ARTICLE V. GENERAL EMPLOYEES' RETIREMENT PLAN

Sec. 102-136. Name and purpose of plan.

(a) The city council adopts this amended and restated city general employee's retirement plan, as set forth in this article. The plan is intended to qualify under section 401(a) of the code and the trust created under the plan is intended to be exempt under section 501(a) of the code.

(b) The plan and the trust shall be maintained for the exclusive benefit of the employees of the city and their beneficiaries. No part of the trust fund can revert to the city, except as provided in this article, or be used for or diverted to purposes other than the exclusive benefit of employees of the city and their beneficiaries.

(c) Unless otherwise expressly provided, the amendments made to this plan, as amended and restated as of January 1, 1989, shall apply only to periods which commence on or after January 1, 1989, and shall not affect the benefits of a participant in pay status on January 1, 1989.

(Code 1979, § 15-42)

Sec. 102-137. Definitions.

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

Accrued benefit means the amount of pension which a participant has earned up to any given date, computed pursuant to subsection 102-142(a), based upon compensation received and credited service rendered by such participant up to the date the accrued benefit is computed. The accrued benefit is payable at normal retirement date on a single life basis.

Actuarial accrued liability means the present value of benefits earned to date by all participants.

Actuarial equivalent or actuarially equivalent means equality in value of the aggregate amounts expected to be received under different manners of payment based on interest rate, mortality and cost-of-living assumptions defined as follows, effective January 1st, 2018, unless otherwise specifically provided in the plan:

(1) *Interest rate assumption for alternative periodic benefits and single sum payments.* The interest rate used by the plan shall be seven and one quarter percent.

(2) *Mortality assumption for alternative periodic benefits and single sum payments.* The mortality assumption for calculations based upon the mortality of a participant or beneficiary shall be the Society of Actuaries' RP-2000 (no collar) Combined Healthy Mortality, 50/50 Blend of Male And Female, except to the extent that section 102-149(a) requires use of a mortality table prescribed by the Secretary of the Treasury for purposes of compliance with code section 415.

(3) *Cost-of-Living assumption used for actuarial equivalence purposes for alternative periodic benefits and single sum payments.* The cost-of-living assumption for Tier 1 benefits shall be 2.75 percent. The cost-of-living assumption for Tier 2 benefits shall be 0.25 percent. The cost-of-living assumption for benefits commencing before January 1st, 2018, shall be the assumption in effect when the payment commenced as provided in tables furnished from time to time by the plan actuary. The tables furnished by the plan actuary are considered part of the plan document by reference.

Actuarial value of assets means the fair value of assets after smoothing of investment gains and losses by the actuary.

Actuary means an actuary or actuarial firm selected by the board, which actuary shall be both an enrolled actuary and a member of the Society of Actuaries or the American Academy of Actuaries or which actuarial firm shall employ at least one such actuary.

Annual required contribution, or actuarially determined contribution means the total contribution that is equal to the normal cost for the current plan year plus an amortized portion of any unfunded actuarial accrued liability, expressed as a percentage of annual payroll.

Beneficiary means the person who becomes entitled to receive payments after the death of a participant.

Board means the board of trustees created pursuant to section 102-145 which is appointed to administer the plan in accordance with section 102-145 and to serve as trustee of the plan assets in accordance with section 102-148.

City means the city of Aurora, Colorado and, in the case of the General Employees' Retirement Plan administrative staff, the General Employees' Retirement Plan.

City council means the city council of the city of Aurora, Colorado.

Code means the Internal Revenue Code of 1986.

Compensation means the total base pay, including acting pay, paid to an employee of the city for personal services which are rendered to the city in accordance with the rules and practices determining regular remuneration, including longevity pay and compensation under sections 414(h) and 457 of the United States Internal Revenue Code, and an elective pre-tax employee contribution to the city's cafeteria plan under code Section 125, but excluding overtime pay, single-sum payments received in lieu of accrued vacation and sick leave upon termination of employment or during the course of employment, and similar nonregular remuneration. There shall be included within any calculation to determine compensation the longevity credit, if any, to which an electing participant is entitled. Effective January 1, 1989, compensation for any plan year will be limited to the first $200,000.00 of compensation or such other amount determined in accordance with code section 415(d). Effective January 1, 1996, compensation for any plan year will be limited to the first $150,000.00 of compensation or such other amount determined in accordance with code section 401(A)(17). Compensation shall exclude pay received while not participating in this plan and employed in a council appointee or executive personnel position. Compensation shall also exclude pay received during a period for which credited service under this plan is canceled because of transfer of a participant's contribution accumulation to the trust for the executive personnel money purchase plan. For purposes of calculating benefits on or after January 1, 2002, the code section 401(a)(17) limit is increased to $200,000.00, as adjusted.

Contribution accumulation means a participant's aggregate employee contributions, plus interest accrued at the rate of three percent per annum to January 1, 1969; 4½ percent per annum from January 1, 1969, through July 4, 1975; five percent per annum from July 5, 1975, through February 20, 1981; and at least six percent per annum compounded annually from February 20, 1981 through March 27, 2009. The rate to be credited subsequent to March 27, 2009, shall be established by the board at a rate of at least three percent per annum compounded annually. Interest shall be credited on all employee contributions until the later of pension commencement or the date that the refund request is made to the trust's custodian.

Credited service means the period of a participant's employment with the city used in determining, pursuant to section 102-139, eligibility for and the amount of benefits payable to the participant.

Custodian means an entity appointed by the board to hold plan assets.

Date of termination means the last date of employment with the city.

Deferred vested participant means a former participant whose employment has terminated and who is entitled to receive a deferred vested pension.

Deferred vested pension means the pension payable pursuant to subsection 102-141(d) to a deferred vested participant.

Delayed retirement date means the retirement date of a participant whose employment with the city continues beyond the normal retirement date.

Disability means a physical or mental condition for which a participant receives long-term disability insurance benefits from the city.

Disability retirement pension means the pension payable pursuant to subsection 102-141(f) to a participant whose employment with the city terminates because of disability.

Earliest retirement age means the earliest age at which, under the plan, the participant could elect to receive an immediate pension upon retirement.

Early retirement date means the retirement date of a participant whose employment with the city terminates on or after meeting the eligibility requirements for an early retirement pension pursuant to subsection 102-141(b) or a special early retirement pension pursuant to subsection 102-141(c) and prior to the normal retirement date.

Early retirement pension means the pension payable pursuant to subsection 102-141(b).

Effective date means March 1, 1967, for the initial plan; sometimes referred to as the "original effective date".

Electing participant means a participant who has received longevity pay from the city and who, in addition to all other contributions required by this article, has, for each year of employment with the city after the fifth year of employment, and before January 1, 2012, made additional contributions to the plan equal to 5.5 percent of the participant's longevity credit. The city shall match such additional contribution of an electing participant.

Employee means any person in the employ of the city, including nonelective officers of the city, but excluding police officers, paid firefighters, temporary employees and any elected officer or member of any commission or board appointed by the city council or any officer of the city unless the officer or member is also an employee of the city as defined in this section. Effective September 1, 1992, the term "employee" also means each full-time employee performing work for the city, funded by a minimum one-year grant which provides for retirement benefits. Effective June 30, 2003, the term "employee" shall include the administrative staff of the General Employees' Retirement Plan.

Employment commencement date means the date on which an employee first performs an hour of service.

Executive personnel means any of the following persons: city manager, assistant city manager(s), deputy city manager(s) and department directors.

Fair value of assets means the value of plan net assets based on market prices or reasonable estimates.

Final average monthly compensation means an employee's compensation from the city during the 36 highest paid consecutive calendar months of the last ten years of credited service, divided by 36. If the employee was employed for fewer than 36 consecutive calendar months, such final average monthly compensation shall be based on the employee's compensation for all full months of credited service with the city.

Funded ratio means the actuarial value of assets divided by the actuarial accrued liability.

Hour of service means an hour for which an employee is paid or entitled to payment for performance of duties for the city.

Investment manager means an investment advisor who renders investment advice to the board and is:

(1) Registered as an investment advisor under the Investment Advisors Act of 1940;

(2) A bank, as defined in that act; or

(3) An insurance company qualified to manage, acquire of dispose of any trust assets under the laws of more than one state.

Leave of absence means an absence authorized by the city under its standard personnel practices provided that all persons under similar circumstances be treated alike in the granting of such leaves of absence. A leave of absence shall be either a:

(1) *Paid leave of absence.* Authorized leave with pay, including but not limited to annual leave, sick leave, emergency leave, injury leave, administrative leave, personal leave, civil leave and military leave; or

(2) *Nonpaid leave of absence.* Authorized or unauthorized absence, without pay, of any employee while remaining in the employ of the city.

Longevity credit means, for a participant who was an electing participant, an amount for each full year as an electing participant equal to the [single annual maximum longevity pay which was paid to the electing participant, for whom the calculation is being made, during such electing participant's employ with the city], minus [longevity pay received by the participant for the year which the calculation is made], but not less than zero. For a participant who was not an electing participant but who received longevity pay on or after January 1, 2012, longevity credit means an amount for each full year as a participant equal to $780.00 minus the longevity pay received by the participant in the year for which the calculation is made. Longevity credit shall be prorated for the year of the participant's termination of employment (based on the number of full months ended before the termination of employment date).

Money purchase pension means the pension payable pursuant to subsection 102-141(e).

Normal or delayed retirement pension means the pension payable pursuant to subsection 102-141(a).

Normal retirement date means the 65th birthday for Tier 1 participants and the 67th birthday for Tier 2 participants.

