

ORDINANCE 05- 14

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA; CREATING AND IMPLEMENTING A RETIREMENT PLAN AND TRUST PURSUANT TO CHAPTER 185, FLORIDA STATUTES, HEREINAFTER KNOWN AS “THE CITY OF MARCO ISLAND POLICE OFFICERS’ PENSION PLAN”; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marco Island and the Police Benevolent Association have agreed to the implementation of a defined benefit retirement plan for police officers of the City of Marco Island, Florida; and

WHEREAS, the City Council of the City of Marco Island has determined that the implementation of a retirement plan pursuant to Chapter 185, Florida Statutes would better enable the City to attract and retain qualified police officers; and

WHEREAS, the City Council of the City of Marco Island has determined that it is in the interest of the City to create and implement the City of Marco Island Police Officers’ Pension Plan; and

WHEREAS, no regular meetings of the City Council are scheduled prior to the end of December 2005 and it is in the best interest of the City of Marco Island, Florida to approve this ordinance by emergency action to ensure that the City of Marco Island, Florida is eligible for the distribution of premium tax revenues pursuant to Chapter 185, Florida Statutes for the calendar year ending December 31, 2005.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:

Sec. 1. Creation of the City of Marco Island Police Officers’ Pension Plan.

The City of Marco Island Police Officers’ Pension Plan is hereby established as set forth in the Plan document attached hereto.

Sec. 2. Incorporation, Conflict, and Severability.

(a) It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Marco Island, Florida, and that the sections of this Ordinance may be renumbered or re-lettered and that the word “ordinance” may be changed to “section”, “article” or other appropriate word.

(b) All sections or parts of sections of the Marco Island City Code of Ordinances, all City of Marco Island resolutions or parts of resolutions made applicable by City Charter in conflict herewith are hereby repealed to the extent of such conflict.

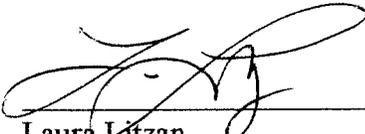
(c) If any word, phrase, clause, subsection or section of this Ordinance is for any reason held unconstitutional or invalid by any court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

Sec. 3. Effective Date.

This Ordinance shall take effect immediately upon adoption, and the effective date of the Police Officers' Pension Plan shall be December 1, 2005.

Attest:

CITY OF MARCO ISLAND, FLORIDA



Laura Litzan
City Clerk

BY: 

Vickie Kelber, Chairwoman

Approved as to form and
legal sufficiency:



Richard Yovanovich
City Attorney

CITY OF MARCO ISLAND
POLICE OFFICERS' PENSION PLAN

Section 1. The City of Marco Island Police Officers' Pension Plan is hereby established as a local law plan pursuant to Chapter 185, Florida Statutes. An excise tax on property insurance premiums has been assessed and imposed pursuant to Section 185.08, Florida Statutes, in the manner and amounts specified therein, for the purpose of this pension plan. In establishing this pension plan, it is the City's intent to maximize the use of premium tax revenues received pursuant to Chapter 185, Florida Statutes, to fund the benefits provided herein.

Section 2. Definitions

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

Accumulated Contributions means a Member's own contributions without interest.

Actuarial Equivalent means a benefit or amount of equal value, based upon the UP 1984 (unisex) Mortality Table and an interest rate of eight percent (8%) per annum.

Average Final Compensation means one-twelfth (1/12) of the average Compensation of the five (5) best years of the last ten (10) years of Credited Service prior to Retirement, termination, or death, or the career average as a full-time Police Officer, whichever is greater. A year shall be twelve (12) consecutive months.

Beneficiary means the person or persons entitled to receive benefits hereunder at the death of a Member, who has been designated in writing by the Member and filed with the Board. If no such designation is in effect, or if no person so designated is living, at the time of death of the Member, the Beneficiary shall be the estate of the Member.

Board means the Board of Trustees, which shall administer the Plan and serve as trustees of the Fund.

City means City of Marco Island, Florida.

Code means the Internal Revenue Code of 1986, as amended from time to time.

Compensation means the total remuneration for services rendered to the City as a Police Officer, including up to 300 hours of overtime pay annually and lump sum payments for unused leave, but excluding pay for special duty or extra-detail work performed for an employer other than the City.

Credited Service means the total number of years and fractional parts of years of service as a Police Officer with Member contributions, when required, omitting intervening years or fractional parts of years when such Member was not employed by the City as a Police Officer. "Fractional parts of years" shall mean a fraction whose numerator is the number of completed days and whose denominator is 365. Members may voluntarily leave their Accumulated Contributions in the Fund for a period of five (5) years after leaving the employ of the Police Department, pending the possibility of being reemployed as a Police Officer, without losing credit for the time as a Member of the Plan. If a vested Member leaves the employ of the Police Department the Member's Accumulated Contributions

will be returned only upon written request of the Member. If a Member who is not vested is not reemployed as a Police Officer with the Police Department within five (5) years, the Member's Accumulated Contributions shall be returned at the Member's request. Upon return of a Member's Accumulated Contributions, all rights and benefits under the Plan are forfeited and terminated. Upon any reemployment, a Member shall not receive credit for the years and fractional parts of years of service for which the Member has withdrawn the Accumulated Contributions from the Fund, unless the Member repays into the Fund the contributions withdrawn, with interest as determined by the Board, within ninety (90) days after reemployment.

The years or fractional parts of a year that a Member serves in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily, after separation from employment as a Police Officer with the City to perform training or service, shall be added to the Member's years of Credited Service for all purposes, including vesting, provided that:

- A. The Member must return to employment as a Police Officer within one (1) year from the earlier of the date of military discharge or release from active service.
- B. The Member is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), (P.L.103-353).
- C. The maximum credit for military service pursuant to this paragraph shall be five (5) years.

