

CITY OF KEY WEST EMPLOYEES' RETIREMENT FUND



CITY OF KEY WEST
— 1828 —
FLORIDA

NEW TRUSTEE HANDBOOK

JUNE 2025

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INTRODUCTION

On behalf of the Board of Trustees (the “Board”) for the City of Key West Employees’ Retirement Fund (the “Plan”) we would like to congratulate you and welcome you to the Board. We recognize that you likely have not had any formal training or experience as a trustee. This Handbook is intended to be a guide to familiarize you with the duties and responsibilities of a trustee. Enclosed with this Handbook is a copy of the Plan document, as set forth in Subpart A, General Ordinances, Chapter 46, Article II of the City of Key West Code of Ordinances, The Plan document is the law governing your Plan.

As a fiduciary, it is recommended that trustees become acquainted with the provisions contained within the Plan document. The Plan is also governed by certain provisions of Chapter 112, Part VII, Chapter 119, and Chapter 286, Florida Statutes; various federal laws including the Internal Revenue Code and amendments thereto; as well as Operating Rules and Administrative Rules adopted by the Board.

It is important to recognize that the Plan is a Defined Benefit plan, which means it is a traditional pension plan that promises to pay its participants a specific benefit when they retire. The amount of retirement benefits is known in advance and is based on a participant’s age, years of services, and earnings. In order to pay benefits, the Plan receives contributions from the City of Key West and Plan participants. These funds are invested based on the Board’s Investment Policy Statement.

This Handbook is meant to be a general guide and in no way is intended to interpret, extend or change the provisions of the Plan in any way. Nothing in this Handbook creates any contract for benefits or establishes any legal right not otherwise provided by law. In the event anything in this Handbook conflicts with any applicable statute, ordinance, Board rule or other provision of law, those provisions of law will control.

TRUSTEE FUNCTIONS AND GENERAL RESPONSIBILITIES

- Read, reread, and read again the ordinances creating, amending, and pertaining to the Plan. Familiarize yourself with all Board rules or policies. Be intimately familiar with these documents.
- Have knowledge of communications provided to Plan participants, such as the Summary Plan Description, employee benefit statements, retirement benefit notifications, handouts from personnel to new employees, enrollment forms, etc.
- Act as the named fiduciary of the Plan as defined by Florida law.
- Be responsible for establishing, executing, and monitoring the Plan's Investment Policy Statement.
- Approve methods of internal reporting and control and ensure overall compliance with appropriate governing conditions.
- Have the exclusive authority to operate, maintain and interpret the provisions of the ordinances creating the Plan.
- Select and retain professional service providers, including but not limited to accountants, actuaries, administrators, attorneys, banks and custodians, investment managers, performance monitors and any others deemed necessary to the operation of the Plan.
- Determine all questions relating to eligibility and participation.
- Determine all claims for retirement or disability benefits and forfeitures.
- Establish uniform rules and procedures to be followed for administrative purposes, benefit applications, and all matters required to administer the Plan.
- Authorize all payments and other expenditures arising through operation of the Plan and system.
- Have prepared and distributed a Summary Plan Description every two years as provided by Section 112.66, Florida Statutes.

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- Direct such actuarial and accounting functions as are required by law.
- File reports with the State of Florida and other appropriate bodies.
- Attend annual pension-related training and conferences and join professional organizations dealing in the area of pensions; and
- Fulfill all other such duties as may be required by prudence and law.

FIDUCIARY STATUS

As a trustee you will hear the word “fiduciary” a lot. Florida Statutes, Section 112.656 makes trustees fiduciaries of the Plan. A fiduciary is defined as a person responsible for the discharge of their duties with respect to the pension plan for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying the reasonable expenses of administering the plan.

The trustees, as fiduciaries of the Plan, must hold, manage, control and safeguard the Plan solely in the interests of Plan members. A fiduciary owes to its principal, in this case the participants and beneficiaries of the Plan, the duty to:

- refrain from self-dealing;
- the duty of loyalty; and
- an overall duty of prudence.

Under the duty of loyalty, trustees must administer the Plan solely in the interest of the Plan participants. The duty of loyalty also requires trustees to deal fairly and to communicate to the participants all known material facts regarding operation of the Plan. Further, trustees must act with the same care, skill and attention that a prudent person would act in a similar enterprise with similar aims. Simply put, a trustee must put the interest of the Plan participants and beneficiaries before his or her own personal interest.

ADMINISTRATION OF THE PLAN

The general administration and responsibility for the proper operation of the Plan is vested in a five-member Board of Trustees. Three trustees are elected by the members of the Plan and must be active members of the Plan. One Trustee is appointed by the Mayor and City Commission and must be either an active or retired member of the Plan or a non-member of the Plan who is a resident of Monroe County. The other trustee is chosen by a majority of the other four trustees.

As a trustee you must determine all claims for retirement and disability benefits,

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forfeitures, and other claims brought before the Board. You will be judged using the reasonably prudent person rule, which assesses whether you used good judgment or common sense when deciding these claims and other matters. For more information regarding the administration of the Plan please refer to Sections 45-61 through 46-76 of the Plan document.

PROFESSIONAL ADVISORS OF THE PLAN

The Plan is authorized to hire outside vendors to advise and provide financial, legal, and other services to the Plan and to the Board. Below is a list of advisors the Board is authorized to hire and whom the Board has hired.

Auditor

The Plan's accountant prepares the Plan's annual financial statements. The auditor for the Plan is Oropeza & Parks.

Actuary

The Plan's actuary is Gabriel, Roeder, Smith & Company. The actuary prepares the annual actuarial valuation, actuarial experience studies, annual member statements, buy-back calculations, actuarial impact statements, and other required reports and calculations.

Administrator

The Plan Administrator is Patti McLaughlin. The Administrator is in charge of the day-to-day record keeping and management functions of the Plan and is primarily responsible for contact with members and beneficiaries regarding Plan features and benefits.

Attorney

The Plan's general counsel is Klausner, Kaufman, Jensen & Levinson. General counsel acts as an advisor to the Board and assists with all legal matters related to the Plan. Additionally, the general counsel provides updates on new developments in pension and retirement system law as well as a variety of other related issues.

Custodian

The Plan's assets are held in trust at Salem Trust.

Investment Manager

The Board may hire professional investment advisors to invest the assets for the Plan.

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Investment Performance Consultant

The investment consultant prepares a quarterly report comparing the Plan's performance to certain benchmarks and other criteria. The Plan's Investment consultant is Mariner Institutional.

CODE OF ETHICS

When making investment decisions, trustees must abide by the "Prudent Investor Rule." The Prudent Investor Rule is generally recognized in the American Law of Trusts and the Florida Statutes governing public pension plans. A summary of those statutes is included in this Handbook. The Prudent Investor Rule provides that a trustee, as fiduciary to the Plan, will exercise all judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence, exercise in the management of a similar enterprise.

Municipal pension board trustees are considered public officers for purposes of the Florida Ethics Commission. As an officer, trustees must annually complete a Statement of Financial Interest (Form 1). The Form 1 is a tool that provides transparency to the public by evaluating a trustee's potential conflicts of interest and helping to deter corruption which in turn promotes public confidence in government.

The Form 1 must be filed within 30 days of a trustee's appointment or election and then **annually** by July 1 of each year. Be sure to read the directions prior to completing and submitting the form. The Florida Commission on Ethics has a short video regarding the completion of the Form 1, in addition to other ethical topics you may need to know, <https://ethics.state.fl.us/Training/Training.aspx> Should you have any further questions regarding the Form 1 or any ethical concerns, the Plan Administrator or the Plan's general counsel will be able to assist. As an officer, trustees are also subject to the ethics laws of the State and of the county.

INVESTMENTS

Florida Statute, Chapter 112.661, sets forth the requirements that must be followed in adopting and implementing an investment policy. A written investment policy is required to be adopted by the Board and filed with the State Department of Management Services. The policy must be structured to maximize the financial return to the Plan. The policy must also establish an appropriate diversification of the Plan's assets and list the investments authorized by the Board. The investments

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that can be authorized by the Board are those set forth in the Plan document and the corresponding state statutes.

