

**CITY OF SARASOTA
GENERAL EMPLOYEES' PENSION PLAN**

Effective November 16, 2009

Sec. 24-96. Definitions.

(a) For the purpose of this division, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Accumulative contributions: The sum of all amounts deducted from the earnings of an employee member and credited to his individual account, together with regular interest thereon. No interest shall accrue after termination of employment.

On and after October 1, 1985, any amounts deducted from earnings of an employee member must be accounted for separately from amounts deducted prior to such date. These amounts shall be credited to his individual account, together with regular interest.

For those members who purchase credited service with interest or at no cost to the plan, any payment representing the amount attributable to member contributions based on the applicable member contribution rate and any payment representing interest and any required actuarially calculated payments for the purchase of such credited service, shall be included in accumulative contributions.

Actuarial equivalent: A benefit of equal value when computed on the basis of such interest, mortality and other actuarial tables as may be adopted by the board of trustees from time to time for this purpose. This definition may only be amended by the city pursuant to the recommendation of the board using the assumptions adopted by the board with the advice of the plan's actuary, such that actuarial assumptions are not subject to city discretion.

Annuity: Annual payments for life, to be paid in equal monthly installments on the last day of the month. Such payments shall be made on a calendar month basis and the payment for any month may be prorated if appropriate.

Average annual earnings: Average earnings of the highest three (3) years of the last ten (10) years of credited service prior to retirement, termination or death. A year shall be twelve (12) consecutive months.

Beneficiary: The person or persons who has or have been designated in writing by the member and filed with the board and who are entitled to receive benefits hereunder at the death of a member. This term includes designated and contingent beneficiaries. If no such designation is in effect, or if no person so designated is living at the time of death of the member, the beneficiary shall be the estate of the member.

Contingent beneficiary: A person named by a member to receive benefits upon the death of a member in the place of his designated beneficiary; in effect, an alternate designated beneficiary.

Designated beneficiary: Any person named by a member to receive benefits payable upon the death of a member.

Board of trustees: The persons designated as trustees of the fund in accordance with the provisions of section 24-98.

Charter: The Charter of the City of Sarasota.

Charter officials: The officials as defined in the City Charter.

Code: The Internal Revenue Code of 1986, as amended from time to time, and any subsequent revenue laws.

Commission: The City Commission of the City of Sarasota.

Consumer Price Index: The U.S. City Average Consumer Price Index issued by the Bureau of Labor Statistics, U.S. Department of Labor, on all items by all urban consumers, as of December 31 of any given year, commonly known as the cost-of-living index, as the same may be revised from time to time by the Bureau of Labor Statistics, provided that any such revision shall be formally recognized by the board of trustees by motion reflected in their minutes.

Credited service: Service for which credit is allowed under section 24-101, Credited service. If a members' accumulative contributions to the plan are less than one-thousand dollars (\$1000.00) he may voluntarily leave his accumulative contributions in the fund for a period of five (5) years after leaving the employ of the city pending the possibility of being reemployed as an employee without losing credit for the time that he was a member of the plan. If a member who is not vested and has less than one-thousand dollars (\$1000.00) of accumulative contributions is not reemployed as an employee within five (5) years, his accumulative contributions will be returned. If any member leaves the employ of the city with accumulative contributions of one-thousand dollars (\$1000.00) or more, his accumulative contributions will be returned only upon his written request and upon completion of a written election, on forms designated by the board, to either receive a cash lump sum or to rollover the lump sum amount. Upon return of a member's accumulative contributions, all of his rights and benefits under the plan are forfeited and terminated.

Earnings: The total annual compensation reported on the member's W-2 form plus any tax-deferred or tax-exempt items of income, but not including any car allowance, clothing allowance or other expense allowance, income attributable to use of a city vehicle, or any lump sum payment of annual leave, sick leave, compensatory time, overtime or severance pay, paid at the time of retirement or termination. Compensation in excess of the limitations set forth in Section 401(a)(17) of the Code as of the first day of the plan year shall be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each member taken into account in determining benefits or employee contributions for any plan year beginning on or after January 1, 2002, may not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). Compensation means compensation during the fiscal year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. 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.

Employee: Any person employed by the city and classified on the personnel records of the city as a full-time employee, including city commissioners. Beginning October 1, 2005, city commissioners shall be deemed employees for purposes of the plan and shall become members of the plan and may purchase credited service pursuant to Sec. 24-101 (k)(2). The term "employee" shall also not include any independent contractors, any temporary full-time, temporary part-time, or permanent part-time employees, DROP participants, any persons covered by the police officers' pension fund or the firefighters' pension fund or anyone on leave without pay in excess of thirty (30) calendar days, except those on Family and Medical Leave.

Fund: All sums of money paid into the plan by employees or the city, and all gifts or contributions to the fund accepted from other sources, together with earnings and appreciation of the same, less disbursements made from such money in accordance with the plan, and less any losses or depreciation of asset values.

Inception date: The date on which the operation of the plan and contributions commenced, being November 1, 1958.

Interest:

Assumed actuarial interest: The rates of interest which are adopted by the trustees, upon recommendation of the consulting actuaries, for use in the periodic actuarial valuation of the plan, as authorized in section 24-98.

Regular interest: Interest computed at the rate of four and one-half (4.5) percent per annum, compounded annually and calculated on the balance in the fund in question on the last day of the calendar year. Regular interest is subject to a periodic adjustment by the board of trustees and the determination of a new rate as provided in section 24-99(d).

Joint annuitant: A person designated by a member, to receive with the member, a pension benefit which is payable to the member for his life and upon his death, is payable to the designated person for the life of the designated person in the same or a reduced amount.

Member: Any employee of the city as defined herein. Retirees are not members. "Member" shall also include an employee who ceases to be a permanent employee prior to retirement due to the transfer of his department's function or activity to county or state control and whose employment concurrently transfers and who opts to remain in the plan. Benefit improvements which, in the past, have been provided for by amendments to the plan adopted by city ordinance, and any benefit improvements which might be made in the future shall apply prospectively and shall not apply to members who terminate employment or who retire prior to the effective date of any ordinance adopting such benefit improvements, unless such ordinance specifically provides to the contrary.

Plan: The system of retirement benefits provided under this division to be known as the City of Sarasota General Employees' Pension Plan.

Plan year: A period of twelve (12) consecutive months measured October 1 of one (1) year to September 30 of the following year.

Retiree: A former member who has entered retirement status, including DROP participants.

Retirement: Withdrawal from active employment by the city with an immediate right to payment of retirement income granted under the provisions of the plan or entry into the deferred retirement option plan.

Retirement income: Annual payments for life, payable in monthly installments, or the actuarial equivalent paid in lieu thereof, in accordance with the plan.

Spouse: The lawful wife or husband of a member or retiree at the time benefits become payable.

Vest, vested: The point in time when a member's right to receive a present or future benefit is no longer contingent upon the member's remaining an employee of the city. A member is vested in the plan after ten (10) years of credited service. A member's vested benefits are not forfeited even if the member's employment is terminated, except as provided for in section 24-113, Forfeiture of pension.

(b) The masculine gender, where used herein, unless the content specifically requires otherwise, shall include both the masculine and feminine genders.

Sec. 24-97. Membership.

(a) All employees shall be members of the plan as a condition of employment. Notwithstanding the previous sentence, the city manager may, within the first three (3) months of employment as city manager, notify the board and the city, in writing, of his election to not be a member of the system. In the event of any such election, he shall be barred from future membership in the system and any contributions made after employment and prior to opting out shall be refunded. Thereafter, contribution to the plan in accordance with section 24-100(a) shall not be required, he shall not be elected as a trustee on the board and shall not be eligible for any other benefits from the plan. Effective retroactively to October 1, 2005, city commissioners shall become members of the plan and they may purchase credited service in the plan pursuant to Sec. 24-101(k)(2). Effective June 1, 2006, Peter Schneider shall become a member of the plan and he may purchase credited service in the plan pursuant to SEC. 24-101(k)(2).

(b) Each retiree, beneficiary or other interested person shall be responsible for advising the board of trustees of his current mailing address and of promptly advising the board of trustees of any error in connection with any payment of benefits or any contribution or any other payment under or in connection with the plan.

(c) It is contemplated, and all members of the plan shall be deemed to have notice that the board of trustees may in the future decide that it is in the best interest of the plan and the members of the plan to provide for the payment of retirement annuities by using a member's interest in the plan to purchase appropriate annuity contracts from one (1) or more qualified insurance companies or to fund the plan in whole or in part through the purchase of the services and/or contracts of insurance and similar qualified companies engaging in the operation of pension, retirement and/or annuity plans.

(d) No person shall, with intent to deceive, make or cause to be made any statement, report, certificate, election, notice, claim or other instrument authorized or required under this division, whether of the enumerated classes or otherwise, which shall be untrue. No person shall falsify or cause or permit to be falsified any record comprising any part of the operation or administration of the plan contemplated by this division. In addition to any penalty under the Sarasota City Code, any such violation shall also be punishable as provided under the laws of the state.

Sec. 24-98. Board of trustees.

(a) *Membership of board:* The sole and exclusive administration of and responsibility for the operation of the plan and for making effective the provisions of this division are hereby vested in the board of trustees which shall consist of the city auditor and clerk, who shall be one of the trustees throughout his term of office and shall also be the secretary of the board throughout his term; the finance director, who shall be one of the trustees throughout his term of office and shall also be the treasurer of the board throughout his term; four (4) members of the plan, each of whom has been a member of the plan for at least five (5) years; and a trustee who shall be a legal resident of the city and who shall be appointed by the city commission. The trustee appointed by the city commission shall serve as trustee for a period of three (3) years unless sooner replaced by the city commission, at whose pleasure he shall serve and may succeed himself as a trustee. The employee trustees shall be elected by a majority of the members of the plan who vote in an election. DROP participants cannot be elected as or vote for elected trustees. There shall be four (4) numbered seats as follows:

- (1) Seat one shall be filled by those employees working in the public works department.
- (2) Seat two shall be filled only by those employees working at city hall.
- (3) Seat three shall be filled only by those employees (including county employee members) who do not work in public works or city hall.
- (4) Seat four shall be an at-large seat to be filled by any member of the plan with five (5) years of credited service.