Participant means an employee who is eligible to participate in the plan in accordance with section 102-138 and who has made all required contributions to the plan, including terminated and retired participants whose interests in the trust have not been fully distributed.

Pension means a series of monthly payments, not a lump sum, to a person who is entitled to receive benefits under the plan.

Plan means the city general employees' retirement plan set forth in this article, as amended from time to time.

Plan year means the fiscal year of the plan commencing on January 1 and ending on December 31.

Prior plan means the city non-uniform employees' retirement plan.

Qualified joint and survivor annuity means an annuity for the life of the participant with a survivor annuity for the life of the surviving spouse that is equal to 50 percent of the amount of the annuity payable during the joint lives of the participant and surviving spouse. A qualified joint and survivor annuity shall be the actuarial equivalent of the benefit payable under the terms of the plan.

Reemployment commencement date means the first day on which a rehired employee performs an hour of service after termination of employment.

Retirement means termination of employment and subsequent commencement of benefits after a participant has fulfilled all requirements for a pension pursuant to section 102-141.

Special early retirement pension means the pension payable pursuant to subsection 102-141(c).

Spouse means: (a) for purposes of federal tax laws applicable to this plan, spouse is defined according to federal tax laws, including IRS Rev. Rul. 2013-17 and subsequent regulations and rulings, and includes a spouse lawfully married under the laws of one of the fifty states, the District of Columbia, a US territory or a foreign jurisdiction, regardless of whether the spouses remain residents of the state, territory, or jurisdiction in which they were married; (b) for all other purposes, spouse is defined according to federal tax laws and, in addition, spouse is defined to include parties to a State of Colorado civil union. A participant without a spouse is "unmarried."

Supplemental benefit means the benefit paid in addition to a pension, as calculated and defined in this chapter, pursuant to subsection 102-142(j).

Surviving spouse means the spouse to whom a participant is married on the earlier of the date payment of a participant's pension commences and the date of the participant's death.

Termination of employment means actual severance of connection with the city through resignation, dismissal or abandonment.

Tier 1. Participants in the plan prior to January 1, 2012, or any employee hired after December 31, 2011, who meets the eligibility requirements under section 102-138(a).

Tier 2. Participants hired or rehired after December 31, 2011, who do not qualify as Tier 1 participants.

Trust means the trust set forth in and created by section 102-148 to carry out the purpose of the plan.

Trust fund means the assets of the plan held in trust by the board pursuant to this article.

Vested city contributions means the amount of accumulated city contributions and interest calculated pursuant to subsection 102-140(f) that is payable to a participant who receives a refund of the contribution accumulations.

(Code 1979, § 15-43; Ord. No. 96-38, § 1, 10-7-96; Ord. No. 96-44, § 1, 10-7-96; Ord. No. 97-77, § 2, 1-5-98; Ord. No. 2005-95, § 1, 1-9-06; Ord. No. 2009-11, § 1, 5-2-09; Ord. No. 2011-29, § 1, 10-22-11; Ord. No. 2013-37, §1, 11-30-13)

Cross references: Definitions generally, § 1-2.

Sec. 102-138. Eligibility and participation.

(a) *General.* Employees who were participants in the plan on December 31, 1988 shall automatically become participants in this amended and restated plan as of January 1, 1989. Any other employee hired on or subsequent to January 1, 1989, shall automatically become a participant upon completion of one hour of service. Except as provided under section 102-138(b), a participant may not terminate participation unless employment with the city terminates. Any employee hired after December 31, 2011 who fulfills the requirements under 102-139(g) to repurchase or reestablish service credit that had been earned prior to January 1, 2012, or who qualifies under 102-142(g) to resume pension benefits that first began prior to January 1, 2012, shall be considered to have been a participants in the plan prior to January 1, 2012.

(b) *Council appointees and executive personnel.* Council appointees, as defined in section 102-287, appointed after January 1, 1998, shall participate in the plan. Current council appointees shall have a one-time irrevocable option to participate in the plan. This option shall be exercised within 30 days after receipt of a favorable IRS letter ruling. Executive personnel shall have an option not to participate in the plan so that they can participate in the money purchase plan for executive personnel. This option shall be a one-time irrevocable option, to be exercised upon the commencement of employment in an executive personnel position or 30 days after receipt of a favorable IRS letter ruling. An employee's election not to participate in the general employees' retirement plan shall remain in effect as long as the employee remains in an executive personnel or council appointee position with the city.

(Code 1979 § 15-44; Ord. No. 96-44, § 2, 10-7-96; Ord. No. 97-77, § 3, 1-5-98; Ord. No. 2011-29, § 2, 10-22-11)

Sec. 102-139. Credited service.

(a) *Generally.* Credited service shall be used to determine a participant's accrued benefit and eligibility for benefits under the plan. A participant's credited service is the elapsed time period from employment commencement date to the date of termination of such employment, except as otherwise stated within this section. Generally, one day of credited service shall be credited for each day in the elapsed time period. A participant's credited service includes service purchased according to Section 102-139(i).

(b) *Disability*. A disabled participant shall accrue credited service during the period of disability.

(c) *Military duty.* A participant who returns to employment with the city from qualified military service during the period within which reemployment rights are guaranteed by law will receive service credit with respect to the participant's period of qualified military service (within the meaning of section 414(u)(1) of the code) in accordance with section 414(u) of the code and applicable regulations, and as described in subsections (1), (2), and (3) below.

(1) *Credited service for deferred vested pension eligibility*. The participant's qualified military service counts toward the five years of credited service required for a deferred vested pension described in subsection 102-141(d).

(2) *Credited service for vested city contributions*. The participant's qualified military service counts toward years of credited service used to calculate the percentage of a participant's vested city contributions as described in subsection 102-140(f).

(3) *Credited service for all purposes other than deferred vested pension eligibility and vested percentage of city contributions*. For purposes other than those described in subsections 102-139(c)(1) and (2) above, a participant's qualified military service counts toward credited service only to the extent the participant elects to make contributions to the trust for all or part of the period of qualified military service, as described in subsection 102-140(h).

(d) *Paid leave of absence.* A participant on paid leave of absence shall accrue credited service during the period of such leave.

(e) *Employment before March 1, 1967.* Employees shall accrue credited service for any period of employment with the city prior to March 1, 1967, only if the participant became a participant on the first date of eligibility, or elected to become a participant retroactively pursuant to Ordinance No. 74-101 and made all required contributions to the plan.

(f) *Former age exclusions.* Beginning January 1, 1988, all individuals who were excluded from the plan on account of age and who complete at least one hour of service as an employee on or after January 1, 1988, shall enter the plan and earn credited service without regard to age.

(g) *Reemployment.* A participant whose employment has terminated, and who is rehired by the city and becomes a plan participant within five years after the date of termination, may repay into the trust an amount equal to any amount received upon the previous termination of employment, with compound interest thereon at the average rate of interest credited on employee contributions during the period of non-employment. For purposes of repurchasing service credit, the plan shall accept payment by check or a participant contribution of an eligible rollover distribution from, or a direct rollover of an eligible rollover distribution from, the following: a qualified plan described in section 401(a) or 403(a) of the code, excluding after-tax employee contributions, an annuity contract described in section 403(b) of the code, excluding after-tax employee contributions, and an eligible plan under section 457(b) of the code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. For purposes of repurchasing service credit, the plan will also accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includible in gross income. For purposes of repurchasing service credit, the plan shall also accept payroll deduction contributions under the following conditions: The participant may make a one-time irrevocable payroll deduction authorization (and may not make more than one such authorization) of a specific amount over a specific time period (not to exceed the five year limit) to repurchase service credit: the payroll deduction covered by the authorization shall be picked up by the city as described in code section 414(h)(2); although designated as employee contributions, these contributions are paid by the city in lieu of contributions by the participant, and once the contributions begin the participant is not given the option of choosing to receive the contributed amounts directly instead of having them paid by the city to the plan; the deductions covered by such authorization shall only apply to compensation earned after the effective date of the plan provision and after the effective date of the authorization and shall cease only after the authorization has expired by its terms or upon the participant's death or the participant's termination of employment for any reason. Any such repayment which is other than a single-sum payment shall be repaid by installments as determined by the board, but such repayment shall be made at a minimum rate of $1,000.00 per year and must be completed within five years following reemployment or by retirement, if earlier. Upon repayment of the full amount, the participant shall be entitled to the credited service accrued at the prior termination. If less than the full amount is repaid, any amount which as been repaid will be refunded at the fifth anniversary of the reemployment commencement date or at the time of retirement, if earlier, together with any interest earned between the date of repayment and the time of refund. The participant will not receive any previously accrued credited service if less than the full amount is repaid. Previously refunded vested city contributions and the interest earned on previously refunded vested city contributions since the date of refund that are repaid to the plan shall be excluded from the participant's contribution accumulation for the purpose of computing a new vested city contribution amount pursuant to section 102-140(f). Should a former participant, rehired by the city, elect not to reimburse the trust for the amount previously received with interest as provided in this subsection, such former participant, upon being employed by the city shall be treated as a new employee for all purposes of this plan, and the previously accrued credited service shall not be reestablished.

If a deferred vested participant is rehired by the city prior to payment or commencement of payments under the plan, the credited service accrued at the prior termination shall be reestablished and the pension payable upon the later termination, death, disability or retirement pursuant to subsections 102-141(a)--(d) or 102-141(f) shall be based on the combined total credited service established during each period of employment and the final average monthly compensation as of the later termination of employment or retirement.

(h) *Limitations*. No period of credited service shall be deemed to be increased or extended by overtime or lump sum payments received in lieu of sick leave or vacation.

Credited service shall not include any period of service during which the participant has elected not to participate in this plan or is covered under any other retirement or pension plan to which the city makes contributions, other than that provided by the federal social security act.