The investment policy must describe the level of prudence and ethical standards to be followed by the Board in carrying out its investment activities. Specifically, the trustees must discharge their duties for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of the plan. Trustees shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity would use. Trustees are required to diversify the investments of the Plan to minimize the risk of large losses, unless under the circumstances it is clearly not prudent to do so. The reasonableness of an investment is viewed based on the information available at the time the action is taken and not in retrospect.

INSURANCE

The three most common insurances procured by a Board of Trustees are fiduciary liability insurance, bonding, and cyber liability insurance. These three insurances are discussed in more detail below. Other insurances the Board may wish to consider include comprehensive general liability insurance, property damage insurance (if the Board/Plan owns or leases any furniture, furnishings or equipment), and workers' compensation insurance for Board employees.

Fiduciary Liability Insurance

As a trustee who makes investment decisions for the benefit of others, the Board should decide whether to purchase fiduciary liability insurance to protect against claims of mismanagement. State law expressly permits pension boards and trustees to purchase fiduciary liability insurance to cover acts and omissions occurring in the performance of their duties. As with any insurance, it does not cover all contingencies.

No insurance will cover acts taken in bad faith, maliciously, or in a manner exhibiting a wanton and willful disregard for human rights, safety, or property. In fact, a trustee who is aware of willful or intentional misconduct on the part of another Trustee is obligated, upon discovery, to reveal that discovery at a meeting of the Board and to move his or her fellow trustees to take whatever action is necessary to correct the misdeeds.

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Fidelity Bonding

Fidelity bonding protects the Plan from a dishonest act which results in loss to the Plan. Bonding generally dovetails with the Plan's fiduciary policy so that coverage of one is excluded by the other.

Cyber Liability Insurance

Cyber liability insurance generally covers the Plan's liability for a data breach involving sensitive information, including but not limited to, social security numbers, bank account numbers, and medical/health records. Additionally, it is recommended that all of the Plan's professional service providers have cyber liability insurance in the amount of \$1,000,000.

CLAIMS FOR DISABILITY RETIREMENT

Aside from hearing a forfeiture claim, which will be discussed in the following section, hearing and determining a claim for disability retirement can be a difficult task. Section 46-109 of the Plan document contains the legal provisions governing service and disability retirement. Disability claims should be processed in accordance with specific procedures that are applied fairly and uniformly to all applicants.

It is important that the Board have medical advisors to provide an opinion on a participant's disability claim. Medical advisors should have the right to refer applicants to any specialist necessary to give an opinion on a particular disability. Any medical opinion provided is merely a recommendation; the final decision on all applications for disability retirement is rendered by the Board.

When a disability application is granted, the Board must make a periodic review to determine the retiree's continued eligibility. Reexamination is not necessary but the review should always include a sworn written statement from the retiree that they remain so disabled. Disability retirement benefits are offset for Worker's Compensation to the amount permitted by law.

FORFEITURE

The Florida Constitution and Section 112.3173 provide for the forfeiture of pension benefits (except a return of employee contributions without interest) following

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conviction of certain specified crimes. Pursuant to Section 112.3173(e), the specified offenses are:

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

The Board should have a detailed procedure in place for the conduct of investigation and determination of possible forfeitures. Forfeiture claims are conducted pursuant to Chapter 120, Florida Statutes, the Administrative Procedures Act. If a forfeitable offense is determined to have occurred, the Board has no discretion on the penalty.

In addition to the state forfeiture law, federal law allows for court ordered restitution to be deducted from retiree benefits.

SUMMARY OF LAWS GOVERNING THE PLAN

While trustees are not expected to be conversant in all of the various legislative enactments governing the Plan, it is appropriate to have a fundamental understanding of the complex interactions among these laws. Trustees should be aware of the following laws:

CITY OF KEY WEST CODE OF ORDINANCES

Subpart A, Chapter 46, Article II Code of Ordinances - This is the Plan document. It is the municipal law governing Plan participation. This document outlines a program of benefits payable to participants and beneficiaries and sets forth the conditions of eligibility.

FLORIDA CONSTITUTION AND STATUTES:

Article I, Section 10, Florida Constitution - This provision bars impairment of a contract. No law can retroactively lower accrued benefits. Once a member becomes eligible to retire (or enter DROP) no aspect of the benefit may be lowered or eliminated. Statutory changes can alter future accrual of benefits for other participants, provided all benefits accrued to date are unaffected.

Article X, Section 14, Florida Constitution - This provision requires an actuarially sound payment method before any benefit improvement can be adopted.

Chapter 112, Part VII, Florida Statutes - This series of statutes requires an actuarial impact statement before any statute or ordinance altering a pension benefit. Failure to pay the actuarially required contribution can result in a loss of all state revenue sharing money, including insurance premium tax rebates. This law makes all trustees and certain full time employees fiduciaries of the Plan. It requires a plain language summary of benefits and the funding status of the Plan be made available to members every two years. Benefits are limited to 100% of final average compensation and no person may receive credit in two different retirement plans for the same time period. The statute requires each pension plan to have a

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written investment policy and to govern the standard of care for investments under what is called the "prudent investor standard" which is the same standard used in private sector pension plans under the Employee Retirement Income Security Act (ERISA). As a governmental plan, the Plan is exempt from all provisions of ERISA and the regulations of the Department of Labor.

Chapter 286, Florida Statutes - It is important to be aware that trustees are subject to the Florida Sunshine Law, which is laid out in Chapter 286, Florida Statutes. In general, the Florida Sunshine Law provides that all business of a public board must be conducted at a properly noticed public meeting. Minutes of each board meeting must be kept and be available for inspection. Trustees **cannot** discuss board business with another Trustee on the same board outside of a meeting. Trustees **can** discuss questions with the Plan Administrator or the Plan's general counsel. You **can** also discuss board matters with anyone else who is not a trustee. You **cannot**, however, use a non-trustee to communicate with another trustee on your behalf.

The Board may, from time to time, delegate any of its functions to a committee of one or more trustees. In the event that a committee consists of more than one trustee, the committee shall meet in accordance with the provisions of the Florida Sunshine Law. All committees are appointed by the Chairperson or the Board. Meetings of committees governed by the Sunshine Law must be publicly noticed and recorded the same as a regular Board meeting.

Chapter 119, Florida Statutes - Records of all Board and Committee meetings must be maintained and open to public inspection in accordance with Chapter 119, Florida Statutes, the Public Records Law. Copies of the minutes should be made available upon request. The Board's records management liaison officer must respond to all requests for public records made to the Board. Medical records of any Plan participant are **exempt** by law from automatic disclosure and are to be maintained so as to ensure the security of privileged information concerning the participant's medical records. However, once medical records are attached to a disability application, they **may** lose their confidential status and become public records. The Plan requires a waiver of confidentiality in order to facilitate the required public nature of meetings. Certain personal information of active and retired members is also exempt from disclosure as provided by law.

Chapter 61, Florida Statutes - This is Florida's dissolution of marriage law. It is relevant because one's pension is specifically made marital property. The Plan can be required to directly pay a portion of the retiree's benefit to a former spouse or the state registry for alimony or child support. The Plan **cannot** directly pay a share of the benefit as marital property because local government pensions in Florida cannot recognize a qualified domestic relations order (QDRO) because that is an ERISA provision. We have developed a model order to effectuate the same result, and our pension office has the model order to provide applicants for benefits.

Section 215.47, Florida Statutes - This statute sets the permitted and prohibited investment options and asset allocations for retirement plans.

Section 518.11, Florida Statutes - This statute is Florida's version of the Uniform Prudent Investor Act. It establishes the state law prudent investor standard of care.

ARTICLE II. GENERAL EMPLOYEES¹

DIVISION 1. GENERALLY

Sec. 46-26. Definitions.

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

Accumulated employee contributions shall mean the sum of all amounts deducted from a member's compensation or picked up on behalf of a member, together with regular interest as provided in this plan. Accumulated employee contributions shall also mean any amounts paid by a member for the purchase of military service credits or other buybacks permitted in this plan.

Active membership shall mean membership in the retirement plan as an employee.