Each employee trustee shall serve for a period of three (3) years, unless he sooner leaves the employ of the city, transfers to a work area outside his area if he fills a designated area seat, or otherwise vacates the office of trustee, whereupon his successor shall be chosen in the same manner as the employee trustee originally chosen.

An election shall be held every year with one (1) trustee elected the first year, one (1) the second year and two (2) the third year. Each employee trustee may succeed himself as a trustee. The trustees shall make all reasonable rules and regulations for the administration of their duties as trustees in the administration of the plan created hereby.

(b) *Compensation of Trustees:* The members of the board of trustees shall serve without compensation for their services.

(c) *Officers:* The board of trustees shall annually elect from among its membership a chair and vice-chair of the board. The city finance director shall be the treasurer of the board. The city auditor and clerk shall be the secretary of the board.

(d) *Meetings; Quorum; Affirmative Votes of Four Members Required for Decisions; Abstaining; Attendance; etc.:* Meetings of the board of trustees shall be held at such times as a majority of the board of trustees shall determine, but not less often than quarterly. A majority of the membership of the board of trustees shall constitute a quorum; and all decisions, acts and resolutions of the board shall be by an affirmative vote of at least four (4) members. A trustee shall abstain from voting as the result of a conflict of interest and shall comply with the provisions of section 112.3143, Florida Statutes.

In recognition of the importance of the work of the board, regular attendance at board meetings is expected of all trustees. Elected or appointed board members shall automatically be removed from membership for failure to attend three (3) successive regular meetings, or at such time that the member's absences exceed twenty-five (25) percent of all meetings in a year. The city auditor and clerk and the finance director are not subject to removal under this subsection.

(e) *Annual Membership Meeting:* The board of trustees shall hold an annual meeting with the membership of the plan within the first quarter of each calendar year to receive the treasurer's report and conduct any other business as determined by the board.

(f) *Rules and Regulations:* The board of trustees adopt written rules and regulations not in conflict with the express terms of this division or the Charter, to cover the operation of any phase or part of the plan provided by this division. Copies of such rules and regulations shall be furnished to any member of the plan on request, and at least one (1) copy thereof shall be kept available in the office of the city auditor and clerk for examination by any interested person at any time during ordinary business hours.

(g) *Selection, Compensation, etc., of Agents, Employees, etc.:* The board of trustees shall have power to select, employ and compensate such consultants, actuaries, accountants, attorneys, investment counselors and other agents and employees as it may deem necessary or advisable for the proper and efficient administration of the plan. Any agent or employee so selected may be a person or firm then, theretofore, or thereafter serving the city in any capacity, if not otherwise prohibited by law.

(h) *Maintaining Minute Book:* It shall be the duty of the secretary of the board of trustees to provide himself and the board of trustees with a substantially bound minute book in which the actions of the board of trustees shall be faithfully recorded in detail. Such book shall be kept at the city hall and not at the home or place of business of any member of the board of trustees or of the secretary thereof. It shall normally be removed from the city hall only if required in connection with a judicial or administrative proceeding where the same is or may be relevant to the issues.

(i) *Filing of Required Notices, Elections, etc.:* Where any notice, election or other instrument is required or permitted by this division to be filed with the board of trustees, the same may be filed with the secretary of the board of trustees.

(j) *Power of City Commission To Amend Article:* The city commission shall have continuous power to amend this division; provided, that no amendment shall be adopted by the city commission which shall have the effect of reducing the then accrued benefits of members, retirees or beneficiaries.

(k) *Records of Members; Annual Status Statements to Employees:* A separate record or account shall be maintained for each member of the plan, which, among other things, shall show his service record, his exact age, any designated and contingent beneficiaries, his normal contributions, and such other information as is necessary for an accurate and comprehensive determination of his status under the plan as determined by the board of trustees. As soon as practicable after the end of each plan year, the board of trustees shall furnish to each employee a statement showing the status of his participation in the plan. The board of trustees may have these records and statements prepared by a consultant, actuary, accountant or other outside agent as they may deem necessary or advisable.

(l) *Written Records of Notices, Elections, etc.; Maintaining Files Pertaining to Plan:* All notices, elections, designations and changes of beneficiaries and similar writings pertaining to the operation of the plan shall be made and preserved in writing and on such forms as the board of

trustees may direct. It shall be the duty of the secretary of the board of trustees to maintain segregated files pertaining to the plan, which shall not be intermingled with other files of the city.

(m) *Meetings of the Board of Trustees To Be Public:* All meetings of the board of trustees shall be open to the public.

(n) *Personal Liability of Persons Administering Plan; Satisfaction of Claims Under Plan.* Each member of the board of trustees shall use the care and diligence in the performance of his duties as required of a fiduciary and shall not be liable for any loss unless resulting from his own individual gross negligence, fraud or willful misconduct. No such member shall be personally liable upon or with respect to any agreement, act, transaction or omission executed, committed or suffered to be committed by himself as a member of the board or by any other member, agent, representative or employee of the board; moreover, the board and the members and agents thereof shall each be fully protected in relying upon the advice of any attorney employed by the board of trustees insofar as legal matters are concerned and the advice of any accountant similarly employed insofar as accounting matters are concerned. Any person having any claim under the plan shall look solely to the assets of the fund or insurance obtained by the fund or the city for satisfaction of such claim.

(o) *Powers and Duties Enumerated in Article Not Deemed Exclusive:* The powers and duties of the board of trustees or of any other person set out in this division are not intended to be either complete or exclusive, but the board or person shall have such powers and duties as are reasonably implied from the terms of this division or necessary for administration of the plan where not in conflict with this division or the Charter. The duties and responsibilities of the board of trustees shall also include, but not necessarily be limited to, the following:

- (1) To construe the provisions of the plan and determine all questions arising thereunder.
- (2) To determine all questions relating to eligibility and participation.
- (3) To determine and certify the amount of all retirement allowances or other benefits hereunder.
- (4) To distribute to members, at regular intervals, information concerning the plan and a summary plan description as required by law.
- (5) To receive and process all applications for benefits.
- (6) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the plan.
- (7) To have performed actuarial studies and at least biennial valuations, and may make recommendations regarding any and all changes in the provisions of the plan.
- (8) To perform such other duties as are specified in this division or required for the prudent administration of this plan.

Sec. 24-99. Finances and fund management.

- (a) The board of trustees shall have the following investment powers and authority:

- (1) The board of trustees shall be vested with full legal title to the fund, subject, however, and in any event to the authority and power of the city commission to amend or terminate this trust; provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this plan. All contributions 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) All monies paid into or held in the pension fund shall be invested and reinvested in such securities or property wherever situated and whatever kind, as shall be approved by the board of trustees, including but not limited to stocks, common or preferred, and bonds, and other evidences of indebtedness or ownership; but there shall be no investment in the following:
 - a. Short sales, margin purchases, or borrowing.
 - b. Private placements or other restricted securities (not freely marketable).
 - c. Commodities.
 - d. Puts, calls, straddles or hedging (not including covered call options).
 - e. Warrants or other options, except as part of purchase of another security.
 - f. Venture capital.
 - g. Any investment prohibited by state or federal law.
 - h. Real estate (including investment trusts), unless approved by an affirmative vote of at least five (5) members of the board.
- (3)
 - a. The aggregate of investments in common stock, capital stock and convertible securities at market shall not exceed seventy-five (75) percent of the assets of the fund.
 - b. The board shall develop and adopt a written investment policy statement setting forth goals and objectives of investments and setting quality and quantity limitations on investments. The investment policy statement shall be reviewed by the board at least annually.
- (4) At least once every three (3) years, and more often as determined by the board, the board shall retain a professionally qualified independent consultant to evaluate the performance of all current investment managers and make recommendations regarding the retention of all such investment managers. These recommendations shall be considered by the board at its next regularly scheduled meeting.
- (5) The board of trustees may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the plan.

- (6) The board shall not 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 its own negligence, willful misconduct or lack of good faith.
- (7) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.
- (8) The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the 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.
- (9) The board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power contained herein.
- (10) 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 division, can reasonably be taken or performed only after receipt by it from a member, retiree, beneficiary, the city, or any other entity, of specific information, certification, direction or instructions, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.
- (11) Any overpayments or underpayments from the fund to a member, retiree or beneficiary caused by errors of computation shall be adjusted without interest in such a manner that the actuarial equivalent of the benefit to which the member, retiree or beneficiary was correctly entitled, shall be paid. Overpayments shall be charged against payments next succeeding the correction or collected in another manner if prudent. Underpayments shall be made up from the fund in a prudent manner.
- (12) The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits herein provided for.
- (13) In any application to or proceeding or action in the courts, only the board shall be a necessary party, and no member or other person having an interest in the fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.
- (14) Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agent;

provided further, that legal title to the fund shall always remain in the board of trustees.

(b) *Annual Audits:* The retirement plan shall be audited at least annually by a certified public accountant. Such audit may be a part of the general city audit required by the Charter, but shall be separately reported. Copies of the audit shall be available to members of the plan upon request. One (1) copy shall be retained among his permanent records by the secretary of the board of trustees.

(c) *Deposit of Funds:* All funds of the fund may be deposited by the board of trustees with the finance director of the city, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he is liable for the safekeeping of funds for the city. However, any funds so deposited with the finance director of the city shall be kept in a separate fund by the finance director or clearly identified as such funds of the fund. In lieu thereof, the board of trustees shall deposit the funds of the fund in a qualified public depository as defined in F.S. section 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of F.S. chapter 280, or a trust company as provided in F.S. chapter 280. In order to fulfill its investment responsibilities as set forth herein, the board may retain the services of a custodian bank, an investment advisor registered under the Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.

(d) *Setting Interest Rates; Computing Interest:* Unless otherwise provided herein, interest shall be the actuarially assumed rate of interest.

