

DIVISION 3. CITY OF MIAMI GENERAL EMPLOYEES' AND SANITATION EMPLOYEES' RETIREMENT TRUST*

***Editor's note:** Ord. No. 12111, § 1, adopted September 25, 2001, amended div. 3, §§ 40-241--40-263 in its entirety to read as herein set out. Formerly, div. 3 pertained to similar subject matter and derived from Code 1980, §§ 40-225--40-247; Ord. No. 10002, § 1, adopted June 13, 1985; Ord. No. 10458, § 1, adopted July 14, 1988; Ord. No. 10911, § 1, adopted September 5, 1991; Ord. No. 11021, § 1, adopted November 12, 1992; Ord. No. 11073, §§ 2, 3, adopted July 22, 1993; Ord. No. 11192, § 2, adopted October 27, 1994; Ord. No. 11199, § 1, adopted November 17, 1994; Ord. No. 11232, § 2, adopted March 9, 1995; Ord. No. 11234, § 1, adopted March 27, 1995; Ord. No. 11340, § 1, adopted February 29, 1996; Ord. No. 11392, § 1, adopted September 12, 1996; Ord. No. 11546, § 1, adopted September 23, 1997; Ord. No. 11564, § 15, adopted October 28, 1997; Ord. No. 11589, § 1, adopted January 13, 1998; Ord. No. 11608, § 1, adopted February 10, 1998; Ord. No. 11717, § 1, adopted October 27, 1998; Ord. No. 11729, § 1, adopted November 17, 1998; Ord. No. 11743, § 2, adopted January 12, 1999; Ord. No. 11879, § 2, adopted January 13, 2000; Ord. No. 11927, § 2, adopted May 11, 2000.

Note: Section 2 of Ord. No. 12111, adopted September 25, 2001, is as follows: "This Ordinance shall be applied on a prospective basis only. No person who is a separated vested member; a member not in service or currently a beneficiary under the plan shall be entitled to the benefits provided for in this Ordinance, except as otherwise specifically provided. Benefits available to those persons shall be the benefits in effect on the date of separation from service. The deletion of obsolete language shall not impair or diminish the rights of any person to whom those benefits are applicable."

Sec. 40-241. Definitions.

The following words and phrases as used in this division shall have the following meanings:

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 division. Accumulated employee contributions shall also mean any amounts paid by a member for the purchase of military service credits or other paybacks permitted in this Plan.

Active membership shall mean membership in the Plan as an employee.

Actuarial equivalent shall mean a benefit having the same present value as the benefit it replaces based upon the actuarial table adopted by the board of trustees.

And shall have a conjunctive meaning.

Average final compensation shall have a meaning dependent upon the date of hire and the date of termination of service of the member. The two periods of time for which average final compensation is determined are:

(a) For members who became employed before May 24, 1984, and whose active membership in the Plan did not cease before May 23, 1985. In the case of such members, average final compensation shall mean the highest compensation of that member during any one year of membership service. The highest one year of compensation shall not exceed the second highest year of compensation by more than 15 percent excluding any difference due to longevity, anniversary and negotiated cost of living increases. The term "year" shall be calculated using the highest 12 months of compensation, but the months need not be consecutive.

(b) In the case of a member who becomes an employee on or after May 24, 1984, or for an employee whose service has previously ended or who is not a member absent from service, but recommences on or after May 24, 1984, average final compensation shall mean the average

annual compensation of the member during the last two years of membership service, or the highest two years of membership service, whichever is greater. In the case of the highest two years of membership service, the years need not be consecutive. The term "year" shall be calculated using the highest 12 months of compensation, but the months need not be consecutive.

BACDROP shall mean Benefit Actuarially Calculated Deferred Retirement Option Program.

Beneficiary shall mean any person receiving a retirement allowance or other benefit from the Plan.

Benefit shall mean a retirement allowance or other payment provided by the Plan and made to a member, retiree or beneficiary.

Board or board of trustees shall mean the board of trustees of the 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 Miami, Florida.

City commission or commission shall mean the Miami City Commission.

COLA shall mean the cost of living adjustment provided under the terms of the Plan.

Compensation shall mean a member's base salary, including pick-up contributions for all straight time hours worked, assignment pay, pay supplements, vacation, and sick leave used while an active member, jury duty, and death in family leave taken or any other administrative leave approved pursuant to ordinance, labor agreement, or city personnel policy which is used as part of the member's base salary. Compensation shall not include overtime pay, payments for accumulated sick leave, accumulated vacation leave, or accumulated compensatory leave, premium pay for holidays worked, call back pay, uniform allowances, tool allowances, the value of any other employment benefit or non-monetary entitlement, or any other form of remuneration.

Creditable service shall mean credit upon which a member's eligibility to receive benefits under the Plan is based, or upon which the amount of such benefits is to be determined.

Disability shall mean the permanent and total incapacity to perform useful and efficient service as an employee of the city as determined by the board pursuant to the terms of the Plan.

DROP shall mean Deferred Retirement Option Program and shall include a Forward DROP and a BACDROP.

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.

Employee shall mean any regular, permanent, and full-time appointed officer or employee of the city, other than a police officer or firefighter as defined in section 40-191 of the city Code. The term "employee" shall include both classified and unclassified employees, provided they are appointed on a full-time basis as defined by the Civil Service Rules, collective bargaining agreement, or other applicable city personnel policy. The term "employee" shall also include members of this Plan who become employees of Miami-Dade County by virtue of the merger, transfer, or assignment of governmental units or functions from the city to Miami-Dade County. Any such employee shall continue as a member of this Plan unless they elect within six months after the date of the transfer to become a member of the Florida Retirement System. For the purpose of any such employee, Miami-Dade County shall be deemed included within the term "city" as used in this Code. Temporary, part-time or casual employees shall not be deemed "employees."

Forward DROP shall mean a Deferred Retirement Option Program where benefit is equal to the regular retirement benefit the member would have received had the member separated from service and commenced the receipt of benefits from the plan.

Full time shall mean an employee who is compensated on a 40 hour per week basis.

Fund shall mean the City of Miami General Employees' and Sanitation Employees' Retirement Trust Fund.

General Employees' Union shall mean the certified collective bargaining agent for all general employees of the city, except sanitation employees, managerial employees and confidential employees.

May shall mean a permissive term.

Member shall mean an employee for whom contributions to the Plan are picked up as required by this Plan.

Member absent from service shall mean any member who has ceased to be an employee for less than three years in a period of five consecutive years after last becoming a member, and who has not withdrawn the accumulated employee contributions.

Member not in service shall mean any member who has a vested right to retirement pursuant to the provisions of this Plan. A member not in service shall also be known as a vested separated member. This term shall not include retired members who have been rehired by the city in positions not eligible for participation in this Plan.

Membership service shall mean service as an employee for which contributions to the Plan were made as required by this Plan.

Miami City General Employees' Retirement Plan shall mean the city pension plan which was established effective July 1, 1956, pursuant to Ordinance No. 5624, enacted May 2, 1956, as amended.

Non-investment expenses shall exclude fees paid to money managers whose duty it is to invest and manage the assets of the Plan and to report on the performance of those investments. Salaries for office staff, overhead, professional fees for actuaries, accountants, financial consultants, performance monitors and attorneys, and other similar non-benefit costs are examples of non-investment expenses.

Normal costs shall mean the cost of benefits attributable to the current year under the modified aggregate entry age normal cost method.

Normal retirement age shall mean age 55.

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

Payback shall mean a member's contribution to the Plan for creditable service for which other than regular contributions have been made. Contributions required for paybacks shall not be picked up by the city, but may be deducted from a member's compensation.

Pick-up amounts shall mean employer contributions derived from a member's compensation through a reduction in the member's compensation. For the purposes of this Plan, amounts picked-up shall be considered for state law purposes as employee contributions.

Plan shall mean the City of Miami General Employees' and Sanitation Employees' Retirement Trust.

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 Plan membership.

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

Regular interest shall mean interest at the rate prescribed by the board of trustees which shall be not less than one percent per quarter of the contribution balance as of the end of the previous calendar year, including interest.

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.

Rule of 70 shall mean a computation permitting normal retirement where the sum of the member's age and length of creditable service is equal to at least 70, provided that the member has completed ten years of creditable service.

Sanitation Employees' Union shall mean the certified collective bargaining agent for all sanitation employees of the city, except for managerial employees, confidential employees and employees covered by another collective bargaining unit.

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 means the spouse of the member at the time 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.

Useful and efficient service shall mean the performance of the regular duties of the position to which the employee is assigned by the city. The board shall determine from the facts of each disability application whether the member is performing in accordance with this definition.

Unfunded liability shall mean the excess of the actuarial accrued liability of the Plan over (the) present asset value used to determine the city's funding obligation.

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, without the need for additional creditable service.

Vesting shall mean ten years of creditable service before the member is entitled to service retirement benefits and non-service disability.

(Ord. No. 12111, § 1, 9-25-01; Ord. No. 12202, § 2, 3-27-02)

Sec. 40-242. Plan established; purpose; name; operative date.

A Plan is established and placed under the exclusive administration and management of a board of trustees for the purpose of providing retirement benefits pursuant to the provisions of this Code and for payment of the reasonable expenses of the Plan. This Plan shall be known as the "City of Miami General Employees' and Sanitation Employees' Retirement Trust."

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-243. Board of trustees.

(a) *Composition and selection.*

(1) The sole and exclusive administration of and responsibility for the proper and effective operation of this Plan is vested in a nine member board of trustees.

