave payout shall be paid to the member upon termination.

(3) Any accrued sick leave in excess of the maximum number of hours accruable for payout purposes will be carried over and available for use by the member in accordance with established city policy while participating in the DROP. The member will continue to accrue sick and annual leave while participating in the DROP. Leave accrual will be in accordance with the appropriate collective bargaining agreement. However, at the member's conclusion of participating in the DROP, the member will forfeit all unused accumulated sick and annual leave and thus will not be compensated for any portion of said leave.

(F) Payments to DROP account. The monthly retirement benefits that would have been payable had the member elected to cease employment and receive a normal retirement benefit (including a cost-of-living increase if one is later included as part of the DROP Plan) shall be paid into the member's deferred retirement option account.

(G) DROP account earnings.

(1) After each fiscal year quarter, the average daily balance in a member's deferred retirement option account shall be credited or debited at a rate equal to the actual net rate of investment return realized by the retirement system for that quarter. "Net investment return" for the purpose of this paragraph is the total return on the retirement system's assets (except those assets invested pursuant to DROP member direction under subsection (2) below) net of brokerage commissions and transaction costs.

(2) As an alternative, each current member of the DROP and each future member of the DROP may elect not to receive "net investment return" as set forth above. Instead, an electing member may direct the investment of his or her DROP account in designated proportions among such unitized or mutual funds as may be made available from time to time by the Board of Trustees. The electing member's DROP account shall be credited or debited at a rate equal to the actual net rate of investment return realized by the member's DROP account.

(3) If a member does not terminate employment at the end of participation in the DROP, all investment return credits and debits to the member's DROP account shall cease. Self-directed DROP accounts maintained pursuant to subsection (2) above will be liquidated and the proceeds returned to the retirement system to be held until the member terminates employment. No amounts shall be paid from the retirement system until the member terminates employment with the city.

(4) Police officer members of the DROP who have elected to participate in the DROP loan program, as detailed herein, shall not receive any earnings on outstanding loan balances until such time as a repayment is made. Repayments are qualified as principal and interest with the latter being reflected on member DROP accounts as "earnings."

(H) Expenses. To compensate the system for the expenses of administering, investing and operating the DROP, each member's account shall be charged an annual administrative fee which shall be reviewed and subject to increase or decrease annually. The initial expense charge of three-quarters of one percent of the account balance (0.75%) shall be deducted from the member's account after each fiscal year quarter at the rate of 0.1875% of the account's average balance during that quarter. Provided, however, if a member elects to participate as set forth in subsection (G)(3) above, the member's account may be charged an administrative cost to be determined from time to time by the Board of Trustees.

(I) Payout.

(1) Upon termination of a member's employment (for any reason), the retirement benefits payable to the member or to the member's beneficiary (if provided for), shall be paid to the member or beneficiary and shall no longer be paid to the member's deferred retirement option account. No payments will be made from the DROP account until the member terminates employment.

(2) Within 90 days after the end of any calendar quarter following the termination of a member's employment, the balance in the member's deferred retirement account shall be payable at the member's option:

(a) In full single lump payment, or

(b) In annual installments in amounts requested by the member by June 30th of each year, or

(c) In equal monthly installments requested by the member, which can be changed only once each year by making such request by June 30th of each year, or

(d) In a single lump sum payment of the balance remaining after payment of any annual or monthly installments, which will be paid within 90 days after receiving a member's request, which request can be made at any time after termination of a member's employment.

Regardless of the selected option by the member, the Board of Trustees has the right to accelerate payments in order to comply with Section 401(a)(9) of the Internal Revenue Code and the right to defer payments to comply with Section 415 of the Internal Revenue Code. The DROP is meant to comply with the provisions of the Internal Revenue Code and the Board of Trustees will take no action which would jeopardize the tax qualification of the retirement system.

(3) Account balances continue to be credited or debited with account earnings or losses and charged with expenses until the entire balance is paid out.

