

ORDINANCE NO. 17-01

AN ORDINANCE OF THE CITY OF WINTER GARDEN AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE II, PENSION PLAN FOR GENERAL EMPLOYEES, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-26, DEFINITIONS; AMENDING SECTION 54-27, MEMBERSHIP; AMENDING SECTION 54-29, FINANCES AND FUND MANAGEMENT; AMENDING SECTION 54-31, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 54-32, PRE-RETIREMENT DEATH BENEFITS; AMENDING SECTION 54-33, DISABILITY; AMENDING SECTION 54-35, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 54-39, MAXIMUM PENSION; ADDING SECTION 54-49, DEFERRED RETIREMENT OPTION PLAN; AMENDING SECTION 54-51, PRIOR GOVERNMENT SERVICE; AMENDING SECTION 54-52, RE-EMPLOYMENT AFTER RETIREMENT; 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 II, Pension Plan for General Employees, of the Code of Ordinances of the City of Winter Garden, is amended by amending Section 54-26, Definitions, to amend the definitions of Actuarial Equivalent, Credited Service and Spouse, to read as follows:

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*Actuarial equivalent* means a benefit or amount of equal value, based on the RP-2000 Combined Healthy Unisex Mortality Table and an interest rate ~~of seven and one-quarter percent per annum~~ equal to the investment return assumption set forth in the last actuarial valuation approved by the Board. 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.

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*Credited service* means the total number of years and fractional parts of years of service 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 former general employee who was employed as a full-time employee for a period prior to November 1, 2011, when member contributions were not required, is reemployed as a general employee on or after November 1, 2011 (notwithstanding the plan provisions in effect at the time of termination), such reemployed general employee shall receive credited service for such prior full time employment as a general employee, without being required to purchase such prior service as provided in Section 54-51, Prior Government Service.

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.
- (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.

Beginning January 1, 2009, to the extent required by section 414(u)(12) of the code, an individual receiving differential wage payments (as defined under section 3401(h)(2) of the code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Leave conversions of unused accrued paid time off shall not be permitted to be applied toward the accrual of credited service either during each plan year of a member's employment with the City or in the plan year in which the member terminates employment.

\* \* \* \* \*

Spouse means the ~~lawful wife or husband of a member or retiree~~ member's or retiree's spouse under applicable law at the time benefits become payable.

\* \* \* \* \*

**SECTION 2:** That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the Code of Ordinances of the City of Winter Garden, is amended by amending Section 54-27, Membership, subsection (b), Opt-out Option, to read as follows:

\* \* \* \* \*

(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~~ January 28, 2010 whose position is no longer on the eligible position list above, ~~may~~ shall 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) A new employee who is hired ~~Persons employed~~ in a designated position may, within sixty (60) days of their employment or promotion to a designated position upon employment, 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. Thereafter, contributions to the plan in accordance with Sec. 54-30 shall not be required, he shall not be eligible to be elected as a member trustee on the board or vote for a member trustee, and he shall not be eligible for any other benefits from the plan , except as provided in paragraph (2) below. Current employees of the City who are promoted to a designated position are not eligible for the opt-out provided for herein.~~

~~(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.~~

\* \* \* \* \*

**SECTION 3:** That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the Code of Ordinances of the City of Winter Garden, is amended by amending Section 54-29, Finances and Fund Management, subsection (6)b.3., to read as follows:

\* \* \* \* \*

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, ~~and~~ Revenue Ruling 2011-1, IRS Notice 2012-6 and Revenue Ruling 2014-24 or successor rulings or guidance of similar import, and operated or maintained exclusively for the commingling and collective investment of monies, provided that the funds in the

group trust consist exclusively of trust assets held under plans qualified under section 401(a) of the code, individual retirement accounts that are exempt under section 408(e) of the code, eligible governmental plans that meet the requirements of section 457(b) of the code, and governmental plans under 401(a)(24) of the code. For this purpose, a trust includes a custodial account or a separate tax favored account maintained by an insurance company that is treated as a trust under section 401(f) or under section 457(g)(3) of the code. 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.