Credited service shall not include any period of time during which the participant is on a nonpaid leave of absence, except for disability pursuant to subsection (b) of this section and military leave pursuant to subsection (c) of this section.

(i) *General Employees' Retirement Plan administrative staff*. Employees on the General Employees' Retirement Plan administrative staff on June 30, 2003 may make a one-time irrevocable election to purchase credited service which matches the employee's service prior to June 30, 2003 on the plan's administrative staff. This election may be exercised within 60 days of final passage of this ordinance. The cost to purchase prior service shall be determined by the plan's actuary and shall be an amount equal to 11% of the compensation received by the employee during the period of prior service, with compound interest thereon at the average rate of interest that was credited by the plan on employee contributions for that time period. For purposes of purchasing service credit, the plan shall follow the rules of subsection 102-139(g) regarding payment by check, rollover, or payroll deduction, installments of at least $1,000 per year, the refund with interest of insufficient payments, and the five year time limit on payment (expires five years after final passage of this ordinance.) Amounts used to purchase service credit shall be segregated and shall not be considered as any portion of the participant's contribution accumulation. Upon a refund, the segregated amount shall be refunded with interest plus the participant's contribution accumulation with the participant's vested city contributions. For purposes of determining the percent of vested city contributions, all years of credited service shall be counted.

(Code 1979, § 15-45; Ord. No. 96-38, § 3, 10-7-96; Ord. No. 97-77, § 4, 1-5-98; Ord. No. 2001-81, § 1, 1-7-2002; Ord. No. 2003-63, § 2, 9-29-2003; Ord. No. 2011-29, § 3, 10-22-11)

Sec. 102-140. Contributions.

(a) *By the city*. The city shall, at the end of each payroll period, make contributions to the trust equal to the amount of contributions of participants. For periods after 2011, the city shall also contribute to the trust a percentage of each participant's longevity credit equal to twice the percentage of the participant contribution rate for the period as provided in Section 102-140(b). All contributions made by the city to the trust shall be used to pay benefits under the plan or to pay expenses of the plan and shall be irrevocable, except for any administrative error or any residual amounts after satisfying all liabilities of the plan for affected participants.

(b) *By participants*. Each participant shall contribute toward the cost of providing benefits under this plan during participation in the plan. Participants, including participants on paid leave of absence, shall contribute 5.5 percent of compensation to the trust. Commencing January 1, 2012 each participant shall contribute to the trust the following percent of the participant's compensation: 5.75 in 2012; 6.0 in 2013; 6.25 in 2014; 6.5 in 2015; 6.75 in 2016; and 7.0 in 2017. Beginning January 1, 2012, longevity credit is excluded from the compensation used to calculate participant contributions. Pursuant to section 414(h) of the internal revenue code, this contribution shall be deferred from taxation until such time as it is paid out from the trust.

(1) Beginning on January 1, 2018 and continuing on the first day of each year thereafter, the employee contribution rate shall be adjusted to the extent required by the criteria below.

(2) The contribution rate will be decreased by 0.25 percent of compensation if all of the following conditions are met:
   a. The funded ratio exceeded 110% on January 1st of each of the three previous years; and
   b. The fair value of assets exceeded the actuarial value of assets on January 1st of the prior year; and
   c. The employee contribution percentage was greater than one-half of the normal cost on January 1st of the prior year; and
   d. The employee contribution percentage in the prior year was above 5.5%.

(3) The contribution rate will be increased by 0.25 percent of compensation if all of the following conditions are met:
   a. The funded ratio was less than 100% on January 1st of the prior year; and
   b. The employee contribution percentage was less than one-half of the annual required contribution on January 1st of the prior year; and
   c. The employee contribution percentage in the prior year was below 7%.

(4) The actuarial assumptions and methods used to determine the contribution rate will be as set by the board pursuant to Section 102-145(g)(5).

The first part of this subsection notwithstanding, no contributions will be required to be made to the trust by a disabled participant during the period of disability nor will contributions be required to be made by a participant while the participant is on military leave and is not receiving compensation from the city.

(c) *Payment to the trust*. The contributions provided under subsections (a) and (b) of this section shall be transferred by the city to the trust at the end of each payroll period.

(d) *Refund of contribution accumulation*. If a participant's employment is terminated before the participant is eligible for any retirement benefits provided in section 102-141, the participant shall be paid, in lieu of any other benefits, within 90 days of the date of termination, the participant's contribution accumulation and vested city contributions as of the date that the refund request is made to the trust's custodian except when a participant files an appeal of the dismissal with the career service commission. If an appeal is made to the career service commission, the participant shall be paid, in lieu of any other benefits, within 30 days of notice of any final adverse decision of the career service commission, the participant's contribution accumulation and vested city contributions as of the date that the refund request is made to the trust's custodian. The participant shall be responsible for notifying the board of the outcome of any career service proceedings.

(e) *Transfer of contribution accumulation*. This subsection applies to executive personnel who elect not to participate in this plan so that they can participate in the executive personnel's money purchase plan. Each participant who has completed five or more years of credited service shall make a one-time irrevocable election to (1) leave their contribution accumulation in the trust or (2) transfer their contribution accumulation, as well as all contributions made by the city to the trust on the participant's behalf into the trust for the executive personnel money purchase plan by means of a trust-to-trust transfer. Each participant who has not completed five years or more of credited service shall have his or her contribution accumulation, as well as all contributions made by the city to the trust on the participant's behalf, transferred by means of a trust-to-trust transfer to the trust for the executive personnel money purchase plan. The amount transferred according to this section shall not exceed applicable limitations of [Internal Revenue] Code Section 415. Upon transfer of a participant's contribution accumulation to the trust for the executive personnel money purchase plan, (1) the participant's credited service under this plan shall be canceled, and (2) this plan will pay no further benefits to the participant, the participant's spouse or the participant's beneficiaries, unless the participant reenters the plan due to change in employment status and earns a right to plan benefits, and (3) the amount transferred to the trust for the executive personnel money purchase plan may not be transferred back to this plan to purchase credited service under this plan.

(f) *Vested city contributions*. For Tier 1 participants, the amount of a participant's vested city contributions shall be 25 percent of the participant's contribution accumulation if the participant has less than one year of credit service, increasing by five percent for each whole year of credit service. For a participant with 15 or more years of credited service, the amount of the vested city contributions shall be equal to 100 percent of the participant's contribution accumulation. For Tier 2 participants, there shall be no vesting in the city contributions until the participant has five years of credited service. After five years the amount of the participant's vested city contributions shall be 50 percent of participant's contribution accumulation, increasing by five percent for each whole year of credited service. For a participant with 15 or more years of credited service, the amount of the vested city contributions shall be 100 percent of the participant's contribution accumulation.

(g) *Default rollover of mandatory distributions*. In the event of a mandatory distribution greater than $1,000 in accordance with the provisions of Section 102-140(d) or Section 102-143(e), if the participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly, then the plan will pay the distribution in a direct rollover to an individual retirement plan designated by the board.

(h) *Contributions for periods of qualified military service*. This subsection applies to a participant who returns to employment with the city from qualified military service during the period within which reemployment rights are guaranteed by law. The participant may elect to contribute to the trust all or part of the contributions the participant would have made to the trust according to subsection 102-140(b) if the participant had remained continuously employed by the city throughout the period of the participant's qualified military service. The amount of contributions the participant may make according to this subsection 102-140(h) shall be determined on the basis of the participant's compensation in effect immediately before the qualified military service and the terms of the plan at that time. A participant may make such contributions during a period beginning on the participant's reemployment with the city and lasting for the shorter of five years or three times the participant's period of qualified military service. To the extent the participant makes contributions permitted by this subsection 102-140(h), the participant will receive credited service described in subsection 102-139(c)(3) for the period of qualified military service to which the contributions relate.

(Code 1979 § 15-46; Ord. No. 96-38, § 3, 10-7-96; Ord. No. 96-44, § 3, 10-7-96; Ord. No. 97-77, § 5, 1-5-98; Ord. No. 2005-95, § 2, 1-9-06; Ord. No. 2011-29, § 4, 10-22-11; Ord. No. 2013-37, §2, 11-30-13)

Sec. 102-141. Eligibility for pension benefits.

(a) *Normal or delayed retirement pension*. A participant shall be eligible for a normal or delayed retirement pension if employment by the city terminates on or after the normal retirement date subject to the other provisions of this plan. If a participant's death occurs after the normal retirement date but prior to the commencement of the pension, it shall be assumed that the participant's retirement date was the date of death.

(b) *Early retirement pension*. A participant shall be eligible for an early retirement pension if employment with the city terminates on or after attainment of age 50 and before the normal retirement date, provided ten or more years of credited service have been completed and the participant is not eligible for a special early retirement pension.

(c) *Special early retirement pension*. A participant shall be eligible for a special early retirement pension if employment with the city terminates on or after attainment of age 50 and before the participant's normal retirement date, provided the participant's age plus credited service equals or exceeds 80.

(d) *Deferred vested pension*. A participant shall be eligible for a deferred vested pension if employment with the city terminates after the completion of five or more years of credited service.

(e) *Money purchase pension*. A participant shall be eligible for a money purchase pension if the participant meets the eligibility requirements for a pension pursuant to section 102-141(a), (b), (c) or (d) and if the monthly money purchase pension amount is greater than the monthly pension calculated pursuant to such sections.

(f) *Disability retirement pension*. If a participant's employment by the city terminates by reason of disability before the normal retirement date and the participant receives long-term disability insurance benefits from the city until the normal retirement date, the participant shall be eligible for a disability retirement pension.