(J) Promotions. Starting with the 79th month after a member enters the DROP, the member is not eligible to be promoted, to participate in any promotional examination process and/or to be appointed or promoted to any bargaining unit position. Employees who have participated in DROP for less than 78 months shall be eligible to be promoted, to participate in any promotional examination process and/or to be appointed or promoted to any non-bargaining unit position. Employees who have participated in DROP for 78 months or more shall be eligible to be promoted, to participate in any promotional examination process and/or to be appointed or promoted to any non-bargaining unit position with the specific approval of the Fire Chief and City Manager when the Fire Chief and City Manager determine such actions to be in the best interest of the city.

(K) Death. If a DROP member dies before his or her account balance is paid out in full, the participant member's designated beneficiary shall have the same rights as the member to elect and receive the payout options set forth. DROP payments to a beneficiary shall be in addition to any retirement benefits payable to the beneficiary under any optional form of retirement benefits elected by the member.

(L) Benefits not guaranteed. All benefits payable under the DROP shall be paid only from the assets of the DROP and neither the city nor the Board of Trustees shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.

(M) DROP loan program.

(1) Police officer DROP participants may apply to the Board of Trustees to borrow from the retirement system up to 50% of the total balance in their respective DROP account, up to a maximum of \$50,000. The Board of Trustees shall approve or deny any such application in accordance with the terms and conditions specified herein. Board of Trustees shall not have the authority to deny member loan applications that satisfy requirements outlined herein. All loans to police officer DROP participants shall be secured by the member's DROP account and no payments from the member's DROP account shall be made to the member, survivor or beneficiary while a loan balance remains outstanding. Should any loan balance remain unpaid after the balance in the member's DROP account has been exhausted, then that balance shall be secured and paid by offsetting such member, survivor or beneficiary's other benefits payable by the retirement system. The loan must be evidenced by the member's promissory note payable to the retirement system and shall have a definite interest rate, repayment schedule, and maturity date. The promissory note shall provide that in the event that the loan is not repaid, at a time when the member is entitled to a distribution, any unpaid balance of the loan, plus interest, shall be retained by the Board of Trustees out of such distribution. The Board of Trustees shall be authorized to take any and all necessary action to reinforce such member's obligations.

(2) In making its determination with respect to eligibility for, terms and conditions of, and interest rates on any loan, the Board of Trustees shall act in a uniform and nondiscriminatory manner. The outstanding principal of any loan to a police officer member shall not exceed 50% of the member's vested amount in the DROP account, provided, that the maximum loan amount not shall exceed \$50,000. The promissory note shall bear interest at the annual interest rate quoted as the "prime rate" in the *Wall Street Journal* on the day which the member files all necessary forms for his or her DROP loan with the Board of Trustees.

(3) If a police officer member or beneficiary, directly or indirectly, receives any amount as a loan from the retirement system, such amount shall be treated as a taxable distribution from the retirement system to the individual if:

(a) The amount of the loan exceeds the lesser of (i) \$50,000 (reduced to the extent that the member or beneficiary's highest balance for plan loans outstanding during the preceding 12 months exceeds the current balance for plan loans); or (ii) one-half of the member's DROP account (or \$10,000 if greater): and

(b) The loan by its terms is not required to be repaid within five years of the date the funds are actually received by the borrower (i.e. member).

(4) Loan amount and term. The Board of Trustees may loan to a police officer DROP participant member a minimum of \$5,000 and a maximum of \$50,000. The loan shall be repaid by the member over a period of time not to exceed five years, as elected by the member at the time of the loan, with installment payments to be paid on a biweekly or monthly basis, as chosen by the member, with each payment being comprised of principal and interest. Member may elect to have installment payments automatically deducted by the Pompano Beach Credit Union and paid directly to the retirement system. Alternatively, the member may elect that the loan installment payments be automatically deducted from his or her monthly pension benefit from the retirement system.

