CITY COMMISSION AGENDA
CITY HALL COMMISSION CHAMBERS
300 W. Plant Street

REGULAR MEETING OCTOBER 27, 2011 6:30 P.M.

CALL TO ORDER
Determination of a Quorum
Invocation and Pledge of Allegiance

1. **APPROVAL OF MINUTES**
   Executive Session and Regular Meeting of October 13, 2011

2. **PRESENTATION**
   A. **Proclamation 11-09** declaring October 29 to November 5, 2011 as the Week of the Family – Mayor Rees
   B. Recognition of Jerry Carris' volunteer service on Planning and Zoning Board and Code Enforcement Board – Mayor Rees

3. **SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCES**
   A. **Ordinance 11-27:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 209+/- ACRES LOCATED ON THE WEST SIDE OF AVALON ROAD AND SOUTH OF THE FLORIDA TURNPIKE INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE – Community Development Director Williams
   B. **Ordinance 11-28:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 7.88± ACRES LOCATED ON THE EAST SIDE OF 9th STREET, SOUTH OF EAST STORY ROAD AND NORTH OF WEST COLONIAL DRIVE INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE – Community Development Director Williams
   C. **Ordinance 11-29:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING THE FUTURE LAND USE MAP OF THE WINTER GARDEN COMPREHENSIVE PLAN BY CHANGING THE LAND USE DESIGNATION OF REAL PROPERTY GENERALLY DESCRIBED AS 7.88± ACRES OF LAND LOCATED ON THE EAST SIDE OF 9th STREET, SOUTH OF EAST STORY ROAD AND NORTH OF WEST COLONIAL DRIVE FROM ORANGE COUNTY LOW-MEDIUM DENSITY RESIDENTIAL TO CITY MULTI OFFICE INDUSTRIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE – Community Development Director Williams

D. **Ordinance 11-30:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING THE FUTURE LAND USE MAP OF THE WINTER GARDEN COMPREHENSIVE PLAN BY CHANGING THE LAND USE DESIGNATION OF REAL PROPERTY GENERALLY DESCRIBED AS 7.88± ACRES OF LAND LOCATED ON THE EAST SIDE OF 9th STREET, SOUTH OF EAST STORY ROAD AND NORTH OF WEST COLONIAL DRIVE FROM ORANGE COUNTY LOW-MEDIUM DENSITY RESIDENTIAL TO CITY MULTI OFFICE INDUSTRIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE – Community Development Director Williams

E. **Ordinance 11-31:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 13.39± ACRES OF REAL PROPERTY GENERALLY LOCATED EAST OF 9th STREET, SOUTH OF EAST STORY ROAD AND NORTH OF WEST COLONIAL DRIVE FROM CITY I-1 LIGHT INDUSTRIAL AND WAREHOUSING DISTRICT AND CITY C-2 ARTERIAL COMMERCIAL DISTRICT TO CITY I-2 GENERAL INDUSTRIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE – Community Development Director Williams

F. **Ordinance 11-32**: AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE III, PENSION PLAN FOR FIREFIGHTERS AND POLICE OFFICERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-190, CONTRIBUTIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE – City Manager Bollhoefer

G. **Ordinance 11-33:** AN ORDINANCE OF THE CITY OF WINTER GARDEN AMENDING AND RESTATING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE II, PENSION PLAN FOR GENERAL EMPLOYEES, SECTIONS 54-26 THROUGH 54-185, INCLUSIVE, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE – City Manager Bollhoefer

4. **REGULAR BUSINESS**

A. Recommendation to approve an interlocal agreement with Orange County for Fire Dispatch Services – Fire Chief Williamson

B. Appointments to the Planning and Zoning Board for a term of three years, for expiring terms of Mac McKinney *(District 1)*, Jerry Carris *(District 2)*, Rohan Ramlackhan *(District 3)* and James Dunn *(District 4)* on October 31, 2011 – City Clerk Golden

C. **Resolution 11-09:** A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AUTHORIZING BINGO TO BE CONDUCTED AT A MUNICIPAL OWNED PROPERTY AS A FUNDRAISER TO BENEFIT THE AMERICAN CANCER SOCIETY "RELAY FOR LIFE" BY THE CITY EMPLOYEE TEAM, PURSUANT TO SECTION 849.0931(11)(D), FLORIDA STATUTES AND PROVIDING FOR AN EFFECTIVE DATE – Community Relations Manager Vaughn

5. **MATTERS FROM CITIZENS** (*Limited to 3 minutes per speaker)*

6. **MATTERS FROM CITY ATTORNEY –** Kurt Ardaman

7. **<u>MATTERS FROM CITY MANAGER</u>** – Mike Bollhoefer
   A. Recommendation to schedule the 2012 run-off election date for April 10, 2012

8. **MATTERS FROM MAYOR AND COMMISSIONERS**

ADJOURN to a Regular Meeting on November 10, 2011 at 6:30 p.m. in City Hall Commission Chambers, 300 W. Plant Street, 1st floor

Please Note: In accordance with Florida Statutes 286.0105: Any person who desires to appeal any decision at this meeting will need a record of the proceedings and for this purpose may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is based, which such written record is not provided by the City of Winter Garden.

Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained at the meeting from the Information Technology Director.

Also, in accordance with Florida Statute 286.26: Persons with disabilities needing assistance to participate in any of these proceedings should contact the Office of the City Clerk, 300 W. Plant Street, Winter Garden, FL 34787, (407) 656-4111 x 2254 48 hours in advance of the meeting.

ORDINANCE 11-27

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 209+/- ACRES LOCATED ON THE WEST SIDE OF AVALON ROAD AND SOUTH OF THE FLORIDA TURNPIKE INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Winter Garden owns the land generally described as approximately 209 +/- acres located on the west side of Avalon Road and south of the Florida Turnpike, and legally described in Section 2 of this Ordinance, which land is contiguous to the corporate limits of the City of Winter Garden, Florida, have pursuant to the prerequisites and standards set forth in Chapter 171, F.S., petitioned the City Commission of the City of Winter Garden for voluntary annexation;

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION 1: That the City Commission through its Planning and Zoning Board has conducted an investigation to determine whether the described property meets the prerequisites and standards set forth in Chapter 171, F.S. and has held a public hearing and said petition and made certain findings.

SECTION 2: That, after said public hearing and having found such petition meets said prerequisites and standards, the property legally defined in ATTACHMENT “A” and graphically shown on the attached map shall be annexed into the City of Winter Garden, Florida, and

SECTION 3: That the City of Winter Garden, Florida, shall have all of the power, authority, and jurisdiction over and within the land as described in Section 2 hereof, and the inhabitants thereof, and property therein, as it does and have over its present corporate limits and laws, ordinances, and resolutions of said City shall apply and shall have equal force and effect as if all territory had been part of said City at the time of the passage of such laws, ordinances, and resolutions.

SECTION 4: The area annexed to the City is owned by the City and is not subject to the imposition of any City municipal ad valorem taxation.

SECTION 5: Should any portion of this Ordinance be held invalid, then such portions as are not declared invalid shall remain in full force and effect.

SECTION 6: This Ordinance shall become effective upon adoption at its second reading.

FIRST READING AND PUBLIC HEARING: October 6 , 2011.

SECOND READING AND PUBLIC HEARING: _____ , 2011.

ADOPTED this _____ day of _____, 2011, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

_____
JOHN REES, Mayor/Commissioner

ATTEST:

_____
KATHY GOLDEN, City Clerk

ATTACHMENT "A"

LEGAL DESCRIPTION

A tract of land lying in Section 28, Township 22 South, Range 27 East, Orange County, Florida and being more particularly described as follows:

Commence at the East 1/4 corner of said Section 28, Township 22 South, Range 27 East, Orange County, Florida; thence run North 89°36'43" West along the South line of the Northeast ¼ of said Section 28 for a distance of 25.00 feet to a point on the Westerly right of way line of State Road No. 545 (Avalon Road) said point being the POINT OF BEGINNING; thence departing said South line of the Northeast ¼ and run South 00°04'46" West along the aforesaid Westerly right of way line of State Road No. 545 for a distance of 1,333.42 feet to a point on the South line of the Northeast ¼ of the Southeast ¼ of said Section 28; thence run North 89°48'32" West along the aforesaid South line of the Northeast ¼ of the Southeast ¼ and the South line of the Northwest ¼ of the Southeast ¼ and the South line of the Northeast ¼ of the Southwest ¼ as established by the plat of Johns Lake Pointe as recorded in Plat Book 69, Page 121 of the Public Records of Orange County, Florida for a distance of 3948.69 feet; thence departing the North line of the aforesaid plat of Johns Lake Pointe and continue North 89°48'32" West along the South line of the Northwest ¼ of the Southwest ¼ of said Section 28 for a distance of 1341.45 feet to the Southwest corner of the Northwest ¼ of the Southwest ¼ of said Section 28; thence run North 00°02'08" East along the West line of the Northwest ¼ of the Southwest ¼ of said Section 28 for a distance of 1,351.60 feet to the West ¼ corner of said Section 28; thence run South 89°36'43" East, along the North line of the Northwest ¼ of the Southwest ¼ of said Section 28 for a distance of 667.06 feet to the Southwest corner of the East ½ of the Southwest ¼ of the Northwest ¼ of Section 28; thence run North 00°18'20" East along the West line of the East ½ of the Southwest ¼ of the Northwest ¼ of Section 28 for a distance of 283.93 feet; thence departing said West line and run South 89°38'06" East along the Southerly right of way line of State Road 91 (Florida's Turnpike) as per the right of way map (Financial Project No. 406146) and along those parcels as described in the Warranty Deed recorded in Official Records Book 9630, Page 3891 of the Public Records of Orange County, Florida for a distance of 522.00 feet; thence run North 63°07'41" East, for a distance of 629.13 feet; thence North 15°17'00" East, for a distance of 165.66 feet to a point on the Southerly limited access right of way line of the aforesaid State Road 91; said point being on a curve concave Northerly and having a Tangent Bearing of South 74°43'00" East and a radius of 11,609.16 feet; thence run Easterly along said right of way line and along the arc of said curve through a central angle of 15°19'03" for a distance of 3,103.63 feet to the Point of Tangency; thence run North 89°57'56" East, for a distance of 429.08 feet to the aforesaid Westerly right of way line of State Road No. 545 (Avalon Road); thence run South 00°04'03" West along said Westerly right of way line being 25 feet West of and parallel to the East line of the Northeast ¼ of said Section 28 for a distance of 345.78 feet to the POINT OF BEGINNING.

Containing 9,102,404 square feet or 208.962 Acres, more or less.

ORDINANCE 11-28

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 7.88± ACRES LOCATED ON THE EAST SIDE OF 9th STREET, SOUTH OF EAST STORY ROAD AND NORTH OF WEST COLONIAL DRIVE INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the owner of the land, generally described as approximately 7.88± acres located on the east side of 9TH Street, south of East Story Road and north of West Colonial Drive and legally described in Section 2 of this Ordinance, which land is reasonably compact and contiguous to the corporate limits of the City of Winter Garden, Florida ("City"), has, pursuant to the prerequisites and standards set forth in § 171.044, Fla. Stat., petitioned the City Commission for voluntary annexation;

WHEREAS, the petition for voluntary annexation referenced herein bears the signatures of all owners of the property or properties described in Section 2 of this Ordinance (*i.e.*, the property or properties to be annexed); and

WHEREAS, the City has determined that the property described in Section 2 of this Ordinance is located in an unincorporated area of the County and that annexation of such property will not result in the creation of an enclave.

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION 1: *Annexation.* That the City Commission through its Planning and Zoning Board has conducted an investigation to determine whether the described property meets the prerequisites and standards set forth in Chapter 171, Fla. Stat. and has held a public hearing and said petition and made certain findings.

SECTION 2: *Description of Area Annexed.* That, after said public hearing and having found such petition meets said prerequisites and standards, the property legally defined in ATTACHMENT "A" and graphically shown on the attached map shall be annexed into the City of Winter Garden, Florida.

SECTION 3: *Effect of Annexation.* That the City of Winter Garden, Florida, shall have all of the power, authority, and jurisdiction over and within the land as described in Section 2 hereof, and the inhabitants thereof, and property therein, as it does and have over its present corporate limits and laws, ordinances, and resolutions of said City shall apply and shall have equal force and effect as if all territory had been part of said City at the time of the passage of such laws, ordinances, and resolutions.

SECTION 4: *Apportionment of Debts and Taxes.* Pursuant to § 171.061, Fla. Stat., the area annexed to the City shall be subject to all taxes and debts of the City upon the effective date of annexation. However, the annexed area shall not be subject to municipal ad valorem taxation for the current year if the effective date of the annexation falls after the City levies such tax.

SECTION 5: *Instructions to Clerk.* Within seven (7) days following the adoption of this Ordinance, the City Clerk or his/her designee is directed to file a copy of this ordinance, including ATTACHMENT "A" hereto, with the clerk of the circuit court and the chief administrative officer of Orange County as required by § 171.044(3), Fla. Stat.

SECTION 6: *Severability.* Should any portion of this Ordinance be held invalid, then such portions as are not declared invalid shall remain in full force and effect.

SECTION 7: *Effective Date.* This Ordinance shall become effective upon adoption at its second reading.

FIRST READING AND PUBLIC HEARING: October 6 , 2011.

SECOND READING AND PUBLIC HEARING: _____ , 2011.