(2) The board of trustees shall be selected as follows:

a. One trustee shall be selected by the city manager, which trustee shall not be the mayor, a city commissioner, the city manager, the city finance director, or an assistant finance director.

b. Two trustees shall be selected by the general employees and their names submitted to the city clerk. The trustee may be a present or retired member of the bargaining unit represented by the General Employees' Union and shall be selected and serve according to the constitution and bylaws of the General Employees' Union.

c. Two trustees shall be selected by the sanitation employees and their names submitted to the city clerk. The trustees shall be present members of the bargaining unit represented by Sanitation Employees' Union and shall be selected and serve according to the constitution and bylaws of the Sanitation Employees' Union.

d. The remaining four trustees shall be selected by the city commission and may not be employees of the city. Two of the trustees shall be selected from a list of six persons submitted by the General Employees' Union according to its constitution and bylaws and the other two trustees shall be selected from a list of six persons submitted by the Sanitation Employees' Union according to its constitution and bylaws. The city commission may, at the request of the General Employees' Union or the Sanitation Employees' Union, accept a list consisting of one name for each position to be filled. The lists submitted to the city commission shall not contain duplications. If a duplication occurs, the city commission shall return both lists for resubmission.

e. The trustees appointed by the city shall have, at the minimum, the following qualifications:

1. Be presently employed or self-employed on a full-time basis, or be retired from such;
2. Have resided in Miami (or its immediate environs) for the past five years;
3. Be able to attend board meetings if scheduled well enough in advance and agree to resign from the board if meeting attendance is less than 75 percent in a one-year period; however, the provisions of this subsection shall not apply to those individuals who are members of city boards and who are (1) reservists in the United States Armed Forces or members of the Florida National Guard, and have been ordered to active military duty for national, state, or homeland defense and due to such duty cannot attend board meetings, or (2) employees of agencies whose services are considered essential for national, state, or homeland defense and due to such services cannot attend board meetings.
4. Have been involved in, within the last five years, and be knowledgeable about employee pension or similar fringe benefits;
5. Have knowledge of, be familiar with, and have had exposure to labor/management relations;
6. Have knowledge of and be familiar with business principles;
7. Have not been, within the past five years, a public employee union representative, nor a representative of management for the city;
8. Not be actively involved in nor aspire to be actively involved in city, county, or state politics.

(b) *Term of office.*

- (1) The term of office for each trustee shall be two years.
- (2) There shall be no limit to the number of terms a trustee may serve.
- (3) A trustee shall take an oath of office administered by the city clerk within ten days after selection.

(4) A trustee shall serve until a successor trustee is appointed and administered the oath of office.

(c) *Fiduciary responsibility.* The board of trustees 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.

(d) *Compensation.* Trustees who are employees of the city shall be granted leave with full pay and benefits while functioning as a trustee during their normal working hours. Service on the board shall not be considered as "time worked" for the purposes of overtime liability under the Fair Labor Standards Act. This shall include attendance at board meetings, workshops, board approved educational conferences and board approved travel. Employee trustees shall not otherwise be paid for their services as trustees. The non-employee-trustees shall be compensated at any given time in the same manner as are members of the city's civil service board.

(e) *Meetings; voting; quorum; officers.*

- (1) The board shall meet at least once every two months following appropriate public notice and shall meet and conduct the business of the Plan in accordance with Chapter 286, Florida Statutes.
- (2) Each trustee shall be entitled to one vote. Five concurring votes shall be necessary for a decision by the board. Five trustees shall constitute a quorum for the purpose of meeting and

transacting business. A lesser number of trustees may be appointed as a committee to perform tasks on behalf of the board. All committee meetings shall be subject to the notice and meeting requirements of Chapter 286, Florida Statutes.

(3) The board shall elect, every two years, a trustee as chairperson and a trustee as vice chairperson of the board.

(f) *Vacancies; removal.*

(1) If a vacancy occurs due to resignation, death, or removal, the vacancy shall be filled for the unexpired term of the departing trustee in accordance with the provisions of this section for selection of the trustee who has vacated the office.

(2) The board may remove a trustee prior to completion of his or her designated term of office for proper cause only, which cause shall be stated in writing. No trustee shall be removed pursuant to this section except upon proper notice and hearing. The board shall prescribe uniform rules for the conduct of such hearings. Proper cause shall mean a trustee's failure to satisfactorily discharge his or her fiduciary responsibility, including, but not limited to, failure to attend 75 percent of the meetings of the board in a one-year period. For the purposes of removal only, six concurring votes shall be necessary.

(Ord. No. 12111, § 1, 9-25-01; Ord. No. 12201, § 1, 3-14-02)

Sec. 40-244. Administration of the Plan; liability; misconduct of a co-trustee.

(a) *Administrative duties of the board.*

(1) To maintain such records as are necessary for calculating and distributing Plan benefits;

(2) To maintain such records as are necessary for financial accounting and reporting of Plan funds;

(3) To 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) To compile such other administrative or investment information as is necessary for the management of the Plan;

(5) To process, certify and respond to all correspondence, bills and statements received by the Plan, as well as all applications submitted to the board for Plan benefits;

(6) To 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) To determine all questions relating to, and process all applications for eligibility, participation and benefits;

(8) To distribute at regular intervals a comprehensive summary Plan description and periodic reports to employees, not less than biennially, regarding the financial and actuarial status of the Plan;

(9) To retain and compensate such professional and technical expertise as is necessary to fulfill its fiduciary responsibilities;

(10) To make recommendations regarding changes in the provisions of the Plan;

(11) To assure the prompt deposit of all member contributions, city contributions, and investment earnings;

(12) To establish a uniform set of rules and regulations for the management of the trust;

(13) To 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.

(b) *Pension administrator.*

(1) The board shall 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.

(2) The pension administrator selected by the board shall have, at the minimum, the following qualifications:

- a. Accounting or pension administration background;
- b. Managerial experience, including hiring, directing and motivating a small staff;
- c. Sufficient knowledge or experience to supervise data processing operations;
- d. Experience with filing government forms (including federal and state compliance requirements) and have the initiative to inquire and successfully obtain resource data when specific information is not readily available;
- e. Be capable of using benefit formulas to calculate and pay benefits;
- f. Be capable of prudent financial management and obeying guidelines established by the board;
- g. Be capable of developing cash flow projection;
- h. Be capable of preparing financial reports reflecting the activity of the trust and financial trends;
- i. Be capable of maintaining an investment schedule;
- j. Be capable of maintaining minutes of the meetings of the board;
- k. Be capable of preparing correspondence, issuing forms, receiving and processing benefit claims, and expressing ideas in writing;
- l. Be able to insist upon, and actively pursue delivery of, all reports and other documents required for the efficient operation of the Plan;
- m. Effective oral communication skills;
- n. A good employment attendance record;
- o. Be efficient, practical and committed to responsible and effective operation of the Plan, its finances and expenses;
- p. Be able to remain neutral on decisions to be made by the board and serve all board members in an impartial and arm's length fashion, giving due recognition to the ultimate fiduciary obligation to participants and beneficiaries of the Plan.

(3) 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.

(4) 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.

(5) The pension administrator shall not be an employee of the city.

(6) The pension administrator shall be a fiduciary of the Plan.

(c) *Annual report to the city commission.* The board shall submit the following information annually to the city commission not later than July 1st of each year:

(1) A report showing the fiscal transactions of the Plan for the year ending on the preceding September 30th, as well as the amount of accumulated cash, securities and other property of the Plan.

(2) The current actuarial valuation of the assets and liabilities of the Plan.

(d) *Actuarial valuation; actuarial standards.*

(1) At least once in each three-year period, the board shall cause an actuarial investigation to be made into the mortality, service and compensation experience of the members of the Plan. Taking into account the result of such investigation, the board shall adopt for the Plan, such mortality, service and other tables as are necessary and proper. On the basis of these tables, an annual actuarial valuation of the assets and liabilities of the Plan shall be made.

(2) Actuarial assumptions based on the three-year experience analysis may be modified by the board at such times as it deems appropriate. No change in actuarial assumptions shall be made by the board without 60 days' prior notice to the city of the first meeting at which any change or proposal or recommendation related to such change is made. After the initial meeting where such changes or proposals are considered, the city shall be given reasonable notice of any subsequent meeting on the same or related proposal.

(3) The actuarial value of the assets of the Plan shall be the three-year moving market value average. Each year the actuarial value shall, starting with the market value as of October 1, 1997, be projected forward at the valuation date based on the actual contribution and benefit payments at the assumed interest assumption. This projected actuarial value is then compared to the market value of assets at the valuation date. One third of the difference plus prior deferrals is added to the projected actuarial asset value to equal the actuarial asset value. Two-thirds of the difference between the projected actuarial and market value is deferred to each of the next two years as future adjustment to the actuarial value. The result cannot be greater than 120 percent of market value or less than 80 percent of market value. The board may approve other methods of determining the actuarial value of the Plan assets if such other methods are recommended by the actuary retained by the board and found by the Florida Bureau of Local Retirement Systems, Division of Retirement, Department of Administration, or its successor, to be in compliance with state law. Prior to the first meeting of the board to consider any change in the method of determining the actuarial value of Plan assets, the city shall be given timely written notice of the proposed change.

(e) *Authority to hire consultants.*

(1) The board shall have the authority to retain its own legal consultants, 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.

(2) The board shall retain a physician to assist it in the performance of its administrative duties with regard to the 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.

(f) *Defense of actions; trustee liability.*

(1) 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.

(2) 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 contained in § 768.28, Florida Statutes. The trustees shall also be authorized to purchase from the assets of the fund, errors and omission insurance to protect the trustees and staff in the performance of their duties. Such insurance shall not provide an individual with protection against a fiduciary's fraud, intentional misrepresentation, willful misconduct or gross negligence.

(g) *Public records; board documents; written communications to and from city; commission agenda.*

(1) The board shall keep a record of all of 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.