Disability shall be considered to have ended if, prior to the normal retirement date, the participant loses the qualification for long-term disability insurance payments from the city. In such case, no disability pension shall be paid to the participant from the plan. If the participant's disability ceases prior to the normal retirement date and the participant is not reemployed by the city as an employee and the participant met the requirements for a pension pursuant to subsection (b), (c) or (d) of this section on the date of recovery from disability, the participant shall be entitled to receive a pension equal in amount to the early, special early, or deferred vested pension to which the participant would have been entitled, as of the date of recovery, determined and paid pursuant to subsection 102-142(b), (c) or (d) based on the higher of the final average monthly compensation or the monthly rate of compensation on the date of disablement and the credited service on the date of recovery from disability.

(g) *General conditions*. If a retired participant is reemployed by the city as an employee, no pension payments shall be made during the period of such reemployment. In addition, a participant shall not be entitled to receive, simultaneously, a pension under more than one of subsections (a) through (e) of this section *[typo: should reference subsections (a) through (f)]*.

(h) *One-time early retirement option pension*. A participant, except terminated or retired participants, shall be eligible for a one-time early retirement option pension if, and only if the participant:

(1) Terminates employment with the city during the month of September, 1990;

(2) Has attained age 53 on or before termination of service;

(3) Has completed eight or more years of credited service with the city on or before termination of service; and

(4) Has submitted a written resignation/termination form to the board no later than September 30, 1990.

Benefits shall be paid as set forth in subsection 102-142(j).

(Code 1979, § 15-47; Ord. No. 96-38, § 5, 10-7-96, Ord. No. 2011-29, § 5, 10-22-11)

Sec. 102-142. Amount and payment of pension benefits.

(a) *Normal or delayed retirement pension*. A participant shall become fully vested in the accrued benefit on the normal retirement date and, upon retirement on or after such date, may elect to receive a monthly pension equal to 1.75 percent of the final average monthly compensation, multiplied by years of credited service, including a fractional computation for each day of service less than a full year. In lieu of a monthly pension, the participant may elect to receive a lump sum equal to the participant's contribution accumulation and vested city contributions.

Payment of a normal or delayed retirement pension shall commence as of the first day of the month following the participant's termination of employment.

Every participant, upon reaching the normal retirement date, may, pursuant to the provisions of the personnel rules and regulations of the city, remain as an employee and may retire on the first day of any subsequent month.

(b) *Early retirement pension*. A participant who meets the requirements for an early retirement pension may request the commencement of the early retirement pensions as of the first day of any month following termination of employment and prior to the participant's normal retirement date or alternatively wait until normal retirement age and receive an unreduced pension benefit.

For Tier 1 participants, the following rules shall apply: If a participant between the age of 55 and 65 requests the commencement of such early retirement pension prior to the participant's normal retirement date, the pension shall be permanently reduced by two percent for each year (including a fractional computation for each day less than a full year) that the pension commencement date precedes the earlier of (1) the date at which the participant's combined age and years of credited service total at least 80, or (2) the participant's 65th birthday. If a participant under age 55 with less than 25 years of credited service requests the commencement of such early retirement pension, the pension shall be permanently reduced by two percent for each year (including a fractional computation for each day less than a full year) that the participant's years of credited service are less than 25, not to exceed a total reduction of 20 percent, and the pension shall be further reduced six percent for each year (including a fractional computation for each day less than a full year) that the commencement precedes the participant's 55th birthday. If a participant under age 55 with 25 or more years of credited service requests the commencement of an early retirement pension, the pension shall be permanently reduced by six percent for each year (including a fractional computation for each day less than a full year) that the pension commencement date precedes the date at which the participant's combined age and years of credited service total at least 80.

For Tier 2 participants, the following rules shall apply: If a participant between the age of 50 and 67 requests the commencement of such early retirement pension prior to the participant's normal retirement date, the pension shall be permanently reduced by six percent for each year (including a fractional computation for each day less than a full year) that the pension commencement date precedes the earlier of (1) the date at which the participant's combined age and years of credited service total at least 80, or (2) the participant's 67th birthday.

(c) *Special early retirement pension*. A participant who meets the requirements for a special early retirement pension shall receive a monthly amount equal to the participant's accrued benefit. Payment of a special early retirement pension shall commence as of the first day of the month following the participant's termination of employment.

(d) *Deferred vested pension*. A participant who meets the requirements for a deferred vested pension may elect to (i) leave the contribution accumulation in the trust or (ii) receive, in lieu of all other benefits under this section, a refund of the participant's contribution accumulation and vested city contributions subject to limitations in subsection 102-140(d). If the participant fails to elect either (i) or (ii) within 90 days after the date of termination, it shall be determined that the participant's contribution accumulation shall remain in the trust. Any participant electing or deemed to have elected to leave the contribution accumulation in the trust after termination of employment with the city may, subsequently, elect a refund of the participant's contribution accumulation and vested city contributions in lieu of all other benefits hereunder at any time prior to the participant's commencement of a pension pursuant to section 102-141(a), (b), (c), (d) or (e).

A deferred vested participant shall be entitled to receive a deferred vested pension equal to the accrued benefit payable as of the first day of the month following the participant's normal retirement date.

A deferred vested participant whose employment terminates after having completed ten years of credited service may request the commencement of the deferred vested pension at any time after attainment of age 50 and prior to the participant's normal retirement date, in which event the pension will be reduced as for early retirement.

(e) *Money purchase pension*. A participant who meets the requirements for a money purchase pension, shall receive a monthly amount which is the actuarial equivalent of the participant's contribution accumulation and vested city contributions as of the date the pension commences.

(f) *Disability retirement pension*. A participant who meets the requirements for a disability retirement pension shall receive a monthly pension payable as of the first day of the month following the participant's normal retirement date, or as of the first day of the month following termination of the long-term disability insurance benefits, if later. A disabled participant shall receive credited service for the period of disability and the final average monthly compensation used to calculate the benefit shall be the higher of the final average monthly compensation or the monthly rate of compensation on the date of disablement.

(g) *Reemployment of retired participants*. Upon the subsequent termination of employment by a retired participant who was reemployed by the city as a plan participant, the plan shall resume paying the participant's previous benefit that was suspended and an additional amount based on the period of reemployment as a plan participant. The additional benefit shall be equal to 1.75% of the final average monthly compensation earned during the period of reemployment, multiplied by the years of credit service earned during the period of reemployment, including a fractional computation for each day of service less than a full year, subject to reduction for early retirement in section 102-142(b). The participant may not change the form of annuity benefit that was originally selection.

(h) *Cost-of-living adjustment*. For Tier 1 participants, monthly pension benefits payable to a participant or beneficiary pursuant to the terms of this article, excluding the supplemental benefit described in subsection (j) of this section, shall be subject to a cost-of-living adjustment. Such cost-of-living adjustment shall be an amount equal to the monthly pension benefit such participant or beneficiary was scheduled to receive on January 1, for the year in which the cost-of-living adjustment takes effect, excluding the supplemental benefit described in this section, times the percentage change, if any, rounded to the nearest one-half of one percent determined by the ratio that the U.S. Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the averages of the third quarter (July, August, September numbers) of the calculation year bears to such index for the third quarter of the base year; provided, however, that, such yearly increase or decrease shall be limited to a maximum percentage change of five percent, and provided further that any decrease shall not reduce the amount of pension below the initial level established at the time payments commenced. The "calculation year" is the year before the year in which the adjustment takes effect and the "base year" is the year preceding the "calculation year."

For years after 2011, the cost of living adjustment shall be determined as described above for Tier 1 participants, except that no negative cost-of-living adjustment shall be applied, and the base year is the year preceding the most recent year in which a positive cost-of-living adjustment took effect for Tier 1 participants.

For Tier 2 participants, cost-of-living adjustments shall not be automatic but may be granted on an annual basis as determined by the board. Such yearly increase shall not exceed the lesser of five percent or the increase which applies to Tier 1 participants.

(i) *General conditions*. It shall be the sole duty and responsibility of every participant entitled to a pension or the designated beneficiaries or heirs to make claim for such benefits upon the board, in writing, and there shall be no duty upon the board to disburse any benefits without written notice of such claim. A participant shall be required to notify the board of the intended retirement at least 60 days prior to the date on which the pension is to commence. Except as required by the last two sentences of this subsection, pension payments shall commence within 90 days after a participant's retirement date or after receipt by the board of a claim for benefits, if later.

A participant whose employment terminates and who is eligible for a pension under this plan, including deferred vested participants who leave their contribution accumulations in the trust, shall file with the board, in writing, a mailing address and each change of address. Any notice sent to a participant at the last filed mailing address will be binding upon the participant for all purposes of the plan.

Effective January 1, 1989, pension payments shall commence not later than April 1 of the calendar year following the later of: (i) the calendar year in which the participant attains 70½ years of age; or (ii) the calendar year in which the participant retires. Effective January 1, 2002 distributions shall be made in accordance with the requirements of code section 401(a)(9), as applicable to a government plan, including the incidental death benefit requirement of code section 401(a)(9)(g) and final treasury regulations sections 1.401(a)(9)-1 through 1.401(a)(9)-9, all as applicable to a governmental plan. The foregoing sentence overrides any distribution options that are inconsistent with code section 401(a)(9) as applicable to a governmental plan.

(j) *Supplemental benefit*. A participant or beneficiary shall receive, in addition to the pension, a monthly supplemental benefit. The full monthly supplemental benefit shall be calculated as follows:

(1) The full monthly supplemental benefit shall be $120.00.