ADOPTED this _____ day of _____, 2011, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

_____
JOHN REES, Mayor/Commissioner

ATTEST:

_____
KATHY GOLDEN, City Clerk

ATTACHMENT "A"

LEGAL DESCRIPTION

PARCEL ID#: 12-22-27-6496-32-002

OVERSTREET CRATE COMPANYS F/9 N 102 FT OF S1/2 OF N1/2 OF BLK 6 LYING W OF CANAL & N1/2 OF S1/2 OF N1/2 BLK 6 LYING E OF CANAL & W 93 FT OF E 665.04 FT OF S1/2 OF S1/2 OF N1/2 OF BLK 6 & E 381.36 FT OF S1/2 OF S1/2 OF N1/2 OF BLK 6 ON MAP 24-22-27 SW1/4

PARCEL ID#: 12-22-27-6496-32-003

OVERSTREET CRATE COMPANYS F/9 BEG SE COR OF NW1/4 OF BLK 6 RUN W 363.35 FT TO ELY R/W OF DRAINAGE DITCH TH N 20 DEG W 176.89 FT ALONG SAID R/W TO PT ON N LINE OF S1/4 OF NW1/4 OF BLK 6TH E 425.94 FT TO E LINE OF SAID NW1/4 S 166.06 FT TO POB (LESS E 225 FT THEREOF) IN SEC 24-22-27 SW1/4

PARCEL ID#: 12-22-27-6496-32-024

OVERSTREET CRATE COMPANYS F/9 W 95.34 FT OF E 476.7 FT OF S1/4 OF N1/2 BLK 6 IN SEC 24-22-27 SW1/4

PARCEL ID#: 12-22-27-6496-32-026

OVERSTREET CRATE COMPANYS F/9 W 95.34 FT OF E 572.04 FT OF S1/2 OF N1/2 OF BLK 6 IN SEC 24-22-27 SW1/4

ORDINANCE 11-29

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING THE FUTURE LAND USE MAP OF THE WINTER GARDEN COMPREHENSIVE PLAN BY CHANGING THE LAND USE DESIGNATION OF REAL PROPERTY GENERALLY DESCRIBED AS 7.88± ACRES OF LAND LOCATED ON THE EAST SIDE OF 9th STREET, SOUTH OF EAST STORY ROAD AND NORTH OF WEST COLONIAL DRIVE FROM ORANGE COUNTY LOW-MEDIUM DENSITY RESIDENTIAL TO CITY MULTI OFFICE INDUSTRIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on the 13th of June, 1991, the City Commission of the City of Winter Garden adopted Ordinance 91-16 which adopted a new Comprehensive Plan for the City of Winter Garden;

WHEREAS, the owner of that certain real property generally described as 7.88± acres of land located on the east side of 9TH Street, south of East Story Road and north of West Colonial Drive, and legally described in ATTACHMENT "A" has petitioned the City to amend the Winter Garden Comprehensive Plan to change the Future Land Use classification from Orange County Low-Medium Density Residential to City Multi Office Industrial; and

WHEREAS, the City of Winter Garden's Local Planning Agency and City Commission have conducted the prerequisite advertised public hearings pursuant to Chapter 163, Florida Statutes, regarding the adoption of this ordinance; now, therefore,

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION I. *FLUM Amendment.* The City of Winter Garden hereby amends the Future Land Use Map of the City of Winter Garden Comprehensive Plan by designating the aforesaid property to City Multi Office Industrial within the Story Road Industrial Activity Center as set forth in ATTACHMENT "B".

SECTION II. *Effective Date.* This Ordinance shall become effective 31 days after adoption, unless the Ordinance is timely challenged pursuant to § 163.3187(5), Fla. Stat., in which case, the Ordinance shall not be effective until the state land planning agency or the Administrative Commission, respectively, issues a final order determining that the adopted Ordinance is in compliance.

SECTION III. *Severability.* Should any portion of this Ordinance be held invalid, then such portions as are not declared invalid shall remain in full force and effect.

FIRST READING AND PUBLIC HEARING: October 6 , 2011.

SECOND READING AND PUBLIC HEARING: _____ , 2011.

ADOPTED this _____ day of _____, 2011, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

_____
JOHN REES, Mayor/Commissioner

ATTEST:

_____
KATHY GOLDEN, City Clerk

ATTACHMENT "A"

LEGAL DESCRIPTION

PARCEL ID#: 12-22-27-6496-32-002

OVERSTREET CRATE COMPANYS F/9 N 102 FT OF S1/2 OF N1/2 OF BLK 6 LYING W OF CANAL & N1/2 OF S1/2 OF N1/2 BLK 6 LYING E OF CANAL & W 93 FT OF E 665.04 FT OF S1/2 OF S1/2 OF N1/2 OF BLK 6 & E 381.36 FT OF S1/2 OF S1/2 OF N1/2 OF BLK 6 ON MAP 24-22-27 SW1/4

PARCEL ID#: 12-22-27-6496-32-003

OVERSTREET CRATE COMPANYS F/9 BEG SE COR OF NW1/4 OF BLK 6 RUN W 363.35 FT TO ELY R/W OF DRAINAGE DITCH TH N 20 DEG W 176.89 FT ALONG SAID R/W TO PT ON N LINE OF S1/4 OF NW1/4 OF BLK 6TH E 425.94 FT TO E LINE OF SAID NW1/4 S 166.06 FT TO POB (LESS E 225 FT THEREOF) IN SEC 24-22-27 SW1/4

PARCEL ID#: 12-22-27-6496-32-024

OVERSTREET CRATE COMPANYS F/9 W 95.34 FT OF E 476.7 FT OF S1/4 OF N1/2 BLK 6 IN SEC 24-22-27 SW1/4

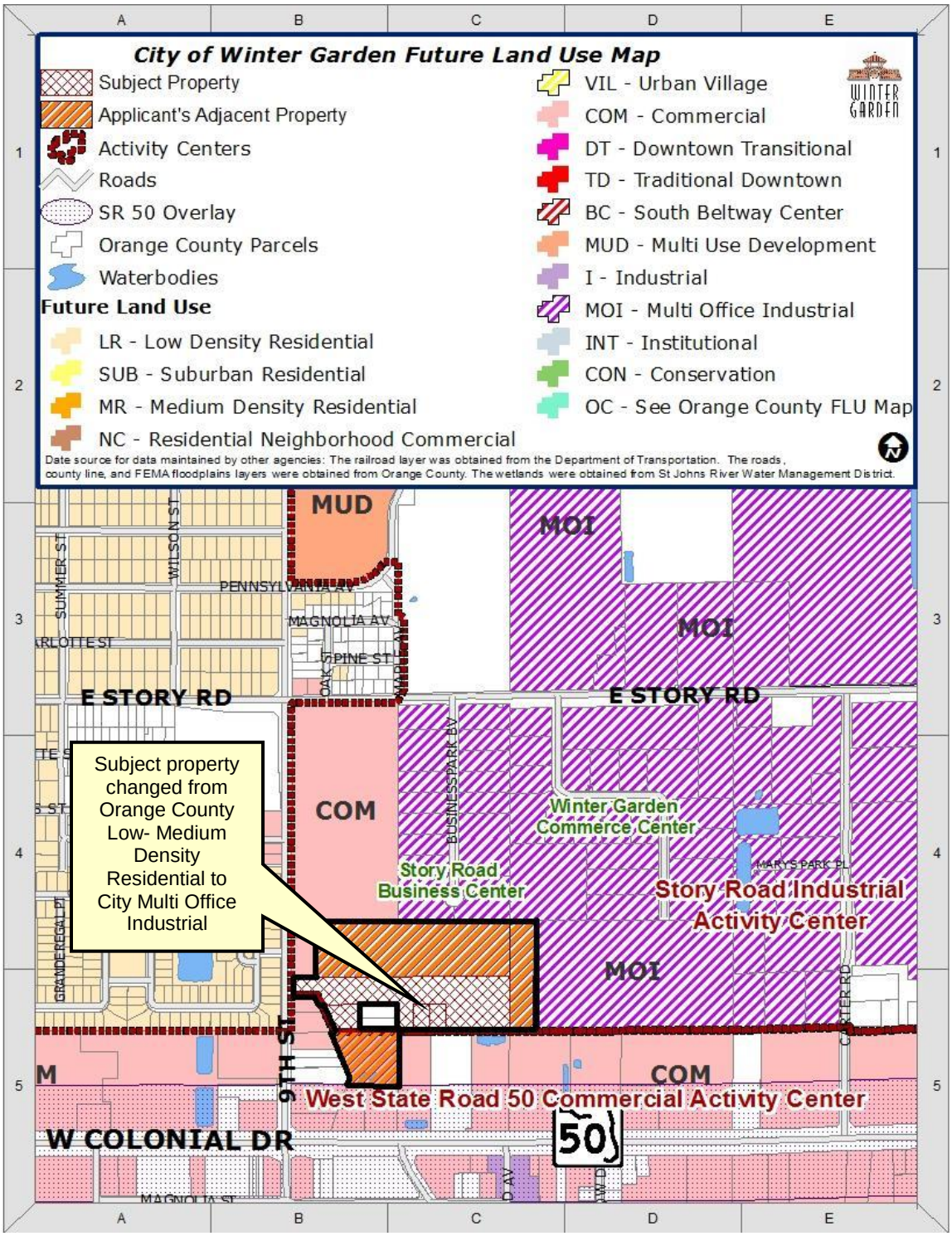
PARCEL ID#: 12-22-27-6496-32-026

OVERSTREET CRATE COMPANYS F/9 W 95.34 FT OF E 572.04 FT OF S1/2 OF N1/2 OF BLK 6 IN SEC 24-22-27 SW1/4

ATTACHMENT "B"

FUTURE LAND USE MAP

881 9th Street



ORDINANCE 11-30

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 7.88± ACRES OF REAL PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF 9th STREET, SOUTH OF EAST STORY ROAD AND NORTH OF WEST COLONIAL DRIVE FROM ORANGE COUNTY R-2 RESIDENTIAL DISTRICT TO CITY I-2 GENERAL INDUSTRIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the owner of that certain real property generally described as 7.88± acres of land located on the east side of 9TH Street, south of East Story Road and north of West Colonial Drive, and legally described in Section 1 of this ordinance has petitioned the City to rezone said property from Orange County R-2 Residential District to the City's I-2 General Industrial District zoning classification, therefore;

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION 1: *Rezoning.* After due notice and public hearing, the zoning classification of real property legally described on ATTACHMENT "A," is hereby rezoned from Orange County R-2 Residential District to City I-2 General Industrial District in the City of Winter Garden, Florida.

SECTION 2: *Zoning Map.* The City Planner is hereby authorized and directed to amend the Official Winter Garden Zoning Map in accordance with the provisions of this ordinance.

SECTION 3: *Non-Severability.* Should any portion of this Ordinance be held invalid, then the entire Ordinance shall be null and void.

SECTION 4: *Effective Date.* This Ordinance shall become effective upon the effective date of an amendment to the Future Land Use Map of the City of Winter Garden Comprehensive Plan that allows the property described herein to be zoned as provided in this ordinance.

FIRST READING AND PUBLIC HEARING: October 6 , 2011.

SECOND READING AND PUBLIC HEARING: _____ , 2011.

ADOPTED this _____ day of _____, 2011, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

_____
JOHN REES, Mayor/Commissioner

ATTEST:

_____
KATHY GOLDEN, City Clerk

ATTACHMENT "A"

LEGAL DESCRIPTION

PARCEL ID#: 12-22-27-6496-32-002

OVERSTREET CRATE COMPANYS F/9 N 102 FT OF S1/2 OF N1/2 OF BLK 6 LYING W OF CANAL & N1/2 OF S1/2 OF N1/2 BLK 6 LYING E OF CANAL & W 93 FT OF E 665.04 FT OF S1/2 OF S1/2 OF N1/2 OF BLK 6 & E 381.36 FT OF S1/2 OF S1/2 OF N1/2 OF BLK 6 ON MAP 24-22-27 SW1/4

PARCEL ID#: 12-22-27-6496-32-003

OVERSTREET CRATE COMPANYS F/9 BEG SE COR OF NW1/4 OF BLK 6 RUN W 363.35 FT TO ELY R/W OF DRAINAGE DITCH TH N 20 DEG W 176.89 FT ALONG SAID R/W TO PT ON N LINE OF S1/4 OF NW1/4 OF BLK 6TH E 425.94 FT TO E LINE OF SAID NW1/4 S 166.06 FT TO POB (LESS E 225 FT THEREOF) IN SEC 24-22-27 SW1/4

PARCEL ID#: 12-22-27-6496-32-024

OVERSTREET CRATE COMPANYS F/9 W 95.34 FT OF E 476.7 FT OF S1/4 OF N1/2 BLK 6 IN SEC 24-22-27 SW1/4

PARCEL ID#: 12-22-27-6496-32-026

OVERSTREET CRATE COMPANYS F/9 W 95.34 FT OF E 572.04 FT OF S1/2 OF N1/2 OF BLK 6 IN SEC 24-22-27 SW1/4

ORDINANCE 11-31

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 13.39± ACRES OF REAL PROPERTY GENERALLY LOCATED EAST OF 9th STREET, SOUTH OF EAST STORY ROAD AND NORTH OF WEST COLONIAL DRIVE FROM CITY I-1 LIGHT INDUSTRIAL AND WAREHOUSING DISTRICT AND CITY C-2 ARTERIAL COMMERCIAL DISTRICT TO CITY I-2 GENERAL INDUSTRIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the owner of that certain real property generally described as 13.39± acres of land located east of 9TH Street, south of East Story Road and north of West Colonial Drive, and legally described in Section 1 of this ordinance has petitioned the City to zone said property from the City's I-1 Light Industrial and Warehousing District and the City's C-2 Arterial Commercial District to the City's I-2 General Industrial District zoning classification, therefore;

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION 1: *Rezoning.* After due notice and public hearing, the zoning classification of real property legally described on ATTACHMENT "A," is hereby rezoned from City I-1 Light Industrial and Warehousing District and City C-2 Arterial Commercial District to City I-2 General Industrial District in the City of Winter Garden, Florida.

SECTION 2: *Zoning Map.* The City Planner is hereby authorized and directed to amend the Official Winter Garden Zoning Map in accordance with the provisions of this ordinance.

SECTION 3: *Non-Severability.* Should any portion of this Ordinance be held invalid, then the entire Ordinance shall be null and void.

SECTION 4: *Effective Date.* This Ordinance shall become effective upon adoption at its second reading.

FIRST READING AND PUBLIC HEARING: October 6 , 2011.

SECOND READING AND PUBLIC HEARING: _____ , 2011.