(2) 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 shall be made directly to the board, with copies to the pension.

(3) The board shall establish uniform procedures for maintaining confidentiality of medical information as required by state and federal law.

(4) 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.

(h) *Rules and regulations.* The board may, from time to time, establish rules and regulations which it deems necessary for the efficient administration and management of the Plan. No administrative rule may conflict with the provisions of the City Charter or Code, state or federal law.

No administrative rule of the fund may conflict with the provisions of any collective bargaining agreements affecting members of the Plan.
(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-245. Asset management and investments.

(a) *Nature of trust.* The Plan is an irrevocable trust fund into which is deposited all of the assets of the Plan of every kind and description. The Plan is a defined benefit retirement fund. 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) *Custody; records.* The custody and supervision of the fund shall be vested in the board. All assets of the Plan may be pooled, 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) Benefits 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.

(c) *Investment policy.* 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.

(d) *Permissible investments.*

(1) Trust funds may be invested without limitation in the following asset classes:

a. Bonds, notes, mortgage-backed securities, or other obligations of the United States or those guaranteed by the United States or any agency of the United States Government or instrumentality of the United States Government or for which the credit of the United States Government, government agency or instrumentality is pledged for the payment of the principal and interest or dividends thereof.

b. Certificates of deposit of any bank incorporated under the laws of the State of Florida, or any national bank organized under the laws of the United States, to do business and situated in this state, to the extent that such savings accounts are fully insured with the federal government or an agency thereof, and that the certificates of deposit are secured by the Deposit of Securities of the United States Government.

c. Repurchase agreements with United States Treasury Securities, and agencies of the United States Government as collateral, said collateral to be held by trustees.

(2) No more than ~~five~~ **seven** percent of the fund at ~~book~~ **market** value may be invested in any one entity of the categories listed below:

a. Common stock, preferred stock and interest-bearing obligations of corporations having an option to convert into common stock, domestic or foreign, when recognized on a major United States stock exchange; provided that the aggregate investment of the fund in any one issuing corporation shall not exceed three percent of the outstanding capital stock of that corporation.

b. Notes secured by first mortgages on real property, insured or guaranteed by the Federal Housing Administration or the Veteran's Administration.

c. Interest-bearing obligations with a fixed maturity of any corporation within the United States; provided that such obligations are rated by at least two nationally recognized rating 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 rating service shall rate such obligations, such rating service must have rated such obligations in any one of the three highest classifications mentioned in this section. Any security downgraded subsequent to purchase which results in the security falling below the recommended guidelines may be held at the investment manager's discretion.

d. Mortgages, excluding those backed by the United States Government or Government agencies and instrumentalities, which are a commercial property secured by a first lien mortgage note for up to, but not in excess of, 80 percent of the appraised value of the property.

e. Common stock and preferred stock of foreign corporations; provided that the overall investment under this paragraph shall not exceed ~~ten~~ **fifteen** percent of the market value of the total trust fund.

(e) *Limitations on investment.*

(1) Trust funds may not specifically be invested in private placements, ~~Eurodollar securities, foreign credits~~ or debt to equity exchanges.

(2) Within the limitations in this section, the board shall have the authority to acquire every kind of property and investment which persons of prudence, discretion and intelligence acquire for their own accounts. The board may retain property properly acquired without limitation as to time and without regard to its suitability for its original purchase.

(f) *Money managers.*

(1) The board of trustees shall retain one or more money managers for management of the assets held by the Plan, and the board shall convey property of the trust to such managers for investment and reinvestment in accordance with the provisions of this section.

(2) 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 of Florida and shall have venue for resolution of disputes in Miami-Dade County, Florida. 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 management 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.

(3) The board shall establish written guidelines and objectives against which the investment performance of any money manager retained by the board shall be measured. If a money manager fails to meet the guidelines and objectives, or fails to meet its contractual agreement with the board, the money manager may be terminated by the board. The performance of the investment portfolio for the Plan shall be not less than 90 percent of the median performance of comparable portfolios as determined jointly by the board and the city manager. If performance falls below that minimum standard, the money managers shall automatically be removed, unless, based on extenuating circumstances, the board recommends continuation and such continuation is approved by the city commission. The board retains the right, at all times, to terminate any money manager agreement, with or without cause.

(4) In the conduct of their affairs, all money managers shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of their capital. Money managers shall disburse cash or property from the fund to the board upon written request. Such written request shall constitute a certification that the distribution so requested is one that the board is authorized to direct and the money manager should not be required to investigate the application of such money by the board or its designee. No distribution under this section may cause any part of the fund to be used for, or diverted for, a purpose other than providing benefits to members and beneficiaries of the Plan and defraying the reasonable expenses of administering the Plan.

(5) The board shall have a continuing duty to observe and evaluate the performance of any money manager or other investment advisor retained by the board. The board may, as part of its continuing duty to evaluate the performance of its money managers, retain the services of a performance monitor who shall be responsible for determining the appropriate performance benchmarks and for advising the board of needed changes in its investment policy or asset allocation. Any such advisor shall constitute a fiduciary of the Plan.

(g) *Records to be maintained.*

(1) Any money manager or investment advisor who has custody or control of any trust property 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 retirement board, or their designees.

(2) The board shall keep accurate and detailed accounts of its assets and investments and all such records shall be open for inspection and audit at all reasonable times by the city, or its designees.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-246. Contributions.

(a) *Member contributions.*

(1) Regular contributions of each member of the Plan shall be made each pay period at the rate of ten percent of each member's earnable compensation.

(2) The city shall pick up, rather than deduct, all regular contributions of members. The city shall derive pickup amounts from the same source of funds which is used in compensating members of the Plan and shall do so by reducing the earnable compensation of each member. All pick up amounts shall be treated as employer contributions for the purposes of determining tax treatment under the Internal Revenue Code of 1954, as amended.

(3) The board shall certify to the appropriate city authority or officer responsible for making up the payroll for members of the Plan, the proper proportion of each member's earnable compensation which shall be picked up each pay period as well as any additional amounts which shall be deducted for any member. In determining the amount earnable by a member in each pay period, the board may consider the rate of annual compensation payable to such member on the first day of each period as continuing throughout such period, and the board may omit pickup of amounts from earnable compensation for any period less than a full period. To facilitate pickup of contributions, the required contributions may be modified by such an amount as shall not exceed one-tenth of one percent of the annual earnable compensation which is the basis upon which such pick up amount is to be made.

(4) The proper authority or officer responsible for making up the payroll for members of the Plan shall certify to the board, on each payroll, the amounts to be deducted or picked up by the city for each member. Such amounts shall be deducted or picked up by the city, and when deducted or picked up, shall be paid to the Plan and credited to the active membership account for each respective member.

(5) Regular contributions shall be made, notwithstanding the fact that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the pick up of regular contributions provided for herein, and payment of compensation less such contributions shall be a full and complete discharge of all claims and demands whatsoever for service rendered during the period of employment covered by such payment, except as to benefits otherwise provided by this division.

(b) *City contributions.* The city's annual fiscal contribution to the Plan shall provide for the following: (1) non-investment expenses of the Plan; (2) amortization of the unfunded liability of the Plan; and (3) normal costs of the Plan.

(1) The city's contribution for non-investment expenses of the Plan in any given fiscal year shall be determined by the same process the city uses for that fiscal year in determining the budget of the downtown development authority and the department of off-street parking.

(2) The city's contribution for the unfunded liability of the Plan shall be made in accordance with the final judgment, as amended, in the matter of *Gates v. City of Miami*, Case No. 77-9491, in the circuit court for the eleventh judicial circuit in and for Miami-Dade County, Florida, and in accordance with the following additional provisions:

a. As of October 1, 1997, any actuarial accrued liability in excess of the market value of assets at that date shall be amortized over 30 years as a level dollar amount. As of October 1, 1997, benefit improvements for actives shall be amortized over 30 years. Benefit improvements for retirees shall be amortized over 15 years. Actuarial gains and losses shall be amortized over 15 years. Changes in actuarial assumptions shall be amortized over 20 years.

b. To the extent the actuarial liability plus normal cost is less than the actuarial asset value, all prior amortization bases are considered fully funded.

(3) The actuarial method for evaluating assets shall be changed to a moving market value average over three years beginning September 30, 1997. As of October 1, 1997, market value shall be used; as of October 1, 1998, a two-year moving average shall be used; as of October 1, 1999, and thereafter, a 3-year moving average shall be used. Each year the actuarial value, starting with the market value as of October 1, 1997, will be projected forward at the valuation date based on actual contributions and benefit payments at the assumed interest assumption. This projected actuarial value is then compared to the market value of assets at the valuation date. One-third of the difference plus prior deferrals is added to the projected actuarial asset value to equal the actuarial asset value. Two-thirds of the difference between projected actuarial and market asset value is deferred to each of the next two years as future adjustment to the actuarial asset value. The result cannot be greater than 120 percent of market value or less than 80 percent of market value.

(4) The modified aggregate entry age normal cost method will be applied for costs as of October 1, 1998, and each October 1st thereafter, based on demographic and asset data as of the previous October 1st adjusted for interest from that date to reflect payment timing. This modification method will determine the annual normal cost based on the present value of future normal costs spread as a level percent of pay. The present value of future normal cost will be based on the present value of all benefits less present value of future employee contributions less the greater of the actuarial accrued liability or actuarial asset value. Under no circumstances will the total cost be determined to be less than zero.