(e) *Reserved.*

(f) *Lump Sum Payment of Small Annuities:* Notwithstanding anything herein to the contrary, the board in its discretion may elect to make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the monthly income payments to be paid do not exceed one thousand dollars (\$1,000.00). Any such payment made to any person pursuant to the power and discretion conferred upon the board of trustees by the preceding sentence shall operate as a complete discharge of all obligations under the plan with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

(g) *Approval Required for Any Payment Out of Pension Fund:* No pension or benefit shall be given to any person out of the pension fund unless the same shall first be reviewed and approved or otherwise authorized by the board of trustees.

(h) *Annual Reports From Treasurer as to Investment Return:* At the annual membership meeting, the treasurer shall advise the board of trustees by his written certificate as to the investment returns of the fund during such year of operation. In making such calculation, the treasurer shall employ standard accounting procedures so far as possible, but shall have reasonable discretion in determining whether any particular item should be credited to principal or income. The minutes of the board of trustees shall reflect the receipt of such annual certificate and shall exhibit a copy of the certificate. The treasurer shall also file a copy of such certificate with the secretary of the board of trustees, who shall maintain the same among his records.

Sec. 24-100. Contributions and funding.

(a) *Member's Contributions:* Members of the plan shall be required to make regular contributions to the fund in the amount of six (6) percent of their earnings. Member contributions withheld by the city on behalf of the member shall be deposited with the board of trustees after each pay period. The contributions made by each member to the fund shall be designated as employer contributions pursuant to section 414(h) of the Code. Such designation is contingent upon the contributions being excluded from the members' gross income for federal income tax purposes. For all other purposes of the plan, such contributions shall be considered to be member contributions. Such contributions shall be made by payroll deduction. (Prior contribution rates: 10/1/85 to present - 6%; 4/1/75 to 9/30/85 - 5%; prior to 4/1/75 -4% of earnings over \$1,320.00.)

(b) *City Contributions:* So long as this plan is in effect, the city shall make contributions to the fund after each pay period in an amount equal to the required city contribution, as shown by the applicable actuarial valuation of the plan; but in no event shall the city's annual contribution be less than eight (8) percent of the total earnings of plan members.

(c) *Gifts, Devices, etc., to Fund:* The board of trustees may accept gifts, devices, bequests or appropriations to or for the pension fund from any source, but shall have the right to reject the same if, in their sole judgment, the same are so conditioned as to conflict with the Charter or this division or to make the administration of the same unreasonably difficult.

Sec. 24-101. Credited service.

(a) *Generally:* A member's credited service shall be the sum of his membership service, military service and any other service for which credit is allowed under this section. Such service shall be computed to the nearest whole month of completed service (which service need not commence on the first day of a calendar month), but shall not include any additional fractional parts of a month. Fractional months of membership service, military service or any other service for which credit is allowed may be added to compute credited service. The plan is authorized to accept lump-sum rollover distributions from other eligible retirement plans to fund the purchase of credited service provided for in this plan.

(b) *Membership Service:* Service rendered as an employee since last becoming a member of the plan and on account of which contributions have been made as provided in this division, provided, that periods of service during which contributions were made prior to last becoming a member may count for purposes of membership service as otherwise outlined in this section.

Former members as provided for in this section shall not include reemployed retirees who shall be subject to the provisions of section 24-116.

(c) *Reserved.*

(d) *Reserved.*

(e) *Probationary service credit:* Employees are hereby granted pension service credit for the period of time served as a probationary employee immediately preceding appointment as a permanent employee since last becoming a member of the plan for which contributions which are now being made as provided in this division. As of February 21, 1989, employees who were classified as probationary full-time for employment purposes were immediately placed in the plan retroactively to their date of employment; such date shall be the date used for calculation of pension benefits. However, no employee contributions shall be required for such retroactive placement in the plan by the employee but such employees were required to contribute to the Plan as of Wednesday, February 22, 1989. In all other cases, the date of employment since last becoming a

member of this plan shall be the date used for calculation of pension benefits. Persons retired prior to February 22, 1989, shall not be considered to be included in the provisions of this subsection (e).

(f) *Leaves of absence:* Any leave of absence shall not count as credited service unless the member receives compensation from the city during such period and the member also makes contributions to the plan as provided for in section 24-100. Notwithstanding the previous sentence, in the event a Member, during any regular pay period, is paid for the equivalent of full time service, he shall receive full credited service for any such period. In the event he is paid for less than full-time service, all hours without pay for such period shall be deducted from credited service. Notwithstanding the previous sentence, in any event, a leave of absence under workers' compensation prior to January 19, 1993, with or without pay, shall be counted as credited service.

Any member who is on leave without pay in excess of thirty (30) days shall be deemed a terminated employee for pension purposes, except absences under the Family and Medical Leave Act (subsection (l) below).

If the employee has withdrawn his benefits or contributions, his plan status shall be governed by subsections (h), (i), (j) and (k) of this section, as if no leave of absence had been granted.

(g) *Military service:*

(1) *Separation from employment for military service.* The years or fractional parts of a year that an employee performs "Qualified Military Service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L.103-353), after separation from employment as an employee with the city to perform training or service, and reemployment on or after December 12, 1994, shall be added to his years of credited service for all purposes, including vesting, provided that:

- a. The member is entitled to reemployment under the provisions of USERRA.
- b. The employee returns to his employment as an employee within one (1) year from the earlier of the date of his military discharge or his release from service, unless otherwise required by USERRA.
- c. The employee deposits into the fund the same sum that the member would have contributed if he had remained an employee during his absence. The maximum credit for military service pursuant to this subsection (1) shall be five (5) years. The employee must deposit all missed contributions within a period equal to three (3) times the period of military service, but not more than five (5) years following reemployment or he will forfeit the right to receive credited service for his military service pursuant to this subsection.
- d. This subsection (1) is intended to meet or exceed the minimum requirements of USERRA. To the extent that this subsection does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

(2) *Military service prior to employment.* The years or fractional parts of years that an employee serves or has served on active duty in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily and honorably or under honorable

conditions, prior to first and initial employment with the city shall be added to his years of credited service provided that:

- a. The member contributes to the fund the sum that he would have contributed, based on his earnings and the member contribution rate in effect at the time that the credited service is requested, had he been a member of the plan for the years or fractional parts of years for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.
- b. Multiple requests to purchase credited service pursuant to this subsection (2) may be made at any time prior to retirement.
- c. Payment by the member of the required amount shall be made within six (6) months of his request for credit, but not later than the retirement date, and shall be made in one (1) lump sum payment upon receipt of which credited service shall be given.
- d. The maximum credit under this subsection (2) shall be four (4) years.
- e. Credited service purchased pursuant to this subsection (2) shall count for all purposes, except vesting and eligibility for disability benefits.

(h) *Reemployment after withdrawing contributions:* If a former member is reemployed and upon his immediate previous separation from the city he received a termination benefit of only the return of his accumulative contributions under section 24-105(a), he shall receive credited service provided that:

- (1) Such employee has been employed by the city on one (1) or more previous occasions, and if on each occasion for which he claims credit the period of prior employment was of at least one (1) year's continuous duration; and
- (2) The employee redeposits the accumulative contributions previously withdrawn by him plus interest for all intervening years and fractions of years since such withdrawal.
- (3) Such redeposit is made within ninety (90) days after the reemployment of such employee or within thirty (30) days after the notification from the board of trustees of the required amount of such redeposit, whichever is later.

(i) *Reemployment With Deferred Benefit:* If a former member is reemployed and under his immediate previous separation from the city he was entitled to a disability benefit under section 24-107, or a deferred benefit under section 24-105 and received no payments thereunder, he may receive credit for prior employment for which he has been credited for the deferred annuity payable thereunder, in addition to the membership service to be earned under the new reemployment period.

(j) *Reemployment After Withdrawing Actuarial Value:* If a former member is reemployed and under his immediate previous separation from the city he received a lump sum payment under the provisions of subsection (b)(1)a. or (b)(2)a. of section 24-105, he may receive credit for his prior credited service after complying with the provisions of subsections (h)(2) and (h)(3) of this section.

(k) *Other reemployment or prior service as a City Commissioner:*

- (1) If a former member is reemployed under any conditions other than those covered by subsection (f), (h), (i) or (j) of this section, he may receive credit for prior service if and only if the period of prior employment was of at least one (1) year's continuous duration, and the employee redeposits the contribution or benefits previously withdrawn by him plus interest for all intervening years and fractions of years since such withdrawal, and upon the further condition that such redeposit shall be made within ninety (90) days after the reemployment of such employee or within thirty (30) days after notification from the board of trustees of the required amount of such redeposit, whichever is later.
- (2) The years or fractional parts of years that an employee who was previously a member, but who terminated employment and is not otherwise entitled to credited service for such previous period of employment as an employee under subsections (f), (h), (i), (j) or (k)(1) above, or for city commissioners who become members on or after October 1, 2005, years or parts of years of prior service as an employee or a City Commissioner, or for Peter Schneider, years or parts of years of service as an employee of the City, shall be added to his years of credited service provided that:
 - a. The member contributes to the fund an actuarially determined amount so that the crediting of the purchased service does not result in any cost to the fund plus advance payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.
 - b. Multiple requests to purchase credited service pursuant to this subsection (2) may be made at any time prior to retirement.
 - c. Payment by the member of the required amount shall be made within six (6) months of his request for credit, but, in any event, prior to retirement, and shall be made in one lump sum payment upon receipt of which credited service shall be given.
 - d. There shall be no maximum purchase of credited service pursuant to this subsection (2) and credited service purchased shall count for all purposes including vesting. No purchase shall be permitted for a period of less than one year.

(1) *Family and Medical Leave Act:* The fractional parts of the twenty-four-month period ending each March 1 that a member is on leave without pay from the city pursuant to the Family Medical Leave Act (FMLA) shall be added to his credited service provided that:

- (1) The member contributes to the fund the sum that he would have contributed, based on his earnings and the member contribution rate in effect at the time that the credited service is requested, had he been a member of the plan for the fractional parts of the twenty-four (24) months ending each March 1 for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of periods of credited service.
- (2) The request for credited service for FMLA leave time for the twenty-four-month period prior to each March 1 and payment of professional fees shall be made on or before March 31.