(2) For each calendar year after 1992, the full monthly supplemental benefit shall be increased or decreased annually by an amount equal to the full monthly supplemental benefit payable during the previous calendar year, times a cost-of-living adjustment determined by the board.

The level of the cost-of-living adjustment, referenced in this section, shall be established at the discretion of the board, but in no event shall the cost-of-living adjustment for any one year exceed plus or minus five percent.

The full supplemental benefit shall be paid to participants with at least 20 years of credited service. Employees with at least five years of credited service up to a maximum of 20 years shall receive a pro rata share of the full monthly supplemental benefit. Employees with less than five years of service are ineligible to receive this benefit. Other provisions of this plan notwithstanding, the city council reserves the right to change this benefit at any time. The city council's determination to provide this supplemental benefit is not based upon a corresponding change to the plan of a detrimental nature.

(k) *One-time early retirement option pension*. A participant who is eligible and meets the requirements for the one-time early retirement option pension under subsection 102-141(h) shall, upon retirement, receive a monthly pension equal to 1.6 percent of the average monthly compensation, multiplied by the participant's years of credited service including fractional years, plus two additional years of credited service. An eligible participant or beneficiary shall receive, in addition to the pension, a monthly supplemental benefit of $250.00 up to the date the participant reaches or would have reached age 62.

Payment of the one-time early retirement pension shall commence as of the first day of the month following the participant's termination of employment. A participant who is eligible and meets the requirements for the one-time early retirement option shall be credited with an additional two years of service for the purpose of calculating the supplemental benefit to which the participant is entitled pursuant to subsection (j) of this section.

(l) *Direct rollover.* For eligible rollover distributions, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of the distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of applying this subsection, the following definitions shall apply:

(1) *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. Effective January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in code section 403(b) and an eligible plan under code section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in code section 414(p). Effective January 1, 2008, an eligible retirement plan shall also mean a Roth IRA described in section 408A(b) of the code, subject to an applicable limits described in section 408A(c) of the code.

(2) *Distributee*. A distributee is a participant of the plan. In addition, the participant's surviving spouse and the participant's or former participant's

spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the code, are distributees with regard to the interest of the spouse or former spouse.

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

(4) *Eligible rollover distribution*. 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 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. For distributions on or after January 1, 2002, a portion of distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or in a direct trustee-to-trustee transfer to a qualified trust described in section 401(a) of the Code which is exempt from tax under section 501(a) of the code or to an annuity contract described in section 403(b) of the Code, provided such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separate accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(m) *Distribution to IRA of nonspouse beneficiary.* A participant's non-spouse beneficiary may elect to have any portion of an eligible plan distribution paid in a direct trustee-to-trustee transfer to an individual retirement account or annuity described in section 402(a)(8)(B)(i) or (ii) of the Code that is established to receive the plan distribution on behalf of the beneficiary. For purposes of this subsection (m), a trust maintained for the benefit of one or more designated beneficiaries may be the beneficiary to the extent provided in rules prescribed by the Secretary of Treasury. If the participant dies after the participant's required beginning date as defined in section 102-142(i) hereof, the required minimum distribution in the year of death may not be transferred according to this subsection 102-142(m). The requirements of Code section 402(c)(11) apply to distributions under this subsection 102-142(m).

(Code 1979, § 15-48; Ord. No 96-38, § 6, 10-7-96; Ord. No. 97-77, § 6, 1-5-98; Ord. No. 2009-05, § 1, 3-14-09; Ord. No. 2011-29, § 6, 10-22-11)

Sec. 102-143. Form of benefit.

(a) *Normal form of benefit for married participant*. If a participant is married on the date benefits commence, the participant's pension shall be paid as an actuarially equivalent qualified joint and survivor annuity unless the participant makes a timely election pursuant to subsection (c) of this section to receive the pension in one of the optional forms of benefit described below.

(b) *Normal form of benefit for single participant*. If a participant who is not married on the date benefits commence does not make a timely election to receive the pension in one of the optional forms of benefits pursuant to subsection (e) of this section, the participant's pension shall be payable as a monthly benefit for the participant's life, with the final payment being the payment for the month the participant dies.

(c) *Waiver of qualified joint and survivor annuity.* A married participant may waive the qualified joint and survivor annuity and elect another form of payment, provided the waiver is in writing and is consented to in writing by the participant's spouse. The spouse's consent to the waiver must be witnessed by a notary public. Any consent by a participant's spouse shall be void if the participant remarries.

(d) *Notice of rights of participant and spouse.* The plan administrator shall provide the participant within a reasonable period prior to the commencement of benefits, a written explanation of: (i) The terms and conditions of a qualified joint and survivor annuity; (ii) the participant's right to make and the effect of an election to waive the qualified joint and survivor annuity; (iii) the rights of a participant's spouse; and (iv) the right to make, and the effect of, a revocation of a previous election to waive the qualified joint and survivor annuity.

(e) *Optional pension benefits.* A participant who waives the qualified joint and survivor annuity pursuant to subsection (c) of this section or who has no spouse may, by filing an application with the board not less than 60 days prior to the date the pension commences, designate a beneficiary and elect to receive a pension payable in accordance with one of the following options that is the actuarial equivalent of the pension to which the participant would otherwise become entitled upon retirement:

(1) *Option 1. One-hundred percent joint and survivor option.* The retired participant shall receive an adjusted pension payable for life, and payments of the pension amount shall, after the retired participant's death, be continued to the beneficiary during the beneficiary's lifetime. Upon the death of the beneficiary prior to the death of the retired participant, a straight life benefit, calculated as of the date of retirement plus or minus any cost-of-living adjustments, shall become payable to the retired participant. This option shall not become effective on or before the normal retirement date unless both the participant and the beneficiary are surviving on the date the pension commences.

(2) *Option 2. Seventy-five percent joint and survivor option*. The retired participant shall receive an adjusted pension payable for life, and payments of 75 percent of such adjusted pension shall, after the retired participant's death, be continued to the beneficiary during the beneficiary's lifetime. Upon the death of the beneficiary prior to the death of the retired participant, a straight life benefit, calculated as of the date of retirement plus or minus any cost-of-living adjustments, shall become payable to the retired participant. This option shall not become effective on or before the normal retirement date unless both the participant and the beneficiary are surviving on the date the pension commences.

(3) *Option* 3. *Fifty percent joint and survivor option.* The retired participant shall receive an adjusted pension payable for life, and payments of 50 percent of such adjusted pension shall, after the retired participant's death, be continued to the beneficiary during the beneficiary's lifetime. Upon the death of the beneficiary prior to the death of the retired participant, a straight life benefit, calculated as of the date of retirement plus or minus any cost-of-living adjustments, shall become payable to the retired participant. This option shall not become effective on or before the normal retirement date unless both the participant and the beneficiary are surviving on the date the pension commences.

(4) *Option* 4. *Ten-year certain and lifetime option.* The retired participant shall receive an adjusted pension payable for life and if the retired participant dies prior to receiving at least 120 payments, the same amount shall be continued to the beneficiary until a total of 120 monthly payments has been made to the retired participant and the beneficiary combined.

(5) *Option 5. Fifteen-year certain and lifetime option*. The retired participant shall receive an adjusted pension payable for life and if the participant dies prior to receiving at least 180 payments, the same amount shall be continued to the beneficiary until a total of 180 monthly payments has been made to the retired participant and the beneficiary combined.

(6) *Option* 6. *Straight life benefit.* The retired participant shall receive a pension payable for life, with no benefits other than those benefits described in Section 102-144(f) payable after the death of the participant.

(7) *Option* 7. *Partial lump sum payment.* The retired participant may elect to receive up to twenty percent of the actuarial equivalent of his or her accrued benefit valued on a single life basis in the form of a lump sum payment. The remaining accrued benefit shall be paid in the form selected by the participant from Option 1 through 6. The monthly benefit will be reduced on an actuarially equivalent basis to reflect the lump sum payment. The lump sum is payable upon pension commencement.

However, an optional form of income under this section may not be elected unless the value of the payments expected to be paid to the participant exceeds 50 percent of the value of the total benefits to be paid under such optional form.

If the actuarial equivalent present value of the participant's vested accrued benefit is not greater than $3,500.00, the participant will receive the actuarial equivalent present value in a lump-sum payment.

A participant may elect, change or revoke an option if the election, change or revocation is filed in writing with the board at least 60 days prior to the date the pension commences. If the participant is married, any change or revocation must be consented to by the participant's spouse in writing. The spouse's consent must be witnessed by a notary public.

The participant shall furnish satisfactory evidence to the board of the age of the beneficiary for option 1, option 2 or option 3.

(f) *Effect of option election.* An option elected under subsection (e) of this section shall cancel and supersede any benefit that would otherwise have become payable under this plan. After a pension commences, no change may be made in the mode of payment and no change of beneficiary or surviving spouse shall be permitted. However, the participant may change the beneficiary designated under an option 4 or option 5 election. Under any option selected, corrections based upon misstatement of age of any participant or beneficiary may be made by a participant only with the permission of the board.

(Code 1979, § 15-49; Ord. No. 97-77, § 7, 1-5-98)

Sec. 102-144. Death benefits.

(a) *Minimum death benefit*. Should a participant die before reaching normal retirement age and before completing five years of credited service, a death benefit equal to the contribution accumulation and vested city contributions on the date of death shall be paid to the surviving spouse or, if none, to the beneficiary.

(b) *Preretirement survivor annuity for deferred vested participants*. The surviving spouse of a deferred vested participant shall be eligible for either a lump sum payment equal to the participant's contribution accumulation and vested city contributions or a spouse's pension if the participant dies prior to the date the pension payments commence. The spouse's pension shall be a monthly benefit for the spouse's life equal to the greater of the following: (1) sixty percent of the actuarial equivalent of the monthly benefit the participant would have received if the participant's pension began on the date the spouse elects to begin receiving the pension calculated based upon the spouse's age; or (2) a monthly amount which is the actuarial equivalent of the participant's contribution accumulation and vested city contributions as of the date the spouse's pension commences.