The calculation for normal costs shall be performed separately by actuaries for the city and for the Plan in accordance with the provisions of the foregoing paragraph. The actuary for the Plan shall use the actuarial assumptions adopted by the board. The actuary for the city may use any actuarial assumptions deemed appropriate by that actuary. If the actuary for the Plan and the actuary for the city agree on the normal costs contribution to be made by the city, that amount shall be contributed by the city. If the two actuaries cannot agree on the normal costs contribution, they shall promptly select an independent third actuary. If they are unable to agree on a third actuary, one shall be selected by the American Academy of Actuaries or Conference of Consulting Actuaries. The third actuary shall, as soon as practicable, submit to the board and the commission a funding recommendation utilizing standard acceptable funding techniques and assumptions. Thereafter, the commission shall fund the amount recommended by either the actuary for the Plan or for the city, whichever recommendation is closer to the recommendation of the third actuary.

(5) On or before May 15 of each year, the board shall certify to the city manager:

a. The amount of appropriation necessary to pay the normal costs and unfunded liability contributions to the Plan for the next fiscal year, including the amount of any benefits payable on account of any predecessor pension or retirement fund; and

b. The amount of appropriation required to pay the non-investment expenses of the Plan for the next fiscal year.

(6) On or before May 15 of each year, the director of finance shall certify to the appropriate fiscal officer of the Miami-Dade County Government, the amount payable by such metropolitan government under the provisions of Act 59-203 of the General Laws of Florida. Such amount shall consist of that proportion of the appropriation certified by the board pursuant to paragraph (4) of this subsection as the total earnable compensation of members who are employees of such metropolitan government bears to the total earnable compensation of all members. Upon receipt of such amount from the Miami-Dade County Government, the director of finance shall cause the amount received, less that proportion included for non-investment expenses, to be paid into the benefit account, and such amount shall be included in the total appropriation payable by the city to the Plan as required by this section.

(7) All contributions made by the city to the Plan for any given fiscal year shall be made quarterly, in equal payments, on the first day of each quarter during the fiscal year in question. If the amount of the city's contribution for normal costs has not been determined by the initial payment date in any given fiscal year, the city shall make quarterly payments based upon the greater of (a) the prior year's contribution to normal costs, or (b) the amount calculated pursuant to the final judgment in *Gates v. City of Miami*, as amended.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-247. Accounts.

(a) *Generally.* There shall be two accounts within the Plan; the membership account and the benefits account. Each account shall be operated in accordance with the provisions of this section.

(b) *Membership account.*

(1) The membership account shall consist of the accumulated contributions of the members of the Plan and the accumulated contributions of each member absent from service. The membership account shall also include regular interest paid on member contributions in accordance with the provisions of this section.

(2) All withdrawals of accumulated contributions, whether made at the request of a member or paid to a legal representative or designated beneficiary of a deceased member, shall be charged to the membership account.

(3) Upon the retirement of a member, or upon a member's election of a vested right to retirement, an amount equal to the member's accumulated contributions shall be transferred from the membership account to the benefit account.

(c) *Benefit account.*

(1) The benefit account shall consist of all accumulated contributions transferred from the membership account, all city contributions, all interest and dividends earned on fund assets, all reserves for payment of Plan benefits and all other assets of the fund.

(2) On January 1 of each year, the board shall transfer from the benefit account to the membership account, an amount sufficient to allow regular interest on the individual balances in the membership account.

(3) All expenses of the Plan shall be chargeable to the benefit account. Such expenses shall include, but are not limited to, payment of all retirement benefits to beneficiaries of the Miami City General Employees' Retirement Plan, beneficiaries of the City of Miami General Employees' and Sanitation Employees' Retirement Trust and retirement allowances to any other persons who retired under the provisions of any predecessor pension or retirement fund.

(d) The board, by uniform rule, may adopt alternate bookkeeping methodology for the maintenance of accounts.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-248. Physical examination; effect of pre-employment conditions.

(a) All employees, as a condition of entry into the Plan, shall agree to submit to a uniform medical examination, as may be required by the board, for the purpose of determining the existence of pre-existing medical conditions. In lieu of a board physical, an employee consents to the board's access for the purposes of this section to any physical performed by the city. No persons shall be denied entry into the Plan on the basis of any pre-existing medical condition.

(b) In the event that the physical examination described in this section shall determine the presence of a pre-existing medical condition, said condition shall be reported to the employee and recorded in the records of the board. Each employee shall acknowledge the receipt of the medical report and execute a form, as prescribed by the board, indicating knowledge of the pre-existing condition and an agreement that said condition cannot form the basis of a service-incurred disability retirement unless it can be shown that the member would have been entitled to a service-incurred disability retirement allowance on the basis of aggravation of the pre-existing condition.

(c) In the event that a member believes the medical report is in error, the member may request a review by the administrator within 30 days of receipt of notice of the physical examination results. If the administrator's review does not satisfactorily resolve the question of the pre-existing condition, the member may request a hearing before the board. Failure to request such a review will not preclude a later challenge on this issue. The board shall prescribe uniform rules for the conduct of such hearings.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-249. Membership; members absent from service.

(a) The membership of the Plan shall include all employees as defined in this Plan, except police officers and firefighters. Membership shall also include an employee who has been absent from service for less than three years in a period of five consecutive years after last becoming a member and who has not withdrawn his or her accumulated contributions. The active membership of the Plan shall include all employees, but shall not include any member absent from service.

(b) Participation in the Plan is a mandatory condition of employment for all employees except as permitted by section 40-250. Acceptance of employment shall constitute authorization for the city to pick up contributions from the compensation of the employee.

(c) Membership in the Plan shall end under the following conditions:

- (1) Absence from service due to resignation, termination, budgetary reduction or layoff for more than three years in any period of five consecutive years after last becoming a member;
- (2) Becoming a member of any other city sponsored Plan;
- (3) End of appointment;
- (4) Expiration of office;
- (5) Death.

When membership ends, all creditable service previously earned becomes void. If the member again becomes an employee of the city, the employee shall enter the Plan as a new member with no credit for previous service, unless time is repurchased as provided in the Plan. Upon becoming a retiree, a member shall be entitled to those rights earned as of the date of retirement or such benefits as are specifically made applicable to retirees.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-250. Right of certain persons to reject membership.

Those persons employed in the following positions shall have the right to reject membership in the Plan within the later of one year from June 10, 2000, or within one year from their respective commencements of employment or appointment with the city, subject to performance of the conditions set forth in paragraphs (1) and (2) below, within the aforesaid time

period: city manager, city attorney, city clerk, chief deputy city attorney, deputy city attorney, assistant city attorney, assistant city clerk, and those employees identified by the city administration as employed in the executive service of the city. **Also, the staff of the City of Miami Commission.** The conditions upon which membership in the Plan may be rejected by any person employed in any of the foregoing positions shall be as follows:

(1) Submission to the commission of a written trust agreement wherein the employee rejects membership in the Plan and wherein provision is made for the city to contribute moneys on behalf of such employee to a public trust fund designated by the employee and approved by the commission, such contribution to be made in lieu of the city's contribution on behalf of the employee to the Plan.

a. The contribution to be made by the city under the terms of the above agreement shall be calculated at the rate of eight percent of the individual's annual compensation.

b. A contribution to the designated public trust fund must be made by the employee rejecting membership in the Plan, and such contribution by the employee shall be picked up by the city at a rate of not less than five percent of the employee's annual compensation.

c. An employee may, if so provided in the trust agreement, take actual or constructive receipt of his or her contribution, and those contributions made by the city on his or her behalf prior to reaching age 55 or upon becoming permanently and totally disabled by making a revocable election of distribution of accounts pursuant to the mode of distribution of benefits as provided in the trust agreement.

d. The city manager may elect to participate in a public trust fund designated by the employee and approved by the city commission. Contributions made to the designated public trust fund by the city shall be in accordance with the provisions of a resolution designating benefits for the city manager and approved by the city commission. Contributions, if any, by the city manager shall be picked up by the city as provided by the provisions of a resolution approved by the city commission. The city manager may, if so provided in the trust agreement, take actual or constructive receipt of his or her contributions, and those contributions made by the city on his or her behalf prior to reaching age 55 or upon becoming permanently and totally disabled, by making a revocable election of distribution of accounts pursuant to the mode of distribution of benefits as provided in the trust agreement.

e. The city attorney, assistant city managers, and assistants to the city manager may elect to participate in a public trust fund designated by the employee and approved by the city commission. Contributions shall be made to the designated public trust fund by the city at a rate of 20 percent of the city attorney's annual base salary, and eight percent of the annual base salary for each of the assistant city managers and assistants to the city manager. The city attorney, assistant city managers, and assistants to the city manager may, if so provided in the trust agreement, take actual or constructive receipt of his or her contributions, and those contributions made by the city on his or her behalf prior to reaching age 55 or disabled, by making a revocable election of distribution of accounts pursuant to the mode of distribution of benefits as provided in the trust agreement.

(2) Upon rejecting membership in the Plan, employees in the foregoing positions as defined in this subsection e., above, may not elect at a later date to transfer membership to the Plan, unless the election is the result of the loss of one of these positions. Should an eligible individual elect to reject membership in the Plan, all previous membership service in the Plan shall be deemed lost upon disbursement or transfer of the employee's member contributions from the Plan. Rejection of membership in the public trust fund, in favor of membership in the Plan, shall preclude employees in the foregoing positions from transferring membership to the public trust fund at a later date.

(3) If an eligible employee fails to comply with all of the conditions set forth above, the employee shall not have the right to reject membership in the Plan.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-251. Transfer of city employees to Plan.

(a) In the event that a firefighter or police officer of the city who is a member of the City of Miami Firefighters' and Police Officers' Retirement Trust ("retirement system") is reclassified to a position other than firefighter or police officer, the employee shall be automatically transferred to membership in this Plan. Creditable service earned as a member of the retirement system shall be deemed creditable service in this Plan.

