

ORDINANCE NO. 03-2010

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 2, ADMINISTRATION, ARTICLE VII, POLICE OFFICERS' RETIREMENT PLAN, OF THE CODE OF ORDINANCES OF THE CITY OF COCOA BY AMENDING SECTION 2-191, DEFINITIONS; AMENDING SECTION 2-194, FINANCES AND FUND MANAGEMENT; AMENDING SECTION 2-195, CONTRIBUTIONS; AMENDING SECTION 2-196, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 2-197, PRE-RETIREMENT DEATH; AMENDING SECTION 2-198, DISABILITY; AMENDING SECTION 2-200, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 2-205, MAXIMUM PENSION; AMENDING SECTION 2-206, MINIMUM DISTRIBUTION OF BENEFITS; AMENDING SECTION 2-207, MISCELLANEOUS PROVISIONS; AMENDING SECTION 2-208, REPEAL OR TERMINATION OF SYSTEM; AMENDING SECTION 2-209, DOMESTIC RELATIONS ORDERS, RETIREE DIRECTED PAYMENTS, EXEMPTION FROM EXECUTION, NON-ASSIGNABILITY; AMENDING SECTION 2-211, FORFEITURE OF PENSION; AMENDING SECTION 2-214, DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS; AMENDING SECTION 2-217, PRIOR POLICE SERVICE; AMENDING SECTION 2-218, DEFERRED RETIREMENT OPTION PLAN; 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 COUNCIL OF THE CITY OF COCOA, BREVARD

COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1: That Chapter 2, Administration, Article VII, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Cocoa, is hereby amended by amending section 2-191, Definitions, to amend the definitions of "*Actuarial equivalent*", "*Credited service*" and "*Salary*", to read as follows:

Actuarial equivalent means a benefit or amount of equal value, based upon the *Actuarial equivalent* 1983 Group Annuity Mortality Table and an interest rate of eight percent (8%) per annum. This definition may only be amended by the city pursuant to the recommendation of the board using assumptions adopted by the board with the advice of the plan's actuary, such that actuarial assumptions are not subject to city discretion.

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Credited service means the total number of years and fractional parts of years of service as a police officer with member contributions, when required, omitting intervening years or fractional parts of years when such member was not employed by the city as a police officer. A member may voluntarily leave his accumulated contributions in the fund for a period of five (5) years after leaving the employ of the Police department pending the possibility of being reemployed as a police officer,

without losing credit for the time that he was a member of the system. If a vested member leaves the employ of the Police department, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a police officer with the Police Department 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. Upon any reemployment, a police officer shall not receive credit for the years and fractional parts of years of service for which he has withdrawn his accumulated contributions from the fund, unless the police officer repays into the fund the contributions he has withdrawn, with interest, as determined by the board, within ninety (90) days after his reemployment.

The years or fractional parts of a year that a member serves in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily 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 police officer with the city to perform training or service, shall be added to his years of credited service for all purposes, including vesting, provided that:

ill The member is entitled to reemployment under the provisions of USERRA.

(-1- 2) The member ~~mtlSt~~ return§ to his employment as a police officer within one (1) year from the earlier of the date of his military discharge or his release from active service unless otherwise required by USERRA.

(2) The member is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act (USER..), (P.L.103 353).

(3) The maximum credit for military service pursuant to this paragraph shall be five (5) years.

ill This paragraph is intended to satisfy the minimum requirements ofUSERRA. To the extent that this paragraph does not meet the minimum standards ofUSERRA, 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.

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Salary means the total compensation for services rendered to the city as a police officer reportable on the member's W-2 form plus all tax deferred, tax sheltered, or tax exempt items of income derived from elective employee payroll deductions or salary reductions. Compensation in excess of the limitations set forth in Section401(a)(17) of the code shall be disregarded 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, as adjusted for cost-of-living increases in accordance with 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.

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SECTION 2: That Chapter 2, Administration, Article VII, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Cocoa, is hereby amended by amending section 2-194, Finances and Fund Management, subsection (f)(2)a., to read as follows:

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- a. Notwithstanding any limitation provided for in Chapter 185, Florida Statutes to the contrary (unless such limitation may not be amended by local ordinance) or 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. In no event, however, shall more than ~~tefl:~~ twenty-five percent of the assets of the Fund at market value be invested in foreign securities, unless Chapter 185, Florida Statutes, is amended to remove or change or this mandatory restriction.