ADOPTED this _____ day of _____, 2011, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

_____
JOHN REES, Mayor/Commissioner

ATTEST:

_____
KATHY GOLDEN, City Clerk

ATTACHMENT "A"

Parcel ID # 12-22-27-6496-32-025
Parcel ID # 24-22-27-0000-00-037

Parcel 1:

The Southwest 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 24, Township 22 South, Range 27 East and the East ½ of the Northeast 1/4 of the Southwest 1/4 of Section 24, Township 22 South, Range 27 East, less the North 30 feet thereof for Road Right-of-Way; Less the East 208.73 feet of the North 626.16 feet of the East ½ of the Northeast 1/4 of the Southwest 1/4 of Section 24, Township 22 South, Range 27 East, Public Records of Orange County, Florida.

Parcel 2:

That portion of the Northwest Quarter (NW 1/4) of the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section 24, Township 22 South, Range 27 East, lying North of a line 257.68 feet South of and parallel to the North line of the Southwest Quarter (SW 1/4) of Section 24, Township 22 South, Range 27 East; Less the North 30 feet thereof for Road Right-of-Way.

Parcel 3:

That portion of the Northwest Quarter (NW 1/4) of the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section 24, Township 22 South, Range 27 East, lying South of a line 257.68 feet South of and parallel to the North line of the Southwest Quarter (SW 1/4) of Section 24, Township 22 South, Range 27 East.

Parcel 4:

That part of the Southwest 1/4 of Section 24, Township 22 South, Range 27 East, Orange County, Florida, being more particularly described as follows:

Commence at the South 1/4 corner of said Section 24; thence run N00°03'40"E along the East line of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 75.00 feet for a Point of Beginning, said point being on the North Right-of-Way line of Colonial Drive (State Road No. 50); Thence run S89°57'06"W along said North Right-of-Way line, being 75.00 feet North of and parallel with when measured perpendicular to the South line of said Section 24, a distance of 334.01 feet; Thence run N00°03'40"E along a line parallel with the East line of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 1266.49 feet to a point on the North line of the South1/2 of the Southwest 1/4 of said Section 24; Thence run N89°33'22"E along the North line of the South ½ of the Southwest 1/4 of said Section 24, a distance of 334.02 feet to the Northeast corner of the Southeast 1/4 of the Southwest 1/4 of said Section 24; Thence run S00°03'40"W along the East line of the Southeast 1/4 of the Southwest 1/4, a distance of 1268.80 feet to the Point of Beginning.

ATTACHMENT "A"
CONTINUED

Parcel 5:

That part of Block "6" of the plat of Overstreet Crate Company Subdivision, as recorded in Plat Book "F", Page 9, of the Public Records of Orange County, Florida, being more particularly described as follows:

Commence at the South 1/4 corner of said Section 24; Thence run N00°03'40"E along the East line of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 75.00 feet to a point on the North Right-of-Way line of Colonial Drive (State Road No. 50); Thence run S89°57'06"W along said North Right-of-Way line being 75.00 feet North of and parallel with when measured perpendicular to the South line of said Section 24, a distance of 667.71 feet; Thence run N00°04'53"E along the West line of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 594.60 feet to the Northwest corner of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24; Thence run S89°45'14"W along the South line of the Northwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 667.51 feet to the Southwest corner of the Northwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24, said point being on the East line of said Block 6 of the Overstreet Crate Company Subdivision, as recorded in Plat Book "F", Page 9, of the Public Records of Orange County, Florida; Thence run N00°06'06"E along the West line of the Northwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 24 and along the East line of said Block "6", a distance of 333.65 feet for a Point of Beginning, said point being the Southeast corner of the North 1/4 of the Southwest 1/4 of the Southwest 1/4 of said Section 24; Thence run S89°39'19"W along the South line of the North 1/4 of the Southwest 1/4 of the Southwest 1/4 of said Section 24, a distance of 1304.80 feet to a point on the East Right-of-Way line of Ninth Street; Thence run N00°08'34"W along said East Right-of-Way line, being 30.00 feet East of and parallel with when measured perpendicular to the West line of the Southwest 1/4 of the Southwest 1/4 of said Section 24, and along the West line of said Block 6, a distance of 236.39 feet; Thence departing said East Right-of-Way line and the West line of said Block 6, run N89°33'22"E along a line parallel with the North line of the South ½ of the Southwest 1/4 of said Section 24, a distance of 161.94 feet to a point on the centerline of a Drainage Easement, as described and recorded in Minute Book 2, Page 23, of the Public Records of Orange County, Florida; Thence run N02°04'34"E along the centerline of said easement, a distance of 95.09 feet to a point on the North line of the South ½ of the Southwest 1/4 of said Section 24 and the North line of said Block "6"; Thence run N89°33'22"E along the North line of the South ½ of the Southwest 1/4 of said Section 24 and the North line of said Block "6", a distance of 1139.43 feet to the Northwest corner of the Southeast 1/4 of the Southwest 1/4 of said Section 24 and the Northeast corner of said Block "6"; Thence run S00°06'06"W along the West line of the Northwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24 and the East line of said Block "6", a distance of 333.65 feet to the Point of Beginning.

Parcel 6:

That part of Southwest 1/4 of Section 24, Township 22 South, Range 27 East, Orange County, Florida, being more particularly described as follows:

Commence at the South 1/4 corner of said Section 24; Thence run N00°03'40"E along the East line

of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 75 feet to a point on the North Right-of-Way line of Colonial Drive (State Road No. 50); Thence run S89°57'06"W along said North Right-of-Way line being 75.00 feet North of and parallel with when measured perpendicular to the South line of said Section 24, a distance of 334.01 feet; Thence run N00°03'40"E, 520.266 feet to the Point of Beginning; Thence run S89°57'06"W, a distance of 232.836 feet: Thence run N00°03'40"E, a distance of 744.62 feet along a line parallel with the East line of the Southeast 1/4 of the Southwest 1/4 of the said Section 24, to a point on the North line of the South ½ of the Southwest 1/4 of the said Section 24; Thence run N89°33'22"E along the North line of the South ½ of the Southwest 1/4 of the said Section 24, a distance of 232.836 feet; Thence run S00°03'40"W, a distance of 746.224 feet to the Point of Beginning.

Parcel 7:

That part of the Southwest 1/4 of Section 24, Township 22 South, Range 27 East, Orange County, Florida, being more particularly described as follows:

Commence at the South 1/4 corner of said Section 24; Thence run N00°03'40"E along the East line of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 75.00 feet to a point on the North Right-of-Way line of Colonial Drive (State Road 50); Thence run S89°57'06"W along said North Right-of-Way line being 75.00 feet North of and parallel with when measured perpendicular to the South line of said Section 24, a distance of 334.01 feet for a Point of Beginning; Thence continue S89°57'06"W along said line, a distance of 333.70 feet; Thence run N 00°04'53"E along the West line of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 520.266 feet; Thence run East 333.70 feet; Thence run S00°03'40"W, a distance of 520.266 feet to the Point of Beginning.

Less Parcel 7:

All that tract or parcel of land lying and being in the Southwest 1/4 of section 24 Township 22 South, Range 27 East, Orange County, Florida, being more particularly described as follows:

Commence at the South 1/4 of corner of said Section 24; Thence run N00°03'40"E along the East line of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 75.00 feet to a point on the North Right-of-Way line of Colonial Drive (State Road 50); Thence run S89°57'06"W along said North Right-of-Way line, being 75.00 feet North of and parallel with when measured perpendicular to the South line of said Section 24, a distance of 437.65 feet to the Point of Beginning; Thence continue S89°57'06"W along said North Right-of-Way line, a distance of 230.00 feet to a point on the West line of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24; Thence run N00°06'16"E along said West line, a distance of 265.00 feet; Thence run N89°57'06"E, a distance of 230.00 feet; Thence run S00°06'16"W, a distance of 265.00 feet to the North Right-of-Way line of Colonial Drive (State Road 50) and the Point of Beginning.

Parcel 8:

ATTACHMENT "A"
CONTINUED

That part of the Southwest 1/4 of Section 24, Township 22 South, Range 27 East, Orange County, Florida, being more particularly described as follows:

Commence at the South 1/4 corner of said Section 24; Thence run N00°03'40"E along the East line of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 75.00 feet to a point on the North Right-of-Way line of Colonial Drive (State Road No. 50); Thence run S89°57'06"W along said North Right-of-Way line being 75.00 feet North of and parallel with when measured perpendicular to the South line of said Section 24, a distance of 334.01 feet for a point Beginning; Thence continue S89°57'06"W along said line, a distance of 333.70 feet; Thence run N00°04'53"E along the West line of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 594.60 feet to the Northwest corner of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24; Thence run S89°45'14"W along the South line of this Northwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 667.51 feet to the Southwest corner of the Northwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24, said point being on the East line of Block 6, of the Overstreet Crate Company subdivision, as recorded in Plat Book "F", Page 9, of the Public Records of Orange County, Florida; Thence run N00°06'06"E along the West line of the Northwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 24 and the East line of said Block 6, a distance of 667.30 feet to the Northwest corner of the Southeast 1/4 of the Southwest 1/4; Thence departing the East line of said Block 6, run N89°33'22"E along the North line of the South ½ of the Southwest 1/4 of said Section 24, a distance of 1000.57 feet to a point lying 334.02 feet Westerly of the Northeast corner of the Southeast 1/4 of the Southwest 1/4 of said Section 24; Thence S00°03'40"W, 1256.49 feet to the Point of Beginning.

Less the following described three parcels:

Parcel A:

That part of the Southwest 1/4 of Section 24, Township 22 South, Range 27 East, Orange County, Florida, being more particularly described as follows:

Commence at the South 1/4 corner of said Section 24; Thence run North 00°03'40"E along the East line of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 75.00 feet to a point on the North Right-of-Way line of Colonial Drive (State Road No. 50); Thence run S89°57'06"W along the North Right-of-Way line being 75.00 feet North of and parallel with when measured perpendicular to the South line of said Section 24, a distance of 334.01 feet; Thence run N00°03'40"E, 520.266 feet to the Point of Beginning; Thence run S89°57'06"W, a distance of 232.836 feet; Thence run N00°03'40"E, a distance of 744.62 feet along a line parallel with the East line of the Southeast 1/4 of the Southwest 1/4 of said Section 24, to a point on the North line of the South ½ of the Southwest 1/4 of the said Section 24; Thence run N89°33'22"E along the North line of the South1/2 of the Southwest 1/4 of said Section 24, a distance of 232.836 feet; Thence run S00°03'40"W, a distance of 746.224 feet to the Point of Beginning.

Parcel B:

ATTACHMENT "A"
CONTINUED

That part of the Southwest 1/4 of Section 24, Township 22 South, Range 27 East, Orange County, Florida, being more particularly described as follows:

Commence at the South 1/4 corner of said Section 24; Thence run N00°03'40"E along the East line of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 75.00 feet to a point on the North Right-of-Way line of Colonial Drive (State Road 50); Thence run S89°57'06"W along the said North Right-of-Way line being 75.00 feet North of and parallel with when measured perpendicular to the South line of said Section 24, a distance of 334.01 feet of a Point of Beginning; Thence continue S89°57'06"W along said line, a distance of 333.70 feet; Thence run N00°04'53"E along the West line of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 520.266 feet; Thence run East 333.70 feet; Thence run S00°03'40"W, a distance of 520.266 feet to the Point of Beginning.

Parcel C:

That part of the Southwest 1/4 of Section 24, Township 22 South, Range 27 East, Orange County, Florida, Being more particularly described as follows:

Commence at the South 1/4 corner of said Section 24; Thence run N00°03'40"E along the East line of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 75.00 feet to a point on the North Right-of-Way line of Colonial Drive (State Road No. 50); Thence run S89°57'06"W along said North Right-of-Way line being 75.00 feet North of and parallel with when measured perpendicular to the South line of said Section 24, a distance of 334.01 feet.

Thence continue S89°57'06"W along said line, a distance of 333.70 feet; Thence run N00°04'53"E along the West line of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 520.266 feet for a Point of Beginning. Thence run N00°04'53"E along the West line of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 74.33 feet to the Northwest corner of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24; Thence run S89°45'14"W along the South line of the Northwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 511.33 feet to a point. Thence run N00°06'06"E 667.30 feet to a point, thence run N89°33'22"E along the North line of the South ½ of the Southwest 1/4 of said Section 24, a distance of 611.55 feet to a point lying 566.856 feet Westerly of the Northeast corner of the Southeast 1/4 of the southwest 1/4 of said Section 24; Thence S00°03'40"W 744.62 feet to a point. Thence continue S89°57'06"W, a distance of 100.864 feet to the Point of Beginning.

Parcel 9:

That part of the Southwest 1/4 of Section 24, Township 22 South, Range 27 East, Orange County, Florida, being more particularly described as follows:

Commence at the South 1/4 of Section 24, Thence run N00°03'40"E along the East line of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 75.00 feet to a point on the North Right-of-Way line of Colonial Drive (State Road No. 50); Thence run S89°57'06"W along said

ATTACHMENT "A"
CONTINUED

North Right-of-Way line being 75.00 feet North of and parallel with when measured perpendicular to the South line of said Section 24, a distance of 334.01 feet.

Thence continue S89°57'06"W along said line, a distance of 333.70 feet; Thence run N00°04'53"E along the West line of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 520.266 feet for a Point of Beginning. Thence run N00°04'53"E along the West line of the Southeast 1/4 of the Southeast 1/4 fo the Southwest 1/4 of said Section 24, a distance of 74.33 feet to the Northwest corner of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24; Thence run S89°45'14"W along the South line of the Northwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24, a distance of 511.33 feet to a point. Thence run N00°06'06"E 667.30 feet to a point. Thence run N89°33'22"E along the North line of the South ½ of the Southwest 1/4 of said Section 24, a distance of 611.55 feet to a point lying 566.856 feet Westerly of the Northeast corner of the Southeast 1/4 of the Southwest 1/4 of said Section 24; Thence S00°03'40"W 744.62 feet to a point. Thence continue S89°57'06"W, a distance of 100.864 feet to the Point of Beginning.

