

by the Village will be added to the amount distributed on a current basis in order to determine total wages, salary, pay or compensation. In the event that the employer agrees to assume and pay Member contributions in lieu of direct contributions by the Member, such contributions shall accordingly be paid into the plan on behalf of the Members. No Member subject to such agreement shall have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer directly to the plan. All such contributions by the employer shall be deemed and considered as part of the Member's accumulated contributions and subject to all provisions of this plan pertaining to accumulated contributions of Members. The intent of this language is to comply with section 414(h)(2) of the Internal Revenue Code.

(c) *Other contributions.* Private donations, gifts and contributions may be deposited to the fund, but such deposits must be accounted for separately and kept on a segregated bookkeeping basis. Funds from these sources may be used only for additional benefits for Members, as determined by the Board, and may not be used to reduce required Village contributions.

(Ord. No. 1-83, § 5, 1-13-83; Ord. No. 2010-07, § 7, 5-27-10)

Sec. 2-151. Retirement board, establishment.

(a) There is hereby created a general employees retirement board of the Village which shall consist of five (5) members.

Two (2) members of the Board shall be employees of the Village. The employee members of the Board shall be elected at large by full-time Village employee Members of the Plan. Employees who are elected cannot work in the same departments of the Village. The term of service of employees on the general retirement board shall be three (3) years, unless the employee member of the retirement board is sooner retired, disabled, resigns, terminates Village employment, is removed for misconduct by majority vote of the employees or the Village Council or is removed for nonparticipa-

tion by missing two (2) or more consecutive meetings. The election to the Board shall be arranged by the Village clerk, who shall give reasonable notice of the election to the eligible voters. Two (2) members of the general retirement Board shall be residents of the Village, selected by the Village Council to serve terms of two (2) years. The two (2) employee members of the Board and the two (2) Council-appointed members of the Board shall annually appoint a member of the general public who has never been employed by the Village to serve as the fifth member of the Board. This fifth member shall serve a term of one-year. All members of the Board shall be voting members.

(b) Should a vacancy occur in the position of a member serving as an employee member, the Village employees shall, within thirty (30) days, hold an election and elect a successor to serve. Should the member appointed by Village council resign or relinquish his duties on the general retirement board, his successor shall be appointed by the Village council within thirty (30) days. Should a vacancy occur in the position of the fifth member, the Board shall appoint a replacement within thirty (30) days.

(c) The retirement Board hereby created shall perform all duties and enjoy all rights and powers vested by law or ordinance, and the village attorney may give advice and legal assistance to said retirement board in all matters pertaining to the performance of their duties, whenever requested and may prosecute and defend all suits which may be instituted by or against it; provided, however, the retirement Board may, in its discretion, employ independent legal counsel for such purposes.

(d) The retirement Board shall have full authority to administer all the provisions of this division and shall cause all disbursements and receipt for all monies received by the fund through the office of the Village finance director or a custodian bank if one is employed. The retirement Board shall appoint a secretary who shall keep a complete record of all actions and proceedings by the Board.

(e) The retirement Board shall continue to exist exclusively for the purpose provided by this division and related legislation, and the respon-

sibility for the administration and proper operation thereof and for effectuating the provisions of the law relating thereto, is vested in the retirement Board.

(f) The Retirement Board shall have the authority to employ such professional, technical or other advisers as required to carry out the provisions of this Ordinance.

(g) The Board shall have the power and authority to recommend an increase or decrease in the benefits payable hereunder, through the adoption of an amendment to this article but provided such action is based on an actuarial review by an enrolled actuary who is a member of the Society of Actuaries.

(h) The Board shall discharge its duties solely in the interest of the participants and beneficiaries for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administration. (Ord. No. 1-83, § 6, 1-13-83; Ord. No. 2006-14, § 1, 7-27-06; Ord. No. 2010-07, § 8, 5-27-10)

Sec. 2-152. Additional rules and regulations authorized.

The retirement Board shall have the power to adopt rules and regulations, not inconsistent with the provisions of this division, governing its activities and providing for the certification of the sum to be paid a retired Member from the general retirement fund.

(Ord. No. 1-83, § 7, 1-13-83; Ord. No. 2010-07, § 9, 5-27-10)

Sec. 2-153. Investing funds; custodian of securities.

(a) The retirement Board shall have the power and authority to retain the services of an investment advisor registered under the Investment Advisors Act of 1940 to invest and reinvest the assets of the general retirement fund in a manner consistent with laws and statutes governing the investment of the Fund. Legal title to the funds shall remain at all times in the name of the Fund.