Effective Date means the effective date of the Plan, which is December 1, 2005.

Police Officer means an actively employed full-time person employed by the City, including the initial probationary employment period, who is certified as a Police Officer as a condition of employment in accordance with the provisions of §943.1395, Florida Statutes, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of the State of Florida.

Fund means the trust fund established herein as part of the Plan.

Member means an actively employed Police Officer who fulfills the prescribed membership requirements. Unpaid volunteer and part-time police officers are not included as members.

Plan Year means the twelve (12) month period beginning October 1 and ending September 30 of the following year. Retiree means a Member who has entered Retirement Status.

Retiree means a former Member who is receiving benefits under the Plan.

Retirement means a Member's separation from City employment with eligibility for immediate receipt of benefits under the Plan.

Spouse means the lawful wife or husband of a Member or Retiree at the time benefits become payable.

Plan means the City of Marco Island Police Officers' Pension Plan as contained herein and all amendments thereto.

Section 3. Benefit Amounts and Eligibility.

1. Normal Retirement Date.

A Member's normal retirement date shall be the first day of the month coincident with or next following the earlier of the attainment of age fifty-five (55) and the completion of six (6) years of Credited Service, or upon completion of twenty-five (25) years of Credited Service, regardless of age. A Member may retire on the Member's normal retirement date or on the first day of any month thereafter, and each Member shall become one hundred percent (100%) vested in the benefit accrued as of the Member's normal retirement date. Normal retirement under the Plan is Retirement from employment with the City on or after the normal retirement date.

2. Normal Retirement Benefit.

A Member retiring hereunder on or after the Member's normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following Retirement and be continued thereafter during the Member's lifetime, ceasing upon death, but with one hundred twenty (120) monthly payments guaranteed in any event. The monthly retirement benefit shall equal three percent (3%) of Average Final Compensation multiplied by the Member's total years and fractional parts of years of Credited Service.

3. Early Retirement Date.

A Member's early retirement date shall be the first day of the next month following the attainment of age fifty (50) and the completion of six (6) years of Credited Service, regardless of age. Early retirement under the Plan is Retirement from employment with the City on or after the early retirement date and prior to the normal retirement date.

4. Early Retirement Benefit.

A Member retiring hereunder on or after the early retirement date but before the normal retirement date may elect to receive either a deferred or an immediate monthly retirement benefit, payable as follows:

A. A deferred monthly retirement benefit which shall commence on what would have been the normal retirement date had the Member continued employment as a Police Officer, with monthly payments continuing on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement on the normal retirement date, except that Credited Service and Average Final Compensation shall be determined as of the Member's separation from City employment; or

B. An immediate monthly retirement benefit which shall commence on the early retirement date, and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in paragraph A above, reduced by three percent (3%) for each year by which the commencement of

benefits precedes the date which would have been the normal retirement date employment as a Police Officer continued until such date.

5. Cost-of-Living Adjustment.

Each July 1 following the later of the Member's termination date or otherwise Normal Retirement Date, Retirees (including disability Retirees), Beneficiaries and joint pensioners of deceased Members or Retirees who are receiving monthly benefit payments shall receive a three percent (3%) increase in their monthly benefit amount.

6. Supplemental Benefit.

Each Retiree or Beneficiary who is the Retiree's surviving spouse or financial dependent shall receive a monthly supplemental benefit equal to the number of years of Credited Service completed at the time of the Member's Retirement multiplied by three dollars (\$3.00); however, no Retiree or Beneficiary may receive a supplemental benefit of more than ninety dollars (\$90.00) or less than thirty dollars (\$30.00). This supplemental benefit shall not be subject to the cost-of-living adjustment.

7. Benefit Improvements.

Benefit improvements shall apply prospectively and shall not apply to Members who terminate employment or who retire prior to the effective date of any ordinance adopting such benefit improvements, unless such ordinance specifically provides to the contrary.

Section 4. Membership.

1. Conditions of Eligibility. All full-time Police Officers who are employed by the City on or after the effective date of this Ordinance shall become Members of this Plan as a condition of employment.

Notwithstanding the previous paragraph, the Police Chief may, within sixty (60) days following the Effective Date, or if hired thereafter within sixty (60) days following employment as Police Chief, notify the Board and the City, in writing, of his/her election to not be a Member of the Plan. In the event of such election, any Accumulated Contributions shall be returned to the Police Chief, and he/she shall thereafter be barred from participation in the Plan.

2. Designation of Beneficiary. Each Member shall complete a form prescribed by the Board providing for the designation of a Beneficiary or Beneficiaries.

Section 5. Contributions

1. Member Contributions.

A. Amount. Each Member of the Plan shall be required to make regular contributions to the Fund in the amount of five percent (5%) of Compensation. Member contributions withheld by the City on behalf of the Member shall be deposited with the Board immediately after each pay period. The contributions made by each Member to the Fund shall be designated as employer contributions pursuant to §414(h) of the Code. Such designation is contingent upon the contributions being excluded from the Members' gross income for Federal Income

Tax purposes. For all other purposes of the Plan, such contributions shall be considered to be Member contributions.

B. Method. Member contributions shall be made by payroll deduction.

2. State Contributions.

Any monies received or receivable by reason of laws of the State of Florida, for the express purpose of funding and paying for retirement benefits for Police Officers of the City shall be deposited in the Fund comprising part of this Plan immediately and under no circumstances more than five (5) days after receipt by the City.

3. City Contributions.

So long as this Plan is in effect, the City shall make quarterly contributions to the Fund in an amount equal to the difference each year, between the total aggregate Member contributions for the year, plus state contributions for such year, and the total cost for the year, as shown by the most recent actuarial valuation of the Plan. The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded past service liability as provided in Part VII of Chapter 112, Florida Statutes.