Actuarial equivalent shall mean equality in value of the aggregate amount or benefits under different forms of payment based upon the following actuarial assumptions: Where the actuarial equivalent calculation involves the determination of the present value of a benefit or a conversion from one form of periodic payment to another form of payment. Actuarial equivalent amounts will be based upon the 1994 Group Annuity Reserving Table, projected to 2002, based upon a fixed blend of 50 percent male mortality rates - 50 percent female mortality rates, per IRS Revenue Ruling 2001-62, set forward five years for disabled lives with interest at seven percent, compounded annually.

And shall have a conjunctive meaning.

Beneficiary shall mean any person receiving a retirement allowance or other benefit from the retirement plan. This term shall include retirees and survivors.

Benefit shall mean a retirement allowance or other benefit provided by the retirement plan.

Board or board of trustees shall mean the board of trustees of the retirement plan.

Buy-back shall mean a member's contribution to the retirement plan for creditable service for which other than regular contributions have been made. Contributions required for buy-backs shall not be picked up by the city, but may be deducted from a member's compensation. Members may rollover funds from eligible retirement plans to pay for all or any portion of a buyback permitted under this plan.

Child shall mean the natural or adopted child of a member, but shall not include foster children or step-children.

City shall mean the City of Key West, Florida.

City commission or commission shall mean the City Commission of Key West, Florida.

Credited service shall mean membership credit upon which a member's eligibility to receive benefits under the retirement plan is based, or upon which the amount of such benefits is to be determined; leave used pursuant

¹Cross reference(s)—Officers and employees, § 2-116 et seq.

to the Family and Medical Leave Act. Unpaid leave shall not result in a break in service, but shall not count as credited service.

Disability shall mean the permanent and total incapacity to perform regular and continuous duties as an employee for the City of Key West, as determined by the board pursuant to the terms of the plan.

Early service retirement shall mean a member's withdrawal from service under circumstances permitting the payment of a retirement benefit before such member is eligible for normal service retirement.

Earnable compensation shall mean a member's base salary and overtime, including pick-up contributions for all hours worked. Earnable compensation shall not mean bonuses, expense allowances, and unused, accumulated leave time.

Employee shall mean a person presently employed in the regular, permanent, and full-time classified service of the city, excluding police officers and firefighters.

Final monthly compensation shall mean a member's average monthly rate of earnable compensation from the city during the best 36 consecutive months out of the last 120 months preceding the date of retirement or termination from the plan; provided that if a member has been employed for fewer than 36 months, such average shall be taken over the period of actual employment.

Full-time shall have the meaning as set forth in the city's personnel rules and in any collective bargaining agreements applicable to members of the plan.

Fund shall mean the City of Key West Employees' Retirement Fund.

May shall mean a permissive term.

Member shall mean a person actively employed as a full-time probationary or permanent employee by the city for whom contributions to the retirement plan are made as required by this plan.

Minimum vesting shall mean ten years of credited service before the member is entitled to full retirement benefits and five years for half benefits except for service-incurred disability retirement income or service incurred death benefits.

Normal retirement date shall mean the earlier of the completion of 20 years of credited service or attainment of age 60 with ten years of service for a full benefit or attainment of age 60 with five years of service for a half benefit.

Option shall mean one of several choices available to members with respect to the manner in which a retirement benefit may be paid.

Pick-up amount shall mean employer contributions derived from a member's compensation through a reduction in the member's compensation.

Plan shall mean the City of Key West Employees' Retirement Fund.

Plan year shall mean the period from October 1 through September 30 of the following year.

Pre-existing condition shall mean a condition of health which pre-dated any period of city employment.

Regular contributions shall mean amounts picked-up by the city from the compensation of a member. Regular contributions shall not include buy-back contributions or any other amounts which may be deducted from a member's compensation pursuant to this division.

Retiree shall mean a former member who is in receipt of benefits from the plan.

Retirement shall mean a member's withdrawal from service with a benefit granted to the member pursuant to the provisions of this plan. *Retirement* shall also mean entry into the deferred retirement option plan.

Retirement plan shall mean the City of Key West Employees' Retirement Plan.

Service shall mean active employment as an employee of the city.

Service retirement shall mean a member's retirement from service under circumstances permitting payment of a retirement benefit without reduction because of age, length of service, or both and without special qualifications such as disability.

Spouse shall mean the lawful husband or wife of a member or retiree at the time benefits commence, unless a new designation has been made in writing to the board in accordance with the provisions of this plan. This section shall be interpreted under Florida choice of law rules.

Surviving spouse shall mean the spouse of the member at the time death benefits commence unless a new designation has been made in accordance with the provisions of this plan.

Trustee shall mean a member of the board of trustees of the plan.

Vested benefit shall mean an immediate or deferred benefit to which a member has gained a non-forfeitable right under the provisions of this plan.

Vesting shall require completion of five years of credited service for a member to be entitled to 50 percent of their service retirement benefits, increasing by ten percent per year thereafter until 100 percent of their retirement benefits on and after completion of ten years of credited service.

(Code 1986, § 5.023; Ord. No. 03-14, § 1, 6-17-2003; Ord. No. 06-01, § 1, 1-4-2006)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 46-27. Established; name; operative date.

- (a) A retirement plan is hereby established and placed under the exclusive administration and management of a board of trustees for the purpose of providing retirement benefits pursuant to this article and for the payment of the reasonable expenses of the retirement plan.
- (b) The retirement plan established by this section shall be known as the City of Key West, Employees' Retirement Plan.
- (c) The retirement plan shall have an effective date of [June 17, 2003].

(Code 1986, § 5.022; Ord. No. 03-14, § 2, 6-17-2003)

Sec. 46-28. Amendment or termination of system.

- (a) It is the intention of the city and the board that this plan shall constitute an irrevocable trust and no portion of the assets may revert to the employer until all other obligations of the plan, including the payment to the last surviving member and beneficiary has been paid.
- (b) For termination or partial termination of the plan, each participant's accrued pension benefit shall become nonforfeitable (100-percent vested) to the extent funded. If the plan is terminated, the assets of the plan shall first be distributed to retired members and their beneficiaries. If there is any asset value remaining after the apportionment to retired members and their beneficiaries, apportionment shall next be made to each member in service who has completed at least ten years of credited service, has contributed to the fund for at least ten years, and who is not otherwise eligible to retire. If there is any asset value after the apportionments to retirees and their beneficiaries and to vested members of the plan, apportionment shall lastly be made in respect of each member in the service of the city in an amount not to exceed the total value of the member's contributions. In the event that there is any asset value remaining after full apportionment to all members and beneficiaries of the plan, the excess, if any, shall revert to the city.

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- (c) No amendment to the plan shall be made until the amendment has been referred to the board for review and the board has issued its comments, in writing, to the city commission.

(Code 1986, § 5.033; Ord. No. 03-14, § 3, 6-17-2003)

Sec. 46-29. Vesting and termination.

- (a) Except as otherwise provided in this section, all rights to benefits under this plan shall terminate when a member's employment terminates for any reason other than normal service retirement, early service retirement, or disability retirement. Any member who completes ten years of credited service and whose contributions remain in the plan has a vested right to accrued benefits from the plan. A member who has completed five years of credited service shall be 50 percent vested in the plan and shall receive an additional ten percent vesting each year thereafter.
- (b) A member who shall leave the service of the city prior to eligibility for normal service retirement or early service retirement, but who has completed ten years of creditable service shall be entitled to receive retirement benefits commencing at the regular normal service retirement date. Such benefits will be based on final monthly compensation and credited service as of the date of termination.
- (c) Every member shall have the right to elect to receive, in lieu of all benefits under the plan, a return of the member's accumulated contributions.
- (d) A member who elects a lump sum return of contributions releases and discharges the city and the plan from the right to any other benefits from the plan.

(Code 1986, § 5.030; Ord. No. 03-14, § 4, 6-17-2003; Ord. No. 09-04, § 1, 3-17-2009)

Sec. 46-30. Forfeiture of benefits.

Members are subject to the provisions of F.S. § 112.3173.

(Ord. No. 09-04, § 2, 3-17-2009)

Sec. 46-31. Assignability of rights.

The present or future right of a person to money in the fund or to a retirement allowance, an optional allowance, a death benefit, the return of contributions, or any other right accrued or accruing under the provisions of this plan shall not be assignable and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law or any other process of law whatsoever, except with respect to alimony, child support or medical payments to a former spouse.