Payment of such pension shall commence as of the first day of the month following the date the spouse notifies the plan of his or her election to take a benefit at any time after the date on which the participant would have attained the earliest retirement age. Any distribution must begin no later than April 1 of the year following the year in which the participant would have attained age 70½.

(c) *Qualified preretirement survivor annuity.* The surviving spouse of a participant who has completed five years of credited service and is actively employed by the city or on a paid or nonpaid leave of absence shall be eligible for a death benefit in the form of either a lump sum equal to the participant's contribution accumulation and vested city contributions, or a spouse's pension if the participant dies prior to the date the pension commences and prior to the normal retirement date. Such lump sum or pension shall also be paid to the surviving spouse of a participant who terminated because of a disability and the disability was continuous until the death and the death occurs before the participant receives a disability retirement pension. The spouse's pension shall be a monthly benefit for the spouse's life equal to the greater of (1) sixty percent of the actuarial equivalent of the monthly benefit the participant would have received if the participant's pension began on the date the spouse elects to begin receiving the pension calculated based upon the spouse's age; or (2) a monthly amount which is the actuarial equivalent of the participant's contribution accumulation and vested city contributions as of the date the spouse's pension commences.

Payment of such pension shall commence as of the first day of the month following the date the spouse notifies the Plan of his or her election to take a benefit at any time after the date on which the participant would have attained the earliest retirement age. Any distribution must begin no later than April 1 of the year following the year in which the participant would have attained age 70 ½.

(d) *Inservice death benefit after normal retirement date.* If a participant continues employment by the city after the normal retirement date and dies before retirement, the survivor annuity shall be a monthly benefit for the life of the participant's surviving spouse equal to the greater of: (1) a defined benefit pension equal to the monthly benefit the participant would have received if the participant had retired on the date of death and selected the one hundred percent joint and survivor option, or (2) the actuarial equivalent of the participant's money purchase pension calculated based upon the survivor's age.

Payment of such pension shall commence as of the first day of the month following the participant's death. In lieu of this annuity, the survivor may elect a lump sum equal to the participant's contribution accumulation and vested city contributions.

(e) *Alternative beneficiary.* Should an unmarried participant die before the pension commences but after meeting all other eligibility requirements for a death benefit pursuant to subsection (b), (c), or (d) of this section, the unmarried participant may name one living person who would be entitled to receive the benefits to be computed in the same manner as (b), (c), or (d). Further, at the time of the death of the participant, a surviving spouse may elect to waive any benefit and allow the pension or lump sum to be paid to the beneficiary selected by the participant.

(f) *Retiree death benefit.* Upon the death of each participant who is receiving pension benefits pursuant to Section 102-141, a one-time lump sum payment of six thousand two hundred fifty dollars shall be paid to the designated beneficiary. This benefit shall be separate from, and in addition to, any other benefit to which the participant's beneficiary may be entitled.

Should a participant and the beneficiary die after the participant's pension has commenced but before such participant and beneficiary have received total benefits equal to the participant's contribution accumulation and vested city contributions on the date the pension commenced, the excess amount shall be paid as a death benefit to the estate of the last to die of the participant and the beneficiary.

Each active or retired participant may designate a beneficiary to receive any benefit that may become payable pursuant to this subsection. Such designation shall be made upon the forms furnished by the Board and shall not be effective until received by the Board. If any participant shall fail to designate a beneficiary or if all of those designated by the participant predecease the participant, any benefit payable shall inure to the estate of the participant.

(g) *Survivor benefits for death during military service*. Effective January 1, 2007, if a participant dies while performing qualified military service (within the meaning of section 414(u)(1) of the code), the participant shall be treated as having terminated employment with the city due to his death for purposes of any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan.

(h) *Partial lump sum payment*. Any spouse or beneficiary who is eligible to receive a monthly benefit under subsections (b), (c), or (d) of this section may elect to receive up to 20 percent of the actuarial equivalent of his or her monthly benefit valued on a single life basis in the form of a lump sum payment. The remaining benefit shall be paid in monthly installments for the lifetime of the spouse or beneficiary.

(Code 1979, § 15-50; Ord. No. 96-38, § 7, 10-7-96; Ord. No. 97-77, § 8, 1-5-98; Ord. No. 99-82, § 4, 11-29-99; Ord. No. 2001-69, § 3, 11-19-2001; Ord. No. 2001-81, § 4, 1-7-2002; Ord. No. 2011-29, §7, 10-22-11)

Sec. 102-145. Administration and retirement board.

(a) *Created.* There is created the board of trustees of the employees' retirement system which shall have the responsibilities, duties and authorities as set forth in this section and this article.

(b) *Membership.* The board shall consist of the following trustees:

(1) Three participants who are employees of the city, elected by employees of the city who are participants in the plan. The General Employees' Retirement Plan administrative staff shall be eligible to vote but shall not be eligible to be elected.

(2) Three qualified electors of the city, appointed to the board by the city council, who have resided at least one year in the city. Such appointees shall not be employees or officials of the city, appointed or elected, or persons who are receiving benefits under the plan.

(3) One member who is a resident of the city and has been such for at least one year, to be selected by the members elected or appointed under subsections (b)(1) and (2) of this section.

In addition, the following persons or their designees shall be nonvoting members of the board, automatically entitled to membership on the board by virtue of their office and employment with the city: the city manager, the director of human resources, and the director of finance.

All members of the board shall serve without compensation for their service on the board, except each member shall be paid any necessary expenses incurred in performing duties as authorized by the board.

(c) *Plan administrator.* A plan administrator shall be appointed by the board. The plan administrator shall serve at the pleasure of the board and shall perform such duties as the board shall, from time to time, assign to the plan administrator. The board shall allocate funds from the plan for the plan administrator's salary and for any support staff and other administrative expenses approved by the board. As the chief staff officer for the board, the plan administrator shall be the secretary of the retirement board and shall keep the record of its proceedings.

(d) *Election and term of voting members.* The plan administrator shall conduct an election during October of each year for the selection of voting members of the board who are participants in the plan and elected under subsection (b)(1) of this section. Such members shall be elected by employees of the city who are participants in the plan for a three-year term commencing on January 1 following such election. Every employee who wishes to be a candidate for the board shall file a written announcement of candidacy with the plan administrator not less than 30 days prior to the announced election date. Any employee member of the board shall cease to be a board member immediately upon termination of employment with the city. Whenever a vacancy occurs on the board of an elected employee member of the board, the board shall select a participant who is an employee of the city to fill the unexpired term of that member. The appointment shall be made within 60 days from the date of vacancy.

(e) *Terms of members appointed by city council.* The term of office of any appointee of the city council shall be for a period of three years commencing on January

1 following appointment. If a city council appointee vacancy occurs on the board, the city council shall select a new member to fill the unexpired term of that member.

(f) *Terms of members selected by board.* The term of office of any member of the board selected by the board shall be for a period of three years commencing on January 1 following selection. If a vacancy occurs on the board among such selected members, the remaining board members shall select a new member to fill the unexpired term of the member for which the vacancy occurred. The selection shall be made within 60 days from the date of vacancy.

(g) *Administrative duties and powers.* The members of the board shall select from their members a chairperson and a vice-chairperson, and shall adopt rules to govern the conduct of business of the board, provided that such board shall meet not less than once each calendar month and provided, further, that the chairperson shall call a meeting of the board whenever requested to do so in writing by three members of the board who are eligible to vote. The board shall prepare a financial report in writing at least once a year and submit the report to the city council and to each participant of the plan, which report shall show the total amounts of money received, the total amounts of money disbursed, an investment report, the financial condition of the plan and any recommendations for improvements in the plan. Such report shall be made by July 31 of each year. Other powers and duties shall be as follows:

(1) The board shall provide for an independent audit of all funds of the plan to be made not less than once annually by a certified public accountant.

(2) The board shall establish rules governing the removal of members of the board. Whenever removal of any appointee member of the board is recommended by the board for violation of such rules and regulations, the recommendation shall be reported immediately to the city council, in order that the council may take appropriate action.

(3) The board shall provide for an actuarial review of the plan to be made not less than once annually by an actuary.

(4) The city attorney shall be the legal consultant for the board. The board may retain outside legal counsel who shall serve under the direction of the board.

(5) The board shall have such powers as may be necessary to discharge its duties under this article, including but not by way of limitation, the following powers and duties:

a. Construe and interpret the plan, decide all questions of eligibility and determine the amount, manner and time of payment of any benefits under this article.

b. Prescribe procedures to be followed by distributees in obtaining benefits.

c. Make a determination as to the right of any person to a benefit and afford any person dissatisfied with such determination the right to a hearing thereon with reasonable notice thereof.

d. Receive from the city and from participants such information as shall be necessary for the proper administration of the plan.

e. If the plan is terminated, report in a timely manner to all necessary parties all available information regarding benefits and amounts to be distributed to each participant and beneficiary.

f. The board shall set all actuarial assumptions and methods, including the assumptions and methods used for the terms “actuarial accrued liability,” “actuarial value of assets,” “annual required contribution,” “fair value of assets,” “normal cost” and “funded ratio.”

The board shall have not power to add to, subtract from or modify any of the terms of the plan, unless amended pursuant to section 102-151, nor to change or add to any benefits provided by the plan nor to waive or fail to apply any requirements of eligibility for a pension under the plan.