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SECTION 3: That Chapter 2, Administration, Article VII, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Cocoa, is hereby amended by amending section 2-195, Contributions, subsection (c), *City contributions*, to read as follows:

(c) *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 difference in each year, betv..een the total aggregate member contributions for the year, plus state contributions v.<hich are legally a: vailable to offset city funding for such year, and the total cost for the year required city contribution, as shown by the most recent applicable actuarial valuation of the system. determined in accordance with Part VII. F.S. ch. 112. and the applicable regulations. 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.

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SECTION 4: That Chapter 2, Administration, Article VII, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Cocoa, is hereby amended by amending section 2-196, Benefit Amounts and Eligibility, to add subsection (d), *Required distribution date*, to read as follows:

@ *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 seventy and one-half (70½) or the calendar year in which the member terminates employment with the city.

SECTION 5: That Chapter 2, Administration, Article VII, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Cocoa, is hereby amended by amending section 2-197, Pre-Retirement Death, to read as follows:

Sec. 2-197. 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 normal retirement shall receive a refund of one hundred (100) percent of the member's accumulated contributions, with interest.

(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 normal retirement, shall be entitled to a benefit as follows:

- (1) If the member was vested, but not eligible for normal retirement, the spouse beneficiary shall receive a benefit payable for ten (10) years, beginning on the date that the deceased member would have been eligible for 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, if applicable. The spouse beneficiary may also elect to receive an immediate benefit, payable for ten (10) years, which is actuarially reduced to reflect the commencement of benefits prior to the normal retirement date.
- (2) If the deceased member was eligible for normal retirement, the spouse beneficiary shall receive a benefit payable for ten (10) years, beginning on the first day of the month following the member's death or at the deceased member's otherwise 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.
- (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 2-200, 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.

iii 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.

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.

.(£1 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:

ill If the member was vested. but not eligible for normal or early retirement. the beneficiary will receive a benefit payable for ten (10) 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.

ill If the deceased member was eligible for normal or early retirement. the beneficiary will receive a benefit payable for ten (10) 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.

ill A beneficiary may not elect an optional form of benefit. however the board may elect to make a lump sum payment pursuant to Sec. 2-200. subsection (g).

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.

ill 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.

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.

ill 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.

SECTION 6: That Chapter 2, Administration, Article VII, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Cocoa, is hereby amended by amending section 2-198, Disability, subsection (f), *Disability payments*, to read as follows:

(f) *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 prior to his normal retirement date, the payment due next preceding the date of such recovery, or
- (2) If the retiree dies without recovering from disability or attains his normal retirement date •while still disabled, the payment due next preceding his death or the 120th monthly payment, whichever is later.

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 2-200 subsection (a)(1) or (a)(2), which shall be the actuarial equivalent of the normal form of benefit.

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SECTION 7: That Chapter 2, Administration, Article VII, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Cocoa, is hereby amended by amending section 2-200, Optional Forms of Benefits, by amending subsection (a)(2), by adding subsection (e)(3), and by amending subsection (g), to read as follows:

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- (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, one hundred percent (100%), seventy-five percent, (75%), sixty-six and two-thirds percent (66-2/3%) or fifty percent (50%) of such monthly amount payable to a joint pensioner for 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 O & A-2 of 1.401(a)(9)-6)

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- iii 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 seventy and one-half (70½) or the calendar year in which the member terminates employment with the city.

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(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 monthly benefit amount is less than one hundred dollars (\$100.00) or the total commuted value of the remaining monthly income payments to be paid do not exceed five thousand dollars (\$5,000.00) total commuted value of the monthly income payments to be paid do not exceed one thousand dollars (\$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.

SECTION 8: That Chapter 2, Administration, Article VII, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Cocoa, is hereby amended by amending section 2-205, Maximum Pension, to read as follows:

Sec. 2-205. Maximum pension.

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

For purposes of applying the above limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by Treasury Regulations, so that such benefits are the actuarial equivalent of a straight life annuity. For purposes of this section, the following benefits shall not be taken into account:

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

(b) *Participation in other defined benefit plans.*

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

(c) *Age-related limitations.*

- (1) In the event the member's retirement benefits become payable before age sixty two (62), the one hundred sixty thousand dollar (\$160,000) limitation prescribed by this section shall be reduced in accordance with regulations issued by the secretary of the treasury pursuant to the provisions of §415(b) of the code, so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) annual benefit beginning at age sixty two (62).
- (2) In the event the member's benefit is based on at least fifteen (15) years of credited service, the adjustments provided for in (1) above shall not apply.
- (3) The reductions provided for in (1) above shall not be applicable to disability benefits paid pursuant to section 2-198, or pre retirement death benefits paid pursuant to section 2-197.
- (4) In the event the member's retirement benefit becomes payable after age sixty five (65), for purposes of determining whether this benefit meets the limitation set forth in subsection (a) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty five (65). This adjustment shall be made in accordance with regulations promulgated by the secretary of the treasury or his delegate.