LESS THE FOLLOWING TWO PARCELS, WHICH ARE EXCLUSIONS FROM PARCELS 1-9;

Less out #1:

Commence at the South1/4 corner of Section 24, Township 22 South, Range 27 East; Thence run N00°03'40"E along the East line of the Southeast 1/4 of the Southwest 1/4 of said Section 24, 75.00 feet to the Point of Beginning, said point being on the North Right-of-Way line of Colonial Drive (State Road No. 50); Thence run S89°57'06"W along said north Right-of-Way line being 75.00 feet North of and parallel with when measured perpendicular to the South line of said Section 24, a distance of 437.65 feet; Thence run N00°03'28"E, 265.00 feet; Thence run S89°57'06"W 230.00 feet to a point on the West line of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24; Thence run N00°04'53"E along said West line 329.47 feet to the Northwest corner of said Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 24; Thence run N89°45'14"E along the South line of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24 667.13 feet to the Northeast corner of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24; Thence run S00°03'40"W along said East line of the Southeast 1/4 of the Southwest 1/4 of Section 24, 596.85 feet to the Point of Beginning.

AND

Less out #2:

Commence at the South 1/4 corner of Section 24, Township 22 South, Range 27 East; Thence run N00°03'40"E along the East line of the Southeast 1/4 of the Southwest 1/4 of said Section 30, 75.00 feet to a point on the North Right-of-Way line of Colonial Drive (State Road No. 50); Thence run S89°57'06"W along said North Right-of-Way line, being 75.00 feet North of and parallel with when measured perpendicular to the South line of said Section 24, a distance of 667.71 feet to a point on the West line of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24; Thence run N00°04'53"E along said West line, 594.60 feet to the Northwest corner of the Southeast

ATTACHMENT "A"
CONTINUED

1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24; Thence run S89°45'14"W along the South line of the Northwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 24, 667.51 feet to the Southwest corner of said Northwest1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 24; Thence run N00°06'06"E along the West line of said Northwest1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 24, also being the East line of Block 6 of the Plat of Overstreet Crate Company Subdivision, as recorded in Plat Book "F", Page 9, of the Public Records of Orange County, Florida; Thence run N00°06'06"E along said West line and East line of Block 6, 333.65 feet to the Southeast corner of the North 1/4 of the Southwest 1/4 of the Southwest 1/4 of said Section 24; Thence run S89°39'19"W along the South line of said North 1/4 of the Southwest 1/4 of the Southwest 1/4 of Section 24, 1150.40 feet to the Point of Beginning; Thence continue S89°39'19"W along said South line, 153.21 feet to a point on the East Right-of-Way line of Ninth Street; Thence run N00°08'34"E, being 30.00 feet East of and parallel with when measured perpendicular to the West line of the Southwest 1/4 of the Southwest 1/4 of said Section 24 and along the West line of said Block "6", 236.39 feet; Thence run N89°33'22"E along a line parallel with the North line of the South ½ of the Southwest 1/4 of said Section 24, 161.94 feet to a point on the centerline of a Drainage Easement, as described and recorded in Minute Book 2, Page 23, of the Public Records of Orange County, Florida, Thence run S02°04'34"W along said centerline of a Drainage Easement, 236.88 feet to the Point of Beginning.

Parcel ID # 24-22-27-2772-02-000

Lot 2, FIRST COMMERCIAL BANK, according to the plat thereof, as recorded in Plat Book 64, Pages 63, 64 and 65, of the Public Records of Orange County, Florida.

ORDINANCE NO. 11-32

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE III, PENSION PLAN FOR FIREFIGHTERS AND POLICE OFFICERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-190, CONTRIBUTIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION 1: That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the Code of Ordinances of the City of Winter Garden, Section 54-190, Contributions, subsection (a), *Member contributions*, is hereby amended to read as follows:

* * * * *

(a) *Member contributions.*

(1) *Amount*. Each member of the system shall be required to make regular contributions to the fund in the amount of ~~one~~ three and one-half percent of his salary. Member contributions withheld by the city on behalf of the member shall be deposited with the board immediately after each pay period. The contributions made by each member to the fund shall be designated as employer contributions pursuant to section 414(h) of the Code. Such designation is contingent upon the contributions being excluded from the members' gross income for Federal Income Tax purposes. For all other purposes of the system, such contributions shall be considered to be member contributions.

(2) *Method*. Such contributions shall be made by payroll deduction.

* * * * *

SECTION 2: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Winter Garden, Florida.

SECTION 3: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 5: That this Ordinance shall become effective on November 1, 2011.

PASSED ON FIRST READING, this ___13th_____ day of ___October_____, 2011.

PASSED AND ADOPTED ON SECOND READING, this ___27th_____ day of _____October_____, 2011.

APPROVED:

_____

JOHN REES, MAYOR/COMMISSIONER

ATTEST:

_____

KATHY GOLDEN, CITY CLERK

dm\wtg\pf\09-27-11.ord

ORDINANCE NO. 11-33

AN ORDINANCE OF THE CITY OF WINTER GARDEN AMENDING AND RESTATING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE II, PENSION PLAN FOR GENERAL EMPLOYEES, SECTIONS 54-26 THROUGH 54-185, INCLUSIVE, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Winter Garden General Employees are presently provided pension and certain other benefits under Ordinances of the City of Winter Garden and;

WHEREAS, the City Commission desires to improve certain benefits and to clarify and restate the provisions of the General Employees' Retirement Plan to provide for member contributions, to consolidate all prior ordinances and Code provisions and to incorporate the applicable state and federal law;

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION 1: That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, Sections 54-26 through 54-185, inclusive, of the Code of Ordinances of the City of Winter Garden, be and the same are amended and restated as set forth in the document designated CITY OF WINTER GARDEN PENSION PLAN FOR GENERAL EMPLOYEES, attached hereto and made a part hereof.

SECTION 2: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Winter Garden.

SECTION 3: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 5: That this Ordinance shall become effective on November 1, 2011.

PASSED ON FIRST READING, this ___13th_____ day of _____October_____, 2011.

PASSED AND ADOPTED ON SECOND READING, this ___27th_____ day of _____October_____, 2011.

APPROVED:

JOHN REES, MAYOR/COMMISSIONER

ATTEST:

KATHY GOLDEN, CITY CLERK

CITY OF WINTER GARDEN PENSION PLAN FOR GENERAL EMPLOYEES

Sec. 54-26. Definitions.

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

Accumulated contributions means a member's own contributions without interest. For those members who purchase credited service with interest or at no cost to the system, any payment representing the amount attributable to member contributions based on the applicable member contribution rate, and any ~~the~~ required actuarially calculated payments for the purchase of such credited service shall be included in accumulated contributions.

Actuarial equivalent means a benefit or amount of equal value, based on the RP-2000 Combined Healthy Mortality Table and an interest rate of seven and one-quarter percent per annum. ~~determined on the basis of actuarial equivalency using assumptions adopted by the board such that benefit calculations are not subject to city discretion.~~ This definition may only be amended by the city pursuant to the recommendation of the board using the assumptions adopted by the board with the advice of the plan's actuary, such that actuarial assumptions..

Average final compensation means one-twelfth of the average salary of the three best years of the last ten years of credited service prior to retirement, termination, or death, or the career average as a full-time general employee, whichever is greater. A year shall be 12 consecutive months.

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

Board means the board of trustees, which shall administer and manage the system herein provided and serve as trustees of the fund.

City means City of Winter Garden, Florida.

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

Credited service means the total number of years and fractional parts of years of service as a general employee ~~since a member's last date of employment as a general employee~~ with member contributions, when required, omitting years or fractional parts of years when such member was not employed by the city as a general employee. A member may voluntarily leave his accumulated contributions in the fund for a period of five (5) years after leaving the employ of the city pending the possibility of being reemployed as a general employee, without losing credit for the time that he was a member of the system. If a vested member leaves the employ of the city, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a general employee with the city within five (5) years, his accumulated contributions, if one thousand dollars ($1,000.00) or less, shall be returned. If a member who is not vested is not reemployed within five (5) years, his accumulated contributions, if more than one-thousand dollars ($1,000.00), will be returned only upon the written request of the member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the board. Upon return of a member's accumulated contributions, all of his rights and benefits under the system are forfeited and terminated.

In the event that a member of this system has also accumulated credited service in another pension system maintained by the city, then such other credited service shall be used in determining vesting as provided for in section 54-34, and for determining eligibility for early or normal retirement. Such other credited service will not be considered in determining benefits under this system. Only his credited service under this system on or after his date of membership in this system will be considered for benefit calculation. In addition, any benefit calculation for a

member of this system who is or becomes eligible for a benefit from this system after he has become a member of another pension system maintained by the city, shall be based upon the member's average final compensation, credited service and benefit accrual rate as of the date the member ceases to be a general employee.

The years or parts of a year that a member performs "qualified military service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L.103-353), after separation from employment as a general employee to perform training or service, shall be added to his years of credited service for all purposes, including vesting, provided that:

(1) The member is entitled to reemployment under the provisions of USERRA.

(2) The member returns to his employment as a general employee within one year following the earlier of the date of his military discharge or his release from service, unless otherwise required by USERRA.

(3) The member deposits into the fund the same sum that the member would have contributed, if any, if he had remained a general employee during his absence. The maximum credit for military service pursuant to this subdivision shall be five (5) years. The member must deposit all missed contributions within a period equal to three times the period of military service, but not more than five (5) years, following re-employment or he will forfeit the right to receive credited service for his military service pursuant to this paragraph.

(~~3~~ 4) This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a member dies on or after January 1, 2007, while performing USERRA Qualified Military Service, the beneficiaries of the member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the member had resumed employment and then died while employed.

Effective date means October 1, 1976.

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

General employee means any actively employed person in the regular full-time service of the city, including those in their initial probationary employment period, but not including certified police officers and certified firefighters employed by the city.

Member means an actively employed general employee who fulfills the prescribed membership requirements. Benefit improvements which, in the past, have been provided for by amendments to the system adopted by city ordinance, and any benefit improvements which might be made in the future shall apply prospectively and shall not apply to members who terminate employment or who retire prior to the effective date of any ordinance adopting such benefit improvements, unless such ordinance specifically provides to the contrary.

Plan year means the 12-month period beginning October 1 and ending September 30 of the following year.

Retiree means a member who has entered retirement status.

Retirement means a member's separation from city employment with eligibility for immediate receipt of benefits under the system or entry into the deferred retirement option plan.

Salary means the total compensation for services rendered to the city as a general employee reportable on the member's W-2 form including bonuses and plus all tax deferred, tax sheltered or tax exempt items of income

derived from elective employee payroll deductions or salary reductions. For service earned after July 1, 2011 ("the effective date"), salary shall not include more than three hundred (300) hours of overtime per calendar year and shall also not include payments for accrued unused sick or annual leave. Provided however, in any event, payments for overtime in excess of three hundred (300) hours per year or accrued unused sick or annual leave accrued as of the effective date and attributable to service earned prior to the effective date, may still be included in salary for pension purposes even if the payment is not actually made until on or after the effective date.

Compensation in excess of the limitations set forth in section 401(a)(17) of the Code as of the first day of the plan year shall be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each member taken into account in determining benefits or employee contributions for any plan year beginning on or after January 1, 2002, may not exceed $200,000.00, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B). Compensation means compensation during the fiscal year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The limitation on compensation for an "eligible employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. "Eligible employee" is an individual who was a member before the first plan year beginning after December 31, 1995.

Spouse means the lawful wife or husband of a member or retiree at the time benefits become payable.

System means the city pension plan for general employees as contained herein and all amendments thereto.

(b) *Masculine gender*. The masculine gender, where used herein, unless the context specifically requires otherwise, shall include both the feminine and masculine genders.

Sec. 54-27. Membership.

(a) *Conditions of eligibility*. All general employees as of the effective date, and all future new general employees, shall become members of this system as a condition of employment.

(b) *Opt out option*. The city has determined that it will provide a defined contribution plan for the following designated positions:

(1) Business Analyst

(2) Assistant City Engineer

(3) Controller

(4) Assistant Director of Operations

(5) Capital Improvements Project Administrator

(6) Accountant

(7) IT Specialist

(8) IT Services Director

(9) Finance Director

Those members who previously opted-out of the system prior to the effective date of this ordinance whose position is no longer on the eligible position list above, may remain opted-out or may re-enter the system as provided for in paragraph (2) below. Those members who entered a previously qualifying position prior to the effective date of this ordinance and were eligible to opt-out of the system, may do so in accordance with paragraph (1) below.

In the event that any person employed by the city in a designated position elects to participate in the defined contribution plan provided by the city, that person may elect to opt out of the system.

(1) Persons employed in a designated position may, within sixty (60) days of their employment or promotion to a designated position, notify the board and the city, in writing, of their election not to be a member of the system. In the event of such election, any accumulated contributions shall be returned and they shall be barred from participation in the system, except as provided in paragraph (2) below.

(2) Any person employed in a designated position who opts out of the system to become a member of the defined contribution plan as provided for in paragraph (1) above, may elect, if otherwise eligible for membership in the system, to discontinue participation in the defined contribution plan, if permitted therein, and again become a member of the system. This is a one time irrevocable election. Any such person electing to again become a member of the system may reenter the system only if they first purchase all eligible prior credited service for service with the city as provided for in section 54-51, Prior government service. Any person employed in a designated position who opts out of the system and thereafter is employed by the city in a position other than a designated position, may reenter the system only upon compliance with this paragraph (2).

(3) Any current Business Analyst and the Assistant City Engineer may, within sixty (60) days after the effective date of the ordinance adopting this provision, elect to irrevocably opt-out of the system. Such member shall notify the board and the city, in writing, of their election to opt out of the system and become a participant in the defined contribution plan provided by the city. In the event of such election, an amount equal to seven and one-half percent (7.5%) of the member's salary, excluding bonuses, from the date of employment to the date of election, plus three percent (3%) of such amount, shall be transferred to the member's account in the city defined contribution plan. Thereafter, the employee will remain a participant in the defined contribution plan in accordance with its terms, and shall not be eligible to again become a member of this system.

(c) *Designation of beneficiary*. Each general employee shall complete a form prescribed by the board designating a beneficiary or beneficiaries.

Sec. 54-28. Board of trustees.