4. Other.

Private donations, gifts and contributions may be deposited to the Fund, and used to defray the cost of benefits produced to Members and beneficiaries.

Section 6. Pre-Retirement Death.

1. Prior to Vesting or Eligibility for Retirement.

The Beneficiary of a deceased Member who had completed less than six (6) years of Credited Service, was not receiving monthly benefits or was not eligible for early or normal retirement, shall receive a refund of one-hundred percent (100%) of the Member's Accumulated Contributions.

2. Deceased Members Vested or Eligible for Retirement.

The Beneficiary of any Member who dies and who, at the date of death had completed six (6) or more years of Credited Service or who was eligible for early or normal retirement, shall be entitled to the Member's accrued monthly benefit payable for one hundred-twenty (120) months beginning at the Member's Normal Retirement Date. In lieu of this benefit, the Beneficiary may elect to receive on immediate distribution of the Member's Accumulated Contributions.

Section 7. Disability.

1. Disability Benefits In-Line of Duty.

Any Member who shall become totally and permanently disabled to the extent of being unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a Police Officer, which disability was directly caused by the performance of duties as a Police Officer, shall, upon establishing the same to the satisfaction of the Board, be entitled to a monthly pension equal to three percent (3%) of Average Final Compensation multiplied by the total years of Credited Service, but in any event the minimum amount paid to the Member shall be forty-two percent (42%) of Average Final Compensation, which shall commence on the first day of the month coincident with or next following Disability Retirement

and be continued thereafter during the Member's lifetime, ceasing upon death, but with one hundred twenty (120) monthly payments guaranteed in any event. Terminated Members, either vested or non-vested, are not eligible for disability benefits, except that those terminated by the City for medical reasons may apply for a disability within thirty (30) days after termination.

2. Disability Benefits Not-in-Line of Duty.

Any Member with eight (8) or more years of Credited Service who shall become totally and permanently disabled to the extent of being unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a Police Officer, which disability is not directly caused by the performance of duties as a Police Officer shall, upon establishing the same to the satisfaction of the Board, be entitled to a monthly pension equal to three percent (3%) of Average Final Compensation multiplied by the total years of Credited Service, but in any event the minimum amount paid to the Member shall be twenty-five percent (25%) of Average Final Compensation, which shall commence on the first day of the month coincident with or next following Disability Retirement and be continued thereafter during Member's lifetime, ceasing upon death, but with one hundred twenty (120) monthly payments guaranteed in any event. Terminated Members, either vested or non-vested, are not eligible for disability benefits.

3. Conditions Disqualifying Disability Benefits.

Each Member who is claiming disability benefits must establish to the satisfaction of the Board that such disability was not occasioned primarily by:

- A. Excessive or habitual use of any drugs, intoxicants or narcotics.
- B. Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections or while committing a crime.
- C. Injury or disease sustained while serving in any branch of the Armed Forces.
- D. Injury or disease sustained after employment as a Police Officer with the City shall have terminated.
- E. Injury or disease sustained while working for anyone other than the City and arising out of such employment.

4. Physical Examination Requirement.

A. A Member shall not become eligible for disability benefits until and unless the Member undergoes a physical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the Board for that purpose. The Board shall not select the Member's treating physician or surgeon for this purpose except in an unusual case where the Board determines that it would be reasonable and prudent to do so.

B. Any Retiree receiving disability benefits under provisions of this ordinance may be required by the Board to submit sworn statements of condition accompanied by a physician's statement (provided at the Retiree's expense) to the Board annually and may be required by the Board to undergo additional periodic re-examinations by a qualified physician or physicians and/or surgeon or surgeons

who shall be selected by the Board, to determine if such disability has ceased to exist. If the Board finds that the Retiree is no longer permanently and totally disabled to the extent that the Retiree is unable to render useful and efficient service as a Police Officer, the Board shall recommend to the City that the Retiree be returned to performance of duty as a Police Officer, and the Retiree so returned shall enjoy the same rights enjoyed at the time the Member was placed upon pension. In the event the Retiree so ordered to return shall refuse to comply with the order within thirty (30) days from the issuance thereof, such Member shall forfeit the right to a pension.

C. The cost of the physical examination and/or re-examination of the Member claiming or the Retiree receiving disability benefits shall be borne by the Fund. All other reasonable costs as determined by the Board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the Fund.

D. If the Retiree recovers from disability and reenters the service of the City as a Police Officer, the Member's service will be deemed to have been continuous, but the period beginning with the first month for which the Retiree received a disability retirement income payment and ending with the date of reemployment with the City will not be considered as Credited Service for the purposes of the Plan.

E. The Board shall have the power and authority to make the final decision regarding all disability claims.

5 Disability Payments.

A. The monthly benefit to which a Member is entitled in the event of the Member's disability retirement shall be payable on the first day of the first month after the Board determines such entitlement. However, the monthly retirement income shall be payable as of the date the Board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be:

(1) If the Retiree recovers from the disability prior to the normal retirement date, the payment due next preceding the date of such recovery, or

(2) If the Retiree dies without recovering from disability or attains the normal retirement date while still disabled, the payment due next preceding death or the 120th monthly payment, whichever is later.

B. Provided, however, the disability Retiree may elect, at any time prior to the date on which benefit payments begin, an optional form of benefit payment as described in Section 9, which shall be the Actuarial Equivalent of the Disability Benefit otherwise payable.