(a) Suspension of loan repayment; leave for military absence. In accordance with IRC section 414(u)(4), the retirement system shall permit postponement of loan repayments for military service personnel while performing military service. Any such postponement shall not alter the accrual of interest. Any such suspension of loan repayments during a leave of absence for military service will not cause the loan to be deemed a taxable distribution so long as:

1. Loan repayments resume upon the completion of the military service; and
2. The amount remaining due on the loan is repaid in substantially level installments; and
3. The loan is fully repaid by the end of the original term of the loan plus the period of military service.

(5) Loan costs and expenses. The electing police officer member shall pay all costs of the loan, including documentary stamps, intangible taxes, loan-servicing fees, and all other costs associated with loan.

(6) Default. Events of default under the terms of the loan shall include, but are not limited to bankruptcy, insolvency, or failure to make any installment loan payment when due.

(7) Grace period. In the event of a default due to a participating police officer member's failure to make an installment payment when due, then the retirement system, at its sole discretion, may provide written notice to such member of the occurrence of such default, and afford such member a grace period not to exceed ten days from the date upon which the subject payment(s) was due, within which such member may make payment to the retirement system to cure such default.

(8) Attorney's fees and costs. In the event of a default, and should the Board of Trustees determine that it is required to pursue legal relief to enforce a police officer member's loan repayment obligations hereunder, then such member shall be held responsible for any and all attorney's fees and costs incurred by the retirement system to enforce such member's obligations.

(Ord. 2010-12, passed 11-24-09; Am. Ord. 2010-34, passed 6-22-10)

§ 34.061 CONTRIBUTIONS.

(A) (1) Members of the retirement system shall make regular contributions to the trust fund at a rate equal to 8.6% of their respective annual earnings, except for firefighter members who, pursuant to § [34.055](#)(B)(4)(f) of this code, shall contribute 11.6% of their respective annual earnings. Eligible employees, as a condition of membership, shall agree in writing on becoming a member to make the contributions specified herein. The contributions shall be deducted from earnings before the earnings are paid.

('58 Code, §11.51)

(2) Effective September 26th, 1989, the city shall assume and pay future member contributions in lieu of payroll deductions from member's earnings. No member shall have the option of choosing to receive the contributed amounts directly instead of having them paid by the city directly to the retirement system. All such contributions by the city shall be deemed and considered as a part of each member's accumulated contributions and subject to all provisions of the retirements system pertaining to accumulated contributions of the members. The city shall immediately deposit all such contributions following each pay period. This city "pick up" of contributions shall be the result of an 8.6% reduction of each member's base pay and is intended to comply with Section 414(H)(2) of the Internal Revenue Code. Base pay for purposes of overtime pay, pay supplements, and retirement benefit calculations shall not be reduced.

(Ord. 89-95, passed 9-19-89; Am. Ord. 2006-9, passed 12-13-05)

(B) Any money received or receivable by reason of laws of the state for the express purpose of funding and paying for retirement benefits for police officers and firefighters of the city shall be deposited immediately, and under no circumstances more than five days after receipt, in the trust fund comprising part of this system.

('58 Code, § 11.52)

(C) So long as this system is in effect, the city shall make an annual contribution to the trust fund, payable at least quarterly, in an amount equal to the difference in each year as between the total of aggregate member contributions for the year plus state contributions for the year, and the amount necessary for the year to maintain the system on a sound actuarial basis as shown by the most recent actuarial valuation and report for the system. The total cost for any year shall be defined as the total of normal cost plus the additional amount sufficient to amortize the accrued past service liability over a 40-year period commencing on October 1, 1972.

('58 Code, §11.53)

(D) All retirement, death, and disability benefits payable under this system are in lieu of a refund of member contributions. In any event, however, each member shall be guaranteed the payment of benefits at least equal in total amount to his accumulated contributions plus 3% interest.