(Code 1986, § 5.036(a); Ord. No. 03-14, § 6, 6-17-2003)

Sec. 46-32. Investigation of pensions obtained erroneously, fraudulently or illegally.

The board shall have the power to examine into the facts upon which any pension has been granted under any prior or existing law, or which may be granted in the future or obtained erroneously, fraudulently, or illegally for any reason. The board is empowered to purge the pension rolls of any person who has been granted a pension under a prior or existing law, or who is hereafter granted a benefit under sections 46-26 through 46-112 if the granting of that pension is found to be erroneous, fraudulent, or illegal for any reason; and to reclassify any pensioner who has under any prior or existing law, or who may under sections 46-26 through 46-112 be erroneously, improperly or illegally classified.

(Code 1986, § 5.036(b); Ord. No. 03-14, § 7, 6-17-2003)

Sec. 46-33. Correction of errors in records.

If any change or error in plan records is discovered or results in any member or beneficiary receiving from the plan more or less than he or she would have been entitled to receive had the records been correct, the board shall have the power to correct such error and, as far as possible, adjust the payments in such a manner that the actuarial equivalent of a benefit to which such member or beneficiary was correctly entitled shall be paid.

(Code 1986, § 5.036(c); Ord. No. 03-14, § 8, 6-17-2003)

Sec. 46-34. Guardian of minor.

If any member or beneficiary is a minor or is under any other legal disability, the board shall have the power to withhold payment of benefits until they are presented with proof satisfactory of the appointment of a guardian. If the board becomes aware that any member or beneficiary is incapable of personally receiving and giving a valid receipt for any payment due under the plan, the board shall cause notice to be given to that participant or beneficiary, of a hearing to determine whether said benefits should continue to be paid until the appointment of a guardian. During the pendency of any such hearing, however, the board may continue to pay benefits to the member or beneficiary and that such payment shall be a complete discharge of any liability under the plan for such payment.

(Code 1986, § 5.036(d); Ord. No. 03-14, § 9, 6-17-2003)

Sec. 46-35. Eligibility for future benefit changes.

Persons retiring on or after October 1, 1988, shall be eligible for any future benefit changes from the date of the change forward. The board, by uniform rule, shall determine those future plan changes which meet the purpose of this section.

(Code 1986, § 5.036(e); Ord. No. 03-14, § 10, 6-17-2003)

Secs. 46-36—46-60. Reserved.

DIVISION 2. BOARD OF TRUSTEES²

Sec. 46-61. Administration of plan.

The sole and exclusive administration of, and the responsibility for, the proper effective operation of the retirement plan and for carrying out the provisions of this article is vested in a five-member board of trustees.

(Code 1986, § 5.024(a); Ord. No. 03-14, § 11, 6-17-2003; Ord. No. 07-02, § 1, 1-17-2007)

²Cross reference(s)—Committees, boards and commissions, § 2-251 et seq.

Sec. 46-62. Composition.

The board of trustees shall consist of five persons. Three trustees shall be employees elected by a majority of the employees who are active members of the plan. One trustee, appointed by the mayor and city commission, shall be either an active or retired member of the plan or a non-member of the plan who is a resident of Monroe County. The fifth member of the board shall be selected by a majority of the other four trustees. The mayor shall appoint one commissioner as liaison to the board.

(Code 1986, § 5.024(b); Ord. No. 03-14, § 12, 6-17-2003; Ord. No. 03-20, § 2, 8-5-2003; Ord. No. 07-02, § 2, 1-17-2007)

Sec. 46-63. Terms; vacancy.

- (a) The elected active employee representative position expiring next after the passage of this ordinance shall be appointed for a term of four years. The two elected active employee representatives shall be elected to a term of four years. The member appointed by the mayor and city commission shall be appointed to a term of four years. The member appointed by a majority of the board shall be appointed to a term of four years. Future elections and appointments for members of the board of trustees shall each be for a four-year term. This subsection shall not operate retroactively to extend any existing member's term.
- (b) If a vacancy shall occur prior to the expiration of a trustee's term, a replacement trustee shall be chosen in the same manner as the trustee who has left office. A replacement trustee shall serve a full term measured from the date of replacement.
- (c) All trustees shall serve until their replacements are selected.

(Code 1986, § 5.024(c); Ord. No. 03-14, § 13, 6-17-2003; Ord. No. 07-02, § 3, 1-17-2007; Ord. No. 20-06, § 1, 6-2-2020)

Sec. 46-64. Election procedure for members.

The board of trustees shall prescribe a uniform election procedure for the selection of the active member trustees.

(Code 1986, § 5.024(d); Ord. No. 03-14, § 14, 6-17-2003)

Sec. 46-65. Compensation.

All trustees shall serve without compensation, but they shall be reimbursed from the fund for all necessary expenses authorized by the board. The board shall be permitted to prescribe uniform rules for reimbursement for travel expenditures.

(Code 1986, § 5.024(e); Ord. No. 03-14, § 15, 6-17-2003)

Sec. 46-66. Officers.

The board of trustees by majority vote, shall annually select a chairperson and a secretary who shall execute all documents on behalf of the board. The board of trustees, by majority vote, shall annually select a co-chairperson, who shall act as chairperson, in the chairperson's absence. The board, by rule, may set the duties of the respective officers.

(Code 1986, § 5.024(f); Ord. No. 03-14, § 16, 6-17-2003)

Sec. 46-67. Quorum.

A majority of the trustees shall constitute a quorum for the transaction of business and shall have full power to act under the terms of the plan.

(Code 1986, § 5.024(g); Ord. No. 03-14, § 17, 6-17-2003; Ord. No. 07-02, § 4, 1-17-2007)

Sec. 46-68. Minutes of meetings and records.

The board shall keep a record of all its proceedings which shall be maintained and open to public inspection in accordance with chapters 119 and 286, Florida Statutes. Such records shall reflect a complete and comprehensive account of the discussions and actions taken by the board.

(Code 1986, § 5.024(h); Ord. No. 03-14, § 18, 6-17-2003)

Sec. 46-69. Rules of procedure.

The board shall have the authority to make such uniform rules and regulations and to take such action as may be necessary to carry out the provisions of the plan and all decisions of the board of trustees, made in good faith, shall be final, binding and conclusive on all parties. No rule may conflict with the provisions of the city charter or code, state or federal law. No rule of the plan may conflict with the provisions of any collective bargaining agreement affecting members of the plan.

(Code 1986, § 5.024(i); Ord. No. 03-14, § 19, 6-17-2003)

Sec. 46-70. Fiduciary responsibilities.

The board shall be deemed the named fiduciary of the plan and shall discharge its responsibilities solely in the interest of the members and beneficiaries of the plan for the exclusive purpose of providing benefits to the members and their beneficiaries and to defray the reasonable expenses of the plan. The trustees shall exercise those fiduciary responsibilities with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a similar character and with similar aims.

(Code 1986, § 5.024(j); Ord. No. 03-14, § 20, 6-17-2003)

Sec. 46-71. Administrative duties.

The board shall have the administrative duty to:

- (1) Maintain such records as are necessary for calculating and distributing retirement benefits.
- (2) Maintain such records as are necessary for financial accounting and reporting of plan funds.
- (3) Maintain such records as are necessary for actuarial evaluation of the plan, including investigations into the mortality, service and compensation experience of its members and beneficiaries.
- (4) Compile such other administrative or investment information as is necessary for the management of the plan.

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- (5) Process, certify and/or respond to all correspondence, bills and statements received by the plan, as well as all applications submitted to the board for retirement benefits.
 - (6) Establish and maintain communication with city departments and other agencies of government as is necessary for the management of the plan, including preparing filing and distributing such reports and information as are required by law to be prepared, filed or distributed on behalf of the plan.
 - (7) Determine all questions relating to and process all applications for eligibility, participation and benefits.
 - (8) Distribute at regular intervals to employees, a comprehensive summary plan description and periodic reports, not less than annually, regarding the financial and actuarial status of the plan.
 - (9) Retain and compensate such professional and technical experience as is necessary to fulfill its fiduciary responsibilities.
 - (10) Make recommendations regarding changes in the provisions of the plan.
 - (11) Ensure the prompt deposit of all member contributions, city contributions, and investment earnings.
 - (12) Establish a uniform set of rules and regulations for the management of the plan.
 - (13) Take such other action as the trustees shall deem, in their sole and exclusive discretion, as being necessary for the efficient management of the plan.