- (3) Payment by the member of the required amount shall be made on or before April 30 for the preceding twenty-four-month period ending March 1 and shall be made in one (1) lump sum payment upon receipt of which credited service shall be issued.
- (4) Credited service purchased pursuant to this section shall not count toward vesting.

(m) *Other government service prior to employment.* Unless otherwise prohibited by law, the years or fractional parts of years that a member previously served as an employee for any other governmental agency of the United States, including but not limited to federal, state or local government service, shall be added to his years of credited service provided that:

- (1) The member contributes to the fund the sum that he would have contributed, based on his earnings and the member contribution rate in effect at the time that the credited service is requested, had he been a member of the plan for the years or fractional parts of years for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.
- (2) Multiple requests to purchase credited service pursuant to this subsection may be made at any time prior to retirement.
- (3) Payment by the member of the required amount shall be made within six (6) months of his request for credit, but, in any event, prior to retirement, and shall be made in one lump sum payment upon receipt of which credited service shall be given.
- (4) There shall be no maximum purchase of credited service pursuant to this subsection and credited service purchased shall count for all purposes including vesting but excluding eligibility for disability benefits.
- (5) In no event, however, may credited service be purchased pursuant to this subsection for prior service with any other governmental agency, if such prior service forms or will form the basis of a retirement benefit or pension from a different employer's retirement system or plan as set forth in section 24-103, subsection (f)(11)b.

Sec. 24-102. Normal and early retirement.

(a) *Normal retirement:*

- (1) The normal retirement date shall be the earlier of the first day of the month coincident with or the next following attainment of age sixty-five (65) and ten (10) years credited service or upon completion of thirty (30) years of credited service, regardless of age.
- (2) A member may retire on his normal retirement date or on the first day of any month thereafter, and each member shall become one hundred (100) percent vested in his accrued benefit on the member's normal retirement date. Normal retirement under the plan is retirement on or after the normal retirement date. The board may require proof of age from the member prior to commencement of benefits.

(b) *Early retirement:* Members may retire on their early retirement date which shall be the first day of any month coincident with or next following the attainment of age fifty-five (55) and the completion of ten (10) years of credited service. Early retirement under the plan is retirement on or after the early retirement date and prior to the normal retirement date.

Sec. 24-103. Pension benefits.

(a) *Normal retirement benefit:* Members retiring from active employment on or after their normal retirement date shall be entitled to a monthly pension equal to one-twelfth of the annual amount, subject to the provisions of subsections (c), (d) and (f) of this section. The annual amount of the pension shall be payable for life and shall be two and one-half (2.5) percent of the member's average annual earnings times the member's credited service.

(b) *Early retirement benefit:* A member retiring on his early retirement date, shall be entitled to either an immediate or deferred monthly pension equal to one-twelfth of the annual amount, subject to the provisions of subsection (c), (d) and (f) of this section. The member may defer the commencement of early retirement benefits until the first day of any month prior to the date that would have been his normal retirement date. The annual amount of the pension shall be payable for life and shall be equal to the member's credited service multiplied by a percentage of the member's average annual earnings based upon age and years of service on the date benefits commence as follows:

TABLE INSET:

<u>Early Retirement Age or Age at Commencement of Benefits</u>	<u>Pension Percentage for Members With Less Than 25 Years of Service</u>	<u>Pension Percentage for Members with 25 or More Years of Service but Less Than 30 Years of Service</u>
55	1.836	2.233
56	1.925	2.264
57	2.014	2.296
58	2.101	2.328
59	2.190	2.360
60	2.279	2.391
61	2.368	2.424
62	2.455	2.455
63	2.470	2.470
64	2.485	2.485

(c) *Payment of pension:* Payment of normal or early retirement benefits shall be on a monthly basis on the last day of each calendar month commencing with the last day of the month in which retirement occurs, or later if the early retirement benefit is deferred. An optional form of benefit may be elected as set forth in section 24-104.

(d) *Cost-of-living adjustments:*

(1) *Annual adjustments.* The pension being paid to any retiree or any beneficiary of a deceased retiree who had been receiving a pension under the provisions of sections 24-103, 24-105(b), 24-106 and 24-107 shall be adjusted annually as of the end of each February for cost-of-living changes as described in the following paragraphs.

a. For those who retired prior to January 1, 2000, the annual percentage adjustment increase or decrease shall be the lesser of four (4) percent or the change in the Consumer Price Index between the preceding December 31st and the December 31st that is twelve (12) months earlier. The pension shall not be reduced below the amount that was initially being paid.

- b. For those who retire on or after January 1, 2000.
1. Subject to subparagraph 2. below, on February 28 of each year, the amount of the pension benefit being paid in the January immediately prior to the adjustment shall be increased by three (3) percent for any retiree (or beneficiary) who retired on or before December 31 of the immediately preceding year.
 2. If pension payments initially began during the calendar year immediately preceding the year of the February adjustment then being made, the following percentage adjustment shall be made:

<i>Month of Initial Pension Payment</i>	<i>Percentage Increase (%)</i>	<i>Month of Initial Pension Payment</i>	<i>Percentage Increase (%)</i>
January	3.00	July	1.50
February	2.75	August	1.25
March	2.50	September	1.00
April	2.25	October	0.75
May	2.00	November	0.50
June	1.75	December	0.25
		January	0.00

- (2) *Ad hoc adjustment.* Effective retroactively to March 1, 2002, the monthly benefit being received by every disability retiree who retired on or before January 1, 2000 or the payment made to such disability retiree's joint annuitant, was increased on July 1, 2002. The monthly benefit was increased by a fraction, the numerator of which was the difference between 2.5% and the benefit accrual rate originally utilized to determine the disability retiree's benefit and the denominator of which was the benefit accrual rate originally utilized to determine the disability retiree's benefit. This was a one-time increase in these benefits. Future annual cost-of-living adjustments as provided in a. or b. above shall be based on this adjusted benefit amount.

(e) *Required distribution date.* The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70½) or the calendar year in which the member terminates employment with the city. In the event a member has delayed applying for his normal retirement benefit, benefits shall begin upon application, but not later than the date provided for in the previous sentence and benefits shall not be retroactive. Notwithstanding the previous sentence, retroactive payment may, however be paid if the Board determines that the member was physically unable to apply.

(f) *Maximum pension:*

- (1) *Basic limitation.* Notwithstanding any other provisions of this system to the contrary, the member contributions paid to, and retirement benefits paid from, the system shall be limited to such extent as may be necessary to conform to the requirements of Code Section 415 for a qualified retirement plan. Before January 1, 1995, a plan member may not receive an annual benefit that exceeds the limits

specified in Code Section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a plan member may not receive an annual benefit that exceeds the dollar amount specified in Code Section 415(b)(1)(A) (\$160,000), subject to the applicable adjustments in Code Section 415(b) and subject to any additional limits that may be specified in this System. For purposes of this section, "limitation year" shall be the calendar year.

- (2) *Adjustments to Basic Limitation for Form of Benefit.* If the form of benefit without regard to any benefit increase feature is not a straight life annuity, then the Code Section 415(b) limit applicable at the annuity starting date is reduced to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the death benefits under the form of benefit.
- (3) *Benefits Not Taken into Account.* For purposes of this Section, the following benefits shall not be taken into account in applying these limits:
 - a. Any ancillary benefit which is not directly related to retirement income benefits;
 - b. Any other benefit not required under §415(b)(2) of the Code and Regulations thereunder to be taken into account for purposes of the limitation of Code Section 415(b)(1).
- (4) *COLA Effect.* Effective on and after January 1, 2003, for purposes of applying the limits under Code Section 415(b) (the "Limit"), the following will apply:
 - a. A member's applicable limit will be applied to the member's annual benefit in the member's first calendar year of benefit payments without regard to any automatic cost of living adjustments;
 - b. thereafter, in any subsequent calendar year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable benefit limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Code Section 415(d), and the regulations thereunder; but
 - c. in no event shall a member's benefit payable under the system in any calendar year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d) and the regulations thereunder.

Unless otherwise specified in the system, for purposes of applying the limits under Code Section 415(b), a Member's applicable limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Code and applicable Treasury Regulations.

- (5) *Other Adjustments in Limitations.*
 - a. In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Code Section 415(b) of the Code, so that such limit (as so

reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) annual benefit beginning at age sixty-two (62).

- b. In the event the member's benefit is based on at least fifteen (15) years of credited service as a full-time employee of the fire or police department of the City, the adjustments provided for in (5)a. above shall not apply.
 - c. The reductions provided for in (5)a. above shall not be applicable to disability benefits pursuant to Sec. 24-107, or pre-retirement death benefits paid pursuant to Sec. 24-106.
 - d. In the event the member's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the limit set forth in subsection (1) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). This adjustment shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.
- (6) *Less than Ten (10) Years of Service.* The maximum retirement benefits payable under this section to any member who has completed less than ten (10) years of credited service with the City shall be the amount determined under subsection (1) of this section multiplied by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10%. The reduction provided for in this subsection shall not be applicable to disability benefits paid pursuant to Sec. 24-107, or pre-retirement death benefits paid pursuant to Sec. 24-106.
- (7) *Participation in Other Defined Benefit Plans.* The limit of this section with respect to any member who at any time has been a member in any other defined benefit plan as defined in Code Section 414(j) maintained by the City shall apply as if the total benefits payable under all City defined benefit plans in which the member has been a member were payable from one plan.
- (8) *Ten Thousand Dollar (\$10,000) Limit.* Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this section if the benefits payable, with respect to such member under this system and under all other qualified defined benefit pension plans to which the City contributes, do not exceed ten thousand dollars (\$10,000) for the applicable plan year and for any prior plan year and the City has not any time maintained a qualified defined contribution plan in which the member participated.
- (9) *Reduction of Benefits.* Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be determined by the board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be established by the board and the plan administrator for such other plans provided, however, that necessary

reductions may be made in a different manner and priority pursuant to the agreement of the board and the plan administrator of all other plans covering such member.