(d) Less than ten (10) years of service. The maximum retirement benefits payable under this section to any member who has completed less than ten (10) years of credited service with the city shall be the amount determined under subsection (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 (10). The reduction provided for in this subsection shall not be applicable to disability benefits paid pursuant to section 2-198, or pre retirement death benefits paid pursuant to section 2-197;

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

(f) Reduction of benefits and/or contributions to all plans, wherever 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.

(g) Cost of living adjustments. The limitations as stated in subsections (a), (b) or (c) herein shall be adjusted to the time payment of a benefit begins in accordance with any cost of living adjustments prescribed by the secretary of the treasury pursuant to §415(d) of the code.

(h) 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 one hundred (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.

(i) 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), 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.

.(hl. *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.

Benefits Not Taken into Account. For purposes of this Section, the following benefits shall not be taken into account in applying these limits:

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

@ *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:

- ill 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;
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
- ill 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 Code and applicable Treasury Regulations.

utl *Other Adjustments in Limitations.*

- ill In the event the member's retirement benefits become payable before age sixty-two (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 one hundred sixty thousand dollar (\$160,000) annual benefit beginning at age sixty-two (62).

In the event the member's benefit is based on at least fifteen (15) years of credited service as a full-time employee of the fire or police department of the City, the

adjustments provided for in (e)(1) above shall not apply.



- iii The reductions provided for in (e)(1) above shall not be applicable to disability benefits pursuant to Sec. 2-198, or pre-retirement death benefits paid pursuant to Sec. 2-197.

In the event the member's retirement benefit becomes payable after age sixty-five (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 sixty-five (65). This adjustment shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

iii *Less than Ten (10) Years of Service.* The maximum retirement benefits payable under this section to any member who has completed less than ten (10) years of credited service with the City shall be the amount determined under subsection (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 (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10%. The reduction provided for in this subsection shall not be applicable to disability benefits paid pursuant to Sec. 2-198, or pre-retirement death benefits paid pursuant to Sec. 2-197.

.(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 (\$10,000) 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 ten thousand dollars (\$10,000) 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.

iii *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.

iii *Service Credit Purchase Limits.*

iii 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 2-216 and 2-217, then the requirements of this section will be treated as met only if:

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).

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 Code solely by reason of this subparagraph c.

ill 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.

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ill 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).

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For limitation years beginning on and after January 1, 2007. compensation for the calendar year will also include compensation paid by the later of 2½ 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:

L 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.

iii 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:

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.

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

iii 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 one hundred percent (100%) 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.

iii 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.

SECTION 9: That Chapter 2, Administration, Article VII, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Cocoa, is hereby amended by amending section 2-206,

Minimum Distribution of Benefits, to read as follows:

Sec. 2-206. 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 Code Section 401(a)(9) and the regulations in effect under that section. as applicable to a governmental plan within the meaning of 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) *Requirements of treasury regulations incorporated.* All distributions required under this section will be determined and made in accordance with the treasury regulations under Section 401(a)(9) of the Code.
- (4) *TEFRA Section 242(b)(2) Elections.* Notwithstanding the other provisions of this section other than this subsection (4) (Cru.Q.), 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 seventy and one-half (70 ½) or the calendar year in which the member retires unless otherwise provided for in the Plan or required by law or 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 70 ½, 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.

(3-1.) *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 of soosections (c),(d) and (e) of 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 annuity 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 distribution period will be o:ver a life (or lives) or o:ver a period certain not longer than the period described in soosection (d) or (e). The member's entire interest must be distributed pursuant to Sec. 2-196. Sec. 2-197. Sec. 2-199, or Sec. 2-200 (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.

c. Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted.

d. Payments will either be nonincreasing or increase only as follows:

1. By an annual percentage increase that does not exceed the cumulative annual percentage increase in a cost of living index that is based on prices of all items and issued by the Bureau of Labor Statistics or by a fixed annual increase of five percent or less.

2. To the extent of the reduction in the amount of the member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in subsection (d) dies or is no longer the member's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p).

3. To provide cash refunds of accumulated contributions upon the member's death.

(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 subsection (b)(2)a. or (b)(2)c. Sec. 2-197) 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., bi monthly, monthly, semi annually, or annually. 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) Requirements for annuity distribution is that commence during a member's lifetime.