(b) Any current employee employed prior to April 1, 1996, by the city in a position defined in section 40-250 who has previously rejected membership in the Plan and elects membership in the Plan by June 30, 1996, shall have membership transferred to the Plan, effective July 1, 1996. Creditable service as a member of the public trust fund defined in section 40-250 shall be deemed creditable service in the Plan upon such transfer.

(c) Past service buy-back. Prior to election for membership transfer under paragraph (b) above, an employee in a position defined in section 40-250 may elect to enter into an agreement between the employee and the city to purchase creditable service as a member of the public trust fund, from his or her original date of employment to the date he or she first becomes a member of the public trust fund defined in section 40-250 above.

(d) Outstanding loan balance. Any member of the public trust fund who has an outstanding loan against his or her public trust fund account balance and who elects to transfer to the Plan must repay said loan in full prior to transfer to the Plan.

(e) Commencing on the effective date of transfer to the Plan, a member who has transferred from the retirement system or public trust fund as defined in section 40-250 shall make regular contributions at the rate required by the Plan. Accumulated contributions credited in the retirement system or public trust fund as defined in section 40-250 to the account of such member shall be transferred to the membership account of the Plan and credited to the member thereunder. There shall be transferred:

The employee/employer contribution account balance held in a public trust fund on behalf of any section 40-250 defined employee who transfers membership to the Plan.

(f) If any member of the Plan has transferred from the retirement system or a section 40-250 public trust fund and his or her contributions pursuant to membership in the retirement system or public trust fund cause accumulated contributions at the member's normal retirement age to exceed the amount such accumulated contributions would have been had the member been a member of the Plan during his or her entire period of service with the city, such member shall be entitled to the return of the excess contributions upon retirement or shall have his or her retirement allowance increased by the actuarial equivalent of the amount by which his or her contributions exceed the full amount which would have been the member's accumulated contributions had he or she been a member of the Plan during his or her entire period of service with the city.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-252. Creditable service.

(a) Creditable service shall consist of all time spent in service since last becoming a member, plus any other time for which creditable service is received pursuant to the provisions of this division.

(b) The board shall determine by administrative rule the amount of service in any year which is equivalent to a year of membership service. The board may not grant more than one year of membership service for all service in any calendar year.

(c) The board may adopt rules and regulations to verify membership credit claimed by any member.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-253. Dismissal for willful misconduct.

(a) Upon a member's dismissal from employment for willful misconduct associated with the duties or responsibilities of his or her employment or office with the city, the following shall apply:

(1) All ownership rights, title, and property interest in such member's accumulated contributions shall immediately vest in the member; and

(2) The dismissed member shall no longer be entitled to receive any benefit whatsoever under the Plan.

The term "willful misconduct" as used in this section shall mean the commission of any act which would constitute a forfeitable offense under Section 112.3173, Florida Statutes.

(b) Should dismissal of an employee for willful misconduct city as defined in this section be reversed by the city manager or by a court of final jurisdiction, the former employee, if he or she again becomes a member, may elect to reconvey all ownership rights, titles and interest in his or her accumulated contributions to the Plan and may elect to payback for time during which the member was dismissed. Payments made to the Plan pursuant to this paragraph shall be made in such manner as the board shall, by rule, prescribe.

(c) The board shall, by administrative rule, adopt a due process procedure to implement this section.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-254. Paybacks for membership credit.

Members shall have the right to receive membership credit in the Plan in accordance with the provisions of this section. Each payback provided for in this section shall be independent of any other payback and may, where appropriate, result in cumulative credits. If a member revokes the payback election, is terminated, resigns or is otherwise separated from the city before the payback is completed, the member shall only receive that portion of credited service purchased as of the date of separation.

(1) *Restoration of prior service credit for reemployed members.*

a. Reemployed former member may restore previous membership service by repaying the accumulated contributions withdrawn together with a uniform rate of interest as determined by the board. This benefit is only available to persons who separated from prior employment with the city other than by involuntary dismissal.

b. The board shall, by uniform rule, promulgate an election form to be filled out by employees wishing to exercise this option. The election form shall specify the form of repayment. All repayments must be completed within five years of the completion of the election form.

c. To receive full credit for the membership service permitted under this section, the member must have completed the repayment of all contributions and interest.

d. If the member is separated for more than three years the member shall be eligible to combine prior and new service for the purpose of Rule of Seventy (70) retirement, but prior service shall be paid at the benefit rate in effect at the time of the first separation. If the member is separated less than three years, all service will be combined for benefit calculation purposes. The member shall again be an active member of the Plan on the date employment recommences and the member shall make regular contributions to the Plan at the rate prescribed by ordinance.

e. All rights under this section must be exercised in accordance with uniform rules adopted by the board.

(2) *Credit for continuous service as a nonmember.*

a. Any person who is now a member of the Plan who had prior service with the city as a probationary, full-time temporary, or permanent employee, classified or unclassified, but who at the time of that service was not a member of the Plan, may purchase up to four years of that prior non-membership service. ~~The provisions of this section shall not apply to the position of standby laborer in the Department of Solid Waste regardless of the pay basis.~~ Contributions will be based

on the member's current rate of earnable compensation and the current contribution rate. Interest shall be charged at a uniform rate as determined by the board.

b. The board shall promulgate a uniform policy for the election and purchase of this benefit. All purchases of credit under this section must be completed within five years of the date of election.

c. In the event that a member becomes disabled in the line of duty, contributions paid under this section shall be refunded with regular interest, at a uniform rate as determined by the board. Benefits purchased under this section may not be used for calculating the minimum service necessary to receive an ordinary disability retirement.

(3) Credit for military service.

a. Any member of the Plan whose service with the city is interrupted by military service shall have all pension rights accorded veterans as provided by state or federal law.

b. Any member who has served active military duty, but whose service is not interrupted by that military duty, may purchase up to a maximum of four years for the time spent in military service under the conditions set forth in this section.

c. To be eligible for the four-year service credit set forth in subsection b., the member must:

1. Have engaged in wartime service as declared by state or federal statute or executive order of the President;

2. Military service under honorable conditions;

3. Be vested in this Plan;

4. Complete the election form promulgated by the board within the time limits set forth by the board within the time limits set forth by uniform rule of the board;

5. Make a contribution to the Plan equal to the member's rate of earnable compensation at the date membership service first commenced and that the contribution rate then in effect, together with four percent interest, be compounded annually.

All such payments must be completed within five years of election to participate in the benefits of this subsection.

d. If a member becomes disabled in the line of duty, the member shall have the option of receiving a return of contributions and no military service credit or accepting a service retirement and completing the purchase of the military service credits by the payment of the remaining contributions.

e. If a member becomes disabled from causes other than service with the city, the member shall have the option of receiving a return of contributions and no military service credit or completing the purchase of the military service credits by payment of the remaining contributions.

(4) Credit for maternity/medical leave.

a. No member who takes an unpaid leave of absence for maternity or medical purposes under the Family Medical Leave Act (FMLA), shall suffer a break in membership. All unpaid leaves of absence taken pursuant to FMLA shall be treated as continuous service, regardless of any other limitation on service within this Plan.

b. A member who takes an unpaid leave of absence for maternity or medical leave may purchase membership credit not to exceed 180 days. If the member requests light duty employment from the city but is denied such employment, the amount of membership credit which may be purchased shall increase to 240 days.

c. Election to buyback for membership credit under this subsection shall be available for 30 days after notification to the member by the board that such buyback is available. The board shall, by uniform rule, establish procedures for notification of members.

d. Contributions for this benefit shall be made in accordance with uniform rules established by the board, but payback of all contributions must be completed within one year. Interest shall be charged at a uniform rate as determined by the board. Contributions shall be at the member's current rate of compensation and the current rate of contribution. If a member fails to meet the qualifications of this subsection, all contributions shall be returned and the member waives the right to membership credit for this period.

(5) *Restoration of service credit for prior continuous service.* Any member with prior service with the city whose membership in the Plan was delayed due to administrative error, either by the board or the member, which resulted in a delay in the commencement of membership shall purchase said prior continuous service, without limitation. Contributions shall be based on the rate of compensation and at the contribution rate in effect on the date of the error. No interest shall be charged if the error was caused by the city or the board. If the error is caused by the member, a uniform rate of interest shall be charged, as determined by the board. The payback shall be made in accordance with uniform rules established by the board and payment must be completed within five years. In the event of a service-connected disability, prior to the completion of the buyback, the member shall be offered the opportunity of receiving either a return of contributions paid or the opportunity to complete the buyback through the payment of the additional contributions. In the event of a refund, contributions shall be refunded without interest. In the case of a non service-connected disability prior to the completion of the buyback, the member shall be offered the opportunity of receiving either a return of the contributions paid or the opportunity to complete the payback through the payment of the additional contributions or reduction of the disability benefit until the contributions are fully paid. In the case of a return of accumulated contributions, said contributions shall be returned with interest, at a uniform rate as determined by the board.

(6) *Purchase of additional service upon retirement.* A member in service who has continuous service may, at time of retirement, purchase up to a maximum of three whole creditable years of service based upon the present value as determined by the actuary for the Plan. The purchase of the service years will be made by utilizing the employee's available leave balance at time of retirement reduced by any required federal withholding taxes. If the amount of the leave balance is insufficient to pay the full cost of the three years, the member may make a lump sum purchase in cash for the difference. The purchase of these years of creditable service shall be based upon the average final compensation of the member as defined in section 40-241. The hourly rate applicable to the calculation of the leave balances shall be as specified under the labor agreement applicable to the employee or, in the case of exempt employees, the appropriate administrative policy of the city.

(7) *Re-employment after an early retirement window.* Should any member be reemployed after leaving on an early retirement window, no enhancement shall apply to benefits earned during the period of re-employment. All service retirement benefits earned during the period of re-employment shall not apply to prior service and shall only apply prospectively.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-255. Benefits.