(a) The sole and exclusive administration of and responsibility for the proper operation of the system and for making effective the provisions of this ordinance is hereby vested in a board of trustees. The board is hereby designated as the plan administrator. The board shall consist of five trustees, two of whom, unless otherwise prohibited by law, shall be appointed by the city commission, and two of whom shall be members of the system, who shall be elected by a majority of the general employees who are members of the system. The fifth trustee shall be chosen by a majority of the previous four trustees as provided for herein, and such person's name shall be submitted to the city commission. Upon receipt of the fifth person's name, the city commission shall, as a ministerial duty, appoint such person to the board of trustees as its fifth trustee. The fifth trustee shall have the same rights as each of the other four trustees appointed or elected as herein provided and shall serve a two-year term unless he sooner vacates the office. Each commission appointed trustee shall serve as trustee for a period of two years, unless he sooner vacates the office or is sooner replaced by the city commission at whose pleasure he shall serve. Each member trustee shall serve as trustee for a period of two years, unless he sooner leaves the employment of the city as a general employee or otherwise vacates his office as trustee, whereupon a successor shall be chosen in the same manner as the departing trustee. Each trustee may succeed himself in office. DROP participants can be elected as and vote for elected Trustees. The board shall establish and administer the nominating and election procedures for each election. The board shall meet at least quarterly each year. The board shall be a legal entity with, in addition to

other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.

(b) The trustees shall, by a majority vote, elect a chairman, vice-chairman and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.

(c) Each trustee shall be entitled to one vote on the board. Three affirmative votes shall be necessary for any decision by the trustees at any meeting of the board. A trustee shall have the right to abstain from voting as the result of a conflict of interest provided that trustee complies with the provisions of F.S. § 112.3143.

(d) The board shall engage such actuarial, accounting, legal, and other services as shall be required to transact the business of the system. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the system shall be paid from the fund at such rates and in such amounts as the board shall agree.

(e) The duties and responsibilities of the board shall include, but not necessarily be limited to, the following:

(1) To construe the provisions of the system and determine all questions arising thereunder.

(2) To determine all questions relating to eligibility and membership.

(3) To determine and certify the amount of all retirement allowances or other benefits hereunder.

(4) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system.

(5) To distribute to members, at regular intervals, information concerning the system.

(6) To receive and process all applications for benefits.

(7) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund.

(8) To have performed actuarial studies and valuations, at least as often as required by law, and make recommendations regarding any and all changes in the provisions of the system.

(9) To perform such other duties as are required to prudently administer the system.

Sec. 54-29. Finances and fund management.

Establishment and operation of fund:

(1) As part of the system, there is hereby established the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the system.

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

(3) All funds of the pension plan for general employees may be deposited by the board with the finance director of the city, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he is liable for the safekeeping of funds for the city. However, any funds so deposited with the finance director of the city shall be kept in a separate fund by the finance director or clearly identified as such funds of the pension plan for general employees. In

lieu thereof, the board shall deposit the funds of the pension plan for general employees in a qualified public depository as defined in F.S. § 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of F.S. ch. 280. In order to fulfill its investment responsibilities as set forth herein, the board may retain the services of a custodian bank, an investment advisor registered under the Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.

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

a. Current amounts of accumulated contributions of members on both an individual and aggregate account basis; and

b. Receipts and disbursements;

c. Benefit payments;

d. Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city;

e. All interest, dividends and gains (or losses) whatsoever; and

f. Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.

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

(6) The board shall have the following investment powers and authority:

a. The board shall be vested with full legal title to said fund, subject, however, and in any event to the authority and power of the city commission to amend or terminate this fund, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this system, except as otherwise provided herein. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund.

b. All monies paid into or held in the fund shall be invested and the investment of all or any part of such funds shall be subject to the following:

1. Notwithstanding any limitation in prior city ordinances to the contrary, all monies paid into or held in the fund may be invested and reinvested in such securities, investment vehicles or property wherever situated and of whatever kind, as shall be approved by the board, including but not limited to common or preferred stocks, bonds, and other evidences of indebtedness or ownership.

2. The board shall develop and adopt a written investment policy statement setting forth permissible types of investments, goals and objectives of investments and

setting quality and quantity limitations on investments in accordance with the recommendations of its investment consultants. The investment policy statement shall be reviewed by the board at least annually.

3. In addition, the board may, upon recommendation by the board's investment consultant, make investments in group trusts meeting the requirements of Internal Revenue Service Revenue Ruling 81-100 or successor rulings or guidance of similar import, and while any portion of the assets of the fund are invested in such a group trust, such group trust is itself adopted as a part of the system or plan.

c. At least once every three years, and more often as determined by the board, the board shall retain a professionally qualified independent consultant to evaluate the performance of all current investment managers and make recommendations regarding the retention of all such investment managers. These recommendations shall be considered by the board at its next regularly scheduled meeting.

d. The board may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the system.

e. Neither the board nor any trustee shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the fund, except that due to his or its own negligence, willful misconduct or lack of good faith.

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

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

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

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

j. Any overpayments or underpayments from the fund to a member, retiree or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board in such a manner that the actuarial equivalent of the benefit to which the member, retiree or beneficiary was correctly entitled to, shall be paid. Overpayments shall be charged against payments next succeeding the correction or

collected in another manner if prudent. Underpayments shall be made up from the fund in a prudent manner.

k. The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits herein provided for.

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

m. Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to said fund shall always remain in the board.

Sec. 54-30. Contributions.

(a) *Member contributions*. ~~Members are not required to make contributions to the system.~~

(1) *Amount*. Each member of the system shall be required to make regular contributions to the fund in the amount of two and one-half percent of his salary. Member contributions withheld by the city on behalf of the member shall be deposited with the board immediately after each pay period. The contributions made by each member to the fund shall be designated as employer contributions pursuant to §414(h) of the Code. Such designation is contingent upon the contributions being excluded from the members' gross income for Federal Income Tax purposes. For all other purposes of the system, such contributions shall be considered to be member contributions.

(2) *Method*. Such contributions shall be made by payroll deduction.

(b) *City contributions*. So long as this system is in effect, the city shall make quarterly contributions to the fund in an amount equal to the total cost for the year, as shown by the most recent actuarial valuation of the system. The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded past service liability as provided in part VII, F.S. ch. 112.

(c) *Other*. Private donations, gifts and contributions may be deposited to the fund, but such deposits must be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used only for additional benefits for members, as determined by the board, and may not be used to reduce what would have otherwise been required city contributions.

Sec. 54-31. Benefit amounts and eligibility.

(a) *Normal retirement date*. A member's normal retirement date shall be the first day of the month coincident with or next following the earlier of the attainment of age 65 and the completion of five years of credited service, or upon the completion of 30 years of credited service, regardless of age, or upon attainment of age 70, regardless of years of credited service. A member may retire on his normal retirement date or on the first day of any month thereafter, and each member shall become 100 percent vested in his accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date.

(b) *Normal retirement benefit*. A member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his retirement and be continued thereafter during member's lifetime and ceasing upon death. The monthly retirement benefit shall equal two and one-half percent of average final compensation for each year of credited service.

(c) *Early retirement date*. A member may retire on his early retirement date which shall be the first day of any month coincident with or next following the attainment of age 60 and the completion of five years of

credited service. Early retirement under the system is retirement from employment with the city on or after the early retirement date and prior to the normal retirement date.

(d) *Early retirement benefit*. A member retiring hereunder on his early retirement date may receive either a deferred or an immediate monthly retirement benefit payable in the same form as for normal retirement as follows:

(1) A deferred monthly retirement benefit which shall commence on the first day of the month coincident with or next following attainment of age 65 and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement on his normal retirement date except that credited service and average final compensation shall be determined as of his early retirement date; or

(2) An immediate monthly retirement benefit which shall commence on his early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in paragraph (1) above, reduced by five percent for each year by which the commencement of benefits precedes the date on which the general employee would have reached age 65.

(e) *Required distribution date*. The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½ or the calendar year in which the member terminates employment with the city.

Sec. 54-32. Pre-retirement death.

(a) Prior to vesting or eligibility for retirement. The beneficiary of a deceased member who was not receiving monthly benefits or who was not yet vested or eligible for early or normal retirement shall receive a refund of 100 percent of the member's accumulated contributions, if any.

(b) Deceased members vested or eligible for retirement with spouse as beneficiary. This subsection (b) applies only when the member's spouse is the sole designated beneficiary. The spouse beneficiary of any member who dies and who, at the date of his death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:

(1) If the member was vested, but not eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the date that the deceased member would have been eligible for early or normal retirement, at the option of the spouse beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable. The spouse beneficiary may also elect to receive an immediate benefit, payable for ten years, which is actuarially reduced to reflect the commencement of benefits prior to the early retirement date.

(2) If the deceased member was eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the first day of the month following the member's death or at the deceased member's otherwise early or normal retirement date, at the option of the spouse beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable.

(3) A spouse beneficiary may not elect an optional form of benefit, however, the board may elect to make a lump sum payment pursuant to section 54-35, subsection (g).

(4) A spouse beneficiary may, in lieu of any benefit provided for in (1) or (2) above, elect to receive a refund of the deceased member's accumulated contributions, if any.

(5) Notwithstanding anything contained in this section to the contrary, in any event, distributions to the spouse beneficiary will begin by December 31 of the calendar year immediately following the

calendar year in which the member died, or by a date selected pursuant to the above provisions in this section that must be on or before December 31 of the calendar year in which the member would have attained 70½.

(6) If the surviving spouse beneficiary commences receiving a benefit under subsection (1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the spouse beneficiary's estate in a lump sum.

(c) Deceased members vested or eligible for retirement with non-spouse beneficiary. This subsection applies only when the member's spouse is not the beneficiary or is not the sole designated beneficiary, but there is a surviving beneficiary. The beneficiary of any member who dies and who, at the date of his death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:

(1) If the member was vested, but not eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten years. The benefit will begin by December 31 of the calendar year immediately following the calendar year in which the member died. The benefit will be calculated as for normal retirement based on the deceased member's credited service and average final compensation and actuarially reduced to reflect the commencement of benefits prior to the normal retirement date.

(2) If the deceased member was eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten years, beginning on the first day of the month following the member's death. The benefit will be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced for early retirement, if applicable.

(3) A beneficiary may not elect an optional form of benefit, however the board may elect to make a lump sum payment pursuant to section 54-35, subsection (g).

(4) A beneficiary, may, in lieu of any benefit provided for in (1) or (2) above, elect to receive a refund of the deceased member's accumulated contributions, if any.

(5) If a surviving beneficiary commences receiving a benefit under subsection (1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the surviving beneficiary's estate by December 31 of the calendar year of the beneficiary's death in a lump sum.

(6) If there is no surviving beneficiary as of the member's death, and the estate is to receive the benefits, the actuarial equivalent of the member's entire interest must be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(7) The Uniform Lifetime Table in Treasury Regulations § 1.401(a)(9)-9 shall determine the payment period for the calendar year benefits commence, if necessary to satisfy the regulations.

Sec. 54-33. Disability.

(a) *Disability benefits*. Any member with ten years or more credited service who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to satisfactorily perform the duties required in his regular position or the duties of any other position which the city makes available to him shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to:

(1) For member's employed prior to June 28, 1979, two percent of average final compensation for the first 25 years of credited service and one percent of average final compensation for all years of credited service in excess of 25.

(2) For members employed on or after June 28, 1979, two percent of average final compensation for the first 20 years of credited service and one percent of average final compensation for all years of credited service in excess of 20.

In any event, the minimum monthly disability benefit shall be the greater of 40 percent of average final compensation and $100.00.

Terminated persons, either vested or nonvested, are not eligible for disability benefits, except that those terminated by the city for medical reasons may apply for a disability within 30 days after termination.

(b) *Conditions disqualifying disability benefits*. Each member who is claiming disability benefits shall establish, to the satisfaction of the board, that such disability was not occasioned primarily by:

(1) Excessive or habitual use of any drugs, intoxicants or alcohol.

(2) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections.

(3) Injury or disease sustained while committing a crime.

(4) Injury or disease sustained while serving in any branch of the Armed Forces.

(5) Injury or disease sustained after his employment as a general employee with the city shall have terminated.

(6) Willful, wanton or intentional misconduct or gross negligence of the member.

(7) Injury or disease sustained by the member while working for anyone other than the city and arising out of such employment.

(8) A condition pre-existing the general employee's membership in the system. No member shall be entitled to a disability pension, because of or due to the aggravation of a specific injury, impairment or other medical condition pre-existing at the time of membership in the system, provided that such pre-existing condition and its relationship to a later injury, impairment or other medical condition be established by competent substantial evidence. Nothing herein shall be construed to preclude a disability pension to a member who, after membership in the system, suffers an injury, impairment or other medical condition different from some other injury, impairment, or other medical condition existing at or prior to said membership.

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

Any retiree receiving disability benefits under provisions of this article may be required by the board to submit sworn statements of his condition accompanied by a physician's statement (provided at the retiree's expense) to the board annually and may be required by the board to undergo additional periodic re-examinations by a qualified physician or physicians and/or surgeon or surgeons who shall be selected by the board, to determine if such disability has ceased to exist. If the board finds that the retiree is no longer disabled to the extent that he is unable to perform duties as a general employee, the board shall recommend to the city that the retiree be returned to performance of duty as a general employee, and the retiree so returned shall enjoy the same rights that he had at the time he was placed upon pension. In the event the retiree so ordered to return shall refuse to comply with the order within 30 days from the issuance thereof, he shall forfeit the right to his pension.

The cost of the physical examination and/or re-examination of the member claiming or the retiree receiving disability benefits shall be borne by the fund. All other reasonable costs as determined by the board

incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the fund.

If the retiree recovers from disability and reenters the service of the city as a general employee, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service of the city will not be considered as credited service for the purposes of the system.

The board shall have the power and authority to make the final decisions regarding all disability claims.

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

(1) If the retiree recovers from the disability, the payment due next preceding the date of such recovery; or

(2) If the retiree dies without recovering from disability, the payment due next preceding his death.