(1) of joint life annuities where the beneficiary is not the member's spouse. If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the member using the table set forth in Q&A 2 of Section 1.401(a)(9) of the Treasury regulations. If the form of

distribution combines a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary and a period certain annuity, the requirements in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(2) Period certain annuities. Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime may not exceed the applicable distribution period for the member under the Uniform Lifetime Table set forth in Section 1.401(a)(9) 9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the member reaches age 70, the applicable distribution period for the member is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9) 9 of the Treasury regulations plus the excess of 70 over the age of the member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the member's applicable distribution period, as determined under this subsection (d)(2), or the joint life and last survivor expectancy of the member and the member's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9) 9 of the Treasury regulations, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

(e) Requirements for minimum distributions where member dies before date distributions begin.

(1) Member survived by designated beneficiary. If the member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the member's entire interest will be distributed, beginning no later than the time described in subsection (b)(2)a. or (b)(2)b., over the life of the designated beneficiary or over a period certain not exceeding:

a. Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death.

b. If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(2) Non-designated beneficiary. If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(3) Death occurring before distributions to surviving spouse begin. If

the Member dies before the date distribution of his interest begins, the Member's surviving spouse is the member's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this subsection (e) will apply as if the surviving spouse were the member.

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except that the time by which distributions must begin , , , , ill be determined without regard to subsection (b)(2)a.

@ General distribution rules.

ill The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of 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, O&A-2.

ill The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in 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% of the cost for all of the members' benefits received from the retirement system.

(f) Definitions.

(1) Designated beneficiary. The individual who is designated as the beneficiary under the plan and is the designated beneficiary under Section 401(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 subsection (b)(2) Sec. 2-197.

(3) Life expeefancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9) 9 of the Treasury regulations.

(4) Required beginning elate. The date specified in subsection (b)(1).

SECTION 10: That Chapter 2, Administration, Article VII, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Cocoa, is hereby amended by amending section 2-207, Miscellaneous Provisions, to read as follows:

Sec. 2-207. Miscellaneous provisions.

(a) Interest of members in system. At 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 Council of the City of Cocoa 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 40Ha) 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.

W Prohibited Transactions. Effective as of January 1, 1989, a board may not engage in a transaction prohibited by Code Section 503(b).

iii 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 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.

Vesting.

Member will be 100% vested in all benefits upon attainment of the plan's age and service requirements for the Plan's normal retirement benefit; and

A member will be 100% vested in all accrued benefits, to the extent funded, if the plan is terminated or experiences a complete discontinuance of employer contributions.

(hl Electronic Forms. In those circumstances where a written election or consent is not required by the plan or the 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.

(e i) *Compliance with Chapter 185, Florida Statutes.* It is intended that the System will continue to qualify for funding under F.S. §185.07. Accordingly, unless otherwise required by law, any provision of the System which violates the requirements of F.S. ch. 185, as amended from time to time, shall be superseded by and administered in accordance with the requirements of such chapter.

SECTION 11: That Chapter 2, Administration, Article VII, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Cocoa, is hereby amended by amending section 2-208, Repeal or Termination of System, to read as follows:

Sec. 2-208. Repeal or termination of system.

(a) This ordinance 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 benefitting 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 ordinance 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 ordinance, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this ordinance who are designated by any of said members. In the event of repeal, discontinuance of contributions, or transfer, merger or consolidation of government units, services or functions, there shall be full vesting (100%) of benefits accrued to date of repeal and the assets of the 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 such benefits shall be nonforfeitable.

(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 ordinance, 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 paragraph (1), apportionment shall next be made in respect of each member in the service of the city on such date who is vested and who is not entitled to an apportionment under paragraph (1), in the amount required to provide the actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions), based on the credited service and average final compensation as of such date, and each vested former member then entitled to a deferred benefit, who has not, by such date, begun receiving benefit payments, in the amount required to provide said actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions), provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.
- (3) If there be any asset value after the apportionments under paragraphs (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 paragraphs (1) and (2) in the amount equal to member's accumulated contributions, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amount shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.
- (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 paragraphs (1), (2), (3), and (4), such excess shall be returned to the city, less

return of the state's contributions to the state, provided that, if the excess is less than the total contributions made by the city and the state to the date of termination such excess shall be divided proportionately to the total contributions made by the city and the state.

The allocation of the fund provided for in this subsection may, as decided by the board, be carried out through the purchase of insurance compffil) contracts to provide the benefits determined in accordance vrith this subsection. The fund may be distributed in one (1) 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 existenee for purposes of subsequent distributions.