('58 Code, §11.54)

(E) All money which has been refunded by the members' contributions and the city's contributions, and money from all outside sources such as private contributions or those contributions made by the state or any other firms, corporations, or companies being invested into any basic or secondary pension plan for

the retirement of any employee which shall be included in this fund, including any interest gathered by these monies, shall be transferred into this fund to be known as The Pompano Beach Police and Firemen's Pension Fund, no later than 30 days after this fund becomes law.

('58 Code, §11.55)

(Ord.72-59, passed 8-15-72; Am.Ord. 73-11, passed 1-3-73; Am. Ord. 2000-73, passed 9-12-00)

§ 34.062 DENIAL OF BENEFITS.

On compulsory retirement of a member by an act of the Board of Pension Trustees or denial of benefits to a member by an act of the Board, the member shall have the following rights concerning the Board action.

(A) The Board shall, within a reasonable time after its decision on the compulsory retirement of a member or denial of member benefits, notify the member in writing of that decision, stating as clearly and concisely as is possible its findings and conclusions.

(B) Within the time provided by the Board in writing, of notification of the Board's decision to the member, the member shall, before commencement of any action in any court of competent jurisdiction against the Board or city, file a request for a public rehearing and review by the Board, with the Board Secretary, in writing.

(C) As soon as practicable after timely receipt of the request for rehearing and review by the member, the Board shall meet, after giving reasonable notice to the member. At that time the member shall have the right to be present with legal counsel and present all additional evidence or testimony in support of the member's claim for benefits before the Board for rehearing, review, and reconsideration of the Board's previous decision. At its option, the Board may call witnesses and place evidence in the record itself.

(D) If the Board's decision, upon formal rehearing and review, is adverse to the member, the member may then, within 30 days, appeal the Board's final decision, to the circuit court in and for the Seventeenth Judicial Circuit of Broward County, and the court shall sit as an appellate court. The member's appeal to the court of the Board's formal rehearing and review of the member's claim shall be for review by certiorari only, and not by trial de novo.

(E) The member, during the rehearing and review process, and any subsequent appeals, shall be responsible for his own attorneys' fees and none shall be assessed against the Board. In addition, costs shall not be assessed against the Board unless it affirmatively appears to the court that it acted with gross negligence, or in bad faith, with malice in making the decision appealed from.

(F) The term **MEMBER** as used in this section and as defined in § [34.045](#) of this code, shall also include, where applicable, and be synonymous with the term **BENEFICIARY** as defined in § [34.045](#) in cases concerning death claims and shall, in addition, also apply to a member's legally appointed guardian in cases where the member has been adjudicated to be incompetent.

('58 Code, §11.65) (Ord.80-30, passed 12-26-79; Am. Ord. 82-18, passed 12-15-81; Am. Ord. 2000-73, passed 9-12-00)

§ 34.063 DISCHARGE.

Members entitled to a pension shall not forfeit it on dismissal from the department but shall be retired as herein described.

(‘58 Code, § 11.66) (Ord. 72-59, passed 8-15-72; Am. Ord. 73-11, passed 1-3-73)

§ 34.064 RECOVERY FROM DISABILITY.

In the event a member who has been retired on a pension on account of permanent incapacity regains his full health and is shown to be physically able to perform his duties in the Police Department or Fire Department, the Board of Pension Trustees shall require the member to resume his position in the respective Department and discontinue the pension. However, if the member has been retired for disability in line of duty, shall not have reached the age of 46 years, and shall within 18 months after resuming his position pay into the fund an amount equal to the aggregate contributions (computed upon his annual earnings at the time of his disability retirement) he would have been required to make hereunder during the period of his disability retirement had he not been retired, the member shall receive creditable service for the period of the disability retirement.

(‘58 Code, § 11.67) (Ord. 72-59, passed 8-15-72; Am. Ord. 73-11, passed 1-3-73)

§ 34.065 PENSIONS NOT ASSIGNABLE.