(a) *Service retirement.*

(1) A member in service 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.

(2) A member shall be considered eligible for a service retirement upon attaining the earliest of the following:

a. The completion of ten years of credited service and the attainment of age 55; or,

b. Rule of 70 retirement. The completion of a combination of years of creditable service plus attained age equaling 70 points. To be eligible for this benefit, the member must have completed not less than ten years of creditable service.

(3) The service retirement benefit for persons retiring after October 1, 1998, shall be equal to three percent of the member's average final compensation multiplied by the number of years of creditable service, which amount shall be paid yearly in monthly installments for the life of the member. The benefit paid shall be the benefit in effect on the date of separation.

(4) Any member eligible for a service retirement may choose any of the optional allowances provided in subsection 40-255(i).

(b) *Early service retirement.*

(1) Any member who has 20 or more years of creditable service may elect to retire on a retirement allowance which shall be the actuarial equivalent of the service retirement allowance otherwise available to the member upon the attainment of age 55. Such election 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.

(2) A member eligible for early service retirement may choose any of the optional allowances provided for in subsection 40-255(i) of this Plan.

(3) A member who has elected to retire on an early service retirement shall not be eligible to participate in DROP.

(c) *Vested right to retirement.*

(1) If a member who is not entitled to retire on either a service retirement or early service retirement, ceases to be an employee for any reason other than death or willful misconduct, the member may elect to continue as a member not in service and retire upon the subsequent attainment of age 55, provided:

a. That at the time the member ceased to be an employee, the member had completed ten years of creditable service; and

b. That the member had not withdrawn his or her accumulated contributions.

c. The retirement benefit shall be the same as a service retirement benefit.

(2) If a member who elects to become a member not in service subsequently elects to withdraw his or her accumulated contributions, the member not in service shall be paid the amount of his or her accumulated contributions at the time he or she ceased to be an employee, plus regular interest.

(3) If a member not in service dies prior to retirement, his or her designated beneficiary shall be paid the amount of his or her accumulated contributions at the time the member ceased to be an employee, plus regular interest to the date of the member's death.

(4) If a member elects a vested right to retirement under any city retirement program and thereafter again becomes an employee more than three years after separation, the member shall be eligible to combine prior and new service for the purpose of Rule of Seventy (70) retirement, but prior service shall be paid at the benefit rate in effect when vested rights were elected. If the member is separated for less than three years, all service will be combined for benefit calculation purposes. The member shall again be an active member of the Plan on the date employment recommences and the member shall make regular contributions to the Plan at the rate prescribed by ordinance. Such member shall be entitled to accrue retirement benefits as if the member were a new entrant upon the date of subsequent employment, except as the right to combine service as set forth in this paragraph and, in addition, shall be entitled to receive a retirement benefit for his or her prior employment as provided in this paragraph. A second period of vesting shall not be required and the member shall be eligible for all rights available to vested employees. This provision shall also be applied to reemployed retired members, who have been retired for more than three years.

(5) A member may choose any of the optional allowances provided for in subsection 40-255(i) of this Plan at the time the vested retirement allowance commences.

(6) A member not in service shall not be eligible to participate in DROP.

(d) *Ordinary disability retirement.*

(1) Any vested member of the Plan who becomes permanently and totally incapacitated for further performance of duty with the city from a cause other than the performance of duty shall be eligible for an ordinary disability retirement.

(2) A member shall be deemed disabled for the purposes of this section if they are permanently and totally unable to engage in any useful and efficient service within the city workforce due to a physical or mental impairment.

(3) No member may receive an ordinary disability retirement on the basis of a pre-existing medical condition, unless the disability would have occurred regardless of that pre-existing condition. The board, as part of the disability review process, shall determine whether a vacant position exists within the city's workforce, consistent with the member's training, skill and medical limitations. If the member is capable of performing any such vacant position and the member refuses the assignment, that refusal shall be grounds for denial of an ordinary disability retirement. Nothing in this section shall require the city to create a job where none presently exists or to accept an employee who lacks the training or skills necessary to perform any such vacant position.

(4) Benefits under this section shall commence on the date disability is determined to exist by the board and shall continue for the life of the member. Benefits shall be paid monthly and the member shall not be eligible for a return of accumulated contributions or for any survivorship or other payment option provided under this Plan.

(5) The procedure for determining disability shall be as set forth in this Plan for the determination of service-incurred disability.

(6) The board of trustees shall have the continuing right to require disabled members to submit to a medical examination when the board has reason to believe that the disabled member is committing a fraud on the fund.

(7) Benefits payable under this section shall be the greater of 90 percent of the product of three percent multiplied by the number of years of credited service; or 30 percent of the member's average final compensation.

(8) Upon finding that a member is no longer disabled as defined in this Plan, ordinary disability benefits shall cease, and the member shall be eligible for a regular service retirement as if he had retired on the date his disability retirement benefits commenced.

(9) A DROP member shall not be entitled to receive an ordinary disability retirement.

(e) ~~Service-incurred~~ *Accidental* disability retirement.

(1) A member shall be disabled under the terms of this section if the member has suffered an injury or illness arising out of performance of service for the city and which renders the member permanently and totally disabled for useful and efficient service with the city.

(2) A member shall be deemed permanently and totally disabled when he or she is totally unable to engage in any useful and efficient service within the city due to a physical or mental impairment which is the natural and proximate result of an accident, injury or illness which occurred while in the actual performance of duty; provided, however, that said accident was without gross negligence on the part of the member.

(3) A member shall be eligible for a ~~service-incurred~~ *an accidental* disability retirement from the date of entry into the Plan. Application for disability retirement shall be made on a form prescribed by the board of trustees. 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 a disability, the board shall refer the application to its physician for review. The applicant for a disability shall be required to submit to such medical examinations as the board appointed physician shall deem necessary. The board appointed physician, and any referring specialists, shall report their findings to the board. The report 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 those determinations, the physician(s) shall be bound by the definition of disability set forth in this Plan.

(4) Upon receipt of the report of the board's physician(s), the board of trustees shall schedule a public hearing at which time the board shall review all medical reports, together with 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 applicant 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. 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. 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. The decision of the board shall be based solely upon the evidence presented and the law applicable to this Plan. 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.

(5) The board may prescribe rules of procedure to implement the provisions of this Plan relating to the conduct of disability hearings.

(6) No applicant for a ~~service-incurred~~ **an accidental** disability retirement may receive benefits under this section if the accident, injury or illness is shown to have occurred due to the gross negligence on the part of the member. The term "gross negligence" shall be defined as willful, wanton or malicious conduct on the part of the member demonstrating a total disregard for human life, safety and property.

(7) ~~Except for disabilities arising from the causes outlined in subsection (11), a~~ **A** member who is granted a ~~service-incurred~~ **an accidental** disability retirement shall receive a benefit equal to 66 2/3 percent of the member's average final compensation or 66 2/3 of the member's compensation in the year immediately preceding the member's disability, whichever is greater. The benefit shall be paid yearly, in monthly installments, for the life of the member. Members receiving a benefit under this section shall not be eligible for a return of contribution nor for optional allowances provided in this Plan under subsections (h) and (i).

(8) Upon the death of a member ~~in receipt of benefits under this section,~~ **who has received an accidental disability** the spouse of the member **who was designated by the member on the date of retirement as said member's spouse** shall receive payment of an amount equal to 40 percent of the member's monthly retirement allowance during the lifetime of the spouse.

(9) The board of trustees shall have the continuing right to require disabled members to submit to a medical examination when the board has reason to believe that the disabled member is no longer entitled to receive benefits from the fund. If the examination reveals the member is no longer entitled to receive disability benefits, the benefits shall cease and, if vested, the member will be eligible for a regular service retirement as if he had retired on the date his disability retirement benefits commenced. The board has discretion to exercise this power as the circumstances warrant.

(10) ~~(Deletion of this paragraph is pending discussion with the City's Law Department.) Any benefits received from this Plan shall be reduced by the amount of workers' compensation indemnity benefits received by the member to the extent that the sum of the worker's compensation benefits and the benefits received under this Plan exceeds the average monthly compensation of the member at the time of disability. The board shall, by uniform rule, prescribe a procedure for treatment of lump sum workers' compensation indemnity payments as if they had been received on a monthly basis.~~

~~(11)~~ **(f) Service-incurred disability retirement.**

(1) Any member who becomes totally and permanently incapacitated for duty as a result of heart disease, hypertension or tuberculosis, shall be presumed to have been **a Service-incurred disability** ~~been injured~~ in the line of duty, unless a physical examination upon entering the plan revealed that such condition existed at that time or competent substantial evidence determines that the injury is

not the result of a workplace injury. Such person may be eligible for a service-incurred disability provided that a physician retained by the board, after a medical examination of such member, certifies that such member is totally incapacitated for duty. Such person shall receive benefits equal to those paid for an ordinary disability, with a minimum benefit of 40 percent of average final compensation. **Upon the death of a member who has received a Service-incurred disability retirement no future pension benefits will be due to any beneficiary.**

~~(12)~~ (2) A DROP participant shall not be entitled to receive a service incurred disability retirement.

~~(f)~~ (g) *Ordinary death benefit; post-retirement death benefits.*

(1) If a member in service who has completed three or more years of creditable service, whether or not the member is eligible for normal or early retirement, dies from a non duty related cause, a lump sum benefit equal to 50 percent of the member's earnable compensation for the year immediately preceding death shall be paid, together with the return of the member's accumulated contributions plus interest. If the member has completed less than three years of credited service at the time of death, there shall be a return of contributions with interest only. The benefit shall be paid to any person nominated in writing by the member. In the absence of a written nomination, or if the person nominated is deceased or cannot otherwise be located, the member's estate shall be deemed the nominated beneficiary.