(10) *Service Credit Purchase Limits.*

a. Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the system, as allowed in Sec. 24-101, then the requirements of this section will be treated as met only if:

1. the requirements of Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Code Section 415(b), or
2. the requirements of Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Code Section 415(c).
3. For purposes of applying subparagraph (10)a.1., the System will not fail to meet the reduced limit under Code Section 415(b)(2)(C) solely by reason of this subparagraph c., and for purposes of applying subparagraph (10)b.2. the system will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Code solely by reason of this subparagraph c.

b. For purposes of this subsection the term "permissive service credit" means service credit—

1. recognized by the system for purposes of calculating a member's benefit under the plan,
2. which such member has not received under the plan, and
3. which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may, if otherwise provided by the system, include service credit for periods for which there is no performance of service, and, notwithstanding clause (10)b.2., may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system.

c. For purposes of applying the limits in this subsection (10), only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a calendar year, except as noted below and as permitted by Treasury Regulations Section 1.415(c)-2, or successor regulations. Unless another definition of compensation that is permitted by Treasury Regulations Section 1.415(c)-2, or successor regulation, is specified by the system, compensation will be defined as wages within the meaning of Code Section 3401(a) and all other

payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Code Sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

1. However, for calendar years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Code Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For calendar years beginning after December 31, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of Code Section 132(f)(4).
 2. For limitation years beginning on and after January 1, 2007, compensation for the calendar year will also include compensation paid by the later of 2½ months after an employee's severance from employment or the end of the calendar year that includes the date of the employee's severance from employment if:
 - (i) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or
 - (ii) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.
 3. Back pay, within the meaning of Treasury Regulations Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.
- d. Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Code Section 415 by using the following methods:
1. If the law requires a lump sum payment for the purchase of service credit, the board may establish a periodic payment deduction plan for the member to avoid a contribution in excess of the limits under Code Sections 415(c) or 415(n).
 2. If payment pursuant to subparagraph (10)d.1. will not avoid a contribution in excess of the limits imposed by Code Section 415(c), the board may either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(11) *Additional Limitation on Pension Benefits.* Notwithstanding anything herein to the contrary:

- a. The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1, 1980, shall not exceed one hundred percent (100%) of his average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.
- b. No member of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

Sec. 24-104. Optional forms of pension.

(a) *Types of option:* In lieu of an annuity payable for life, any member of the plan may elect to receive retirement benefits in any of the following forms having an actuarial value equal to the annuity the member would normally receive:

- (1) *A joint and survivor annuity :* An annuity in a reduced amount, to continue during the lifetime of the retiree and further to continue after his death at the same rate or at three-quarters, two-thirds, or one-half rate (according to the election of the member) to a surviving spouse or other designated joint annuitant, during the lifetime of such person after the death of the retiree.
 - a. *Option to change joint annuitant.* If the joint annuitant dies after the option becomes effective, but before the death of the retiree, the retiree shall nevertheless receive the reduced income payable to him in accordance with such election until a new joint annuitant is substituted for a deceased joint annuitant. In addition, a retiree may at any time after the option becomes effective, change his joint annuitant, but not more than twice.

Upon change of a retiree's joint annuitant, the amount of the retirement income payable to the retiree shall be actuarially redetermined to take into account the age of the former joint annuitant, the new joint annuitant and the retiree and to ensure that the benefit paid is the actuarial equivalent of the present value of the retiree's current benefit at the time of the change. Any such retiree shall pay the actuarial recalculation expenses. Each request for a change will be made in writing on a form prepared by the board and on completion will be filed with the board.

- b. *Pop up option.* In the event that a retiree has elected a joint and survivor annuity form of pension, that retiree may, in lieu of the option in a. above, elect that if the retiree's joint annuitant predeceases the retiree, that the survivorship benefit shall be deemed canceled and the retiree's annuity shall revert to the amount of the original normal form of benefit determined before the joint and survivor option was elected. The dollar amount of cost of living adjustments since the date of retirement shall be added to the revised benefit amount. The adjusted amount will be effective on the first day of the month following the death of the retiree's joint annuitant. An eligible retiree, by electing this pop-up feature, consents to the actuarial adjustment of the

retiree's retirement benefits sufficient to cover the cost of this feature. If a retiree chooses the pop up option, he may not change his joint annuitant, as provided for in a. above, after his first benefit check is issued.

- (2) *Guaranteed period annuity*: A reduced annuity payable during the lifetime of the retiree and, in the event that the retiree dies prior to the expiration of the elected ten or fifteen year period, to further continue to a beneficiary or to the estate of the last to die of the retiree or the beneficiary, for at least ten (10) or fifteen (15) years (according to the election of the retiree).
 - (3) *Reserved*.
 - (4) *Lump sum*: A lump sum payment equal to the actuarial value of the retiree's accrued benefit.
- (b) *Election of option*: Any election of an optional benefit shall be made prior to the date pension payments commence. Such election may not be revoked after the first benefit check is issued.
- (c) *Conditions relative to optional forms*:
- (1) To elect a joint and survivor option, the member shall designate his joint annuitant in a form provided for this purpose. He shall also furnish to the trustees within one (1) month thereafter, but not later than the date on which he shall retire, proof satisfactory to the trustees of the age of the joint annuitant. Except where the Retiree's joint pensioner is his spouse, the payments to the joint pensioner as a percentage of the payments to the Retiree shall not exceed the applicable percentage provided for in the applicable table in the Treasury regulations. (See Q & A-2 of 1.401(a)(9)-6)
 - (2) The election of an optional form of retirement income shall become effective on the member's actual retirement date.
 - (3) A member may revoke his election of an optional form of retirement income at any time before it has become effective.
 - (4) If a member has elected a joint and survivor option, and:
 - a. If his joint annuitant under a joint and survivor option election dies before the election becomes effective, the election shall thereupon become void;
 - b. If the retiree dies before receiving his first benefit payment pursuant to the option, the election shall remain in effect and be paid accordingly;
 - c. If the member dies after his normal retirement date while in service, his beneficiary will receive benefits as provided in section 24-106;
 - d. If the retiree is reemployed by the city after the date on which the election becomes effective, his election shall nevertheless continue to be effective.
 - (5) The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70½) or the calendar year in which the member terminates employment with the city.

Sec. 24-105. Termination benefits.

- (a) *With Less Than Ten Years of Credited Service:*
- (1) *Transfer to governmental:* Any member who ceases to be a permanent employee prior to retirement due to the transfer of his department's function or activity to county or state control and whose employment concurrently transfers, and who has less than ten (10) years of credited service shall, upon application, be entitled to a termination benefit of either:
- a. A lump sum equal to the sum of the member's accumulative contributions; or
 - b. The employee may be retained in the plan with no change in his pension plan status, with the employer's share of cost for such employee being paid to the pension plan by such county or state office or department assuming control, such share of cost being at the same rate of contribution being concurrently made by the city on behalf of the employees still remaining in the plan.
- (2) *Transfer to nongovernmental or involuntary termination:* Any member who ceases to be a permanent employee prior to retirement due to the transfer of his department's function or activity to a nongovernmental contractor, or whose employment is involuntarily terminated without cause and who has less than ten (10) years of credited service shall, upon application, be entitled to a termination benefit of a lump sum equal to the member's accumulative contributions.
- (3) *Other termination:* Any member who ceases to be a permanent employee prior to retirement except those provided in paragraph (1) or (2) of this subsection, and who has less than ten (10) years of credited service shall, upon application, be entitled to a termination benefit of a lump sum equal to the sum of the member's accumulative contributions.
- (b) *With Ten or More Years of Credited Service:*
- (1) *Transfer to governmental.* Any member who ceases to be a permanent employee prior to retirement due to the transfer of his department's function or activity to county or state control and whose employment concurrently transfers, after completing at least ten (10) years of credited service shall, upon application, be entitled to a termination benefit of either:
- a. A lump sum equal to the sum of:
 - 1. The member's accumulative contributions; plus
 - 2. A lump sum determined in the following manner:

The annuity to which the terminated member would be entitled shall be calculated based upon his membership service and treated as though the date of termination were the date of normal retirement for such employee, the actuarial equivalent of such annuity then being calculated at regular interest as the present value of such annuity starting at normal retirement age based upon the age of the member at termination;

The lump sum shall be determined by multiplying such calculated actuarial equivalent by a percentage factor, such percentage to be twenty (20) percent for the first ten (10) years of credited service and an additional three (3) percent for each additional year of credited service with fractional years computed to the nearest whole month of completed credited service and with the provision that such percentage shall not exceed eighty (80) percent; or

- b. The employee may be retained in the plan with no change in his pension plan status, with the employer's share of cost for such employee being paid to the pension plan by such county or state office being at the same rate of contribution being concurrently made by the city on behalf of the employees still remaining in the plan; or
- c. An annuity computed according to the formula provided in section 24-103, using the termination date as the normal date of retirement, with such payment to be deferred until the employee has reached age sixty-five (65); however, such employee may elect to have such deferred annuity start at the first of any month prior to his normal retirement date, except that for employees hired on or after January 19, 1993, the monthly benefit shall not commence before age fifty-five (55). The deferred benefit shall be determined by reducing the monthly payment by three-tenths of one (0.3) percent for each month that the effective date of the pension payment precedes age sixty-five (65); and further, such election of this paragraph shall not act to increase the amount of the annuity because of deferment until the normal retirement date.

If the employee dies prior to the commencement of deferred annuity payments, his beneficiary shall receive the benefit provided for in section 24-106(a)(2); except that the pension to which the deceased member would have been entitled shall be calculated as set forth above in this paragraph as if the deferred benefit was to commence as of the first day of the month following his date of death.