No pension provided for herein shall be assignable or subject to garnishment for debt or for other legal process; except the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit those funds necessary to pay for the benefits beings received through the city or BSO, to pay the certified bargaining agent of the city or BSO, and to make any payments for child support or alimony. Further, the recipient of any monthly benefit may authorize the Board of Trustees upon written request, to withhold from the monthly benefit those funds necessary to pay for accident, health, and long-term care insurance premiums for the recipient, the recipient’s spouse and the recipient’s dependents. The retirement system shall not incur any liability for participation in such permissive program if its action is taken in good faith.

(‘58Code, § 11.68) (Ord.72-59, passed 8-15-72; Am. Ord. 73-11, passed 1-3-73; Am. Ord. 2004-72, passed 9-28-04; Am. Ord. 2010-33, passed 6-22-10)

§ 34.066 DURATION OF PENSION.

Pensions granted to retired members shall be paid to them for life and shall not be revoked nor in any way diminished except as provided in this section. The payments of the member of this fund shall cease on his retirement and acceptance of a pension.

(‘58 Code, § 11.69) (Ord. 72-59, passed 8-15-72; Am. Ord. 73-11, passed 1-3-73)

§ 34.067 PENSION VALIDITY.

(A) The Board of Trustees shall have the power to examine into the facts on which any pension shall have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently, or illegally for any reason. The Board is empowered to purge the pension rolls

of any person granted a pension under prior or existing law or hereafter granted under this section, if it is found to be erroneous, fraudulent, or illegal for any reason; and to re-classify any pensioner who has heretofore under any prior or existing law, or who shall hereafter under this section, be erroneously, improperly, or illegally classified.

(B) It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement or withhold or conceal material information to obtain any benefit payable hereunder. A person who violates the foregoing commits a misdemeanor of the first degree, punishable as provided in F.S. §§ 775.082 or 775.083. In addition to any applicable criminal penalty, upon conviction for a violation as set forth above, a participant or beneficiary hereunder may, in the discretion of the Board of Trustees, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled. For the purposes hereof, "**CONVICTION**" means a determination of guilty that is the result of a plea or trial, regardless of whether the adjudication is withheld.

('58 Code, § 11.70) (Ord.72-59, passed 8-15-72; Am. Ord. 73-11, passed 1-3-73; Am. Ord. 2000-73, passed 9-12-00)

§ 34.068 INCOMPETENCE.

If any participant or beneficiary is a minor or is, in the judgment of the Pension Board, otherwise incapable of personally receiving and giving a valid receipt for any payment due him under the plan, the Board may, unless and until claims have been made by a duly-appointed guardian or committee of the person, make the payment or any part thereof to the persons' spouse, children, or other person deemed by the Board to have incurred expenses or assumed responsibility for the expenses of the person. Any payment so made shall be a complete discharge of any liability under the plan for the payment.

('58 Code, § 11.71) (Ord. 72-59, passed 8-15-72; Am. Ord. 73-11, passed 1-3-73)

§ 34.069 WAGE CONTROL LAW VIOLATIONS.

No payment or any benefit, contribution, or other sum which would constitute a violation of any applicable wage control law shall be made hereunder.

('58 Code, § 11.72 (b)) (Ord. 72-59, passed 8-15-72; Am. Ord. 73-11, passed 1-3-73)

§ 34.070 RECORDS AND DATA.

(A) The Board will furnish the actuary with all data required for necessary actuarial computations under the plan.

('58 Code, §11.72 (a)) (Ord.72-59, passed 8-15-72)

(B) Upon request, and as specified in the request, by the Board of Trustees, the Finance Department shall maintain any or all records and data necessary for the proper administration of this system, and shall make these records and data available to the Board of Trustees. The records and data shall include, but not necessarily be limited to, the following list and any other similar items necessary for proper administration of the system.