7. Disability Benefit Offsets.

When a Member Retiree is receiving a disability pension, Social Security benefits and/or workers' compensation benefits pursuant to Florida Statute Chapter 440, for the same disability,

and the total monthly benefits received from these sources combined both exceed one hundred percent (100%) of the Member's average monthly wage, as defined in Chapter 440, Florida Statutes, the disability pension benefit shall be reduced so that the total monthly amount received by the Retiree does not exceed one hundred percent (100%) of such average monthly wage. The amount of any lump sum workers' compensation payment shall be converted to an equivalent monthly benefit payable for ten (10) Years Certain by dividing the lump sum amount by 83.9692. Social Security disability cost of living increases and cost of living increases provided for under the plan shall not be used to further offset disability benefits. Notwithstanding the foregoing, in no event shall the disability pension benefit be reduced below the greater of forty-two percent (42%) of Average Final Compensation or two percent (2%) of Average Final Compensation multiplied by years of Credited Service.

Section 8. Vesting.

1. A Member shall become fully vested upon attaining six (6) years of Credited Service.

2. If a Member terminates employment with the City, either voluntarily or by discharge, and is not eligible for any other benefits under this Plan, the Member shall be entitled to the following:

A. A Member with less than six (6) years of Credited Service upon termination shall be entitled to a refund of Accumulated Contributions or the Member may leave such Accumulated Contributions deposit with the Fund.

B. A Member with six (6) or more years of Credited Service upon termination shall be entitled to a monthly retirement benefit, payable for life, determined in the same manner as for normal or early retirement and based upon the Member's Credited Service, Average Final Compensation and the benefit accrual rate as of the date of termination, payable to the Member commencing at the Member's otherwise normal or early retirement date, determined as if the Member had remained employed, provided the Member does not elect to withdraw the Member's Accumulated Contributions and provided the Member survives until benefits actually begin. If the Member does not withdraw the Accumulated Contributions and does not survive until benefits actually begin, the designated Beneficiary shall be entitled to a return of the Member's Accumulated Contributions.

Section 9. Optional Forms of Benefits.

1. In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified herein, a Member, upon written request to the Board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

A. A retirement income of a monthly amount payable to the Retiree for the lifetime of the Retiree only.

B. A retirement income of a modified monthly amount, payable to the Member Retiree during the lifetime of the Member Retiree and following the death of the Member Retiree, one hundred percent (100%), seventy-five percent (75%), sixty-six and two-thirds percent (66 2/3%) or fifty percent (50%) of such

monthly amount payable to a joint pensioner for the joint pensioner's lifetime. Except where the Retiree's joint pensioner is the Retiree's Spouse, the present value of payments to the Retiree shall not be less than fifty percent (50%) of the total present value of payments to the Retiree and the joint pensioner.

C. A Member who retires prior to the time at which social security benefits are payable may elect to receive an increased retirement benefit until such time as social security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of Retirement. The amounts payable shall be as recommended by the actuaries for the Plan, based upon the social security law in effect at the time of the Member's Retirement.

2. The Member, upon electing the option described in subsection 1. B. above, shall designate the joint pensioner to receive the benefit, if any, payable in the event of the Member's death, and will have the power to change such designation from time to time. If a Member has elected an option with a joint pensioner and the Member's retirement income benefits have commenced, the Member may thereafter change the joint pensioner no more than twice. Subject to the restriction in the previous sentence, a Member may substitute a new joint pensioner for a deceased joint pensioner.

3. The consent of a Member's or Retiree's joint pensioner to any such change shall not be required. The rights of all previously-designated joint pensioners to receive benefits under the Plan shall thereupon cease.

4. Upon change of a Retiree's joint pensioner in accordance with this Section, the amount of the retirement income payable to the Retiree shall be actuarially redetermined to take into account the age of the former joint pensioner, the new joint pensioner and the Retiree, to ensure that the benefit paid is the Actuarial Equivalent of the Retiree's then-current benefit at the time of the change. Any such Retiree shall pay the actuarial recalculation expenses and shall make repayment of any overage of previously-paid pension benefits as a result of said recalculations. Each request for a change will be made in writing on a form prepared by the Board, and on completion will be filed with the Board. In the event that no joint pensioner survives the Retiree, such benefits as are payable in the event of the death of the Retiree shall be paid to the Retiree's estate.

5. Retirement income payments shall be made under the option elected in accordance with the provisions of this Section and shall be subject to the following limitations:

A. If a Member dies prior to the Member's normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under Section 6.

B. If the joint pensioner dies before the Member's Retirement, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the Member upon Retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this Section or a new joint pensioner is designated by the Member prior to Retirement.

C. If both the Retiree and the joint pensioner designated by Member or Retiree die before the full payment has been effected under subsection 2.B., above, the Board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum to the Retiree's estate.

D. If a Member continues employment beyond the normal retirement date, and dies prior to actual retirement and while an option made pursuant to the provisions of this Section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to the joint pensioner or Beneficiary (or Beneficiaries) designated by the Member, in the amount or amounts computed as if the Member had retired under the option on the date of the Member's death.

6. A Retiree may not change retirement options after the date of cashing or depositing his/her first retirement check.

7. Notwithstanding anything herein to the contrary, a Member or Beneficiary may elect to receive a lump sum payment in the event that the monthly benefit amount is less than one hundred dollars (\$100.00) or the total commuted value of the remaining monthly income payments to be paid do not exceed five thousand dollars (\$5,000.00). Any such payment made to any person pursuant to the preceding sentence shall operate as a complete discharge of all obligations under the Plan with regard to such Member or Beneficiary.

Section 10. Beneficiaries.

1. Each Member or Retiree may, on a form provided for that purpose, signed and filed with the Board, designate a Beneficiary (or Beneficiaries) to receive the benefit, if any, which may be payable in the event of the Member's death. Each designation may be revoked or changed by such Member or Retiree by signing and filing with the Board a new designation-of-beneficiary form. Upon such change, the rights of all previously designated Beneficiaries to receive any benefits under the Plan shall cease.