- (2) *Transfer to nongovernmental; involuntary or voluntary termination:* Any member who ceases to be a permanent employee prior to retirement due to the transfer of his department's function or activity to a nongovernmental contractor; or whose employment is involuntarily terminated without cause as provided in the city's personnel merit system; or any member who ceases to be a permanent employee prior to retirement due to any reason other than death, disability or that provided in paragraph (1) of this subsection, after completing at least ten (10) years of credited service shall, upon application, be entitled to a termination benefit of either:

- a. A lump sum equal to the sum of:
 - 1. The member's accumulative contributions; plus
 - 2. A lump sum determined in the following manner:

The annuity to which the terminated member would be entitled shall be calculated based upon his membership service and treated as though the date of termination were the date of normal retirement for such employee, the actuarial equivalent of such annuity representing its total cost then being calculated at the assumed actuarial interest

rate as the present value at the age of termination of such annuity starting at normal retirement date;

The portion of the total cost that represents the city's share of the cost shall be calculated as the difference between the total cost and the member's accumulative contributions;

The lump sum shall be determined by multiplying such calculated city's share of the total cost by a percentage factor, such percentage to be twenty (20) percent of the first ten (10) years of credited service and an additional three (3) percent for each additional year of credited service with fractional years computed to the nearest whole month of completed credited service, and with the proviso that such percentage factor shall not exceed eighty (80) percent; or

- b. An annuity computed according to the formula provided in section 24-103, using the termination date as the normal date of retirement, with such payment to be deferred until the employee has reached age sixty-five (65); however, such employee may elect to have such deferred annuity start at the first of any month prior to age sixty-five (65), except that for employees hired on or after January 19, 1993, the monthly benefit shall not commence before age fifty-five (55). The deferred benefit shall be determined by reducing the monthly payment by three-tenths of one (0.3) percent for each month that the effective date of the pension payment precedes the date the member would have reached age sixty-five (65); and further, such election of this paragraph shall not act to increase the amount of the annuity because of deferment until age sixty-five (65).

If the former employee dies prior to the commencement of deferred annuity payments, his beneficiary shall receive the benefit provided for in section 24-106(a)(2); except that the pension to which the deceased former employee would have been entitled shall be calculated as set forth above in this paragraph as if the deferred benefit was to commence as of the first day of the month following his date of death.

Sec. 24-106. Death benefits.

- (a) *Before retirement:*
 - (1) *With less than ten years of credited service:* If any member dies before retirement with less than ten (10) years of credited service, a lump sum death benefit will be paid to his designated beneficiary equal to the sum of the member's accumulative contributions.
 - (2) *With ten or more years of credited service:* If any member dies before retirement with ten (10) or more years of credited service, the member's beneficiary shall receive either:
 - a. An immediate annuity, payable for the life of the beneficiary to be based on the pension to which the deceased member would have been entitled on the date of his death calculated based upon his membership service and average annual earnings as of the date of his death. The present value of the total cost of this calculated pension shall be computed at the assumed actuarial interest rate, assuming that such benefit was to start at the deceased member's normal retirement date as defined herein.

The deceased member's beneficiary may receive a monthly annuity payment actuarially determined for the life of the beneficiary and based on an amount equal to the present value computation provided for above, or

- b. A lump sum payment equal to the present value computation in a. above, or
- c. A lump sum payment of the member's accumulative contributions.

(b) *After retirement:* Upon the death of a retiree after retirement, there shall be paid to his designated beneficiary the following:

- (1) The benefit due the beneficiary under any optional form of pension selected by the retiree prior to his death under the provisions of section 24-104; or
- (2) A lump sum equal to the sum of the retiree's normal contributions plus regular interest accruing prior to and subsequent to the deceased retiree's retirement, less the sum total of amounts previously received in annuity or retirement benefits. Interest accruing subsequent to retirement shall be based on the declining value of the retiree's accrued benefit.

(c) *Designation of beneficiaries:* A member or retiree may designate to the board of trustees, in writing, a designated beneficiary and one (1) or more contingent beneficiaries to receive benefits in the event of the death of the designated beneficiary prior to the death of the member or retiree, and may change such designations from time to time. In the event of the death of a retiree after retirement without designation of a designated beneficiary or contingent beneficiary or in the event the designated beneficiary and each contingent beneficiary shall be deceased, any benefit payable under this section shall on written request be paid to the estate of the deceased retiree. A member or retiree may also designate his estate as designated or contingent beneficiary. Corporations, estates or other entities which are not natural persons shall only be eligible to receive a lump sum benefit. A payment to a minor shall be paid to the guardian of the minor or as otherwise provided by law.

Sec. 24-107. Disability benefits.

(a) *Requirements for disability benefits:* Every member of the general employees' pension plan who, prior to his normal retirement date, shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to perform the duties he was assigned at the time of the impairment and unable to perform the duties of another position or job which the city makes available to him in a similar classification and rank and unable to perform other gainful employment with another employer for which the employee is qualified by reason of his training, education or experience, shall, upon establishing to the satisfaction of the board of trustees that the member is so disabled, receive benefits as follows:

- (1) *With less than ten years of credited service:* Any member who ceases to be a permanent employee prior to retirement due to his becoming totally and permanently disabled as disability is defined herein and who has less than ten (10) years of credited service shall not be eligible for any disability benefit, but shall be eligible to receive termination benefits as provided in subsection (a)(3) of section 24-105.
- (2) *With ten or more years of credited service:* Any member who ceases to be a permanent employee prior to his normal retirement date due to his becoming totally and permanently disabled as disability is defined herein after completing at least ten (10) years of credited service shall, upon application, be entitled to a disability

benefit equal to the full amount of pension accrued under section 24-102, calculated as if such date of disability were the member's normal retirement date. Such pension shall be first paid on the last day of the first month after the board of trustees determines such entitlement; however, the monthly disability payment shall be payable as of the date the board determines such entitlement, and any portion due for a partial month shall be paid together with the first full payment.

Such monthly payments shall cease upon recovery from disability if prior to the employee's normal retirement date and shall continue for life if the employee is still disabled at his normal retirement date. Terminated persons are not eligible for disability benefits, except that terminated vested persons who are terminated by the city for medical reasons may apply for a disability within thirty (30) days after termination.

(b) *Conditions disqualifying disability benefits:* As a condition to receiving disability benefits, each employee who is claiming disability benefits under this subsection shall establish, to the satisfaction of the board, that such disability was not occasioned primarily by:

- (1) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections.
- (2) Injury or disease sustained while committing a crime.
- (3) Injury or disease sustained while serving in any branch of the armed forces.
- (4) Injury or disease sustained after his employment as an employee with the city shall have terminated.
- (5) The willful intention of the member to injure or kill himself or another, or by his own gross negligence or willful or wanton disregard for his own safety.

(c) *Review of disability pensioners:* The board of trustees shall have the power to require any employee who has retired because of permanent disability to appear before the board so as to ascertain the status of his disability and to require examination and conduct such other investigation as the board feels is warranted and, if the board determines that the permanent disability as defined in subsection (a) of this section no longer exists, he shall forfeit his rights to any further pension and shall be terminated subject to the provisions of section 24-105, subsection (b)(2). Any retiree who has not reached age sixty-five (65) and who is receiving disability benefits under the provisions of this ordinance may be required by the board to submit bi-annual sworn statements of his condition accompanied by a physician's statement (provided at the retiree's expense).

A member or retiree shall be examined by a qualified physician or surgeon (or more than one (1) if the board so orders) whose report shall be used by the board in making its determination of disability or continuing disability.

(d) *Benefit offsets.* When a retiree is receiving a disability pension and workers' compensation benefits pursuant to F.S. ch. 440 or Social Security disability benefits, for the same disability, and the total monthly benefits received from each combined exceed one hundred (100) percent of the member's average monthly wage, as defined in F.S. ch. 440, the disability pension benefit shall be reduced so that the total monthly amount received by the retiree does not exceed one hundred (100) percent of such average monthly wage. The amount of any lump sum workers' compensation payment shall be converted to an equivalent monthly benefit payable for ten (10) years certain by dividing the lump sum amount by 83.9692. Social Security disability cost of living increases and cost of living increases provided for under the plan shall not be used to further offset disability benefits.

Sec. 24-108. Minimum distribution of benefits.

(a) *General Rules:*

- (1) *Effective Date.* Effective as of January 1, 1989, the plan will pay all benefits in accordance with a good faith interpretation of the requirements of Code Section 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Code Section 414(d). Effective on and after January 1, 2003, the plan is also subject to the specific provisions contained in this section. The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- (2) *Precedence.* The requirements of this Section will take precedence over any inconsistent provisions of the Plan.
- (3) *TEFRA Section 242(b)(2) Elections.* Notwithstanding the other provisions of this Section other than subsection (a)(3), distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that related to Section 242(b)(2) of TEFRA.

(b) *Time and Manner of Distribution:*

- (1) *Required Beginning Date.* The Member's entire interest will be distributed, or begin to be distributed, to the Member no later than the Member's required beginning date which shall not be later than April 1 of the calendar year following the later of the calendar year in which the Member attains age seventy and one-half (70 1/2) or the calendar year in which the Member terminates employment with the city.
- (2) *Death of Member Before Distributions Begin.* If the Member dies before distributions begin, the Member's entire interest will be distributed, or begin to be distributed no later than as follows:
 - a. If the Member's surviving spouse is the Member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Member died, or by a date on or before December 31 of the calendar year in which the Member would have attained age 70 1/2, if later, as the surviving spouse elects.
 - b. If the Member's surviving spouse is not the Member's sole designated beneficiary, then, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Member died.
 - c. If there is no designated beneficiary as of September 30 of the year following the year of the Member's death, the Member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Member's death.
 - d. If the Member's surviving spouse is the Member's sole designated beneficiary and the surviving spouse dies after the Member but before

distributions to the surviving spouse begin, this subsection (b)(2) other than subsection (b)(2)a, will apply as if the surviving spouse were the Member.

For purposes of this subsection (b)(2) and subsection (e), distributions are considered to begin on the Member's required beginning date or, if subsection (b)(2)(d) applies, the date of distributions are required to begin to the surviving spouse under subsection (b)(2)a. If annuity payments irrevocably commence to the Member before the Member's required beginning date (or to the Member's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(2)a.), the date distributions are considered to begin is the date distributions actually commence.