(Code 1986, § 5.024(k); Ord. No. 03-14, § 21, 6-17-2003)

Sec. 46-72. Advisors.

- (a) The board shall have the authority to retain its own legal counsel, accountants, actuaries and other professional advisors to assist the board in the performance of its duties. The board may act without independent investigation upon the professional advice of the advisors so retained.
- (b) The board shall retain a physician, as needed, to assist in the performance of its administrative duties with regard to consideration of medical questions arising under the plan. The physician shall conduct any required medical examinations or refer the examinee to a specialist or specialists.
- (c) The board may employ a pension administrator to assist the board in the performance of its administrative duties. The pension administrator, subject to the approval of the board, may employ such staff as is necessary for the proper administration of the plan. The board shall have a continuing duty to observe and evaluate the performance of the pension administrator. The board shall, in selecting a pension administrator, exercise all judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence, exercise in the management of their own affairs. The pension administrator shall have a written contract of employment with the board, which shall include any tenure rights which the board, in its discretion, may grant. The position of pension administrator shall not be an employee position of the city. The pension administrator shall be a fiduciary of the plan.

(Code 1986, § 5.024(l); Ord. No. 03-14, § 22, 6-17-2003)

Sec. 46-73. Protection of fund assets and board.

The board is authorized to prosecute or defend actions, claims or proceedings of any nature or kind for the protection of the fund assets or for the protection of the board in the performance of its duties.

(Code 1986, § 5.024(m); Ord. No. 03-14, § 23, 6-17-2003)

Sec. 46-74. Liability; insurance.

Neither the board nor any of its individual members shall have any personal liability for any action taken in good faith. The trustees individually and the board as a whole shall be entitled to the protections in F. S. § 768.28. The trustees shall also be authorized to purchase from the assets of the fund, errors and omission insurance to protect the trustees in the performance of their duties. Such insurance shall not provide protection against a trustee's fraud, intentional misrepresentation, willful, misconduct or gross negligence.

(Code 1986, § 5.024(n); Ord. No. 03-14, § 24, 6-17-2003)

Sec. 46-75. Misconduct, misfeasance, malfeasance or nonfeasance.

- (a) No trustee shall be responsible at his or her own expense, to take legal action to correct the misconduct of any other member of the board. A trustee shall have an affirmative obligation, however, to publicly reveal any misfeasance, malfeasance or nonfeasance by a co-trustee, and upon making such revelation in a public meeting, shall be relieved of further individual responsibility of the actions of that co-trustee.
- (b) The board shall establish uniform procedures for maintaining confidentiality of medical information as required by state and federal law.
- (c) When consideration by the city commission is required for plan business, such business shall be placed on the agenda of the commission and heard at the next scheduled meeting, consistent with the agenda rules of the commission.
- (d) The board and the city manager shall each provide the other with copies of all documents relating to the plan contemporaneously upon the making or receipt of such documents. All written communications relating to the plan from the board to the city shall be made directly to the city manager. All written communications to the board from the city manager shall be made directly to the board, with copies to the pension administrator.

(Code 1986, § 5.024(o); Ord. No. 03-14, § 25, 6-17-2003)

Sec. 46-76. Fund management and investments.

- (a) The city employees' retirement plan is established as an irrevocable trust fund into which shall be deposited all of the assets of the plan or every kind and description. The plan is a defined benefit retirement fund. Vested members have an ownership right in benefits accrued as provided for in this plan. No member has an ownership right in the assets of the plan.
- (b) The actual custody and supervision of the fund shall be vested in the board. All assets of the plan may be commingled, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate accounts regarding the following:
 - (1) Current amounts of accumulated contributions of members, both on an individual and aggregate basis.
 - (2) Receipts and disbursements.
 - (3) Benefit payments.
 - (4) All contributions from the city.
 - (5) All interest, dividends, gains and losses from investment.
 - (6) Such other entries as may be required for a clear, complete financial report of the status of the fund.

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- (c) The board shall maintain a written investment policy, with the advice and counsel of such advisors as the board deems necessary, and said investment policy shall set forth the types of securities and other types of investments into which shall be placed the assets of the fund. The policy shall further set forth appropriate limitations on those investments, including, but not limited to, anticipated rate of return, quality of investment, class of investment acceptable risk, and any other factor as required by law. The board shall have the authority to invest and reinvest the assets of the plan in such securities or property, real or personal, as the board deems appropriate, including, but not limited to:
- (1) Bonds, notes, or other obligations of the United States or any of its agencies, or those guaranteed by the United States or for which the credit of the United States is pledged for the payment of the principal and interest or dividends thereof.
 - (2) Accounts or certificates of deposit in any bank or other financial institution incorporated under the laws of the state, or any national bank organized under the laws of the United States, or authorized to do business and situated in the state, to the extent that such certificates of deposit are secured by the deposits of securities of the United States that such certificates of deposit are secured by the deposits of securities of the United States government.
 - (3) Notes secured by first mortgages on real property insured or guaranteed by the Federal Housing Administration or the Veterans Administration.
 - (4) Interest-bearing obligations with a fixed maturity of any corporation organized under the laws of the United States, any state or organized territory of the United States and District of Columbia; provided that such obligations are rated by at least two nationally recognized ratings services in any one of the four highest classifications approved by the comptroller of the currency for the investment of funds of national banks or, if only one nationally recognized ratings service shall rate such obligations, such ratings service must have rated such obligation in any one of the three highest rating classifications as set forth in this subsection.
 - (5) Bonds issued by foreign states.
 - (6) Venture capital, private placements and letter stocks which may be in the form of commingled ownership.
 - (7) Real estate, which may be in the form of commingled ownership and financial institutional futures, listed options, stock index futures, which may be used under specific instruction of managers.
 - (8) Common stock, preferred stock and interest bearing obligations of domestic corporations having an option to convert into common stock issued by a corporation organized under the laws of the United States, any state or organized territory of the United States or any state or organized territory of the United States and the District Columbia.
 - (9) Common stock, preferred stock, and interest bearing obligations of foreign corporations having an option to convert into common stock issued by a foreign corporation.
- (d) The board may determine the percentage of each type of investment to be held.
- (e) The board shall be authorized to retain one or more money managers for the management of assets held in the plan, and the board shall convey property of the plan to such managers for investment and reinvestment in accordance with the terms this article and the investment policies established by the board.
- (f) All money managers shall have a written contract with the board specifying the assets to be invested; the asset classes appropriate for utilization; expected performance; standard of care and resolution of disputes. All such contracts shall be governed in accordance with the laws of the state and shall have venue for resolution of disputes in Monroe County, Florida. All such contracts shall have a clause stating that the board retains the right, at all times, to terminate any money manager agreement, with or without cause. In the event that any money manager shall invest assets of the plan in a prohibited category of investment or shall

otherwise breach the terms of the investment agreement, if such breach causes a loss to the trust, the contract shall require the money manager to make the trust whole for any losses incurred. Each money manager shall be a fiduciary of the plan.

- (g) In the conduct of their affairs, all money managers shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. This provisions shall be incorporated in and constitute a part of all contracts with the board.
- (h) The board shall have a continuing duty to observe and evaluate the performance of any money manager retained by the board. The board shall, in selecting a money manager or other investment counsel, exercise all judgment and care in the circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs.
- (i) Any money manager or investment advisor who has custody or control of any trust assets or who is otherwise employed, directly or indirectly, in the management of plan assets shall keep accurate and detailed accounts of all such activities, which records shall be open to inspection and audit at all reasonable times by the city, the board, or their designees.
- (j) The board shall also keep accurate and detailed accounts of its assets and investments which shall be open to inspection and audit at all reasonable times by the city or its designees.

(Code 1986, § 5.026; Ord. No. 03-14, § 26, 6-17-2003)

Secs. 46-77—46-105. Reserved.