Provided, however, the disability retiree may select, at any time prior to the date on which benefit payments begin, an optional form of benefit payment as described in section 54-35, subsection (a)(1) or (a)(2), which shall be the actuarial equivalent of the normal form of benefit.

(e) *Benefit offsets*. When a retiree is receiving a disability pension and workers' compensation benefits pursuant to F.S. ch. 440 or Social Security disability benefits, for the same disability, and the total monthly benefits received from each combined exceed 100 percent of the member's average monthly wage, as defined in F.S. ch. 440, the disability pension benefit shall be reduced so that the total monthly amount received by the retiree does not exceed 100 percent of such average monthly wage. The amount of any lump sum workers' compensation payment shall be converted to an equivalent monthly benefit payable for ten years certain by dividing the lump sum amount by 83.9692. Social Security disability cost of living increases shall not be used to further offset disability benefits.

Sec. 54-34. Vesting.

If a member terminates his employment as a general employee, either voluntarily or by discharge, and is not eligible for any other benefits under this system, the member shall be entitled to the following:

(1) If the member has less than five years credited service upon termination, the member shall be entitled to a refund of his accumulated contributions, if any<u>, or the member may leave it deposited with the fund</u>.

(2) If the member has five or more years of credited service upon termination, the member shall be entitled to a monthly retirement benefit, determined in the same manner as for normal or early retirement and based upon the member's credited service, average final compensation and the benefit accrual rate as of the date of termination, payable to him commencing at member's otherwise normal or early retirement date, determined based upon his actual years of credited service, provided he does not elect to withdraw his accumulated contributions, if any, and provided the member survives to his otherwise normal or early retirement date. If the member does not withdraw his accumulated contributions, if any, and does not survive to his otherwise normal or early retirement date, his beneficiary shall be entitled to a benefit as provided herein for a deceased vested member under section 54-32.

Sec. 54-35. Optional forms of benefits.

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

(1) A retirement income of a monthly amount payable to the retiree for his lifetime, but with 120 monthly payments guaranteed in any event.

(2) A retirement income of a modified monthly amount, payable to the retiree during the lifetime of the retiree and following the death of the retiree, 100 percent, 75 percent, 66 2/3 percent or 50 percent of such monthly amount payable to a joint pensioner for his lifetime. Except where the retiree's joint pensioner is his spouse, the payments to the joint pensioner as a percentage of the payments to the retiree shall not exceed the applicable percentage provided for in the applicable table in the Treasury regulations. (See Q&A-2 of 1.401(a)(9)-6)

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

(4) A member may elect a percentage of benefit in a lump sum as follows:

a. Ten percent of the total actuarial equivalent value of the benefit paid as a lump sum ~~benefit~~ with the remaining 90 percent paid under the normal form or as per subsection (1), (2) or (3) above.

b. Fifteen percent of the total actuarial equivalent value of the benefit paid as a lump sum ~~benefit~~ with the remaining 85 percent paid under the normal form or as per subsection (1), (2) or (3) above.

c. Twenty percent of the total actuarial equivalent value of the benefit paid as a lump sum ~~benefit~~ with the remaining 80 percent paid under the normal form or as per subsection (1), (2) or (3) above.

d. Twenty-five percent of the total actuarial equivalent value of the benefit paid as a lump sum ~~benefit~~ with the remaining 75 percent paid under the normal form or as per subsection (1), (2) or (3) above.

(b) The member, upon electing any option of this section, will designate the joint pensioner (subsection (a)(1) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a member has elected an option with a joint pensioner or beneficiary and member's retirement income benefits have commenced, the member may thereafter change his designated beneficiary at any time, but may only change his joint pensioner if the designated joint pensioner and the member were married at the time of member's retirement and are divorced subsequent thereto and the joint pensioner is alive at the time of the change; provided however, in no event may a member change his designated joint pensioner more than twice.

(c) The consent of a member's or retiree's joint pensioner or beneficiary to any such change shall not be required. The rights of all previously designated beneficiaries to receive benefits under the system shall thereupon cease.

(d) Upon change of a retiree's joint pensioner in accordance with this section, the amount of the retirement income payable to the retiree shall be actuarially determined to take into account the age and sex of the former joint pensioner, the new joint pensioner and the retiree. Any such retiree shall pay the actuarial recalculation

expenses. Each request for a change will be made in writing on a form prepared by the board and on completion will be filed with the board. In the event that no designated beneficiary survives the retiree, such benefits as are payable in the event of the death of the retiree subsequent to his retirement shall be paid as provided in section 54-36.

(e) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:

(1) If a member dies prior to his normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under section 54-32.

(2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the member's retirement under the system, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the member upon his retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the member prior to his retirement.

(3) If both the retiree and the beneficiary (or beneficiaries) designated by member or retiree die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection (a) above, the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 54-36.

(4) If a member continues beyond his normal retirement date pursuant to the provisions of subsection 54-31(a), and dies prior to his actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the member in the amount or amounts computed as if the member had retired under the option on the date on which his death occurred.

(5) The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½ or the calendar year in which the member terminates employment with the city.

(f) A retiree may not change his retirement option after the date of cashing or depositing his first retirement check.

(g) Notwithstanding anything herein to the contrary, the board in its discretion, may elect to make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the monthly income payments to be paid do not exceed $1,000.00. Any such payment made to any person pursuant to the power and discretion conferred upon the board by the preceding sentence shall operate as a complete discharge of all obligations under the system with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

Sec. 54-36. Beneficiaries.

(a) Each member or retiree may, on a form provided for that purpose, signed and filed with the board, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his death. Each designation may be revoked or changed by such member or retiree by signing and filing with the board a new designation-of-beneficiary form. Upon such change, the rights of all previously designated beneficiaries to receive any benefits under the system shall cease.

(b) If a deceased member or retiree failed to name a beneficiary in the manner prescribed in subsection (a) above, or if the beneficiary (or beneficiaries) named by a deceased member or retiree predeceased the member or retiree, the death benefit, if any, which may be payable under the system with respect to such deceased member or retiree, shall be paid to the estate of the member or retiree and the board, in its discretion, may direct that the commuted value of the remaining monthly income benefits be paid in a lump sum.

(c) Any payment made to any person pursuant to this section shall operate as a complete discharge of all obligations under the system with regard to the deceased member and any other persons with rights under the system and shall not be subject to review by anyone but shall be final, binding and conclusive on all persons ever interested hereunder.

Sec. 54-37. Claims procedures.

(a) The board shall establish administrative claims procedures to be utilized in processing written requests ("claims"), on matters which affect the substantial rights of any person ("claimant"), including members, retirees, beneficiaries, or any person affected by a decision of the board.

(b) The board shall have the power to subpoena and require the attendance of witnesses and the production of documents for discovery prior to and at any proceedings provided for in the board's claims procedures. The claimant may request in writing the issuance of subpoenas by the board. A reasonable fee may be charged for the issuance of any subpoenas not to exceed the fees set forth in Florida Statutes.

Sec. 54-38. Roster of retirees.

The secretary of the board shall keep a record of all persons enjoying a pension under the provisions of this article in which it shall be noted the time when the pension is allowed and when the same shall cease to be paid. Additionally, the secretary shall keep a record of all members in such a manner as to show the name, address, date of employment and date of termination of employment.

Sec. 54-39. Maximum pension.

(a) *Basic limitation*. Notwithstanding any other provisions of this system to the contrary, the member contributions paid to, and retirement benefits paid from, the system shall be limited to such extent as may be necessary to conform to the requirements of Code Section 415 for a qualified retirement plan. Before January 1, 1995, a plan member may not receive an annual benefit that exceeds the limits specified in Code Section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a plan member may not receive an annual benefit that exceeds the dollar amount specified in Code Section 415(b)(1)(A) ($160,000.00), subject to the applicable adjustments in Code Section 415(b) and subject to any additional limits that may be specified in this system. For purposes of this section, "limitation year" shall be the calendar year.

(b) *Adjustments to basic limitation for form of benefit*. If the form of benefit without regard to any benefit increase feature is not a straight life annuity, then the Code Section 415(b) limit applicable at the annuity starting date is reduced to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the death benefits under the form of benefit.

(c) *Benefits not taken into account*. For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) Any other benefit not required under Section 415(b)(2) of the Code and Regulations thereunder to be taken into account for purposes of the limitation of Code Section 415(b)(1).

(d) *COLA effect*. Effective on and after January 1, 2003, for purposes of applying the limits under Code Section 415(b) (the "limit"), the following will apply:

(1) A member's applicable limit will be applied to the member's annual benefit in the member's first calendar year of benefit payments without regard to any automatic cost of living adjustments;

(2) Thereafter, in any subsequent calendar year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable benefit limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Code Section 415(d), and the regulations thereunder; but

(3) In no event shall a member's benefit payable under the system in any calendar year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d) and the regulations thereunder.

Unless otherwise specified in the system, for purposes of applying the limits under Code Section 415(b), a member's applicable limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code and applicable treasury regulations.

(e) *Other adjustments in limitations*.

(1) In the event the member's retirement benefits become payable before age 62, the limit prescribed by this section shall be reduced in accordance with regulations issued by the secretary of the treasury pursuant to the provisions of Code Section 415(b) of the Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a $160,000.00 annual benefit beginning at age 62.

(2) In the event the member's benefit is based on at least 15 years of credited service as a full-time employee of the fire department of the city, the adjustments provided for in (e)(1) above shall not apply.

(3) The reductions provided for in (e)(1) above shall not be applicable to disability benefits pursuant to section 54-33, or pre-retirement death benefits paid pursuant to section 54-32.

(4) In the event the member's retirement benefit becomes payable after age 65, for purposes of determining whether this benefit meets the limit set forth in subsection (a) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age 65. This adjustment shall be made in accordance with regulations promulgated by the secretary of the treasury or his delegate.

(f) *Less than ten years of service*. The maximum retirement benefits payable under this section to any member who has completed less than ten years of credited service with the city shall be the amount determined under subsection (a) of this section multiplied by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below ten percent. The reduction provided for in this subsection shall not be applicable to disability benefits paid pursuant to section 54-33, or pre-retirement death benefits paid pursuant to section 54-32.

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

(h) *Ten thousand dollar limit*. Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this section if the benefits payable, with respect to such member under this system and under all other qualified defined benefit pension plans to which the city contributes, do not exceed $10,000.00 for the applicable plan year and for any prior plan year and the city has not any time maintained a qualified defined contribution plan in which the member participated.

(i) *Reduction of benefits*. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be determined by the board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be established by the board and the plan administrator for such other

plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the board and the plan administrator of all other plans covering such member.

(j) *Service credit purchase limits*.

(1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the system, as allowed in sections 54-50 and 54-51, then the requirements of this section will be treated as met only if:

a. The requirements of Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Code Section 415(b), or

b. The requirements of Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Code Section 415(c).

c. For purposes of applying subparagraph (j)(1)a., the system will not fail to meet the reduced limit under Code Section 415(b)(2)(C) solely by reason of this subparagraph c., and for purposes of applying subparagraph (j)(1)b. the system will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this subparagraph c.

(2) For purposes of this subsection the term "permissive service credit" means service credit:

a. Recognized by the system for purposes of calculating a member's benefit under the plan;

b. Which such member has not received under the plan; and

c. Which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may, if otherwise provided by the system, include service credit for periods for which there is no performance of service, and, notwithstanding clause (j)(2)b., may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system.

(3) For purposes of applying the limits in this subsection (j), only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a calendar year, except as noted below and as permitted by Treasury Regulations Section 1.415(c)-2, or successor regulations. Unless another definition of compensation that is permitted by Treasury Regulations Section 1.415(c)-2, or successor regulation, is specified by the system, compensation will be defined as wages within the meaning of Code Section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Code Sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2).

a. However, for calendar years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Code Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For calendar years beginning after December 31, 2000, compensation will also include any elective

amounts that are not includible in the gross income of the employee by reason of Code Section 132(f)(4).

b. For limitation years beginning on and after January 1, 2007, compensation for the calendar year will also include compensation paid by the later of two and one-half months after an employee's severance from employment or the end of the calendar year that includes the date of the employee's severance from employment if:

1. The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or

2. The payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

c. Back pay, within the meaning of Treasury Regulations Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Code Section 415 by using the following methods:

a. If the law requires a lump sum payment for the purchase of service credit, the board may establish a periodic payment deduction plan for the member to avoid a contribution in excess of the limits under Code Sections 415(c) or 415(n).

b. If payment pursuant to subparagraph (j)(4)a. will not avoid a contribution in excess of the limits imposed by Code Section 415(c), the board may either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(k) *Additional limitation on pension benefits*. Notwithstanding anything herein to the contrary:

(1) The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1, 1980, shall not exceed 100 percent of his average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.

(2) No member of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

Sec. 54-40. Minimum distribution of benefits.

(a) *General rules*.

(1) *Effective date*. Effective as of January 1, 1989, the plan will pay all benefits in accordance with a good faith interpretation of the requirements of Internal Revenue Code Section 401(a)(9) and the

regulations in effect under that section, as applicable to a governmental plan within the meaning of Internal Revenue Code Section 414(d). Effective on and after January 1, 2003, the plan is also subject to the specific provisions contained in this Section. The provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

(2) *Precedence*. The requirements of this section will take precedence over any inconsistent provisions of the plan.

(3) *TEFRA section 242(b)(2) elections*. Notwithstanding the other provisions of this section other than this subsection (a)(3), distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that related to section 242(b)(2) of TEFRA.

(b) *Time and manner of distribution*.

(1) *Required beginning date*. The member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date which shall not be later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½ or the calendar year in which the member terminates employment with the city.

(2) *Death of member before distributions begin*. If the member dies before distributions begin, the member's entire interest will be distributed, or begin to be distributed no later than as follows:

a. If the member's surviving spouse is the member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by a date on or before December 31 of the calendar year in which the member would have attained age 70½, if later, as the surviving spouse elects.

b. If the member's surviving spouse is not the member's sole designated beneficiary, then, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died.

c. If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

d. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subsection (b)(2), other than subsection (b)(2)a., will apply as if the surviving spouse were the member.