(h) *Authority.* The employees’ retirement system board shall be vested with jurisdiction to determine eligibility for membership in the plan and for benefits under the plan, as well as general administration, management and responsibility for the proper operation of the pension plan, the supervising of investment of funds held in the trust fund subject to any limitations contained in this article, and the board shall have authority to contract with any person authorized to do business in the state for these purposes.

(i) *Duties and powers as trustee.*

(1) *Duties.* In addition to any duty or responsibility otherwise imposed on the board by law or this chapter, the board shall:

a. Perform all of its trustee functions with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

b. Hold and administer the trust fund in trust, provided the board may appoint a custodian to hold the trust fund on behalf of the board.

c. Cooperate with and furnish the necessary information for such performance measuring services as the board may retain, from time to time, to monitor the investment activities of the trust fund.

d. Maintain, with the assistance of the custodian, accurate and detailed accounts of all investments, receipts, disbursements and all other transactions affecting all or any portion of the trust fund.

e. Pay from the trust fund all taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon or in respect of the trust fund or its income except that the trust shall not pay the tax on prohibited transaction.

f. Take no action which would adversely affect the tax-exempt status of the trust. The board may demand assurances satisfactory to it that any action which it is directed to take will not adversely affect the tax-exempt status.

g. Conduct periodic reviews of the funding policy and notify the investment manager of any anticipated significant changes in the number or composition of participants or any other matter which would have a significant impact on expected cash flow.

The board shall have no duty to inquire into the accuracy or sufficiency of any contribution to the trust fund, or its source.

(2) *Powers.* The board shall have the power and authority in the control of the trust fund, all consistent with the direction by an investment manager according to subsection 102-148(c)(2), to:

a. Purchase or subscribe for and retain any securities or other property, and sell, exchange, convey, transfer or otherwise dispose of any securities or other property held by it by private contract or at public auction. No person dealing with the board shall be bound to see to the application of the purchase money or to inquire into the validity, expedience or propriety of any such sale or other disposition.

b. Cause any securities or other property to be registered in its own name or in the name of its nominee without designating such as trust property, and hold any investments in bearer form, but the books and records of the board shall at all times show that all such investments are part of the trust fund. Any such registration or holding by the board shall not relieve it from its responsibility for the safe custody and disposition of the trust fund in accordance with the terms and provisions of this trust agreement.

c. Hold cash, uninvested, for such length of time as the board may deem prudent and in the best interests of the trust created hereby without liability for interest thereon.

d. Make, execute, acknowledge and deliver any and all documents of transfer and conveyance, including but not limited to deeds, leases, mortgages, conveyances, contracts, waivers and releases, and any and all other instruments that may be necessary or appropriate to carry out the powers granted in this section.

e. Employ suitable agents and counsel and pay their reasonable expenses and compensation.

f. Act at any time and in any jurisdiction without bond or other security to ensure the faithful performance of its duties.

g. Continue to have and to exercise, after the termination of the plan and until final distribution, all of the title, powers, discretions, rights and duties conferred or imposed upon the board under this section or by law.

h. Commence or defend suits or legal or administrative proceedings and settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the trust fund; provided, however, the board shall not be required to institute suit or maintain any litigation to collect the proceeds of any insurance or other contract forming a part of the trust fund unless the trust fund holds sufficient funds for this purpose or unless the board has been indemnified to its satisfaction for its counsel fees, costs, disbursements and all other expenses and liabilities to which it may be subjected by such suit; provided, further, that the board may utilize the proceeds of any contract to meet expenses incurred in enforcing payment of such contract.

(j) *Authorization of pension payments.* The board shall issue directions to the custodian of the trust concerning all benefits which are to be paid from the trust pursuant to the provisions of the plan. Wherever and whenever it is provided in this article for payments or distributions to be made, whether in money or otherwise, the payments or distributions shall be made to the participant or beneficiary, as the case may be, except as otherwise provided below in this section. Deposit to the account of a participant or beneficiary in any bank or trust company selected by the participant or beneficiary under this article shall be deemed payment into the participant or beneficiary's hands.

If prior claim for any amount owing to a participant or beneficiary is made by a duly qualified guardian or legal representative, the board shall direct the custodian to pay the amount to which the participant or beneficiary is entitled to such guardian or legal representative. Any payments so made shall be a complete discharge of all liabilities under the plan with respect to such payments and the board shall not be obliged to see to the proper application or expenditure of any payment so made.

(k) *Payment of expenses.* All expenses incident to the administration, termination or protection of the plan and trust, including but not limited to reasonable expenses of the board, actuarial, legal, accounting, custodian, investment manager and consultant fees and reasonable premiums for bonds and fiduciary liability insurance shall be paid by the custodian from the trust and, until paid, shall constitute a first and prior claim and lien against such fund.

(l) *Indemnification.* The board and the individual members thereof or any employee of the board performing duties therefore shall be indemnified by the city against any and all liabilities arising by reason of any act or failure to act made in good faith pursuant to the provisions of the plan, including expenses reasonably incurred in the defense of any claim relating thereto.

(m) *Unclaimed benefits.* During the time when a benefit under this article is payable to any participant or beneficiary, the board, shall mail by registered or certified mail to such person at the last known address a written demand for the current address or for satisfactory evidence of the person’s continued life or both. If such information is not furnished to the board within three months from the mailing of such demand, the board may, in its sole discretion, declare such benefit or any unpaid portion thereof suspended. Failure to furnish such information shall not result in the forfeiture of any nonforfeitable benefits, and any such declaration by the board shall later be revoked upon a receipt of the requested information by the board. If payment of benefits to a participant or beneficiary is suspended after the participant's normal retirement date due to failure of the participant or beneficiary to furnish such information or to claim a benefit, the amount of the participant's or beneficiary's benefit payments suspended after the participant’s normal retirement date shall be paid as an actuarially equivalent increase to any benefit payments later made to the participant or beneficiary.

(n) *Errors.* Should an error in records result in an incorrect benefit being paid, the board shall correct the record and insofar as practicable see that the correct benefit is paid. The board is authorized to recover from ineligible benefit recipients or persons who received moneys on behalf of ineligible benefit recipients, through legal process or benefit offset, any benefits paid to them to which they are not entitled, and to assess interest on such moneys.

(o) *Construction*. The plan shall be construed according to the laws of the state and the city, where it is made and where it shall be enforced. The plan and trust shall each form a part of the other by reference and terms shall be used therein interchangeably.

(p) *Confidentiality.* Records of members, former members, inactive members, and benefit recipients and their dependents which specifically identify financial information of such persons shall be kept confidential.

(Code 1979, §§ 8-157, 8-158, 15-51; Ord. No. 95-53, exhibit A (§ 15-51), 9-11-95; Ord. No. 2011-29, § 8, 10-22-11)

Sec. 102-146. Custodian.

(a) Under this article, the board may select a custodian, acting under a custodial agreement. The custodian may be removed by the board at any time. The board is authorized to execute an appropriate custodial agreement not inconsistent with the provisions of the plan.

(b) Whenever the board shall select a custodian, the custodian's duties shall include but not be limited to the following:

(1) It shall receive from the director of finance the city's and the members' contributions to the trust fund established in this article.

(2) It shall receive all of the income of the trust fund.

(3) In order to provide for payments pursuant to the plan, the custodian shall, from time to time, on the written direction of the board, make payments from the trust fund to such persons, corporations or other entities, in such manner, in such amounts and for such purposes as may be specified in the written directions of the board, and upon such payment, the amount thereof shall no longer constitute a part of the trust fund. The custodian shall make such payments either directly to the person certified by the board to be entitled to them or to the board or its delegate for transmittal to such persons or as otherwise directed by the board. The custodian shall be liable for failure to make any payment of any kind only if it shall have been directed by the board to make such payment and only if such funds sufficient to make such payment shall be available from the trust fund.

(4) It shall invest and reinvest the assets and incomes of the trust fund as directed by one or more investment managers.

(5) It shall maintain such records and accounts of the trust fund and shall render such financial statements and reports thereof as may be requested, from time to time, by the board.

(Code 1979, § 15-52)

Sec. 102-147. Investment manager.

Under this article, the board may select and retain one, or more than one, investment manager who shall invest or reinvest the corpus of the trust fund subject to the requirements of the plan as directed by the board and as set forth in any agreement with the investment manager. As a condition to its appointment, an investment manager shall acknowledge in writing that it is a fiduciary with respect to the plan. An investment manager who is not also a custodian shall not have authority to take custody of any property which is a part of the trust fund. The board may furnish an investment manager with written investment guidelines for investment of the investment manager's account, which guidelines may include directions with respect to diversification of the investments. The board may select a custodian and one or more separate investment managers to invest or reinvest the corpus of the trust, or the custodian and the investment manager may be the same entity.

(Code 1979, § 15-53)

Sec. 102-148. Trust.

(a) *Establishment and purpose.* Under this article, the city establishes with the board a trust which shall consist of all property of the plan, together with all interest, income and profits which accrue on such property, all of which shall be held, managed and administered in trust pursuant to this article. The plan assets held in trust shall constitute the "trust fund", as defined in section 102-137. The board accepts the trust created under this section and agrees to perform the duties, responsibilities and obligations required of it by this chapter. The sole purpose of the trust fund is to provide benefits for participants and their beneficiaries and to defray reasonable expenses of administering and operating the plan and trust. No part of the trust fund shall be used for or be diverted to another purpose by operation of the trust, by its natural termination, by the exercise of any power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, except upon termination of the plan and satisfaction of trust expenses and all liabilities to participants and their beneficiaries.