DIVISION 3. CONTRIBUTIONS AND BENEFITS

Sec. 46-106. Contributions.

- (a) Under the city employees' retirement plan, the city shall pick-up, rather than deduct from each member's pay, beginning with the date of employment, six percent of the member's basic earnable compensation. The monies so picked-up shall be deposited in the fund on a bimonthly basis. An account record shall be maintained continuously for each member. Pick-up contributions shall continue until death, disability or termination of service, whichever shall occur first. Contributions shall remain in the fund unless withdrawn as provided in the plan. No member shall have the option to choose to receive the contributed amounts directly instead of having them paid by the city directly to the plan. All such pick-up contributions by the city shall be deemed and be considered as part of the member's accumulated contributions and subject to all provisions of the plan pertaining to accumulated contributions of members. The intent of this provision is to comply with section 414(h)(2) of the Internal Revenue Code. For the purpose of accruing and calculating pension benefits, overtime compensation, percentage increases to base pay, longevity, years of service, payroll steps, and for such other purposes except as specified in this plan, the amount of employee contributions "picked-up" or paid by the city will be added to the amount distributed on a current basis in order to determine total wages, salary, pay or compensation.
- (b) All benefits payable under this plan are in lieu of a refund of accumulated contributions. In any event, however, each member shall be guaranteed the payment of benefits at least equal in total amount to the member's accumulated contributions.
- (c) The city shall make such contribution under the Florida Protection of Public Employee Retirement Benefits Act, which, together with contributions picked-up on behalf of members, plan earnings will maintain the fund on a sound actuarial basis, as determined by the board in consultation with its actuary. City

contributions shall be deposited into the trust fund at least quarterly. Member contributions shall be deposited into the trust fund immediately after each pay period.

- (d) Expenses, charges and fees attributable to the management of the plan shall be paid from the fund.
- (e) The city shall have no right, title or interest in the fund or in any part thereof, and no contribution made thereto shall revert to the city, except such part of the fund, if any, which remains therein after the satisfaction of all liabilities to persons entitled to benefits under the plan.

(Code 1986, § 5.025; Ord. No. 03-14, § 27, 6-17-2003)

Sec. 46-107. Service retirement benefits.

- (a) A member of the retirement plan may elect to retire on a service retirement upon the attainment of retirement eligibility as defined in this section. An election to retire shall be made upon a written application, prescribed by the board. Benefits shall be effective on the date the application is approved in accordance with the administrative rules adopted by the board.
- (b) A member shall be eligible for a service retirement upon the first day of the month coincident with or next following the earlier of:
 - (1) The date upon which the member completes 20 years of credited service, regardless of age; or
 - (2) The date upon which the member attains age 60 with five years of credited service for a half benefit and ten years of service for a full benefit.
- (c) There shall be no mandatory retirement age.
- (d) A normal retirement benefit shall be determined by multiplying two and thirty-five-hundredths percent of final monthly compensation by the number of years of credited service; except, that the normal retirement benefit for members retiring at age 60 with five years, but less than ten years of service, shall be determined by multiplying one and seventeen [and] one-half hundredths percent of final monthly compensation by the number of years of credited service. Normal retirement benefits for members retiring at age 60 with ten years of service shall be based on a multiplier of two and thirty-five-hundredths percent of final monthly compensation. Effective January 1, 2006, a normal retirement benefit shall be determined by multiplying two and one-half percent of final monthly compensation by the number of years of credited service; except, that the normal retirement benefit for members retiring at age 60 with five years, but less than ten years of service, shall be determined by multiplying one and one-quarter percent of final monthly compensation by the number of years of credited service. Effective January 1, 2006, normal retirement benefits for members retiring at age 60 with ten years of service shall be based on a multiplier of two and one-half percent of final monthly compensation.
- (e) A service retirement benefit shall be payable on the first day of each month. The benefit shall commence on the first day of the month coincident with or next following the member's actual retirement and shall continue until the death of the member. In the event that a member shall retire in the middle of the month, the retirement benefit shall commence on the first day of the following month, but the member shall receive credit for the partial month preceding the actual date that payment commenced.
- (f) Early retirement shall be available to a member on the first day of the month coincident with or next following attainment of age 55 and the completion of ten years of credited service.
- (g) The benefit shall be determined by multiplying two and thirty-five one hundredths percent of final monthly compensation by the number of years of credited service. Effective January 1, 2006, the benefit shall be determined by multiplying two and one-half percent of final monthly compensation by the number of years of credited service. This benefit shall be actuarially reduced for the number of actual years and months at

which the starting date of the benefit precedes the normal retirement date. The actuarial factor employed shall be a uniform rate established by the board, with the advice of the actuary.

- (h) The payment of the early retirement income shall be subject to the same conditions as normal retirement income.
- (i) If a member elects early retirement, the benefit formula in effect on the early retirement date shall be applicable to the member.
- (j) A member entitled to a normal or early retirement benefit shall have the right at any time prior to the date upon which the first payment is received to elect to have the benefit payable under one of the options provided in this plan. A member shall be permitted to revoke any such election and to elect a new option at any time prior to the receipt of the first payment. Each retirement option shall be the actuarial equivalent of the other retirement options available. Election of the retirement option shall be on a form prescribed by the board.
 - (1) *Joint and last survivor option.* A member may elect to receive a reduced benefit for life and to have 100 percent, 75 percent, 66⅔ percent, or 50 percent of such benefit continued after the member's death and during the lifetime of a designated survivor. A designated survivor may be any natural person, but need not be the spouse of the member. In the event that the designated survivor dies before the member's benefit payments begin, this option shall be canceled automatically and a retirement income shall be payable to the member as if the election had never been made.
 - (2) *Ten-year certain and life thereafter.* A member may elect to receive a reduced life annuity with 120 guaranteed payments. If the member shall die prior to receiving 120 payments, the remaining benefits shall be paid to the beneficiary designated by the member. In the event that no beneficiary has been designated, the member's estate shall be the recipient of the remaining balance of payments.
- (k) Effective January 1, 2006, the monthly benefit currently being received by every retiree, including disability retirees, DROP participants, joint pensioners or beneficiaries who were receiving benefits on or before January 1, 2006, is increased by two percent.

(Code 1986, § 5.027; Ord. No. 03-14, § 28, 6-17-2003; Ord. No. 06-01, § 2, 1-4-2006)

Sec. 46-108. Buybacks/reemployment.

- (a) Any member of the plan who is employed by the city prior to entry into military service and who takes a leave of absence for the purpose of entering into military service in the Armed Forces of the United States and thereafter re-enters the employ of the city, and is vested, shall be entitled to purchase service credits for the period of absence by contributing the amount that would have been contributed had the member continued in city employment for the period of military service based on the salary in effect on the date of the leave of absence, for each year being purchased.
- (b) **Prior Military** - Any member who has successfully completed all of the terms of the probationary period for the City of Key West and who has served on active military duty in the Armed Forces of the United States prior to entry or re-entry into the plan may receive credit for a maximum of five (5) years of military service time in the plan, provided that for each year being purchased the member pays to the plan the full actuarial cost of the buyback. Members purchasing military service credit shall provide the Board of Trustees with proof of the prior service with honorable separation.
- (c) The contribution for military buyback required of the employee may be made in one lump sum or may be made by payroll deductions in installments for a period of time which shall not exceed the number or years being purchased. Payment for additional service may be made via direct transfer or rollover of an eligible rollover distribution from a qualified retirement plan as determined by the Board of Trustees. An employee

making installment payments shall complete all required payments prior to payment of any benefit under this section. If installment payments are not completed at the time an employee retires, the employee shall not receive military credit for the remaining period for which payments were not made. An employee making installment payments shall pay an interest rate as established by a uniform rule of the board.