For purposes of this subsection (b)(2) ~~and subsection (e)~~, distributions are considered to begin on the member's required beginning date or, if subsection (b)(2)d. applies, the date of distributions are required to begin to the surviving spouse under subsection (b)(2)a. If annuity payments irrevocably commence to the member before the member's required beginning date (or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(2)a.) the date distributions are considered to begin is the date distributions actually commence.

(3) *Death after distributions begin*. If the member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.

(4) *Form of distribution*. Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date,

as of the first distribution calendar year distributions will be made in accordance with this section. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the code and treasury regulations. Any part of the member's interest which is in the form of an individual account described in section 414(k) of the code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the code and treasury regulations that apply to individual accounts.

(c) *Determination of amount to be distributed each year*.

(1) *General requirements*. If the member's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:

a. The annuity distributions will be paid in periodic payments made at intervals not longer than one year.

b. The member's entire interest must be distributed pursuant to section 54-31, section 54-32, section 54-34 or section 54-35 (as applicable) and in any event over a period equal to or less than the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary. The life expectancy of the member, the member's spouse, or the member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.

(2) Amount required to be distributed by required beginning date. The amount that must be distributed on or before the member's required beginning date (or, if the member dies before distributions begin, the date distributions are required to begin under section 54-32 is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., monthly. All of the member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.

(3) Additional accruals after first distribution calendar year. Any additional benefits accruing to the member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(d) *General distribution rules*.

(1) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Internal Revenue Code Section 401(a)(9)(G), and effective for any annuity commencing on or after January 1, 2008, the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

(2) The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in Internal Revenue Code Section 401(a)(9)(G) and Treasury Regulation Section 1.401-1(b)(1)(I) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25 percent of the cost for all of the members' benefits received from the retirement system.

(e) *Definitions*.

(1) *Designated beneficiary*. The individual who is designated as the beneficiary under the plan and is the designated beneficiary under section 40l(a)(9) of the code and section 1.401(a)(9)-1, Q&A-4, of the treasury regulations.

(2) *Distribution calendar year*. A calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section 54-32.

Sec. 54-41. Miscellaneous provisions.

(a) *Interest of members in system*. All assets of the fund are held in trust, and at no time prior to the satisfaction of all liabilities under the system with respect to retirees and members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

(b) *No reduction of accrued benefits*. No amendment or ordinance shall be adopted by the city commission which shall have the effect of reducing the then vested accrued benefits of members or a member's beneficiaries.

(c) *Qualification of system*. It is intended that the system will constitute a qualified public pension plan under the applicable provisions of the Code for a qualified plan under code section 401(a) and a governmental plan under code section 414(d), as now in effect or hereafter amended. Any modification or amendment of the system may be made retroactively, if necessary or appropriate, to qualify or maintain the system as a plan meeting the requirements of the applicable provisions of the Code as now in effect or hereafter amended, or any other applicable provisions of the U.S. federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder.

(d) *Use of forfeitures*. Forfeitures arising from terminations of service of members shall serve only to reduce future city contributions.

(e) *Prohibited transactions*. Effective as of January 1, 1989, a board may not engage in a transaction prohibited by Internal Revenue Code Section 503(b).

(f) *USERRA*. Effective December 12, 1994, notwithstanding any other provision of this system, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended. To the extent that the definition of "credited service" sets forth contribution requirements that are more favorable to the member than the minimum compliance requirements, the more favorable provisions shall apply.

(g) *Vesting*.

(1) Member will be 100 percent vested in all benefits upon attainment of the plan's age and service requirements for the plan's normal retirement benefit; and
(2) A member will be 100 percent vested in all accrued benefits, to the extent funded, if the plan is terminated or experiences a complete discontinuance of employer contributions.

(h) In those circumstances where a written election or consent is not required by the plan or the Internal Revenue Code, an oral, electronic, or telephonic form in lieu of or in addition to a written form may be prescribed by the board. However, where applicable, the board shall comply with Treas. Reg. § 1.401(a)-21.

Sec. 54-42. Repeal or termination of system.

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

(b) If this article shall be repealed, or if contributions to the system are discontinued or if there is a transfer, merger or consolidation of government units, services or functions as provided in F.S. ch. 121, the board shall continue to administer the system in accordance with the provisions of this article, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this article who are designated by any of said members. In the event of repeal, discontinuance of contributions, or transfer, merger or consolidation of government units, services or functions, there shall be full vesting (100 percent) of benefits accrued to date of repeal and the assets of the system shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled in accordance with the provisions thereof.

(c) The following shall be the order of priority for purposes of allocating the assets of the system as of the date of repeal of this article, or if contributions to the system are discontinued with the date of such discontinuation being determined by the board.

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

(2) If there be any asset value remaining after the apportionment under subsection (c)(1) above, apportionment shall next be made in respect of each member in the service of the city on such date who is vested and who is not entitled to an apportionment under subsection (c)(1) above, in the amount required to provide the actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions, if any) based on the credited service and average final compensation as of such date, and each vested former member then entitled to a deferred benefit who has not, by such date, begun receiving benefit payments, in the amount required to provide said actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions, if any), provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(3) If there be any asset value remaining after the apportionments under subsections (c)(1) and (2), apportionment shall be made in respect of each member in the service of the city on such date who is not entitled to an apportionment under subsections (c)(1) and (2) in the amount equal to the member's accumulated contributions, if any, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such amounts shall be reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(4) If there be any asset value remaining after the apportionments under paragraphs (1), (2), and (3), apportionment shall lastly be made in respect of each member included in paragraph (3) above to the extent of the actuarial equivalent of the non-vested accrued normal retirement benefit, less the amount apportioned in paragraph (3), based on the credited service and average final compensation as of such date, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such amounts shall be reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(5) In the event that there be asset value remaining after the full apportionment specified in subsections (c)(1), (2), (3) and (4) above, such excess shall be returned to the city.

The allocation of the fund provided for in this subsection may, as decided by the board, be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this subsection. The fund may be distributed in one sum to the persons entitled to

said benefits or the distribution may be carried out in such other equitable manner as the board may direct. The fund may be continued in existence for purposes of subsequent distributions.

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

Sec. 54-43. Domestic relations orders; retiree directed payments; exemption from execution, nonassignability.

(a) *Domestic relations orders*.

(1) Prior to the entry of any domestic relations order which affects or purports to affect the system's responsibility in connection with the payment of benefits of a retiree, the member or retiree shall submit the proposed order to the board for review to determine whether the system may legally honor the order.

(2) If a domestic relations order is not submitted to the board for review prior to entry of the order, and the system is ordered to take action that it may not legally take, and the system expends administrative or legal fees in resolving the matter, the member or retiree who submits such an order will be required to reimburse the system for its expenses in connection with the order.

(b) *Retiree directed payments*. The board may, upon written request by a retiree or by a dependent, when authorized by a retiree or the retiree's beneficiary, authorize the system to withhold from the monthly retirement payment those funds that are necessary to pay for the benefits being received through the city, to pay the certified bargaining agent of the city, to make payments to insurance companies for insurance premiums, and to make any payments for child support or alimony.

(c) *Exemption from execution, non-assignability*. Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this article and the accumulated contributions and the cash securities in the fund created under this article are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable.

Sec. 54-44. Pension validity.

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

Sec. 54-45. Forfeiture of pension.

(a) Any member who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this system, except for the return of his accumulated contributions, if any, as of the date of termination. Specified offenses are as follows:

(1) The committing, aiding or abetting of an embezzlement of public funds;

(2) The committing, aiding or abetting of any theft by a public officer or employee from employer;

(3) Bribery in connection with the employment of a public officer or employee;

(4) Any felony specified in F.S. Ch. 838;

(5) The committing of an impeachable offense;

(6) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he acts or in which he is employed, of the right to receive the faithful performance of his duty as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his public office or employment position; or

(7) The committing on or after October 1, 2008, of any felony defined in F.S. § 800.04, against a victim younger than 16 years of age, or any felony defined in F.S. Ch. 794, against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

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

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

(d) Any member who has received benefits from the system <u>in excess of his accumulated contributions</u> after member's rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his accumulated contributions, if any. The board may implement all legal action necessary to recover such funds.

Sec. 54-46. Indemnification.

(a) To the extent not covered by insurance contracts in force from time to time, the city shall indemnify, defend and hold harmless members of the board from all personal liability for damages and costs, including court costs and attorneys' fees, arising out of claims, suits, litigation, or threat of same, herein referred to as "claims," against these individuals because of acts or circumstances connected with or arising out of their official duty as members of the board. The city reserves the right, in its sole discretion, to settle or not settle the claim at any time, and to appeal or to not appeal from any adverse judgment or ruling, and in either event will indemnify, defend and hold harmless any members of the board from the judgment, execution, or levy thereon.

(b) This section shall not be construed so as to relieve any insurance company or other entity liable to defend the claim or liable for payment of the judgment or claim, from any liability, nor does this section waive any provision of law affording the city immunity from any suit in whole or part, or waive any other substantive or procedural rights the city may have.

(c) This section shall not apply nor shall the city be responsible in any manner to defend or pay for claims arising out of acts or omissions of members of the board which constitute felonies or gross malfeasance or gross misfeasance in office.

Sec. 54-47. Direct transfers of eligible rollover distributions.

(a) *Rollover distributions*.

(1) *General*. This section applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the system to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) *Definitions*.

a. *Eligible rollover distribution*: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under § 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income. Effective January 1, 2002, any portion of any distribution which would be includible in gross income as after-tax employee contributions will be an eligible rollover distribution if the distribution is made to an individual retirement account described in § 408(a); to an individual retirement annuity described in § 408(b); to a qualified defined contribution plan described in § 401(a) or 403(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

b. *Eligible retirement plan*: An eligible retirement plan is an individual retirement account described in § 408(a) of the Code; an individual retirement annuity described in section 408(b) of the Code; an annuity plan described in § 403(a) of the Code; effective January 1, 2002, an eligible deferred compensation plan described in § 457(b) of the code which is maintained by an eligible employer described in § 457(e)(1)(A) of the code and which agrees to separately account for amounts transferred into such plan from this plan; effective January 1, 2002, an annuity contract described in § 403(b) of the code; a qualified trust described in § 401(a) of the Code; or effective January 1, 2008, a Roth IRA described in Section 408A of the Code, that accepts the distributee's eligible rollover distribution. This definition shall also apply in the case of an eligible rollover distribution to the surviving spouse.

c. *Distributee*: A distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse. Effective January 1, 2007, it further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

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

(b) *Rollovers or transfers into the fund*. On or after January 1, 2002, the system will accept, solely for the purpose of purchasing credited service as provided herein, permissible Member requested transfers of funds

from other retirement or pension plans, member rollover cash contributions and/or direct cash rollovers of distributions made on or after January 1, 2002, as follows:

(1) *Transfers and direct rollovers or member rollover contributions from other plans*. The system will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in section 401(a) or 403(a) of the Code, from an annuity contract described in section 403(b) of the Code or from 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. The system will also accept legally permissible member requested transfers of funds from other retirement or pension plans.

(2) *Member rollover contributions from IRAs*. The system will accept a member 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.

(c) *Elimination of mandatory distributions*. Notwithstanding any other provision herein to the contrary, in the event this plan provides for a mandatory (involuntary) cash distribution from the plan not otherwise required by law, for an amount in excess of $1,000.00, such distribution shall be made from the plan only upon written request of the member and completion by the member of a written election on forms designated by the board, to either receive a cash lump sum or to rollover the lump sum amount.

Sec. 54-48. Family and Medical Leave Act.

The fractional parts of the 12-month period ending each March 1 that a member is on leave without pay from the city pursuant to the Family and Medical Leave Act (FMLA) shall be added to his credited service provided that:

(1) The member contributes to the fund the sum, based on his salary at the time that the credited service is requested, equal to an amount actuarially determined, such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of periods of credited service.

(2) The request for credited service for FMLA leave time for the 12-month period prior to each March 1 and payment of professional fees shall be made on or before March 31.

(3) Payment by the member of the required amount shall be made on or before April 30 for the preceding 12-month period ending March 1 and shall be made in one lump sum payment upon receipt of which credited service shall be issued.

(4) Credited service purchased pursuant to this section shall not count toward vesting.

Sec. 54-49. Reserved.

Sec. 54-50. Military service prior to employment.

The years or ~~completed months~~ <u>or fractional parts of years that</u> a member serves or has served on active duty in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily and honorably or under honorable conditions, prior to first and initial employment with the city shall be added to his years of credited service provided that:

(1) The member contributes to the fund the sum, based on his salary <u>and the member contribution rate in effect</u> at the time that the credited service is requested, ~~equal to an amount~~ <u>had he been a member of the system for the years or fractional parts of years for which he is requesting credit plus amounts</u> actuarially determined such that the crediting of service does not result in any cost to

the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.

(2) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.

(3) Payment by the member of the required amount shall be made within six months of his request for credit, but not later than the retirement date, and shall be made in one lump sum payment upon receipt of which credited service shall be given.

(4) The maximum credit under this section shall be four years.

(5) Credited service purchased pursuant to this section shall not count toward vesting or eligibility for disability benefits.

Sec. 54-51. Prior government service.

Unless otherwise prohibited by law, the years or fractional parts of years that a general employee who was previously a member, but who terminated employment and received a refund of his contributions or who terminated employment and is not otherwise entitled to credited service for such previous period of employment as a general employee, or the years or fractional parts of years that a member previously served as an employee for any governmental agency in the United States, including but not limited to federal, state or local government service, and for which he does not otherwise qualify for and receive credit under this system, shall be added to his years of credited service provided that:

(1) The member contributes to the fund the sum, based on his salary and the member contribution rate in effect at the time that the credited service is requested, ~~equal to an amount~~ had he been a member of the system for the years or fractional parts of years for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.

(2) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.

(3) Payment by the member of the required amount shall be made within six months of his or her request for credit, but, in any event, prior to retirement, and shall be made in one lump sum payment upon receipt of which credited service shall be given.

(4) There shall be no maximum purchase of credited service pursuant to this section. Credited service purchased for prior service with the city shall count for all purposes including vesting. Credited service purchased for any other government service shall count for all purposes except vesting and eligibility for disability benefits.