A member in service who is eligible for any form of early or normal retirement under the terms of this Plan dies prior to retirement from a non duty related cause, the member shall be treated as if he or she had retired on the date preceding death. The member's spouse shall have the option to receive:

a. Forty percent of the member's monthly retirement allowance which would have been payable at normal retirement date, without actuarial reduction together with 50 percent of the member's compensation in the year immediately preceding the member's death; and

b. In the event the monthly retirement allowance provided for in subparagraph (a) above is chosen, and the member has served as city manager, assistant city manager, city clerk, assistant city clerk, executive secretary of the civil service board, city physician, city attorney, assistant director of the law department, or as director or assistant director of any department or office established by the City Charter, or by ordinance established by the City Charter, for a combined period of at least three years prior to May 23, 1985, an additional one percent of the member's final average final compensation multiplied by the number of years of service in that position, up to a maximum of ten years shall be paid to the surviving spouse.

c. A return of the member's accumulated contributions, with accumulated interest together with 50 percent of the member's compensation in the year immediately preceding the member's death. This benefit is payable on behalf of any member, whether or not there is a surviving spouse. In the absence of a surviving spouse, the benefit will be paid to the person designated in writing to the board by the member, or if no such designation exists or the designated beneficiary has predeceased the member, then the benefit will be payable to the member's estate; or, in the case of a surviving spouse.

The payments under subsections (a) and (b) shall be paid yearly in monthly installments.

If a retired member dies prior to receiving 12 monthly retirement payments and prior to the effective date of any optional allowance permitted by this Plan, there shall be a benefit payable in a lump sum equal to the unpaid difference of 12 monthly payments. This benefit may be paid to any person nominated in writing by the member. In the absence of a nomination, or if the person nominated has died or is otherwise unavailable, the member's estate shall be deemed the nominated beneficiary.

~~(g)~~ (h) *Service-incurred death benefit.* If a member in service dies from a cause arising in the line of duty, other than the gross negligence of the member, there shall be a service-incurred death benefit equal to one-half of the member's average final compensation, which shall be paid yearly in monthly installments, together with the member's accumulated contributions plus interest, which

shall be payable in a single sum. This benefit shall only be paid to the following persons in the order set forth below:

- (1) To the spouse of the member until the death of the spouse;
- (2) If there is no spouse or if the spouse dies before the youngest child of the deceased member has attained the age of 18, then to the children of the member under the age of 18 in equal shares. As each child reaches the age of 18, the shares of the remaining children shall be adjusted accordingly;
- (3) If there are no spouse or children under the age of 18 years living at the time of the member's death, then payment may be made to the dependent father or dependent mother for life. The board shall determine, by uniform rule, proof necessary to establish dependency. If both the dependent father and mother are living, the benefit shall be shared equally. Upon the death of one, the living dependent parent shall receive the entire benefit. If there is no spouse, dependent child or dependent parent living at the time of the member's death, the member's estate shall receive an amount equal to 50 percent of the member's compensation for the year immediately preceding the member's death, together with a return of accumulated contributions plus interest.

~~(h)~~ (i) *Return of contributions.*

- (1) If a member ceases to be an employee, a member may demand a return of accumulated contributions. Receipt of said contributions shall constitute a full discharge of all rights under the Plan and any creditable service is waived.
- (2) If a member has been granted a retirement benefit, the member shall not be eligible to receive accumulated contributions unless provided for as an optional allowance under the terms of this Plan or any other prior Plan of the city.

~~(i)~~ (j) *Optional allowances.*

- (1) A member may receive payment of retirement benefits under the Plan in accordance with the options set forth in this section. The Board, by rule, shall prescribe the method for selecting payment options consistent with the provisions of this section.

- (2) The options permitted under the plan are:

Option 2: Equal payment survivor annuity. A member may receive a reduced retirement allowance throughout his or her life with an equal sum being paid to the member's designated beneficiary at the death of the member. If this option is chosen for a surviving spouse, the reduction shall be ten percent of the member's benefit. If any person other than a surviving spouse is chosen as the beneficiary, the reduction shall be based on the actuarially equivalent sum.

Option 3: One-half payment survivor option. A member may receive a reduced retirement allowance payable for the life of the member with one-half of the member's benefit being paid to a designated beneficiary at the death of the member. If this option is chosen for a surviving spouse, the reduction shall be two percent of the member's benefit. If any person other than a surviving spouse is chosen as the beneficiary, the reduction shall be based on the actuarially equivalent sum.

Option 6a: A member may, in lieu of any other benefit from this Plan, receive a return of contributions, excluding amounts picked up from the member's earnable compensation and credited to the COLA fund between June 23, 1985 and September 30, 1993. Under this option, the member shall also receive a monthly service allowance equal to one-half of the amount to which the member would have been entitled under this plan. This option has no survivorship benefit.

Option 6b: Life annuity. A member may receive the normal monthly service retirement allowance plus an additional five percent payable for the life of the member, with no survivorship benefit. The payment of this benefit shall be guaranteed for at least one year.

Option 6c: Surviving spouse annuity. A member may receive an unreduced retirement payment through the life of the member and upon the member's death the surviving spouse shall receive forty percent of the member's retirement allowance payable during the lifetime of the spouse. A member who desires to leave a greater survivorship percentage to a surviving spouse may elect Options 2 or 3.

~~(j)~~ **(k) Change in beneficiary.** Any **Only** members who elects a survivorship option for a spouse pursuant to subsection (1) **Option 6c: Surviving spouse annuity** may designate a new spousal beneficiary in accordance with procedures established by the board; provided, that an actuarial valuation will be made following such election, and the benefit for the retiree will be recalculated so that it is the actuarial equivalent of the benefit payable to the original spouse. It is intended that the Plan will pay only one survivor benefit for any member of the Plan and will not incur an increase in benefit costs by reason of a change in designated beneficiary. **Also, provided that the spouse designated at the time of retirement is still alive at the time the member is requesting to change his or her beneficiary.**

~~(k)~~ **(l) Deferred retirement option program.** Effective upon ratification of the A.F.S.C.M.E., Local 1907, labor agreement for October 1, 2001 through September 30, 2004, the DROP of the retirement plan shall be available for general employees and shall consist of a FORWARD DROP and a BACDROP. Any general employee who has reached age 55 with ten years of creditable service, or who has attained a combination of age plus years of creditable service equal to 70, shall be eligible to participate in the DROP.

(1) **Election to participate.** Upon election of participation in the DROP, by using forms and procedures as prescribed by the board of trustees, a member's creditable service, accrued benefits, and compensation calculation shall be frozen and shall be based on the member's average final compensation as the basis of calculating the DROP payment. Upon commencement of participation in the DROP, the member's contribution and the city contribution to the retirement plan for that member shall cease as the member will be earning no further service credit. The member shall not acquire additional pension credit for the purposes of the pension plan but may continue city employment for up to a maximum of 36 months.

(2) **Maximum participation.** The maximum period of participation in the DROP, is 36 months. Once the maximum participation has been achieved, the participant must terminate employment.

(3) **Creation of individual account.** For each general employee electing participation in the DROP, an individual account shall be created.

(4) **Earnings on DROP account.** The board of trustees of the retirement plan shall establish, by administrative rule, a series of investment vehicles which may be chosen by participants in the DROP. Any losses incurred on account of the option selected by the participant shall not be made up by the city or the GESE trust fund, but any such loss shall be borne by the participant only. Upon participation in the DROP, the member shall make a selection of the earnings program on forms provided by the board. All interest shall be credited to the member's DROP account.

(5) **Distribution of DROP benefits.** Upon conclusion of a period of participation in the DROP not to exceed the maximum set forth in subsection 2, the participant shall terminate employment. Upon termination of employment, a participant may receive payment from the DROP account in the following manner:

- a. Lump sum distribution; or
- b. Periodic payments; or
- c. Rollover of the balance to another qualified Retirement Plan, IRA, or an Internal Revenue Code Section 457 Plan; or
- d. An annuity.

A participant may defer payment until the latest date authorized by Section 401(a)(9) of the Internal Revenue Code.

(6) Drop participation shall not affect any other death or disability benefit provided to a member under federal law, state law, city ordinance, or any rights or benefits under any applicable collective bargaining agreement.

(7) If a DROP participant dies before the DROP account balances are paid out in full, the person(s) designated by such DROP participant shall receive such DROP account balances in accordance with the DROP participant election in effect at the time of death.

(8) Any employee who enters into a DROP agreement shall be bound by the terms and conditions of that agreement.

(9) *Forward DROP*. The date of entry into the FORWARD DROP shall be the beginning of a pay period. Payment shall be made by the retirement plan into the participant's DROP account in an amount equal to the regular monthly retirement benefit which the participant would have received had the participant separated from service and commenced the receipt of benefits from the plan. The amount of the monthly benefit shall be determined based on the creditable service, average final compensation, and retirement option selected in accordance with section 40-255 of this Code. Upon conclusion of a period of participation in the DROP not to exceed the maximum set forth in subsection 2, the participant shall terminate employment with the city.

Election of a FORWARD Drop Program precludes participation in a BACDROP program.

(10) *BACDROP*. A general employee may elect to BACDROP to a date no further back than the date of the member's retirement eligibility date. The BACDROP period must be in 12-month increments, beginning at the start of a pay period, not to exceed 36 months. Participation in the BACDROP does not preclude participation in the FORWARD Drop program.

The benefits for purpose of the BACDROP will then be actuarially calculated to be the equivalent to the benefit earned at the date of retirement. Said calculation will consist of the present value of benefits being equal to the actuarially reduced benefit, plus a lump sum with interest, as determined by the retirement plan's actuary. Participant contributions will not be returned for the period of time covered by the BACDROP program.