2. If a deceased Member or Retiree failed to name a Beneficiary in the manner prescribed in subsection 1, or if the Beneficiary (or Beneficiaries) named by a deceased Member or Retiree predeceased the Member or Retiree, the death benefit, if any, which may be payable under the Plan with respect to such deceased Member or Retiree, shall be paid to the estate of the Member or Retiree and the Board, in its discretion, may direct that the commuted value of the remaining monthly income benefits be paid in a lump sum.

3. If both the Retiree and the Beneficiary (or Beneficiaries) designated by Member or Retiree die before the full value of a benefit providing for payments for a period certain, the Board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum to the Retiree's estate.

4. Any payment made to any person pursuant to this Section shall operate as a complete discharge of all obligations under the Plan with regard to the deceased Member and any other persons with rights under the Plan.

Section 11. Claims Procedures.

The Board shall establish administrative claims procedures to be utilized in processing written requests ("claims"), on matters which affect the substantial rights of any person

("Claimant"), including Members, Retirees, Beneficiaries, or any person affected by a decision of the Board.

Section 12. Reports to Division of Retirement.

Each year and no later than March 15th, the Board shall file an Annual Report with the Division of Retirement containing the documents and information required by Section 185.221, Florida Statutes.

Section 13. Roster of Members and Retirees.

The Board shall ensure that records are maintained of all persons receiving a pension under this Plan. Such records shall reflect the time when the pension is allowed and when the same shall cease to be paid. Additionally, the Board shall ensure that records are maintained of all Members in such a manner as to show the name, address, date of employment and date of termination of employment.

Section 14. Maximum Pension.

1. Basic Limitation.

Subject to the adjustments hereinafter set forth, the maximum amount of annual retirement income payable with respect to a Member under this Plan shall not exceed one hundred sixty thousand dollars (\$160,000).

For purposes of applying the above 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 Section, the following benefits shall not be taken into account:

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

2. Participation in Other Defined Benefit Plans.

The limitation of this Section with respect to any Member who at any time has been a member in any other defined benefit plan (as defined in §414(j) of the Code) maintained by the City shall apply as if the total benefits payable under all defined benefit plans in which the Member has been a member were payable from one plan.

3. Adjustments in Limitations.

- A. In the event the Member's retirement benefits become payable before age sixty-two (62), the one hundred sixty thousand dollar (\$160,000) limitation prescribed by this Section shall be reduced in accordance with Regulations issued by the Secretary of the Treasury pursuant to the provisions of §415(b) of the Code, but not less than \$75,000, if the benefit begins at or after age fifty-five (55). In the event the Member's retirement benefit becomes payable before age fifty-five (55), the \$75,000 limitation shall be reduced from age fifty-five (55) in accordance with Regulations issued by the Secretary of the Treasury pursuant to

the provisions of §415(b) of the Code so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) annual benefit beginning at age sixty-two (62).

B. In the event the Member's benefit is based on at least fifteen (15) years of Credited Service, the adjustments provided for in A. above shall not apply.

C. The reductions provided for in A. above shall not be applicable to disability benefits paid pursuant to Section 7, or pre-retirement death benefits paid pursuant to Section 6.

D. If the Member's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the limitation set forth in subsection 1 herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). This adjustment shall be made using an assumed interest rate of five percent (5%) and shall be made in accordance with regulations promulgated by the Secretary of the Treasury or a delegate thereof.

4. Less than Ten (10) Years of Service.

The maximum retirement benefits payable under this Section to any Member who has completed less than ten (10) years of Credited Service with the City shall be the amount determined under subsection 1 of this Section multiplied by a fraction, the numerator of which is the number of the Member's years of Credited Service and the denominator of which is ten (10). The reduction provided for in this subsection shall not be applicable to disability benefits paid pursuant to Section, or pre-retirement death benefits paid pursuant to Section.

5. Ten Thousand Dollar (\$10,000) Limit.

Notwithstanding the foregoing, the retirement benefit payable with respect to a Member shall be deemed not to exceed the limitations set forth in this Section if the benefits payable, with respect to such Member under this Plan and under all other qualified defined benefit pension plans to which the City contributes, do not exceed ten thousand dollars (\$10,000) for the applicable Plan Year and for any prior Plan Year and the City has not at any time maintained a qualified defined contribution plan in which the Member participated.

6. Reduction of benefits.

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the Member's benefit under any defined benefit plans in which Member participated, such reduction to be made first with respect to the plan in which Member most recently accrued benefits and thereafter in such priority as shall be determined by the Board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the Member participated, such reduction to be made first with respect to the plan in which Member most recently accrued benefits and thereafter in such priority as shall be established by the Board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the Board and the plan administrator of all other plans covering such Member.

7. Cost-of-Living Adjustments.

The limitations as stated in subsections 1, 2, and 3 and 6 herein shall be adjusted to the time payment of a benefit begins in accordance with any cost-of-living adjustments prescribed by the Secretary of the Treasury pursuant to §415(d) of the Code.

8. Additional Limitation on Pension Benefits. Notwithstanding anything herein to the contrary:

A. The normal retirement benefit or pension payable to a Retiree shall not exceed 100 one hundred percent (100%) of Average Final Compensation. However, nothing contained in this Section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.

B. No Member of the 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 a different employer's retirement Plan or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

Section 15. 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 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 (70-1/2), or the calendar year in which Member retires,

B. The distribution shall commence not later than the calendar year defined above; and a), shall be paid over the life of the Member or over the lifetimes of the Member and Spouse, issue or dependent, or b), shall be paid over the period extending not beyond the life expectancy of the Member and Spouse, issue or dependent.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the Member dies before the Member's 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 the Member's interest in the Plan has commenced, Member's entire interest in the Plan shall be distributed within five (5) years of 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 the Member's Spouse, issue or dependent;

B. The remaining interest is to be distributed over the life of the Spouse, issue

or dependent or over a period not extending beyond the life expectancy of the Spouse, issue or dependent; and

C. Such distribution begins within one year of the Member's death unless the Member's Spouse 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 (70-1/2) and if the Spouse dies before the distribution to the Spouse begins, this Section shall be applied as if the Spouse were the Member.