- i. Any collective or common group trust to which assets of the fund are transferred pursuant to subsection 3. shall be adopted by the board as part of the plan by executing appropriate participation, adoption agreements, and/or trust agreements with the group trust's trustee.
- ii. The separate account maintained by the group trust for the plan pursuant to subsection 3. shall not be used for, or diverted to, any purpose other than for the exclusive benefit of the members and beneficiaries of the plan.
- iii. For purposes of valuation, the value of the separate account maintained by the group trust for the plan shall be the fair market value of the portion of the group trust held for the plan, determined in accordance with generally recognized valuation procedures.

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**SECTION 4:** That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the Code of Ordinances of the City of Winter Garden, is amended by amending Section 54-31, Benefit Amounts and Eligibility, subsection (a), Normal Retirement Date, and subsection (d), Early Retirement Benefit, to read as follows:

\* \* \* \* \*

(a) *Normal retirement age and 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.~~ A member's normal retirement age is the earlier of the attainment of age 62 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. Each member shall become one hundred percent (100%) vested in his accrued benefit at normal retirement age. A member's normal retirement date shall be the first day of the month coincident with or next following the date the member retires from the City after attaining normal retirement age.

\* \* \* \* \*

(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~~ 62 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~~ 62.

\* \* \* \* \*

**SECTION 5:** That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the Code of Ordinances of the City of Winter Garden, is amended by amending Section 54-32, Pre-Retirement Death, subsection (b)(2), to read as follows:

\* \* \* \* \*

- (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.

\* \* \* \* \*

**SECTION 6:** That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the Code of Ordinances of the City of Winter Garden, is amended by amending Section 54-33, Disability, subsection (a), Disability Benefits, to read as follows:

\* \* \* \* \*

(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.~~ Notwithstanding the previous sentence, if a member is terminated by the city for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the board within thirty (30) days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the board otherwise determines that he is totally and permanently disabled as provided for above.

\* \* \* \* \*

**SECTION 7:** That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the Code of Ordinances of the City of Winter Garden, is amended by amending Section 54-35, Optional Forms of Benefits, subsections (a)(4), and (b), to read as follows:

\* \* \* \* \*

- (4) A For Members who do not participate in the DROP pursuant to Section 54-49 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 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 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 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 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. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume that the joint pensioner has deceased for purposes of calculating the new payment.

\* \* \* \* \*

**SECTION 8:** That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the Code of Ordinances of the City of Winter Garden, is amended by amending Section 54-39, Maximum Pension, by amending subsections (f), (h), (l)(2), and by adding subsection (m), to read as follows:

\* \* \* \* \*

(f) *Less than ten years of participation ~~or 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~~ participation 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~~ participation and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below ten percent of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits paid pursuant to section 54-33, or pre-retirement death benefits paid pursuant to section 54-32.

\* \* \* \* \*

(h) *Ten thousand dollar limit; less than ten years of service.* Notwithstanding anything in this section 54-39, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection (h) of section 54-39 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 limitation year ~~and or~~ for any prior limitation year, and the city has not at any time maintained a qualified defined contribution plan in which the member participated; provided, however, that if the member has completed less than ten (10) years of credited service with the City, the limit under this subsection (h) of section 54-39 shall be a reduced limit equal to ten thousand dollars (\$10,000) multiplied by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten (10).

\* \* \* \* \*

(l)(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~~ 1223, Title 10, U.S. Code.

(m) *Effect of Direct Rollover on 415(b) Limit.* If the plan accepts a direct rollover of an employee's or former employee's benefit from a defined contribution plan qualified under Code Section 401(a) which is maintained by the employer, any annuity resulting from the rollover amount that is determined using a more favorable actuarial basis than required under Code Section 417(e) shall be included in the annual benefit for purposes of the limit under Code Section 415(b).



**SECTION 9:** That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the Code of Ordinances of the City of Winter Garden, is amended by adding Section 54-49, Deferred Retirement Option Plan, to read as follows:

**Sec. 54-49. Deferred retirement option plan.**

- (a) Definitions. As used in this section 54-49, the following definitions apply:
- (1) DROP. The City of Winter Garden Deferred Retirement Option Plan for General Employees.
  - (2) DROP account. The account established for each DROP participant under subsection (c).
  - (3) "Total return of the assets" -- For purposes of calculating earnings on a member's DROP account pursuant to subsection (c)(2)b., for each fiscal year quarter, the percentage increase in the interest and dividends earned on investments, including realized and unrealized gains, of the total Plan assets.
- (b) Participation.
- (1) Eligibility to participate. In lieu of terminating his employment as a general employee, any member who is eligible for normal retirement under the system may 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 be made in writing in a time and manner determined by the board and shall be effective on the first day of the first calendar month which is at least fifteen (15) business days after it is received by the board.
  - (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 36 months, beginning at the time his election to participate in the DROP first becomes effective. however, in no event may a member participate in the DROP beyond the date on which the member reaches age sixty-eight (68). 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. Notwithstanding the previous sentences, any member who is over age sixty-five (65) on the effective date of this ordinance shall be permitted, within 3 months of the effective date of this ordinance, to make a one-time irrevocable election to participate in the DROP for a period of 36 months. 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 investment earnings, 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 54-52, 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 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 earnings 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 earnings, to be credited to the member's DROP Account, determined as of the last business day of each fiscal year quarter, and credited as of such date, determined as follows:

The average daily balance in a member's DROP account shall be credited at a rate equal to the net investment return realized by the system for that quarter, but not less than zero percent (0.0%). "Net investment return" for the purpose of this paragraph is the total return of the assets in which the member's DROP account is invested by the board net of brokerage commissions, transaction costs and management fees.

For purposes of calculating earnings on a member's DROP account pursuant to this subsection (c)(2)b., brokerage commissions, transaction costs, and management fees shall be determined for each quarter by the investment consultant pursuant to contracts with fund managers as reported in the custodial statement. The investment consultant shall report these quarterly contractual fees to the board. The investment consultant shall also report the net investment return for each manager and the net investment return for the total plan assets.

- c. A member's DROP account shall only be credited with earnings 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 at the end of the quarter immediately preceding termination of participation plus any monthly periodic additions made to the DROP account subsequent to the end of the previous quarter and prior to distribution. 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 first 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 earnings, 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 still not be eligible for pre-retirement death or disability benefits and will not accrue additional credited service except as provided for in section 54-52.

(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). 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.

(4) *Limitation of liability.*

a. The trustees shall not incur any liability individually or on behalf of any other individuals for any act or failure to act, made in good faith in relation to the DROP or the funds of the DROP.

b. Neither the board nor any trustee of the board shall be responsible for any reports furnished by any expert retained or employed by the board, but they shall be entitled to rely thereon as well as on certificates furnished by an accountant or an actuary, and on all opinions of counsel. The board shall be fully protected with respect to any action taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.

(f) *General provisions.*

(1) *The DROP is not a separate retirement plan.* Instead, it is a program under which a member who is eligible for normal retirement under the system may elect to accrue future retirement benefits in the manner provided in this Sec. 54-49 for the remainder of his employment, rather than in the normal manner provided under the plan. Upon termination of employment, a member is entitled to a lump sum distribution of his or her DROP account balance or may elect a rollover. The DROP account distribution is in addition to the member's monthly benefit.

(2) *Notional account.* The DROP account established for such a member is a notional account, used only for the purpose of calculation of the DROP distribution amount. It is not a separate account in the system. There is no change in the system's assets, and there is no distribution available to the member until the member's termination from the DROP. The member has no control over the investment of the DROP account.

(3) *No employer discretion.* The DROP benefit is determined pursuant to a specific formula which does not involve employer discretion.

(4) *IRC limit.* The DROP account distribution, along with other benefits payable from the system, is subject to limitation under Internal Revenue Code Section 415(b).

- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) 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.

- (10) 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.
- (11) 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.
- (12) 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.

**SECTION 10:** That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the Code of Ordinances of the City of Winter Garden, is amended by amending Section 54-51, Prior Government Service, subsection (5), to read as follows:

\* \* \* \* \*

- (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 ~~(k)(2)~~ (1)(2).

\* \* \* \* \*

**SECTION 11:** That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the Code of Ordinances of the City of Winter Garden, is amended by amending Section 54-52, Reemployment After Retirement, to read as follows:

**Sec. 54-52. 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 (not including any period of DROP participation) 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 (based only on the subsequent employment period). 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 if he is at least age sixty-two (62), otherwise the system shall discontinue receipt of benefits until the retiree reaches age sixty-two (62) 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 reinstated as~~ 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 if he is at least age sixty-two (62), otherwise the system shall discontinue receipt of benefits until he reaches age sixty-two (62). 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 age sixty-two. 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