The lump sum as calculated by the retirement plan's actuary will be based on the assumed investment return of the fund without discount for mortality and deposited into the newly created DROP account.

~~(h)~~ (m) *Reemployment of retirees*. Except as expressly provided herein, should any retiree be reemployed by the city into a regular, permanent, full-time employment position as defined in section 40-241, the benefits payable under this Plan shall be suspended during the period of reemployment. Upon termination of the period of reemployment with the city, benefits shall be automatically restored, as provided for in this Plan, on the first day of the month following the termination of reemployment. No additional vesting period shall be required. Effective November 1, 2002, this section shall not apply to city commission and mayoral assistants and secretarial staff position, as described in Civil Service Rule 1, Sec. 1.2(a), authorized in the city budget for the offices of the mayor and members of the city commission, or to any employment other than with the city. Employees in the above job classifications may opt to continue collecting their pensions during their reemployment, but they may not accrue any further pension service credit. This section shall not apply to retirees who enter into legal agreement with the city either through written contracts or otherwise for services not defined as full-time, permanent employees of the city.

(Ord. No. 12111, § 1, 9-25-01; Ord. No. 12185, § 2, 2-14-02; Ord. No. 12202, § 2, 3-27-02; Ord. No. 12249, § 1, 6-27-02; Ord. No. 12753, § 1, 1-26-06)

Sec. 40-256. Cost-of-living allowance.

A cost of living (COLA) allowance shall be paid to beneficiaries of the Plan as follows:

(1) Every October 1, there shall be calculated a four percent COLA benefit equal to four percent of the benefit payable at that time. There shall be a minimum COLA benefit of \$54.00 per year and a maximum COLA benefit increase of \$400.00 per year provided the retiree's first anniversary of retirement has been reached.

(2) Retirees exercising the return of contributions and reduced pension option shall receive a minimum COLA benefit of \$27.00 per year and a maximum COLA benefit of \$200.00 per year, provided the retiree's first anniversary of retirement has been reached.

(3) *COLA participation for DROP members*. Eligibility for payments for cost of living adjustment (COLA) shall commence when a member has reached the first anniversary of retirement. When

that occurs, the COLA shall be paid into the member's DROP account in monthly installments for the Forward DROP until a member has actually separated from employment from the city and in lump sum to the member's DROP account for the BACDROP member upon separation from employment. For the purpose of complying with Section H(2)(g) of the Second Amended Final Judgment in Gates, the employee's "Date of Retirement" shall be the date Forward DROP is entered or the date to which the member elects to BACDROP.

(4) The board shall administer COLA payments and COLA assets shall be deemed an integral part of the trust for which separate accounting is not required.
(Ord. No. 12111, § 1, 9-25-01; Ord. No. 12202, § 2, 3-27-02)

Sec. 40-257. Adjustment in benefits.

Members who belonged to the Miami City General Employees' Retirement Plan, presently known as the City of Miami General Employees' and Sanitation Employees' Retirement Trust, shall continue to be subject to the following adjustments in benefits:

Any member who, on or before May 23, 1985, had a vested right to receive an additional retirement allowance under the provisions of the Miami City General Employees' Retirement Plan, presently known as the City of Miami General Employees' and Sanitation Employees Retirement Trust, which benefit was previously set forth in former section 40-235(A)(3)(a) of this Code (repealed June 13, 1985), shall be entitled to such additional benefit upon service retirement, early service retirement or "rule of 75" or "rule of 70" retirement pursuant to this division. A member shall be deemed to have a vested right if said member, on or before May 23, 1985, was serving in any of the capacities enumerated in former section 40-235(A)(3)(a) and thereafter continued to serve in such capacity uninterruptedly for a total combined period of not less than three years. Those members having such vested right may only continue to earn credit for such allowance up to a combined period of ten years' service.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-258. Assignments and loans prohibited.

The present or future right of a person to moneys 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 to any person under the provisions of this division, shall be unassignable, 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. Loans to participants are prohibited.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-259. Protection against fraud.

Whoever, with intent to deceive, shall make any statements or reports required under this division which are untrue or shall falsify or permit to be falsified any record of this Plan, shall be punished as provided in section 1-13 of this Code.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-260. Errors.

Should any change or error in Plan records be discovered or result 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 the benefit to which such member or beneficiary was correctly entitled shall be paid.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-261. Bonding; fiduciary insurance.

(a) Prior to exercising custody or control of any funds or property of the Plan, every fiduciary of the Plan and every person who handles funds or other property of the Plan shall be bonded. Such bond shall provide protection to the Plan against loss by reason of acts of fraud or dishonesty on the part of the bonded individual, directly or through connivance with others.

(b) The board shall purchase insurance for the Plan and for the members of the board of trustees to cover liability or losses occurring by reason of an act or omission of a fiduciary, providing, however, that such insurance permits recourse by the insurer against the fiduciary in case of a breach of a fiduciary obligation by such fiduciary.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-262. Compliance with the 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 amounts permitted under Section 415 of the Internal Revenue Code as amended, including cost of living adjustments under Section 415 (d).

(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 1st following the calendar year in which the member attains age 70 1/2, or April 1st of the year following the calendar year in which the member retires.

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; 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.

(e) 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.

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 70- 1/2).

(f) 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.

(1) For the purposes of this section and section 40-266 of this Plan, the following words and phrases shall have the meanings indicated:

a. "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:

1. 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;

2. Any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and

3. The portion of any distribution that is not includable in gross income.

b. "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 an eligible defined compensation plan described in Section 457(b) of the Internal Revenue Code which is maintained by an eligible employer described in Section 457(e)(i)(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.

c. "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.

d. "Direct rollover" is a payment by the Plan to the eligible Plan specified by the distributee.

(Ord. No. 12111, § 1, 9-25-01; Ord. No. 12181, § 1, 1-24-02)

Sec. 40-263. Distribution of marital interests in the plan; intervention in legal proceedings affecting the Plan.

(a) In the event that the board 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 employees 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.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-264. General conditions.

(a) The City of Miami General Employees' and Sanitation Employees' Retirement Trust may sue or be sued as an entity.

(b) The city commission shall have continuing power to amend or supplement this division, but no amendment shall be adopted which will reduce the then accrued benefits of members or beneficiaries covered by accumulated reserves, which reserves shall constitute a trust fund for the payment of such benefits.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-265. Excess benefit plan.

(a) The excess retirement benefits above the limits permitted by the Internal Revenue Code shall be as follows:

- (1) Funded from the City of Miami General Fund; and
- (2) Paid annually concurrently with the city's annual contribution to normal pension costs, which shall cause the city to realize a reduction in normal pension costs in the same amount; and
- (3) Be deposited in separate accounts for each respective plan to receive the city's excess retirement benefit contributions, which accounts shall be separate and apart from the accounts established to receive the city's normal pension contributions for each retirement trust;

(b) The board of trustees for General Employees' and Sanitation Employees' (GESE) is appointed as the committee to administer the Excess Benefit for the GESE retirees.

(c) The actuaries for the GESE Board of Trustees shall calculate the amounts necessary to fund the defined benefit plans giving effect to the reductions caused by implementation of Section 415 of the Internal Revenue Code.

(d) The excess benefits shall be paid to each eligible member of the Plans on a monthly basis in an amount equal to the difference between the allowable pension to be paid under the Internal Revenue Code and the amount of the defined benefit granted eligible members pursuant to the provisions set forth in the Code.

(e) Should additional retirements occur during the year where the eligible member's retirement benefit exceeds the Section 415 limits, the GESE Board of Trustees shall calculate the additional excess benefit amount required for the remainder of the fiscal year and should such amount exceed the amount available from the funds provided for the fiscal year, the GESE board of trustees shall notify the city of the additional funds required.

(f) Upon the city's receipt of notice of the additional funds required, the city shall forward the additional funds required. The requirement for additional funds paid by the city to fund the Excess Benefit Plan shall be reflected as a reduction in the city's annual contribution of normal pension costs for the following year.

(Ord. No. 12111, § 1, 9-25-01)

Sec. 40-266. Transfer of accumulated leave.

(a) Members eligible to receive accumulated sick leave, accumulated vacation leave or any other accumulated leave payable upon separation may elect, not later than the year prior to the year of retirement to have the leave transferred to the Plan. Members on whose behalf leave has been transferred may elect one of the following options within 30 days of separation. Members failing to elect a distribution option within 30 days of separation will be deemed to have elected Option 1 below:

- (1) Receive a lump sum equal to the transferred leave balance, or
- (2) Transfer the entire amount of the transferred leave balance directly to any eligible retirement plan, or
- (3) Purchase additional service credit as may permitted by the Code. If the leave balance exceeds the cost of the service credit purchased, the balance shall be paid to the member in a lump sum.

(b) Members who fail to elect a transfer in the year prior to retirement or other separation will receive payment in a lump sum at time of separation with all attendant tax consequences.

(c) If a member on whose behalf the city makes a transferred leave balance to the Plan dies after retirement or other separation, but before making an election, as provided, or after making an election but before any distribution is made, the election option shall be void. In such an event, any person who would have received a death benefit had the member died in service immediately prior to the date of retirement or other separation, shall be entitled to receive an amount equal to the transferred leave balance in a lump sum. In the case of a surviving spouse or former spouse, an

election may be made to transfer the leave balance to an eligible retirement plan in lieu of the lump sum payment. Failure to make such an election by the surviving spouse or former spouse within 60 days of the member's death, will be deemed an election to receive a lump sum payment.

(d) The board, by rule, shall prescribe the method for implementing the provisions of this section.

(Ord. No. 12111, § 1, 9-25-01)

Secs. 40-267--40-290. Reserved.