(b) The Village, or its designated funding agent, shall be the custodian of all securities, and the accretion thereof shall become a part of the gen-

eral retirement fund. All funds and securities of the general retirement fund shall be deposited with the Village finance director who shall keep them in a separate fund, and shall be liable for the safekeeping of the same under the bond given to the Village and shall be liable in the same manner and to the same extent as is liable for the safekeeping of the funds of the Village as provided for by law. All funds now held by the Village for this retirement system are hereby transferred to the fund established by this division. The Board may in its discretion chose to retain services of a custodian bank.

(Ord. No. 1-83, § 8, 1-13-83; Ord. No. 11-85, § 1, 7-11-85; Ord. No. 2010-07, § 10, 5-27-10)

Sec. 2-154. Oaths of office; meetings; quorum.

Before entering upon their duties as members of the Board, each member shall take and subscribe to the oath of office required by the Village Charter, which oath shall be filed with the Village clerk. The Board shall meet as often as necessary or upon the call of the chairman or any member thereof or upon request of the Village clerk. All Board meetings shall be held at Village hall. A majority of the Board shall constitute a quorum for the transaction of any business. Notice of meetings shall be given to council and the public at least seven (7) days in advance.

(Ord. No. 1-83, § 9, 1-13-83; Ord. No. 06-2002, § 2, 2-28-02; Ord. No. 2010-07, § 11, 5-27-10)

Sec. 2-155. Repeal or termination of system.

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

(b) If this division is repealed and not superseded by another pension plan, or if contributions to the system are discontinued, the Board shall continue to administer the system in accordance

with the provisions of this division, for the sole benefit of the then Members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one (1) of the options provided for in this division who are designated by any of such Members. In the event of such repeal, or if contributions to the system are discontinued, there shall be full vesting of one hundred (100) percent of the accrued benefits to the person entitled to benefits in accordance with the provisions thereof.

(c) Upon termination of the Fund by the Village for any reason, or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in Chapter 121, Florida Statutes, or upon written notice to the Board by the Village that contributions under the Fund are being permanently discontinued, the rights of all employees to benefits accrued to the date of such termination or discontinuance and the amounts credited to the employees' accounts are nonforfeitable. The Fund shall be distributed in accordance with the following procedures:

- (1) The Board shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits, after taking into account the expenses of such distribution. The Board shall inform the Village if additional assets are required, in which event the Village shall continue to financially support the plan until all nonforfeitable benefits have been funded.
- (2) The Board shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each Member entitled to benefits under the plan, as specified in subsection (3).
- (3) The Board shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the

method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest if provided by the Fund, less the value of any plan benefits previously paid to the employee.

- (4) If there is asset value remaining after the full distribution specified in subsection (3), and after payment of any expenses incurred with such distribution, such excess shall be returned to the Village.
- (5) The Board shall distribute, in accordance with the manner of distribution determined under subsection (2), the amounts determined under subsection (3).

(Ord. No. 1-83, § 10, 1-13-83; Ord. No. 2010-07, § 12, 5-27-10)

Sec. 2-156. Miscellaneous.

(a) *Discharged members.* Members entitled to a pension as approved by the pension Board shall not forfeit the same upon dismissal from the Village, but shall be retired as herein described.

(b) *Nonassignability.* No benefit provided for herein shall be assignable or subject to garnishment for debt or for other legal process. However, the Board shall honor income deduction orders for alimony or child support in accordance with rules and procedures by the Board.

(c) *Pension validity.* The Board of retirement shall have the power to examine into the facts upon which any pension shall heretofore or hereafter have been granted or obtained to determine if such pension was granted erroneously, fraudulently or illegally for any reason. The Board is empowered to purge the pension rolls of any person heretofore or hereafter granted a pension under prior or existing law or heretofore granted under this division if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any pensioner who has hereto-

fore under any prior or existing law or who shall hereafter under this division be erroneously, improperly or illegally classified.

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

(e) *Bargaining unit employees.* Nothing herein shall limit the Village's authority to provide alternate retirement benefits to employees in each of the bargaining units provided:

- (1) The benefit is provided pursuant to the terms of a collective bargaining agreement ratified by the Village council or is the subject of a waiver of bargaining or a memorandum of understanding.
- (2) No vested benefit is reduced or eliminated.
- (3) An actuarial impact statement disclosing the cost and effect of the modification is made and reviewed by the Village council prior to ratification of the collective bargaining agreement.
- (4) The terms of the modification are incorporated in this chapter of the Village Code by amendatory ordinance.