- (1) Deduct employee contributions, and immediately transmit same to the Board each pay period.
- (2) For pending retirements, complete the basic data form, including determination of average monthly earnings.
- (3) Prepare annually the employee data needed for actuarial valuation.
- (4) Transmit city and state contributions to the Board in accordance with § [34.061](#).

('58 Code, §11.74) (Ord.74-59, passed 6-25-74)

(Ord.73-11, passed 1-3-73; Am. Ord. 2000-73, passed 9-12-00)

§ 34.071 TERMINATION OF THE SYSTEM.

In the event of termination of the system, or complete discontinuance of city contributions to the system, each participant's accrued pension benefit shall become nonforfeitable (i.e., 100% vested). The Board shall determine the date of distribution and the asset value required to fund all of the nonforfeitable benefits. The Board shall inform the city, or then current system sponsor, if additional assets are required, in which event, the city, or then current fund sponsor, shall continue to financially support the retirement system until all nonforfeitable benefits have been fully funded. At such time, the funds shall be appropriated and distributed in accordance with the provisions of Florida Statutes, Sections 175.361 and 185.37.

('58 Code, § 11.75) (Ord.73-11, passed 1-3-73; Am. Ord. 75-84, passed 9-16-75; Am. Ord. 2010-33, passed 6-22-10)

§ 34.072 REQUIRED STATE REPORTS.

Each year, on or before March 15, the Pension Board Trustees of the system shall submit a report to the Division of Retirement in accordance with the requirements of F.S. Chs. 175 and 185.

('58 Code, § 11.76) (Ord. 73-11, passed 1-3-73; Am. Ord. 2001-10, passed 10-24-00)

§ 34.073 PENSION ADJUSTMENTS.

(A) Retirees who have been retired from the Police and Firefighters' Pension Plan for a period of five or more years prior to or on October 1, 2000 shall be granted an increase in pension benefits, effective October 1, 2000, and each October 1 thereafter. Annual pension benefits shall be increased by a "fixed" (guaranteed) percentage equal to 2%. In addition to the "fixed" increase, pension benefits shall be increased by a "variable" percentage, in an amount certified by the pension plan actuary as supportable and funded solely by the pension plan assets, but not more than 1%. The "variable" component of the cost-of-living adjustment may be granted only when the plan is sufficiently funded and only if all other provisions of this section are satisfied. The sum of the "fixed" and "variable" portions of the adjustment shall not exceed 3% per year, nor be less than 2%.

(B) Retirees who reach the fifth anniversary of retirement after October 1, 2000 shall be granted an annual increase in pension benefits effective on the fifth retirement anniversary date, payable on the following October 1, and each October 1 thereafter, in the percentage amount paid the previous October 1

under subsection (A) above. Notwithstanding the previous sentence, an employee who participates in the DROP for five or more years shall be eligible for an annual increase in pension benefits on the October 1 following his or her separation from the city, and on each subsequent October 1 in accordance with this article.

(C) In the event the pension plan is not sufficiently funded so as to provide a full 1% “variable” COLA in any year, a retroactive “variable” COLA, retroactive to the first year in which the full 1% “variable” COLA was not paid, shall be provided in subsequent years in which the plan is sufficiently funded, in order to provide an average compounded “variable” COLA of 1% per year, to the extent such amount is certified by the pension fund actuary to be supportable solely by the assets of the plan. The purpose of the retroactive additional COLA is to make retirees whole for any years in which the full 1% “variable” COLA could not be granted because the pension plan was not sufficiently funded.

(D) The annual actuarial valuation shall assume that the “fixed” 2% annual COLA will be repeated on an annual basis for future years. The “variable” COLA will not be assumed to be granted every year for future years because it is granted only in those years when the plan is sufficiently funded.

(Ord. 2001-43, passed 3-13-01; Am. Ord. 2006-9, passed 12-13-05; Am. Ord. 2009-03, passed 10-14-08)