- (3) *Death After Distributions Begin.* If the member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.
 - (4) *Form of Distribution.* Unless the Member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with this Section. If the Member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and Treasury regulations. Any part of the Member's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and Treasury regulations that apply to individual accounts.
- (c) *Determination of Amount to be Distributed Each Year:*
- (1) *General Requirements.* If the Member's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:
 - a. The annuity distributions will be paid in periodic payments made at intervals not longer than one year.
 - b. The member's entire interest must be distributed pursuant to Sec. 24-103, Sec. 24-104, Sec. 24-105, or Sec. 24-106 (as applicable) and in any event over a period equal to or less than the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary. The life expectancy of the member, the member's spouse, or the member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.
 - (2) *Amount Required to be Distributed by Required Beginning Date.* The amount that must be distributed on or before the Member's required beginning date (or, if the Member dies before distributions begin, the date distributions are required to begin under Sec. 24-106) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., monthly. All of the Member's benefit accruals as of the last day of the first distribution calendar year will be

included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Member's required beginning date.

- (3) *Additional Accruals After First Distribution Calendar Year.* Any additional benefits accruing to the Member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
- (d) *General distribution rules.*
 - (1) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Code Section 401(a)(9)(G), and effective for any annuity commencing on or after January 1, 2008, the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.
 - (2) The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in Code Section 401(a)(9)(G) and Treasury Regulation Section 1.401-1(b)(1)(I) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the members' benefits received from the retirement system.
- (e) *Definitions:*
 - (1) *Designated Beneficiary.* The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.
 - (2) *Distribution Calendar Year.* A calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Member's required beginning date. For distributions beginning after the Member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Sec. 24-106.

Sec. 24-109. Claims procedures.

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

(b) The board shall have the power to subpoena and require the attendance of witnesses and the production of documents for discovery prior to and at any proceedings provided for in the board's claims procedures. The claimant may request in writing the issuance of subpoenas by the board. A reasonable fee may be charged for the issuance of any subpoenas not to exceed the fees set forth in Florida Statutes.

Sec. 24-110. Domestic relations orders; retiree directed payments; Exemptions from execution; nonassignability.

- (a) *Domestic relations orders.*
 - (1) Prior to the entry of any domestic relations order which affects or purports to affect the plan's responsibility in connection with the payment of benefits of a retiree, the

member or retiree shall submit the proposed order to the board for review to determine whether the plan may legally honor the order.

- (2) If a domestic relations order is not submitted to the board for review prior to entry of the order, and the plan is ordered to take action that it may not legally take, and the plan expends administrative or legal fees in resolving the matter, the member or retiree who submits such an order will be required to reimburse the plan for its expenses in connection with the order.

(b) *Retiree directed payments.* The board may, upon written request by a retiree or by a dependent, when authorized by a retiree or the retiree's beneficiary, authorize the plan to withhold from the monthly retirement payment those funds that are necessary to pay for the benefits being received through the city, or for Income Deduction Orders or tax levies, plus any amounts necessary to reimburse the plan for the administrative cost of making the deduction.

(c) *Exemption from execution, non-assignability.* Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this ordinance and the accumulated contributions and the cash securities in the fund created under this ordinance are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable.

(d) A member who has less than ten (10) years credited service may pledge or hypothecate his termination benefit, as provided for in section 24-105(a)(3), to the Sarasota Municipal Employees Credit Union. The pledge or hypothecation shall be strictly limited to the member's nonforfeitable accumulative contributions as provided for in section 24-105(a)(3). In addition, the city may request and the board may authorize the payment of sums due to the city from the terminating member's termination benefit.

Sec. 24-111. Pension validity.

Should any change or error in the records of the plan be discovered or any error in any calculation be made resulting in any member or beneficiary receiving from the plan more or less than he was entitled to receive, the board of trustees shall have the power to correct such error, and as far as possible, to adjust the payments thereafter to be made in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

Sec. 24-112. Actuary; actuarial tables.

(a) *Employment of Actuary; Investigations and Reports by Actuary:* The board of trustees shall employ an actuary to review the operation of the plan annually, and to make recommendations to the board of trustees as to the actuarial solvency of the plan, the amount of the city's contributions which have been made for the period of review and which in his opinion are necessary to be made for the current operation of the plan, what benefits the plan can afford to pay from an actuarial standpoint under existing schedules of contributions or such revised schedules as the board of trustees may direct the actuary to investigate, and such other information as the board of trustees may require. The actuary's report shall be submitted in writing, and copies thereof shall be available to members of the plan upon request. The board of trustees may also retain such actuary or some other actuary as a consultant.

(b) *Selection of Actuarial Tables:* In making any actuarial computation provided in this division, the tables, charts and other statistical information shall be selected by the actuary with the approval of the board of trustees from standard sources in common use by other annuity and pension plans, including but not limited to those operated by governmental bodies in the United States of America.

Sec. 24-113. Forfeiture of pension.

(a) Any member who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this pension fund, except for the return of his accumulated contributions as of the date of termination. Specified offenses are as follows:

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

(b) *"Conviction"* shall be defined as follows: An adjudication of guilt by a court of competent jurisdiction, a plea of guilty or nolo contendere, or a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation.

(c) *"Court"* shall be defined as follows: Any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense.

(d) Prior to forfeiture, the board of trustees shall hold a hearing on which notice shall be given to the member whose benefits are being considered for forfeiture. The member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the member shall be afforded a full opportunity to present his case against forfeiture.

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

Sec. 24-114. Repeal or termination of the plan.

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

(b) If this division shall be repealed, or if contributions to the plan are discontinued or if there is a transfer, merger or consolidation of government units, services or functions as provided in F.S. ch. 121, the board shall continue to administer the plan in accordance with the provisions of this division, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this division who are designated by any of the members. In the event of repeal, discontinuance of contributions, or transfer, merger or consolidation of government units, services or functions, there shall be full vesting (100%) of benefits accrued to date of repeal and such benefits shall be nonforfeitable.

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

- (1) The board shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits after taking into account the expenses of such distribution. The board shall inform the city if additional assets are required, in which event the city shall continue to financially support the plan until all nonforfeitable benefits have been funded.
- (2) The board shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each employee entitled to benefits under the plan as specified in subsection (3).
- (3) The board shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.
- (4) If there is asset value remaining after the full distribution specified in subsection (3), and after the payment of any expenses incurred with such distribution, such excess shall be returned to the city.
- (5) The board shall distribute, in accordance with subsection (2), the amounts determined under subsection (3).

Sec. 24-115. Direct transfers of eligible rollover distributions; elimination of mandatory distributions.

- (a) *Rollover distributions.*

- (1) *General.* This section applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (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 (10) 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 includible in gross income. Effective January 1, 2002, any portion of any distribution which would be includible in gross income as after-tax employee contributions will be an eligible rollover distribution if the distribution is made to an individual retirement account described in section 408(a); to an individual retirement annuity described in section 408(b); to a qualified defined contribution plan described in section 401(a) or 403(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or on or after January 1, 2007, to a qualified defined benefit plan described in Code Section 401(a) or to an annuity contract described in Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.
 - b. *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in section 408(a) of the Code; an individual retirement annuity described in section 408(b) of the Code; an annuity plan described in section 403(a) of the Code; effective January 1, 2002, an eligible deferred compensation plan described in section 457(b) of the Code which is maintained by an eligible employer described in section 457(e)(1)(A) of the Code and which agrees to separately account for amounts transferred into such plan from this plan; effective January 1, 2002, an annuity contract described in section 403(b) of the Code; a qualified trust described in section 401(a) of the Code; or effective January 1, 2008, a Roth IRA described in Section 408A of the Code, that accepts the distributee's eligible rollover distribution. This definition shall also apply in the case of an eligible rollover distribution to the surviving spouse.
 - c. *Distributee:* A distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse. Effective January 1, 2007, it further includes a non-spouse beneficiary who is a

designated beneficiary as defined by Code Section 401(a)(9)(E). However, a non-spouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

d. *Direct rollover:* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(b) *Rollovers or transfers into the fund.* On or after January 1, 2002, the plan will accept, solely for the purpose of purchasing credited service as provided herein, permissible member requested transfers of funds from other retirement or pension plans, member rollover cash contributions and/or direct cash rollovers of distributions made on or after January 1, 2002 for the purpose of purchasing credited service as provided for herein, as follows:

(1) *Transfers and direct rollovers or member rollover contributions from other plans.* The plan will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in section 401(a) or 403(a) of the Code, from an annuity contract described in section 403(b) of the Code or from 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. The plan will also accept legally permissible member requested transfers of funds from other retirement or pension plans.

(2) *Member rollover contributions from IRAs.* The plan will accept a member rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over.

(c) *Elimination of mandatory distributions.* Notwithstanding any other provision herein to the contrary, in the event this plan provides for a mandatory (involuntary) cash distribution from the plan not otherwise required by law, for an amount in excess of one-thousand dollars (\$1,000.00), such distribution shall be made from the plan only upon the written request of the member and completion by the member of a written election, on forms designated by the board, to either receive a cash lump sum or to rollover the lump sum amount.

Sec. 24-116. Reemployment, election or appointment to the city commission after retirement.

(a) Any retiree who is retired under this plan, except for disability retirement as previously provided for, may be reemployed by any public or private employer, except the city, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this plan. Reemployment by the city on or after October 4, 2004 shall be subject to the limitations set forth in this section.

(b) *After normal retirement.* Any retiree who is retired under normal retirement pursuant to this plan and who is reemployed by the city including election or appointment to the city commission after that retirement, shall upon being reemployed continue receipt of benefits. If, upon reemployment, the reemployed retiree is eligible to participate in this plan, the retiree shall be deemed a new employee subject to any vesting and contribution requirements and the additional credited service accrued during the subsequent employment period shall be used in computing a

second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon initial retirement shall be based upon the benefit accrual rate, average annual earnings, credited service and cost-of-living adjustment as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average annual earnings (based only on the subsequent employment period), credited service and cost-of-living adjustment as of the date of the subsequent retirement. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the member may select a different optional form and joint pensioner applicable to the subsequent retirement benefit. If a reemployed retiree does not re-vest during his reemployment period, he shall, upon termination of employment, receive a return of his contributions made during his reemployment period.