(f) *Maximum Pension.*

(1) *Section 415(b) Internal Revenue Code Limits.*

a. *Basic Limitations.* Notwithstanding anything to the contrary in this Plan, the provisions of Section 415 and its regulations are hereby incorporated by reference into this Plan. Subject to the adjustments in Code Section 415, the maximum amount of the

actual annual retirement income paid in any year with respect to a Participant under this Plan attributable to employer provided benefits shall not exceed the dollar amount allowable for any calendar year pursuant to Code Section 415(b), as adjusted in such calendar year for increases in the cost of living in accordance with Regulations issued by the Secretary of the Treasury under Code Section 415(d). For purposes of applying the basic limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by Treasury Regulations, so that such benefits are the Actuarial Equivalent of a straight life annuity. For purposes of this subsection Article, the following benefits shall not be taken into account:

1. Any ancillary benefit which is not directly related to retirement income benefits;
2. Any other benefit not required under Code Section 415(b)(2) and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Code Section 415(b)(1).

b. For purposes of applying the limitations of Code Section 415(b), compensation includes those items as set forth in Regulation 1.415-2(d). This definition specifically includes the crediting of compensation while absent from service for military duty; such crediting shall to exceed the compensation that would have been credited under the System if System services had continued.

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

a. The normal retirement benefit or pension to a retiree who becomes a Member of the Plan and who has not

previously participated in such Plan, on or after January 1, 1980, shall not exceed one hundred (100) percent of his/her average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments. In all events, distributions shall be limited by the applicable provisions of Code Section 415(b) limits.

- b. No Member of the Plan who is not now a Member of such Plan shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the Member is already receiving, or will receive in the future, a retirement benefit or pension from another retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

(g) *Section 401(a)(17) Limitation on Compensation.* For any person who first becomes a Member in any plan year beginning on or after January 1, 1996, compensation for any plan year shall not include any amounts in excess of the limitation set forth in Code Section 401(a)(17) (as amended by the Omnibus Budget Reconciliation Act of 1993), which limitation shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Code Section 415(d).

(h) *Distribution of Benefits.* Notwithstanding any other provision of this Plan to the contrary, a form of retirement income payable from this Plan after the effective date of this ordinance, shall be made in accordance with the requirements of Code Section 401(a)(9), including the minimum distribution incidental benefit requirements of section 1.401(a)(9)-2 Code Section 401(a)(9)(G) to satisfy the following conditions:

- (1) If the retirement income is payable before the Member's death:
 - a. It shall either be distributed or commence to the Member not later than

April 1 of the calendar year following the later of the calendar year in which the Member attains age seventy and one-half (70½), or the calendar year in which the Member retires,

- b. The distribution shall commence to them not later than the calendar year defined above; and shall be paid over the life of the Member or over the lifetimes of the Member and spouse, or dependent, or, shall be paid over the period extending not beyond the life expectancy of the Member and spouse, or dependent.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the Member dies before his/her entire interest in the Plan has been distributed, the remaining portion of such interest in the Plan shall be distributed no less rapidly than under the form of distribution in effect at the time of the Member's death.

- (2) If the Member's death occurs before the distribution of his/her interest in the Plan has commenced, the Member's entire interest in the Plan shall be distributed within five (5) years of the Member's death, unless it is to be distributed in accordance with the following rules:
 - a. The Member's remaining interest in the Plan is payable to his/her spouse, or dependent;
 - b. The remaining interest is to be distributed over the life of the spouse, or dependent or over a period not extending beyond the life expectancy of the spouse, or dependent; and
 - c. Such distribution begins within one (1) year of the Member's death unless the Member's spouse, or dependent shall receive the remaining interest in which case the distribution need not begin before the date on which the Member would have attained age seventy and one-half (70½) and if the spouse, or dependent dies

before the distribution to the spouse, issue or dependent begins, this Section shall be applied as if the spouse, or dependent were the Plan Member.

(Ord. No. 1-83, § 11, 1-13-83; Ord. No. 08-2005, § 1, 5-26-05; Ord. No. 2010-07, § 13, 5-27-10)

Sec. 2-157. Rollovers, direct transfers of eligible rollover distribution.

(a) *General.* This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the system to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) *Definitions.*

(1) *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income.