- (d) Any member who has previously separated from service with the city and withdrawn his or her accumulated contributions shall be permitted to buy back all prior service credits as set forth in this section. Employees may purchase all past service credit, including time spent as a full-time employee in the program funded by the Comprehensive Employment and Training Act (CETA) or as a full-time contract employee with the city. No service credit may be purchased for temporary, seasonal or part-time work. The employee shall pay the full cost of the buyback, including the employee contribution, the contribution, a uniform rate of interest as adopted by the board, and the actual administrative cost of the buyback, including, but not limited to, actuarial, accounting and legal fees. All buybacks shall be at the current contribution and salary rates as determined by the most recent actuarial valuation adopted by the board. Employees wishing to exercise the buyback right must do so within one year from the date of reemployment. Any employee who fails to have completed the application process and tender the full amount of the buyback within the time limits provided in this section, shall be deemed to have irrevocably waived the right of the buyback. The buyback under this section shall be made in a single sum payment at the time of application. If an employee who exercises the buyback rights under this section should again leave city employment and withdraw accumulated contributions, the employee shall only be entitled to a return of that portion of the buyback amount which would have represented the regular employee contribution had the employee made that contribution in the regular course of employment. Any monies paid as part of the buyback which represented the contribution, interest contribution, or the administrative cost shall not be refundable.
- (e) At the time any buyback is made under this section, the member shall consent to a medical examination in a form to be determined by the board, which examination shall be at the cost of the member, for the purpose of determining the presence of any preexisting medical condition. Any preexisting condition determined to exist at the time of the buyback may not serve as the basis for a subsequent claim for service or non-service connected disability retirement.
- (f) An employee choosing to exercise a buyback may purchase all or any portion of prior service credit, but said buyback may be exercised only one time by a member.
- (g) Reemployment by the city, other than as a full-time employee shall not affect receipt of benefits from the plan. In the event that a retiree is reemployed as a full-time employee in a position covered by this plan, receipt of benefits shall be suspended for the period of reemployment. Upon ending the period of reemployment, benefits shall be recalculated, taking into account, any additional credited service or change in final monthly compensation.
- (h) The Board of Trustees has the authority to adopt administrative rules to implement military buybacks.

(Code 1986, § 5.028; Ord. No. 03-14, § 29, 6-17-2003; Ord. No. 06-01, § 3, 1-4-2006; Ord. No. 09-04, § 3, 3-17-2009; Ord. No. 23-01, § 1, 1-4-2023)

Sec. 46-109. Disability.

- (a) A member shall be disabled under the terms of the plan if the member has suffered an illness, injury or disease which renders the member permanently and totally incapacitated, physically or mentally, from performing regular and continuous duties as an employee for the city. Disability shall not be determined based solely on the fact that a member cannot perform the duties of his or her classification as set forth in the job description. The city shall be required to accommodate disabled workers in accordance with state and federal law and shall not withhold assignment to vacant positions on the basis that the member is not capable of performing all of the tasks of a particular classification. A disability benefit cannot be based upon

a condition which preexisted membership in the plan unless the cause of the disability would reasonably be expected to give rise to a disability as defined in this section in a person without the pre-existing condition. In order to determine the existence or non-existence of medical conditions, the board, by uniform rule may require members to submit to a pre-entry physical exam. The results of the physical exam shall not bar any person from membership in the plan, but shall only be used to determine the question of pre-existing conditions in the event of an application for disability retirement.

- (b) A member shall be eligible for a service-incurred disability retirement from their entry date into the plan. A service-incurred disability retirement shall mean that the disability arose as a result of an act occurring in the performance of service with the city.
- (c) A member shall be eligible for a non-service incurred disability retirement upon the completion of ten years of credited service. A non-service incurred disability shall be an illness, injury, or disease, which did not occur as a result of an act in the performance of service with the city.
- (d) The service connected disability benefit shall be paid in equal monthly installments in an amount which shall be the greater of:
 - (1) 42 percent of the member's final monthly compensation;
 - (2) The benefit supported by the single sum value of the deferred monthly retirement income beginning at normal retirement date which has accrued to the date of termination of service due to disability; or
 - (3) The benefit supported by 18 times the member's rate of final monthly compensation at the date of termination of service for disability.

In no instance shall the monthly amount computed in subsection (d)(3) exceed 60 percent of the participant's anticipated monthly retirement income commencing at normal retirement date.

- (e) The non-service incurred disability benefit shall be paid on a monthly basis in an amount equal to the greater of:
 - (1) The benefit supported by the single sum value of the deferred monthly retirement income beginning at normal retirement date which has accrued to the date of termination of service due to disability; or
 - (2) 18 times the member's rate of final monthly compensation at the date of termination of service for disability.

For the purposes of a nonservice incurred disability benefit, the final monthly compensation shall be determined as of the last day the member was actively at work for the city.

- (f) Disability benefits shall be paid on the first day of each month. No benefit shall be paid until the board has actually considered and voted upon entitlement to disability.
- (g) Disability retirement income shall continue until the death of the member or recovery from disability. In the event of the death of a member who is retired on a disability benefit and has not received 120 payments, the remaining unpaid benefits shall be paid to a designated beneficiary selected by the member and communicated to the board on the form prescribed by the board. In the event that there is no designated beneficiary, the remaining unpaid benefits shall be paid to the estate of the deceased member. During the period of disability, member contributions shall be suspended unless the member is receiving a pay supplement in addition to disability benefits provided under the Florida Workers' Compensation Act. In such event, there shall be a member contribution from that amount representing the supplemental pay. In the event a member's disability is converted to a service retirement as set forth in this section, the member shall be accorded credited service for the period of disability.
- (h) No member shall be eligible to receive disability benefits from the plan during any period of time that the member is receiving a salary from the city. This section shall not apply to the receipt of worker's compensation benefits.

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- (i) Application for disability retirement shall be made on a form prescribed by the board. The member shall execute such medical releases as are necessary to permit the board to review the medical records needed to determine the question of disability and to discuss said records at a public meeting. Upon receipt of an application for disability, the board shall refer the application to its physician(s) for review. The applicant for disability shall be required to submit to such medical examinations as the board appointed physician(s) shall deem necessary. The board appointed physician(s), and any referring specialists, shall report their findings to the board, which shall include a determination, to the extent reasonably possible, of the origin of the disability, whether the disability is permanent, and whether the disability is total. In making these determinations, the physician(s) shall be bound by the definition of disability set forth in this plan. The city shall provide to the board and the physician(s) any documents relating to those cases where an applicant has been terminated from employment due to physical inability to perform the member's duties as an employee, as well as any attempts to provide alternate employment within the member's classification.
- (j) Upon receipt of the report of the physician(s), the trustees shall schedule a public hearing at which time the board shall review all reports of the physician(s), together with any such documentary evidence as the applicant may wish to submit. The board shall conduct a preliminary determination as to whether the member is permanently and totally disabled based upon the written documentation presented. If the board does not grant the application based on the written documentation, it shall inform the member in writing of the reasons for the denial of the application. The member may, within 30 days of receipt of the board's preliminary denial, request a full evidentiary hearing before the board. Said hearing will be conducted consistent with the principles of due process and the rules of evidence generally applicable to administrative proceedings shall apply. This means that formal rules of evidence and civil procedure used in civil judicial proceedings shall not apply. The board shall have the power to issue subpoenas compelling the attendance of witnesses. At said hearing the applicant may present such oral and written evidence as the applicant deems necessary to establish its burden of proof. The board may appoint special counsel as an advocate to cross-examine witnesses and to offer argument in opposition to the application. All witnesses shall be sworn prior to testifying. The attorney for the board shall not serve both as advocate and as advisor to the board in the same proceeding. The applicant and the board shall have the right to examine and cross-examine all witnesses. Medical reports and depositions may be accepted in lieu of live testimony, at the board's discretion. The decision of the board shall be based solely upon the evidence presented and the law applicable to this plan. The record in a case governed by this section shall consist only of a tape recording or transcript of the hearing; evidence received or considered; all notices, pleadings, motions, and intermediate rulings; and any decisions, opinions, proposed or recommended orders or reports by the board. Making a verbatim record of the proceedings is not the duty of the board, but may be made by the member. Following the conclusion of the hearing, the board shall render an opinion in writing setting forth the reasons for the grant or denial of the benefit. In the event that the disability benefit is denied, the applicant shall have the right to judicial review by complaint for common law certiorari in the Circuit Court of Monroe County.
- (k) The board may prescribe rules of procedure to implement the provisions of this plan relating to the conduct of disability hearings.
- (l) No member shall be granted a disability pension upon a determination by the board that the disability resulted from:
- (1) Excessive and habitual use of drugs, intoxicants or narcotics.
 - (2) Injury or disease sustained while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime.
 - (3) Intentionally self-inflicted wounds, injuries or ailments.
 - (4) Any occurrence arising from compensable employment unrelated to regular city employment, and such employment having been undertaken without prior permission of the appropriate department head having been granted to such member in writing.