Section 16. Board of Trustees.

1. The sole and exclusive administration of and responsibility for the proper operation of the Plan and for making effective the provisions of this ordinance is hereby vested in a Board of Trustees. The Board shall consist of five (5) Trustees, two (2) of whom shall be legal residents of the City, who shall be appointed by the Marco Island City Council, and two (2) of whom shall be Members of the Plan, who shall be elected by a majority of the Police Officers who are Members of the Plan. The fifth Trustee shall be chosen by a majority of the four (4) Trustees approved and elected as provided for herein, and such person's name shall be submitted to the City Council. Upon receipt of the fifth person's name, the City Council shall, as a ministerial duty, appoint such person to the Board of Trustees as its fifth Trustee. The fifth Trustee shall have the same rights as each of the other four (4) Trustees appointed or elected as herein provided, and shall serve a two (2) year term unless the Trustee sooner vacates the office. Each resident Trustee shall serve as Trustee for a period of two (2) years, unless the Trustee sooner vacates the office or is sooner replaced by the City Council at whose pleasure said Trustee shall serve. Each Member Trustee shall serve as Trustee for a period of two (2) years, unless the Trustee sooner leaves the employment of the City as a Police Officer or otherwise vacates the office of Trustee, whereupon a successor shall be chosen in the same manner as the departing Trustee. Each Trustee may succeed himself or herself in office. In order to establish staggered terms for the appointed and elected Trustees, the term for one elected and one appointed Trustee shall be shortened to one (1) year for one term only. All future terms of those and all other Trustees shall be two (2) years thereafter, as provided above. The Board shall establish and administer the nominating and election procedures for each election. The Board shall meet at least quarterly each year. The Board shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.

2. The Trustees shall, by a majority vote at the first Board meeting and annually thereafter, elect a Chairman, Vice-Chairman and a Secretary. The Secretary of the Board shall keep a complete minute book of the actions, proceedings, or hearings of the Board. The Trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.

3. Each Trustee shall be entitled to one vote on the Board. Three (3) affirmative votes shall be necessary for any decision by the Trustees at any meeting of the Board. A Trustee shall have the right to abstain from voting as the result of a conflict of interest and shall comply with the provisions of Section 112.3143, Florida Statutes.

4. The Board shall engage such actuarial, accounting, legal, and other services as shall be required to transact the business of the Plan. The compensation of all persons engaged

by the Board and all other expenses of the Board necessary for the operation of the Plan shall be paid from the Fund at such rates and in such amounts as the Board shall agree. In the event the Board chooses to use the City's legal counsel, actuary or other professional, technical or other advisors, it shall do so only under terms and conditions acceptable to the Board.

5. The duties and responsibilities of the Board shall include, but not necessarily be limited to, the following:

- A. To construe the provisions of the Plan and determine all questions arising thereunder.
- B. To determine all questions relating to eligibility and membership.
- C. To determine and certify the amount of all retirement allowances or other benefits hereunder.
- D. To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the Plan.
- E. To distribute to Members, at regular intervals, information concerning the Plan.
- F. To receive and process all applications for benefits.
- G. To authorize all payments whatsoever from the Fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the Plan and Fund.
- H. To have performed actuarial studies and valuations, at least as often as required by law, and make recommendations regarding any and all changes in the provisions of the Plan.
- I. To perform such other duties as may be required to administer the Plan in accordance with this Ordinance.

Section 17. Finances and Fund Management.

Establishment and Operation of Fund.

1. As part of the Plan, there exists the Fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the Plan.

2. The actual custody and supervision of the Fund (and assets thereof) shall be vested in the Board. Payment of benefits and disbursements from the Fund shall be made by the disbursing agent but only upon written authorization from the Board.

3. All funds of the Police Officers' Pension Plan may be deposited by the Board with the Finance Director of the City, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as for the safekeeping of funds for the City. However, any funds so deposited with the Finance Director of the City shall be kept in a separate fund by the Finance Director or clearly identified as such funds of the Police Officers' Pension Plan. In lieu thereof, the Board shall deposit the funds of the Police Officers' Pension Plan in a qualified public depository as defined in §280.02, Florida Statutes, which depository with regard to such

funds shall conform to and be bound by all of the provisions of Chapter 280, Florida Statutes. In order to fulfill its investment responsibilities as set forth herein, the Board may retain the services of a custodian bank, an investment advisor registered under the Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the Board, in the investment of all Fund assets.

4. All funds and securities of the Plan may be commingled in the Fund, provided that accurate records are maintained at all times reflecting the financial composition of the Fund, including accurate current accounts and entries as regards the following:

- A. Current amounts of Accumulated Contributions of Members on both an individual and aggregate account basis, and
- B. Receipts and disbursements, and
- C. Benefit payments, and
- D. Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the City, and
- E. All interest, dividends and gains (or losses) whatsoever, and
- F. Such other entries as may be properly required so as to reflect a clear and complete financial report of the Fund.

5. An audit shall be performed annually by a certified public accountant for the most recent fiscal year of the Plan showing a detailed listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete evaluation of assets on both a cost and market basis, as well as other items normally included in a certified audit.