(5) In no event, however, may credited service be purchased pursuant to this section for prior service with any other governmental agency, if such prior service forms or will form the basis of a retirement benefit or pension from a different employer's retirement system or plan as set forth in section 54-39, subsection ~~(h)(2)~~ (k)(2).

~~**Sec. 54-52. Deferred retirement option plan.**~~

~~(a) *Definitions*. As used in this section 54-52, the following definitions apply:~~

~~(1) *DROP*. The City of Winter Garden General Employees Deferred Retirement Option Plan.~~

~~(2) *DROP account*. The account established for each DROP participant under subsection (c).~~

~~(b) *Participation*.~~

~~(1) *Eligibility to participate*. In lieu of terminating his employment as a general employee, any member who was eligible for normal retirement under the system on May 22, 2003 was eligible to elect to defer receipt of such service retirement pension and to participate in the DROP.~~

~~(2) *Election to participate*. A member's election to participate in the DROP must have been made in writing on or before June 21, 2003 and became effective on the first day of the next calendar month.~~

~~(3) *Period of participation*. A member who elects to participate in the DROP under subsection (b)(2), shall participate in the DROP for a period not to exceed 60 months beginning at the time his election to participate in the DROP first becomes effective. An election to participate in the DROP shall constitute an irrevocable election to resign from the service of the city not later than the date provided for in the previous sentence. A member may participate only once.~~

~~(4) *Termination of participation*.~~

~~a. A member's participation in the DROP shall cease at the earlier of:~~

~~1. The end of his permissible period of participation in the DROP as determined under subsection (b)(3); or~~

~~2. Termination of his employment as a general employee.~~

~~b. Upon the member's termination of participation in the DROP, pursuant to subsection 1. above, all amounts provided for in subsection (c)(2), including monthly benefits and interest, shall cease to be transferred from the system to his DROP account. Any amounts remaining in his DROP account shall be paid to him in accordance with the provisions of subsection (d) when he terminates his employment as a general employee.~~

~~(5) *Effect of DROP participation on the system*.~~

~~a. A member's credited service and his accrued benefit under the system shall be determined on the date his election to participate in the DROP first becomes effective. The member shall not accrue any additional credited service or any additional benefits under the system (except for any additional benefits provided under any cost of living adjustment for retirees in the system) while he is a participant in the DROP. After a member commences participation, he shall not be permitted to again contribute to the system nor shall he be eligible for disability or pre-retirement death benefits, except as provided for in section 54-53, reemployment after retirement.~~

~~b. No amounts shall be paid to a member from the system while the member is a participant in the DROP. Unless otherwise specified in the system, if a member's participation in the DROP is terminated other than by terminating his employment as a general employee, no amounts shall be paid to him from the system until he terminates his employment as a general employee. Unless otherwise specified in the system, amounts transferred from the system to the member's DROP account shall be paid directly to the member only on the termination of his employment as a general employee.~~

~~c. A member who terminates his participation in the DROP under this subsection (b)(4) shall not be permitted to again become a participant in the DROP.~~

~~(c) *Funding*.~~

~~(1) *Establishment of DROP account*. A DROP account shall be established for each member participating in the DROP. A member's DROP account shall consist of amounts transferred to the DROP under subsection (c)(2), and interest on those amounts.~~

~~(2) *Transfers from retirement system*.~~

~~a. As of the first day of each month of a member's period of participation in the DROP, the monthly retirement benefit he would have received under the system had he terminated his employment as a general employee and elected to receive monthly benefit payments thereunder shall be transferred to his DROP account, except as otherwise provided for in subsection (b)(4)b. A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (b)(3) and (b)(4), but in no event shall it continue past the date he terminates his employment as a general employee.~~

~~b. Except as otherwise provided in subsection (b)(4)b., a member's DROP account under this subsection (c)(2) shall be credited with interest at an effective rate of six and one-half percent per annum compounded monthly on the prior month's ending balance.~~

~~c. A member's DROP account shall only be credited with interest and monthly benefits while the member is a participant in the DROP. A member's final DROP account value for distribution to the member upon termination of participation in the DROP shall be the value of the account on the date of distribution with interest through the final date of DROP participation. If a member fails to terminate employment after participating in the DROP for the permissible period of DROP participation, then beginning with the member's 1st month of employment following the last month of the permissible period of DROP participation, the member's DROP account will no longer be credited with interest, nor will monthly benefits be transferred to the DROP account. All such non-transferred amounts shall be forfeited and continue to be forfeited while the member is employed by the city. A member employed by the city after the permissible period of DROP participation will be eligible for pre-retirement death or disability benefits, and will accrue additional credited service only as provided for in section 54-53.~~

~~(d) *Distribution of DROP accounts on termination of employment*.~~

~~(1) *Eligibility for benefits*. A member shall receive the balance in his DROP account in accordance with the provisions of this subsection (d) upon his termination of employment as a general employee. Except as provided in subsection (d)(5), no amounts shall be paid to a member from the DROP prior to his termination of employment as a general employee.~~

~~(2) *Form of distribution*.~~

~~a. Unless the member elects otherwise, distribution of his DROP account shall be made in a lump sum, subject to the direct rollover provisions set forth in subsection (d)(6). A member may elect, however, in such time and manner as the board shall prescribe, that his DROP distribution be used to purchase a nonforfeitable fixed annuity payable in such form as the member may elect. Elections under this paragraph shall be in writing and shall be made in such time or manner as the board shall determine.~~

~~b. If a member dies before his benefit is paid, his DROP account shall be paid to his beneficiary in such optional form as his beneficiary may select. If no beneficiary designation is made, the DROP account shall be distributed to the member's estate.~~

~~(3) *Date of payment of distribution*. Except as otherwise provided in this subsection (d), distribution of a member's DROP account shall be made as soon as administratively practicable following the member's termination of employment. Distribution of the amount in a member's DROP account will not be made unless the member completes a written request for distribution and a written election, on forms designated by the board, to either receive a cash lump sum or a rollover of the lump sum amount.~~

~~(4) *Proof of death and right of beneficiary or other person*. The board may require and rely upon such proof of death and such evidence of the right of any beneficiary or other person to receive the value of a deceased member's DROP account as the board may deem proper and its determination of the right of that beneficiary or other person to receive payment shall be conclusive.~~

~~(5) *Distribution limitation*. Notwithstanding any other provision of this subsection (d), all distributions from the DROP shall conform to the "minimum distribution of benefits" provisions as provided for herein.~~

~~(6) *Direct rollover of certain distributions*. This subsection applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the DROP to the contrary, a distributee may elect to have any portion of an eligible rollover distribution paid in a direct rollover as otherwise provided under the system in section 54-47.~~

~~(e) *Administration of DROP*.~~

~~(1) *Board administers the DROP*. The general administration of the DROP, the responsibility for carrying out the provisions of the DROP and the responsibility of overseeing the investment of the DROP's assets shall be placed in the board. The members of the board may appoint from their number such subcommittees with such powers as they shall determine; may adopt such administrative procedures and regulations as they deem desirable for the conduct of their affairs; may authorize one or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical, accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP; and may allocate among themselves or delegate to other persons all or such portion of their duties under the DROP, other than those granted to them as trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A trustee shall not vote on any question relating exclusively to himself.~~

~~(2) *Individual accounts, records and reports*. The board shall maintain records showing the operation and condition of the DROP, including records showing the individual balances in each member's DROP account, and the board shall keep in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The board shall prepare and distribute to members participating in the DROP and other individuals or file with the appropriate governmental agencies, as the case may be, all necessary descriptions, reports, information returns, and data required to be distributed or filed for the DROP pursuant to the Code and any other applicable laws.~~

~~(3) *Establishment of rules*. Subject to the limitations of the DROP, the board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The board shall have discretionary authority to construe and interpret the DROP (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in the DROP). The determination of the board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law. The board shall also oversee the investment of the DROP'S assets.~~

~~(f) *General provisions*.~~

~~(1) *Amendment of DROP*. The DROP may be amended by an ordinance of the city at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP account of any member.~~

~~(2) *Facility of payment*. If a member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or is a minor, the board shall direct that any benefit due him shall be made only to a duly appointed legal representative. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.~~

~~(3) *Information*. Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the DROP, shall file with the board the information that it shall require to establish his rights and benefits under the DROP.~~

~~(4) *Prevention of escheat*. If the board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the board may, no earlier than three years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the board or the city. If such person has not made written claim therefor within three months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the DROP, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the DROP. Upon such cancellation, the DROP shall have no further liability therefor except that, in the event such person or his beneficiary later notifies the board of his whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.~~

~~(5) *Written elections, notification*.~~

~~a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the board in a time and manner determined by the board under rules uniformly applicable to all employees similarly situated. The board reserves the right to change from time to time the manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.~~

~~b. Each member or retiree who has a DROP account shall be responsible for furnishing the board with his current address and any subsequent changes in his address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him at the last such address given to the board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the board of his address.~~

~~(6) *Benefits not guaranteed*. All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP account and neither the city nor the board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.~~

~~(7) *Forfeiture of retirement benefits*. Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.~~

~~(8) *Effect of DROP participation on employment*. Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.~~

Sec. ~~54-53~~ <u>54-52</u>. Reemployment after retirement.

(a) [*Reemployment by public or private employer*.] Any retiree who is retired under this system, except for disability retirement as previously provided for, may be reemployed by any public or private employer, except the city, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this system. Reemployment by the city shall be subject to the limitations set forth in this section.

(b) *After normal retirement*. Any retiree who is retired under normal retirement pursuant to this system and who is reemployed as a general employee after that retirement and, by virtue of that reemployment, is eligible to participate in this system, shall upon being reemployed select one of the following options:

(1) The retiree may elect to discontinue receipt of benefits. Upon reemployment, the retiree shall be deemed to be fully vested and the additional credited service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon initial retirement shall be based upon the benefit accrual rate, average final compensation, and credited service as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average final compensation (based only on the subsequent employment period and not including any period of DROP participation), and credited service as of the date of the subsequent retirement. The amount of any death or disability benefit received as a result of a subsequent period of employment shall be reduced by the amount of accrued benefit eligible to be paid for a prior period of employment. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the member may select a different optional form and joint pensioner applicable to the subsequent retirement benefit; or

(2) The retiree may continue to receive retirement benefits previously earned and not be an active member of the system. If this option is selected, the subsequent employment period shall have no effect upon average final compensation, years of credited service or retirement benefits. Regardless of any other provision of this system, any retired and reemployed retiree electing to continue to receive retirement benefits shall not be required to be an active member of the system.

(c) [*Reemployment by the city*.] Any retiree who is retired under normal retirement pursuant to this system and who is reemployed by the city after that retirement and, by virtue of that reemployment is ineligible to participate in this system, shall, during the period of such reemployment, continue to receive retirement benefits previously earned. ~~Former DROP participants shall begin receipt of benefits under these circumstances.~~

(d) *After early retirement*. Any retiree who is retired under early retirement pursuant to this system and who subsequently becomes an employee of the city in any capacity, shall discontinue receipt of benefits from the system until the earlier of termination of employment or such time as the reemployed retiree reaches the date that he would have been eligible for normal retirement under this system had he continued employment and not elected early retirement. "Normal retirement" as used in this subsection shall be the current normal retirement date provided for under this system. A retiree who returns to work under the provisions of this section shall not be eligible for membership in the system, and, therefore, shall not accumulate additional credited service for subsequent periods of employment described in this section, shall not be required to make contributions to the system, nor shall he be eligible for any other benefit other than the retiree's early retirement benefit when he again becomes eligible as provided herein. Retirement pursuant to an early retirement incentive program shall be deemed early retirement for purposes of this section if the member was permitted to retire prior to the customary retirement date provided for in the system at the time of retirement.

(e) *Reemployment of terminated vested persons*. Reemployed terminated vested persons shall not be subject to the provisions of this section until such time as they begin to actually receive benefits. Upon receipt of benefits, terminated vested persons shall be treated as normal or early retirees for purposes of applying the provisions of this section and their status as an early or normal retiree shall be determined by the date they elect to begin to receive their benefit.

~~(f) *DROP participants*. Members or retirees who are or were in the deferred retirement option plan shall, following termination of employment after DROP participation, have the options provided for in this section for reemployment.~~

Secs. 54-53--54-185. Reserved.

dm/wtg/gen/09-27-11.ORD

RESOLUTION 11-09

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AUTHORIZING BINGO TO BE CONDUCTED AT A MUNICIPAL OWNED PROPERTY AS A FUNDRAISER TO BENEFIT THE AMERICAN CANCER SOCIETY "RELAY FOR LIFE" BY THE CITY EMPLOYEE TEAM, PURSUANT TO SECTION 849.0931(11)(D), FLORIDA STATUTES AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Winter Garden is granted the authority under § 2(b), Art. VIII of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Florida State Statute 849.0931(11)(d) Bingo authorized; conditions for conduct; permitted uses of proceeds; limitations states "Property owned by a municipality or a county when the governing authority has, by appropriate ordinance or resolution, specifically authorized the use of such property for the conduct of such games"; and

WHEREAS, employees have participated in the American Cancer Society "Relay for Life" for the past three years and raised roughly over $25,000 to date for this worthy nonprofit organization through various fundraisers; and

WHEREAS, the City of Winter Garden employees have requested to conduct a bingo game for City employees only, in City Commission Chambers at City Hall and via conference call. The staff member with the most wins (bingos) will receive a donated gift card of $20.00, which will not be a part of the fundraising money; and

WHEREAS, this resolution is intended as a onetime event to be scheduled in 2011 during the City employee's unpaid time off.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA that:

Section 1. **Incorporation of Recitals.** The foregoing recitals are hereby affirmed and ratified.

Section 2. **Authorized Location.** The City Commission hereby authorizes Winter Garden employees to conduct a single bingo game in City Commission Chambers in City Hall, 300 W. Plant Street, Winter Garden, Florida, to raise money for "Relay for Life" by the City Employee Team in the year of 2011.

Section 3. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND RESOLVED THIS _27th___ DAY OF __October_____, 2011.

BY: _____
John Rees, Mayor/Commissioner

ATTEST:

BY: _____
Kathy Golden, City Clerk