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- (5) Any injury, illness or disease which preexisted membership in the plan unless the cause of the disability would have disabled the member notwithstanding the preexisting condition.

(Code 1986, § 5.029; Ord. No. 03-14, § 30, 6-17-2003)

Sec. 46-110. Death benefits.

- (a) If the death of a member occurs prior to the normal retirement date, there shall be payable to the member's designated beneficiary, on a ten-year certain and life thereafter basis a monthly income beginning on the first day of the month coincident with or next following the date of death which shall be supported by the greater of:
- (1) The single sum value of the participant's deferred monthly retirement income beginning at his normal retirement date which has accrued to the date of the member's death, based on the participant's number of years of credited service and final monthly compensation at the date of death; or
 - (2) The smaller of 18 times the member's rate of final monthly compensation at time of death or 100 times the member's anticipated monthly retirement income commencing at the normal retirement date based upon the participant's number of years of credited service and final monthly compensation at the time of death.

The amount of the benefit shall be computed as though the member had retired on the date of death and had chosen the 100-percent joint and survivor option. The board may, in its discretion, pay the benefit in another form if the board deems it to be in the best interest of the beneficiary unless the member has designated otherwise. The actuarial value of any other form of benefit may not exceed the actuarial value of the 100-percent joint and last survivor option.

- (b) If the death of a member occurs after the normal retirement date, but prior to actual retirement or entry into the DROP, there shall be payable to his beneficiary a monthly income beginning on the first day of the month coincident with or next following the date of death which shall be the actuarial equivalent of the single sum value of the retirement income based upon the final monthly compensation and number of years of credited service at the date of death.

(Code 1986, § 5.031; Ord. No. 03-14, § 31, 6-17-2003; Ord. No. 09-04, § 4, 3-17-2009)

Sec. 46-111. Compliance with Internal Revenue Code.

- (a) It is the intention of the city and of the board that the plan remain at all times a qualified plan, as that term is defined under the Internal Revenue Code.
- (b) No member's annual benefit may exceed the maximum amount allowable under section 415 of the Internal Revenue Code, as amended. In the event that a benefit shall exceed the maximum amount, the city shall establish an excess plan as permitted by law.
- (c) Compensation in excess of limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for an eligible employee shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. The term "eligible employee" means an individual who was a member before the first plan year beginning on or after January 1, 1996.
- (d) In no event may a member's retirement benefit be delayed beyond the later of April 1 following the calendar year in which the member attains age 70½, or April 1 of the year following the calendar year in which the member retires.

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- (e) When a distribution of the participant's entire interest is not made in a lump sum, the distribution will be made in one or more of the following ways: over the life of the participant and designated beneficiary; over a period certain not extending beyond the life expectancy of the participant; or over a period certain not extending beyond the joint life and last survivor expectancy of the participant and a designated beneficiary.
 - (f) If the distribution has commenced before the participant's death, the remaining interest will be distributed at least as rapidly as under the method of distribution being used as of the date of the participant's death.
 - (g) The method of distribution, if the participant dies before distribution is commenced, must satisfy the following requirements:
 - (1) Any remaining portion of the participant's interest that is not payable to a beneficiary designated by the participant will be distributed within five years after the participant's death;
 - (2) Any portion of the participant's interest that is payable to a beneficiary designated by the participant will be distributed either: (i) within five years after the participant's death; or (ii) over the life of the beneficiary, or over a period certain not extending beyond the life expectancy of the beneficiary, commencing not later than the end of the calendar year following the calendar year in which the participant died or, if a designated beneficiary is the participant's surviving spouse, commencing not later than the end of the calendar year following the calendar year in which the participant would have attained age 70½.
 - (h) This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

For the purposes of this section, the following words and phrases shall have the meanings indicated:

- (1) "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:
 - a. Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually), made for the life (or life expectancy) of the distributee, or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;
 - b. Any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code; and
 - c. The portion of any distribution that is not includable in gross income.
- (2) "Eligible retirement plan" is an individual retirement account described in section 408(a) of the Internal Revenue Code, an individual retirement annuity described in section 408(b) of the Internal Revenue Code, an annuity plan described in section 403(a) of the Internal Revenue Code, or a qualified trust described in section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
- (3) "Distributee" includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse.
- (4) "Direct rollover" is a payment by the plan to the eligible retirement plan specified by the distributee.

(Code 1986, § 5.032; Ord. No. 03-14, § 32, 6-17-2003)

Sec. 46-112. Distribution of marital interests.

- (a) If the board of trustees is served with a domestic relations order or other legal process purporting to require the payment of any portion of a member's benefit to another person as a result of a dissolution of marriage, the board shall cause such order to be reviewed to determine compliance with the provisions of the plan.
- (b) The board of trustees shall be authorized to intervene in any such dissolution of marriage proceeding to ensure that such domestic relations order is otherwise consistent with the distribution of an interest in a public employee's retirement plan under state law.
- (c) Any cost associated with the modification or correction of such domestic relations orders shall be the responsibility of the plan member.
- (d) The board shall be authorized to seek intervention as provided by law in any legal proceedings which, in the opinion of the board, affects the substantial interests of the plan.
- (e) The parties may consent to the entry of an order distributing benefits in a manner not otherwise inconsistent with the terms of the plan.

(Code 1986, § 5.034; Ord. No. 03-14, § 33, 6-17-2003)

Sec. 46-113. Deferred retirement option plan.

- (a) A deferred retirement option plan (DROP) is hereby created.
- (b) Eligibility to participate in the DROP is based upon eligibility for service retirement or early retirement in the plan.
- (c) Participation in the DROP must be exercised within the first 33 years of employment; provided, however, that participation in the DROP, when combined with participation in the plan as an active member may not exceed 33 years. The maximum period of participation in the DROP is eight years.
- (d) Upon exercising the right to participate in the DROP, an employee's creditable service, accrued benefits and final monthly compensation shall be frozen and 60 highest months of the 120 months immediately preceding participation in the DROP shall be utilized as the compensation basis.
- (e) Payment shall be made into the employee's DROP account as if the employee had terminated employment in the city in an amount determined by the employee's selection of Options 1 and 2 as enumerated in section 46-107(j).
- (f) An employee's account in the DROP program shall earn or lose interest based upon the actual earnings of the plan for the preceding year.
- (g) An employee shall terminate service with the city at the conclusion of eight years in the DROP.
- (h) All interest shall be credited to the employee's DROP account at the end of the DROP period.
- (i) Upon termination with the city, an employee shall receive payment within 45 days of the member's request for payment.
- (j) Payments from the DROP may be received as a lump sum, or by rollover to an eligible retirement plan; provided, however, that at all times, the DROP shall be subject to the provisions of the Internal Revenue Code.
- (k) No payment may be made from the DROP until the employee actually separates from service with the city.

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- (l) If an employee dies during participation in the DROP, the employee shall be treated as any other vested member in the plan who dies prior to retirement.
 - (m) Upon commencement of participation in the DROP, the member shall no longer be eligible for disability retirement from the plan. If a member becomes disabled during the DROP period, the member shall be treated as if he/she retired on the day prior to the date of disability.
 - (n) Employees who are currently in the DROP as of the effective date of this ordinance may elect in writing to extend their DROP participation time to eight years total from the date they entered into DROP. Employees who are currently in the DROP must elect to participate in the extension before the end of their initial DROP period. Receipt of the normal service retirement pension shall be deferred for employees opting to extend their participation in DROP until such time as they terminate their employment with the city, but not to exceed eight years from initial entry into the DROP.

(Code 1986, § 5.035; Ord. No. 03-14, § 5, 6-17-2003; Ord. No. 09-04, § 5, 3-17-2009; Ord. No. 24-19, § 1, 8-8-2024)

Secs. 46-114-46-140. Reserved.