6. The Board shall have the following investment powers and authority:

- A. The Board shall be vested with full legal title to said Fund, subject, however, and in any event to the authority and power of the Marco Island City Council to amend or terminate this Plan, provided that no amendment or Fund termination shall ever result in the use of any assets of this Fund except for the payment of regular expenses and benefits under this Plan, except as otherwise provided herein. All contributions from time to time paid into the Fund, and the income thereof, without distinction between principal and income, shall be held and administered by the Board or its agent in the Fund and the Board shall not be required to segregate or invest separately any portion of the Fund.
- B. All monies paid into or held in the Fund shall be invested and reinvested by the Board and the investment of all or any part of such funds shall be limited to:
 - (1) Annuity and life insurance contracts with life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the Members in the Fund shall be entitled under the provisions of this

Plan and pay the initial and subsequent premium thereon.

- (2) Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund or a savings/building and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.
 - (3) Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States or by an agency of the government of the United States.
 - (4) Bonds issued by the State of Israel.
 - (5) Stocks, commingled funds administered by national or state banks, mutual funds and bonds or other evidences of indebtedness, provided that:
 - (a) Except as provided in subparagraph (b), all individually held securities and all securities in a commingled or mutual fund must be issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia.
 - (b) Up to ten percent (10%) of the assets of the Fund may be invested in foreign securities.
 - (c) The Board shall not invest more than five percent (5%) of its assets in the common stock, capital stock, or convertible securities of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent (5%) of the outstanding capital stock of that company; nor shall the aggregate of its investments in common stock, capital stock and convertible securities at market exceed sixty-five percent (65%) of the assets of the Fund.
 - (6) Real estate, provided the Board shall not invest more than ten percent (10%) at cost in real property or real estate, utilizing investment vehicles approved by the Board.
- C. At least once every three (3) years, and more often as determined by the Board, the Board shall retain a professionally qualified independent consultant, as defined in Sections 185.06, Florida Statutes, to evaluate the performance of all current investment managers and make recommendations regarding the retention of all such investment managers. These recommendations shall be considered by the Board at its next regularly scheduled meeting.
- D. The Board may retain in cash and keep unproductive of income such amount of the Fund as it may deem advisable, having regard for the cash requirements of the Plan.
- E. Neither the Board nor any Trustee shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided, nor for any

loss or diminishment of the Fund, except that due to the negligence of the Board or Trustee, willful misconduct or lack of good faith.

F. The Board may cause any investment in securities held by it to be registered in or transferred into its name as Trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the Fund.

G. The Board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the Trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the Fund which it may deem to be to the best interest of the Fund to exercise.

H. The Board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power contained herein.

I. Where any action which the Board is required to take or any duty or function which it is required to perform either under the terms herein or under the general law applicable to it as Trustee under this ordinance, can reasonably be taken or performed only after receipt by it from a Member, the City, or any other entity, of specific information, certification, direction or instructions, the Board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.

J. Any overpayments or underpayments from the Fund to a Member, Retiree or Beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the Board in such a manner that the Actuarial Equivalent of the benefit to which the Member, Retiree or Beneficiary was correctly entitled, shall be paid. Overpayments shall be charged against payments next succeeding the correction or collected in another manner if prudent. Underpayments shall be made up from the Fund in a prudent manner.

K. The Board shall sustain no liability whatsoever for the sufficiency of the Fund to meet the payments and benefits provided for herein.

L. In any application to or proceeding or action in the courts, only the Board shall be a necessary party, and no Member or other person having an interest in the Fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.

M. Any of the foregoing powers and functions reposed in the Board may be

performed or carried out by the Board through duly authorized agents, provided that the Board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to said Fund shall always remain in the Board.

Section 18. Miscellaneous Provisions.

1. Interest of Members in Plan.

At no time prior to the satisfaction of all liabilities under the Plan with respect to Retirees and Members and their Spouses or Beneficiaries, shall any part of the corpus or income of the Fund be used for or diverted to any purpose other than for their exclusive benefit.

2. No Reduction of Accrued Benefits.

No amendment or ordinance shall be adopted by the City Council which shall have the effect of reducing the then vested accrued benefits of a Member or a Member's Beneficiaries.

3. Qualification of Plan.

It is intended that the Plan will constitute a qualified governmental retirement plan under the applicable provisions of the Code, as now in effect or hereafter amended. Any modification or amendment of the Plan may be made retroactively, if necessary or appropriate, to qualify or maintain the Plan as a plan meeting the requirements of the applicable provisions of the Code as now in effect or hereafter amended, or any other applicable provisions of the U.S. federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder.

4. Use of Forfeitures.

Forfeitures arising from terminations of service of Members shall serve only to reduce future City contributions.

5. Compliance with Chapter 185, Florida Statutes.

This Plan is intended to comply with all applicable provisions of Chapter 185, Florida Statutes.

Section 19. Repeal or Termination of Plan.

1. This ordinance establishing the Plan and Fund, and subsequent ordinances pertaining to said Plan and Fund, may be modified, terminated, or amended, in whole or in part; provided that if this 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, except to the extent that the assets of the Fund may be determined to be inadequate.

2. If this ordinance shall be repealed, or if contributions to the Plan are discontinued or if there is a transfer, merger or consolidation of government units, services or functions as provided in Chapter 121, Florida Statutes, the Board shall continue to administer the Plan in accordance with the provisions of this ordinance, for the sole benefit of the then Members, any Beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this ordinance who are designated by any of said Members. In the event of repeal, discontinuance of contributions, or transfer, merger or

consolidation of government units, services or functions, there shall be full vesting (100%) of benefits accrued to date of repeal and the assets of the Plan shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled in accordance with the provisions thereof.

3. The following shall be the order of priority for purposes of allocating the assets of the Plan as of the date of repeal of this ordinance, or if contributions to the Plan are discontinued with the date of such discontinuation being determined by the Board.

A. Apportionment shall first be made in respect of each Retiree receiving a retirement or disability benefit hereunder on such date, each person receiving a benefit on such date on account of a retired or disabled (but since deceased) Member, and each Member who has, by such date, become eligible for normal retirement but has not yet retired, an amount which is the Actuarial Equivalent of such benefit, provided that, if such asset value be less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.