(b) *Control of trust fund.* The board shall have the power to control the trust fund and to do all such acts, to take all such proceedings, and to exercise all rights and privileges, although not specifically mentioned in this article, as the board may deem necessary or advisable to administer the trust fund or to carry out the purpose of the trust.

(c) *Management of trust fund.* The management, including the acquisition and disposition of property comprising the trust fund, shall be as follows:

(1) *Board.* The board shall have exclusive responsibility, discretion and authority with respect to management of the trust fund, consistent with the plan, except as to those portions of the trust fund for which the board has appointed an investment manager according to section 102-147. The

board's authority to manage the trust fund absent appointment of an investment manager according to section 102-147 shall not impose upon the board any duty to exercise such authority instead of appointing an investment manager for all or any portion of the trust fund.

(2) *Investment manager.* An investment manager shall have the authority, by written direction of the board, to direct the investment of that portion of the trust fund with respect to which it has been appointed an investment manager pursuant to section 102-147, in a manner consistent with the trust, the plan and applicable law.

(3) *Investment in city property.* No part of the trust fund may be invested in the bonds, notes, other obligations, or any other property, real or personal, of the city.

(d) *Amendment of trust.* The city shall have the right at any time and from time to time to amend the trust provisions of this article:

(1) In such manner as it may deem necessary or advisable in order to cause the trust and the plan to qualify or continue to qualify under the provisions of Internal Revenue Code section 401(a) and be exempt from taxation under the terms of Internal Revenue Code section 501(a), and any such amendment may by its terms be retroactive to the extent permitted by applicable law; and

(2) In any other manner; however, no such amendment shall authorize or permit any part of the trust fund to be used for or diverted to purposes other than to provide benefits for participants and their beneficiaries and to defray reasonable expenses of administering and operating the plan and trust, and no such amendment may cause or permit any portion of the trust fund to revert to or become the property of the city, except as permitted by section 102-152(d).

(e) *Termination.* The city shall have the right at any time to terminate the trust fund by delivering to the board written notice of such termination. Upon receipt of such notice, the board shall appraise the value of the trust fund, and the board shall allocate and distribute the trust fund in accordance with section 102-152. Upon making such final distribution, the board shall be discharged from all obligations under the trust.

(f) *Individual's rights; acquittance.* Neither the establishment of the trust fund created nor any modification thereof nor the creation of any fund or account nor the payment of any benefits shall be construed as giving to any person any legal or equitable right against the city or any officer or employee thereof, any investment manager, or the board except as provided by section 102-150. Under no circumstances shall the trust modify or affect the terms of employment of any participant.

(g) *Exercise of authority by city.* Whenever the city, under the terms of this trust, is permitted or required to do or perform any act or matter or thing, it shall be done and performed by its city council or by any officer of agent duly authorized by its city council.

(Code 1979, § 15-54)

Sec. 102-149. Limitations.

This Plan incorporates by reference the requirements of Code Section 415 and final regulations interpreting Code section 415, as applicable to this governmental retirement plan. The cost-of-living increase of Code section 415(d) shall continue to apply to increase the dollar benefit limit of Code section 415(b) after the participant's severance from employment. The limitation year is the calendar year.

(Code 1979, § 15-55; Ord. 2009-05, 3-14-09)

Sec. 102-150. Guarantees and liabilities.

(a) *Nonguarantee of employment.* Nothing contained in this plan shall be construed as a contract of employment between the city and any employee or as a right of any employee to be continued in the employment of the city or as a limitation of the right of the city to discharge any of its employees at any time, with or without cause.

(b) *Rights to trust assets.* No participant shall have any right to or interest in any assets of the trust, except as provided under this plan, and then only to the extent of the benefits payable to such participant out of the assets of the trust. Neither the city, the custodian, the investment manager, nor any member of the board shall be liable to any participant or beneficiary for benefits from this plan, except for those payable from the trust in accordance with the terms of the plan.

(c) *Nonalienation of benefits.* No benefit under the plan, nor any other interest under the plan of any participant, spouse or beneficiary shall be assignable, transferable, or subject to sale, mortgage, pledge, hypothecation, commutation, anticipation, garnishment, attachment, execution, or levy or any kind, and the board shall not recognize any attempt to assign, transfer, sell, mortgage, pledge, hypothecate, commute or anticipate such, except that the board shall recognize and comply with a properly executed domestic relations order under such terms and conditions as the board shall approve. The board's conditions for approval shall not allow lump sum payment to an alternate payee according to a qualified domestic relations order if the participant has not yet retired or terminated employment with the city.

(Code 1979, § 15-56)

Sec. 102-151. Amendments.

(a) *Right to amend.* The city council reserves the right to amend this plan at any time, subject to the limitations of subsection 102-140(b). No amendment shall decrease the then vested interest of any participant.

(b) *Restrictions.* No amendment shall reduce the retirement benefit below that which has been determined actuarially to be sufficiently funded at the time of amendment, except in the case of complete termination of the plan, nor shall any amendment deny any participant the right to receive the return of the participant's contribution accumulation and vested city contributions upon death or termination of employment. No amendment shall cause any part of the trust to be used for, or diverted to, any purpose other than the exclusive benefit of participants included in the plan or permit reversion of any part of the trust to the city except as provided in subsection 102-152(d).

(Code 1979, § 15-57; Ord. No. 96-38, § 8, 10-7-96; Ord. No. 97-77, § 9, 1-5-98)

Sec. 102-152. Termination and severability.

(a) *Termination of the plan and trust.* Upon a complete or partial termination of the plan, the rights of each affected participant to benefits accrued under the plan to the date of such discontinuance, to the extent then funded, shall be nonforfeitable. Upon a partial or complete termination of the plan or a permanent discontinuance of contributions to the plan, the proportionate interests of each affected participant and beneficiary shall be determined by the actuary. The assets of the terminated portion of the trust shall be liquidated and payment of expenses of administration, termination and liquidation shall be made therefrom. Payment or provision for the payment of the actuarial equivalent value of benefits accrued prior to the date of termination shall be made in the following order of precedence, to the participants and their beneficiaries from the liquidated portion of the trust on the following basis:

(1) An amount equal to the contribution accumulation and vested city contributions which would have been payable to the participant, retired participant or beneficiary had death occurred on the day before the termination of the plan.

(2) An amount of the remaining affected assets equal to the prorated portion that the actuarial reserve for the participant's accrued benefits minus the amount in subsection (a)(1) of this section credited to the participant bears to the total of such actuarial reserves minus the total amounts in subsection (a)(1) of this section.

(b) *Manner of distribution.* Any distribution after termination of the plan may be made at any time in whole or in part to the extent that no discrimination in value results, in cash, in securities, or other assets in kind at fair market value, in the form of a pension or a continued pension, in nontransferable annuity contracts, or in installments, as determined by the board in its discretion. In making such distribution, any and all determinations, division, appraisals, apportionments and allotments shall be made by the board acting under the information supplied by the actuary and shall be final and conclusive and not subject to question by any person.

(c) *Limitations.* The order of priorities set forth in this section if the plan is terminated shall be subject to:

(1) The limitations provided by section 102-149; and

(2) Such distributions not being determined by the Secretary of Treasury to produce discrimination prohibited by the code.

If either the limitations under section 102-149 become effective or the Secretary of the Treasury rules that the distributions are otherwise discriminatory, adjustments shall be made in the priorities and amounts of distributions as may be necessary to satisfy the requirements of section 102-149 or of the Secretary of the Treasury.

(d) *Amounts returnable to the city.* In no event shall the city receive any amounts from the trust except such amounts, if any, as follows:

(1) Upon termination of the plan and subject to subsection (d)(2) of this section, the city shall receive such amounts, if any, as may remain after the satisfaction of all liabilities of the plan to its participants and beneficiaries, and arising out of any variations between actual requirements and expected actuarial requirements.

(2) Before any distribution from the trust to the city pursuant to subsection (d)(1) of this section, if any assets of the plan attributable to employee contributions remain after satisfaction of all liabilities described in subsection (a) of this section, such remaining assets shall be equitably distributed to the participants who made such contributions or their beneficiaries. For purposes of this subsection, the portion of the remaining assets which are attributable to employee contributions shall be an amount equal to the product derived by multiplying:

a. The market value of the total remaining assets, by

b. A fraction:

1. The numerator of which is the present value of all portions of the accrued benefits with respect to participants which are derived from the participants' mandatory contributions, and

2. The denominator of which is the present value of all accrued benefits payable from the terminated plan according to subsection (a) of this section.

For purposes of this subsection, each person who is, as of the termination date, a participant under the plan shall be treated as a participant with respect to termination, if all or part of the nonforfeitable benefit with respect to such person is attributable to participants mandatory contributions.

(3) If a contribution is made by the city by a mistake of fact, such contribution may be returned to the city within one year after payment thereof.

(4) If a determination letter is issued by the district director of Internal Revenue to the effect that the plan and trust set forth in this article or as amended prior to the receipt of such letter do not meet the requirements of sections 401(a) and 501(a) of the code, the city shall be entitled to its option to withdraw, within one year of the receipt of such letter, all contributions made on or after the effective date, in which event the plan shall cease and terminate, and all rights of the participants shall be those as if the prior plan had been terminated as of such effective date.

(e) *Severability.* If any section, subsection, paragraph, sentence, clause or phrase of this chapter is, for any reason, held or decided to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. The city council declares that it would have passed this chapter and each section, subsection, paragraph, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, paragraphs, sentences clauses or phrases might be declared unconstitutional.

(Code 1979, § 15-58; Ord. No. 96-38, § 9, 10-7-96; Ord. No. 97-77, § 10, 1-5-98)

Secs. 102-153—102-180. Reserved.