(2) *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible

rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

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

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

(c) *Rollovers from qualified plans.*

(1) A Member may roll over all or part of his or her assets in another qualified plan to this Plan for the purpose of purchasing service provided all of the following requirements are met:

a. Some or all of the amount distributed from the other plan is rolled over to this plan no later than the sixtieth day after distribution was made from the plan or, if distributions are made in installments, no later than the sixtieth day after the last distribution was made.

b. The amount rolled over to the Plan does not include any amounts contributed by the member to the other plan on a post-tax basis.

c. The rollover is made in cash.

d. The Member certifies that the distribution is eligible for a rollover.

e. Amounts which the Board accepts as a rollover to this Fund shall, along with any earnings allocated to the Board, be fully vested at all times.

(2) In addition, the Fund may accept the direct transfer of a Member's benefits from another qualified retirement plan or Internal Revenue Code section 457 plan for purposes of purchasing service.

(d) *[Mandatory distributions.]* In the event of a mandatory distribution greater than one thousand dollars (\$1,000.00) under this Plan, if the participant does not elect to have such distribu-

tion paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive such distribution directly, then the Board will pay the distribution in a direct rollover to an individual retirement plan designated by the Board. This section is effective for mandatory distributions after October 1, 2006.

(Ord. No. 13-95, § 1, 3-23-95; Ord. No. 2010-07, § 14, 5-27-10)

Sec. 2-158. Cost of living adjustment.

The amount of pension benefit will be increased in accordance with the changes in the consumer price index for urban wage earners (CPI-W) South, published by the U.S. Bureau of Labor Statistics. Adjustments of pension payments will be made on October 1 of each year reflecting the change in the consumer price index over the twelve-month period ending April 1 of that year. The maximum increase in the member's pension benefit for any one (1) year is three (3) percent. Such adjustments shall apply to each retirement, survivor or disability benefit in pay status as of each October 1.

This provision is mandatory for all employees hired after the May 11, 2000 and such employees shall contribute two (2) percent of their salary for this benefit. The cost of living adjustment and contribution of salary as specified in this section shall be optional with all employees who were hired prior to May 11, 2000.

The cost of living adjustment (COLA) set forth herein shall apply to all forms of benefits set forth in sections 2-148 and 2-149 of this Code. (Ord. No. 13-2000, § 1, 5-11-00; Ord. No. 25-2005, § 3, 9-8-05; Ord. No. 27-2005, § 3, 9-29-05; Ord. No. 2010-07, § 16, 5-27-10)

Editor's note—Ord. No. 2010-07, §§ 15, 16, adopted May 27, 2010, repealed former § 2-158 in its entirety and renumbered former § 2-158.1 as section 2-158. Repealed former § 2-158 pertained to optional benefit plan and derived from Ord. No. 12-96, § 2, adopted March 28, 1996; Ord. No. 28-96, § 1, adopted July 25, 1996; Ord. No. 35-2003, §§ 2, 3, adopted Dec. 11, 2003; Ord. No. 16-2004, § 2, adopted July 22, 2004.

DIVISION 4. PENSION AND CERTAIN OTHER BENEFITS FOR FIRE AND POLICE EMPLOYEES*

Sec. 2-159. Creation of trust and definitions.

(a) *Creation of trust.* A pension and retirement system for full-time firefighters and police officers of the village is hereby established to provide retirement, survivor and disability benefits as provided by this division. The system shall be known as the Village of North Palm Beach Fire and Police Retirement Fund and is intended to be a tax qualified plan under Internal Revenue Code Section 401(a) and meet the requirements of a governmental plan as defined in Internal Revenue Code Section 414(d).

(b) *Definitions.* As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

Accrued benefit means the portion of a member's normal retirement benefit which is considered to have accrued as of any date. A member's accrued benefit as of any date shall be equal to the sum of two and one-half (2½) percent of his average monthly earnings multiplied by his credited service for the first twenty-four (24) years; zero (0) percent of his average monthly earnings multiplied by the member's credited service for each year after twenty-four (24) years up to thirty (30) years; and two (2) percent of his average monthly earnings multiplied by the member's credited service for each year in excess of thirty (30) years. For purposes of this calculation, average monthly earnings and credited service as of the date of determination shall be used. The accrued benefit is considered to be payable in the plan's normal form commencing on the member's normal retirement date, with such date determined as through the member remains in full-time employment with the employer.

***Editor's note**—Ordinance No. 9-82, enacted June 10, 1982, did not expressly amend the Code; hence, codification of §§ 1—11 as herein set out in §§ 2-159—2-169 was at the discretion of the editor.

Cross references—Fire division, § 12-29 et seq.; police, Ch. 23.