B. If there be any asset value remaining after the apportionment under paragraph A, apportionment shall next be made in respect of each Member in the service of the City on such date who is vested and who is not entitled to an apportionment under paragraph A, in the amount required to provide the Actuarial Equivalent of the vested portion of the accrued normal retirement benefit (but not less than Accumulated Contributions), based on the Credited Service and Average Final Compensation as of such date, and each vested former Member then entitled to a deferred benefit who has not, by such date, begun receiving benefit payments, in the amount required to provide said Actuarial Equivalent of the vested portion of the accrued normal retirement benefit (but not less than Accumulated Contributions), provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

C. If there be any asset value after the apportionments under paragraphs A and B, apportionment shall be made in respect of each Member in the service of the City on such date who is not entitled to an apportionment under paragraphs A and B in the amount equal to Member's Accumulated Contributions, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder such latter amount shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

D. If there be any asset value remaining after the apportionments under paragraphs A, B, and C, apportionment shall lastly be made in respect of each Member included in paragraph C above to the extent of the Actuarial Equivalent of the non-vested accrued normal retirement benefit, less the amount apportioned in paragraph C, based on the Credited Service and Average Final Compensation as of such date, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such amounts shall be reduced

so that the aggregate of such reduced amounts will be equal to such remaining asset value.

E. In the event that there be asset value remaining after the full apportionment specified in paragraphs A, B, C, and D, such excess shall be returned to the City, less return of the State's contributions to the State, provided that, if the excess is less than the total contributions made by the City and the State to the date of termination such excess shall be divided proportionately to the total contributions made by the City and the State.

The allocation of the Fund provided for in this subsection may, as decided by the Board, be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this subsection. The Fund may be distributed in one sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the Board may direct. The Fund may be continued in existence for purposes of subsequent distributions.

4. After all the vested and accrued benefits provided hereunder have been paid and after all other liabilities have been satisfied, then and only then shall any remaining funds revert to the general fund of the City.

Section 20. Exemption from Execution, Non-Assignability.

Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this ordinance and the Accumulated Contributions and the cash securities in the Fund created under this ordinance are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable, except the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit those funds necessary to pay for the benefits being received through the City to pay the certified bargaining agent of the City and to make any payments for child support or alimony.

Section 21. Pension Validity.

The Board shall have the power to examine into the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. The Board is empowered to purge the pension rolls or correct the pension amount of any person heretofore granted a pension under prior or existing law or any person hereafter granted a pension under this ordinance if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any person who has heretofore under any prior or existing law been or who shall hereafter under this ordinance be erroneously, improperly or illegally classified. Any overpayments or underpayments shall be corrected and paid or repaid in a reasonable manner determined by the Board.

Section 22. Forfeiture of Pension.

1. Any Member who is convicted of the following offenses committed prior to Retirement, or whose employment is terminated by reason of an admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this Plan, except for the return of Accumulated Contributions as of the date of termination. Specified offenses are as follows:

- A. The committing, aiding or abetting of an embezzlement of public funds;
- B. The committing, aiding or abetting of any theft by a public officer or employee from employer;
- C. Bribery in connection with the employment of a public officer or employee;
- D. Any felony specified in Chapter 838, Florida Statutes.
- E. The committing of an impeachable offense.
- F. The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which such officer or employee acts or is employed, of the right to receive the faithful performance of duties as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of such public office or employment position.

2. Conviction shall be defined as an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or a nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.

3. Court shall be defined as any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the Board shall hold a hearing on which notice shall be given to the Member whose benefits are being considered for forfeiture. Said Member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the Member shall be afforded a full opportunity to present a case against forfeiture.

4. Any Member or Retiree who has received benefits from the Plan in excess of Accumulated Contributions after such Member or Retiree's rights were forfeited shall be required to pay back to the Fund the amount of the benefits received in excess of Accumulated Contributions. The Board may implement all legal action necessary to recover such funds.

Section 23. Direct Transfers of Eligible Rollover Distributions.

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

2. Definitions.

A. **Eligible Rollover Distribution:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated

Beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income. Any portion of any distribution which would be includible in gross income will be an eligible rollover distribution if the distribution is made to an individual retirement account described in section 408(a), to an individual retirement annuity described in section 408(b) or to a qualified defined contribution plan described in section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

B. **Eligible Retirement Plan:** An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, an eligible deferred compensation plan described in section 457(b) of the Code which is maintained by an eligible employer described in section 457(e)(1)(A) of the Code and which agrees to separately account for amounts transferred into such plan from this plan, an annuity contract described in section 403(b) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. This definition shall also apply in the case of an eligible rollover distribution to the surviving Spouse.

C. **Distributee:** A distributee includes an employee or former employee. 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:** A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

Section 24. Share Account

1. In addition to any other benefit provided under this Plan, a share account shall be established for the benefit of active Members of this Plan, as specified in this Section 24. Each Member who is employed by the City during a plan year commencing after the share account is established shall be entitled to participate in the share account in accordance with a formula to be determined through collective bargaining between the City and the Police Benevolent Association.

2. An individual account will be established for each Member, and the amount to which each Member is entitled shall be credited to such account as at the end of each fiscal year. No credits shall be made to an account after the Member has separated from City service as a police officer or otherwise terminated membership in the Plan.

3. The share account shall be funded entirely and solely by premium tax moneys received by the Plan pursuant to Chapter 185, Florida Statutes, that are in excess of the maximum amount allowed by law to be used for all other Plan benefits. The share account shall

annually be credited with the same rate of investment earnings as the overall rate of return on all Plan investments, net of all investment management and administrative expenses.