(c) *After early retirement.* Any retiree who is retired under early retirement pursuant to this plan and who subsequently becomes an employee of the city in any capacity, including election or appointment to the city commission, shall discontinue receipt of benefits from the plan until the earlier of termination of employment or such time as the reemployed Retiree reaches the date that he would have been eligible for normal retirement under this System had he continued employment and not elected early retirement. Cost-of-living adjustments shall, however, be applied during the period of discontinued benefits. If by virtue of that reemployment, the retiree is eligible to participate in this plan, the retiree shall be deemed to be one hundred (100) percent vested and the additional credited service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon retirement shall be based upon the benefit accrual rate, average annual earnings, credited service, cost-of-living adjustment and early retirement reduction factor as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average annual earnings (based only on the subsequent employment period), credited service, cost-of-living adjustment and early retirement reduction factor, if applicable, as of the date of subsequent retirement. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the member may select a different optional form and joint pensioner applicable to the subsequent retirement benefit. Retirement pursuant to an early retirement incentive program shall be deemed early retirement for purposes of this section if the member was permitted to retire prior to the customary retirement date provided for in the plan at the time of retirement.

(d) *Reemployment of terminated vested persons.* Reemployed terminated vested persons, including those elected or appointed to the city commission, shall not be subject to the provisions of this section until such time as they begin to actually receive benefits, but shall be subject to section 24-105, (b)(3). Upon receipt of benefits, terminated vested persons, including those elected or appointed to the city commission, shall be treated as normal or early retirees for purposes of applying the provisions of this section and their status as an early or normal retiree shall be determined by the age they elect to begin to receive their benefit.

(e) *DROP participants.* Members or retirees who were in the deferred retirement option plan shall have the options provided for in this section for reemployment following termination of employment, as if the retiree was a retiree under normal retirement.

Sec. 24-117. Deferred retirement option plan.

- (a) *Definitions.* As used in this section 24-117, the following definitions apply:
 - (1) *DROP* means the City of Sarasota General Employees' Deferred Retirement Option Plan.
 - (2) *DROP account* means the account established for each DROP participant under subsection (c).
- (b) *Participation.*
 - (1) *Eligibility to participate.* In lieu of terminating his employment as an employee, any member who is eligible for normal retirement under the plan may elect to defer receipt of such service retirement pension and to participate in the DROP.
 - (2) *Election to participate.* A member's election to participate in the DROP must be made in writing in a time and manner determined by the board and shall be effective on the election date.
 - (3) *Period of participation.* A member who elects to participate in the DROP under subsection (b)(2), shall participate in the DROP for a period not to exceed sixty (60) months beginning at the time his election to participate in the DROP first becomes effective. An election to participate in the DROP shall constitute an irrevocable election to resign from the service of the city not later than the date provided for in the previous sentence. A member may participate only once.
 - (4) *Termination of participation.*
 - a. A member's participation in the DROP shall cease at the earlier of:
 - 1. The end of his period of participation in the DROP as determined under subsection (b)(3); or
 - 2. The termination of his employment as an employee.
 - b. Upon the member's termination of participation in the DROP pursuant to subsection 1, above, all amounts provided for in subsection (c)(2), including monthly benefits and interest, shall cease to be transferred from the plan to his DROP account. Any amounts remaining in his DROP account shall be paid to him in accordance with the provisions of subsection (d) when he terminates his employment as an employee.
 - c. A member who terminates his participation in the DROP under subsection (b)(4) shall not be permitted to again become a participant in the DROP.
- (5) *Effect of DROP participation on the plan.*
 - a. A member's credited service and his accrued benefit under the plan shall be determined on the date his election to participate in the DROP first becomes effective. The member shall not accrue any additional credited service or any additional benefits under the plan (except for any additional benefits provided under any cost-of-living adjustment in the plan) while he is a participant in the DROP. A member shall not be eligible for disability or pre-retirement death benefits while he is a participant in the DROP. After a member commences participation, he shall be permitted to again contribute

to the plan and be eligible for disability or pre-retirement death benefits only as provided in section 24-116.

- b. No amounts shall be paid to a member from the plan while the member is a participant in the DROP. Unless otherwise specified in the plan, if a member's participation in the DROP is terminated other than by terminating his employment as an employee, no amounts shall be paid to him from the plan until he terminates his employment as an employee. Unless otherwise specified in the plan, amounts transferred from the plan to the member's DROP account shall be paid directly to the member only on the termination of his employment as an employee.

(c) *Funding.*

- (1) *Establishment of DROP account.* A DROP account shall be established for each member participating in the DROP. A member's DROP account shall consist of amounts transferred to the DROP under subsection (c)(2), and interest on those amounts.

(2) *Transfers from retirement plan.*

- a. As of the last business day of each month of a member's period of participation in the DROP, the monthly retirement benefit he would have received under the plan (including any cost of living adjustments) had he terminated his employment as an employee and elected to receive monthly benefit payments thereunder shall be transferred to his DROP account, except as otherwise provided for in subsection (b)(4)b. A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (b)(3) and (b)(4), but in no event shall it continue past the date he terminates his employment as an employee.
- b. Except as otherwise provided in subsection (b)(4)b., a member's DROP account under this subsection (c)(2) shall be credited on the last day of each quarter, based on the balance in the account on the last day of the previous quarter, with interest at an effective rate of six and one-half (6 ½) percent per annum compounded quarterly.
- c. A member's DROP account shall only be credited with interest and monthly benefits while the member is a participant in the DROP. A member's final DROP account value for distribution to the member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation plus any monthly periodic additions made to the DROP account subsequent to the end of the previous quarter and prior to distribution. If a member fails to terminate employment after participating in the DROP for the permissible period of DROP participation, then beginning with the member's first month of employment following the last month of the permissible period of DROP participation, the member's DROP account will no longer be credited with interest, nor will monthly benefits be transferred to the DROP account. All such non-transferred amounts shall be forfeited and continue to be forfeited while the member is employed by the city and no cost-of-living adjustments shall be applied to the member's benefit during such period of continued employment.

(d) *Distribution of drop accounts on termination of employment.*

- (1) *Eligibility for benefits.* A member shall receive the balance in his DROP account in accordance with the provisions of this subsection (d) upon his termination of employment as an employee. Except as provided in subsection (d)(4), no amounts shall be paid to a member from the DROP prior to his termination of employment as an employee.
- (2) *Form of distribution.*
 - a. Distribution of a member's DROP account shall be made in a lump sum.
 - b. If a member dies before distribution of his DROP account, his DROP account shall be paid to his beneficiary. If no beneficiary designation is made, the DROP account shall be distributed to the member's estate.
- (3) *Date of payment of distribution.* Except as otherwise provided in this subsection (d), distribution of a member's DROP account shall be made as soon as administratively practicable. Distribution of the amount in a member's DROP account will not be made unless the member completes a written request for distribution and a written election, on forms designated by the board, to either receive a cash lump sum or a rollover of the lump sum amount.
- (4) *Distribution limitation.* Notwithstanding any other provision of subsection (d), all distributions from the DROP shall conform to the "Minimum Distribution of Benefits" provisions as provided for herein.
- (5) *Direct rollover of certain distributions.* Notwithstanding any provision of the DROP to the contrary, a distributee may elect to have any portion of an eligible rollover distribution paid in a direct rollover as otherwise provided under the plan in section 24-115.
- (e) *Administration of DROP.*
 - (1) *Board administers the DROP.* The general administration of the DROP, the responsibility for carrying out the provisions of the DROP and the responsibility of overseeing the investment of the DROP's assets shall be placed in the board.
 - (2) *Individual accounts, records and reports.* The board shall maintain records showing the operation and condition of the DROP, including records showing the individual balances in each member's DROP account, and the board shall keep in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The board shall prepare and distribute to members participating in the DROP and other individuals or file with the appropriate governmental agencies, as the case may be, all necessary descriptions, reports, information returns, and data required to be distributed or filed for the DROP pursuant to the Code, the applicable portions of the act and any other applicable laws.
 - (3) *Establishment of rules.* Subject to the limitations of the DROP, the board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The board shall have discretionary authority to construe and interpret the DROP (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in

the DROP). The determination of the board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law.

- (f) *General provisions.*
 - (1) *Amendment of DROP.* The DROP may be amended by an ordinance of the city at any time to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP account of any member.
 - (2) *Facility of payment.* If a member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or is a minor, the board shall direct that any benefit due him shall be made only to a duly appointed legal representative. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.
 - (3) *Information.* Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the DROP, shall file with the board the information that it shall require to establish his rights and benefits under the DROP.
 - (4) *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 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.
 - (5) *Forfeiture of retirement benefits.* Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the plan. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.
 - (6) *Right to elect and serve as a trustee.* A member's election to participate in the DROP shall make him ineligible to vote for member trustees or serve as a member trustee.
 - (7) *Effect of DROP participation on employment.* Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

Sec. 24-117.1 Miscellaneous provisions.

(a) *Interest of members in system.* All assets of the fund are held in trust, and at no time prior to the satisfaction of all liabilities under the system with respect to retirees and members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

(b) *No reduction of accrued benefits.* No amendment or ordinance shall be adopted by the City Commission of the City of Sarasota which shall have the effect of reducing the then vested accrued benefits of members or a member's beneficiaries.

(c) *Qualification of system.* It is intended that the system will constitute a qualified public pension plan under the applicable provisions of the Code for a qualified plan under code section 401(a) and a governmental plan under code section 414(d), as now in effect or hereafter amended. Any modification or amendment of the system may be made retroactively, if necessary or appropriate, to qualify or maintain the system as a Plan meeting the requirements of the applicable provisions of the Code as now in effect or hereafter amended, or any other applicable provisions of the U.S. federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder.

(d) *Use of forfeitures.* Forfeitures arising from terminations of service of members shall serve only to reduce future City contributions.

(e) *Prohibited Transactions.* Effective as of January 1, 1989, a board may not engage in a transaction prohibited by Code Section 503(b).

(f) *USERRA.* Effective December 12, 1994, notwithstanding any other provision of this system, contributions, benefits and service credit with respect to qualified military service are governed by Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended. To the extent that Sec. 24-101(g)(1) sets forth contribution requirements that are more favorable to the member than the minimum compliance requirements, the more favorable provisions shall apply.

(g) *Vesting.*

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

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

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