If, at any time during the first ten (10) years after the effective date of the ordinance originally establishing this system, the system shall be terminated or the full current eosts of the system shall not have been met, anything in the system to the contrary notvt'ithstanding, city contributions which may be used for the benefit of any one (1) of the tvlenty five (25) highest paid members on the effective date, v,hose anticipated annual retirement allowanee provided by the city's contributions at member's normal retirement date v,ould exceed one thousand five hundred dollars (\$1,500), shall not e rneed the greater of either a) twenty thousand dollars (\$20,000), orb), an amount computed by multiplying the smaller of ten thousand dollars (\$10,000) ortv.,enty (20) percent ofsuch member's average annual earnings during his last five (5) years of serviee by the number of years of serviee since the effective date. In the event that it shall hereafter be determined b:) statute, court decision, ruling by the commissioner of Internal Revenue, or otherwise, that the provisions of this paragraph are not then necessary to qualify the system under the code, this paragraph shall be ineffective without the necessity of further amendment of this ordinance.

(d) A.fter 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.

The fund shall be distributed in accordance with the following procedures:

- iii The board shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits after taking into account the expenses of such distribution. The board shall inform the city if additional assets are required, in which event the city shall continue to financially support the plan until all nonforfeitable benefits have been funded.
- iii The board shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each police officer entitled to benefits under the plan as specified in subsection (3).
- iii The board shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the police officer's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the police officer.

If there is asset value remaining after the full distribution specified in subsection (3), and after the payment of any expenses incurred with such distribution, such excess shall be returned to the city, less return to the State of the State's contributions, provided that, if the excess is less than the total contributions made by the city and

the State to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the city and the State.

The board shall distribute, in accordance with subsection (2), the amounts determined under subsection (3).

ill lf, after twenty-four (24) months after the date the plan terminated or the date the

board received written notice that the contributions thereunder were being permanently discontinued, the city or the board of the fund affected has not complied with all the provisions in this section, the Florida Department of Management Services will effect the termination of the fund in accordance with this section.

SECTION 12: That Chapter 2, Administration, Article VII, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Cocoa, is hereby amended by amending section 2-209, Domestic Relations Orders, Retiree Directed Payments, Exemption from Execution, Non-Assignability, subsection (b), *Retiree directed payments*, to read as follows:

(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 if as permitted by F.S. ch. 185 and to make any payments for child support or alimony.

SECTION 13: That Chapter 2, Administration, Article VII, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Cocoa, is hereby amended by amending section 2-211, Forfeiture of Pension, subsection (a), to read as follows:

(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 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.

- iii The committing on or after October 1, 2008, of any felony defined in Section 800.04, Florida Statutes, against a victim younger than sixteen (16) years of age, or any felony defined in Chapter 794, Florida Statutes, against a victim younger than eighteen (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.

* * * * *

SECTION 14: That Chapter 2, Administration, Article VII, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Cocoa, is hereby amended by amending section 2-214, Direct Transfers of Eligible Rollover Distributions, to read as follows:

Sec. 2-214. Direct transfers of eligible rollover distributions; elimination of mandatory 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 often years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the code and the portion of any distribution that is not includible in gross income. Any 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 section 408(a); to an individual retirement annuity described in section 408(b); or to a qualified defined contribution plan described in section 401(a) or 403(a) that agrees to separately account for amounts so transferred (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 Code Section 401(a) or to an annuity contract described in 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 section 408(a) of the code; an individual retirement annuity described in section 408(b) of the code; an annuity plan

described in section 403(a) of the code; effective January 1, 2002, an eligible deferred compensation plan described in section 457(b) of the code which is maintained by an eligible employer described in section 457(e)(1)(A) of the code and which agrees to separately account for amounts transferred into such plan from this plan; effective January 1, 2002, an annuity contract described in section 403(b) of the code; or a qualified trust described in section 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. In addition, It also includes the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse and the employee's or former employee's spouse or former spouse. Effective January 1, 2007, it further includes a non-spouse beneficiary who is a designated beneficiary as defined by Code Section 401(a)(9)(E). However, a non-spouse 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 and would otherwise be includible in gross income.

(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 one-thousand dollars (\$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.

SECTION 15: That Chapter 2, Administration, Article VII, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Cocoa, is hereby amended by amending section 2-217, Prior Police Service, to read as follows:

Sec. 2-217. Prior police service.

Unless otherwise prohibited by law, and except as provided for in section 2-191, the years or fractional parts of years that a member previously served as a full-time police officer with the city during a period of previous employment and for which period accumulated contributions were withdrawn from the fund, or the years and fractional parts of years that a member served as a full-time police officer for any other municipal, county or state law enforcement department in the State of Florida shall be added to his years of credited service provided that:

- (1) The member contributes to the fund the sum that he would have contributed, based on his salary and the member contribution rate in effect at the time that the credited service is requested, 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 police officer of the required amount shall be made within six (6) 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 for service other than with the City of Cocoa shall be five (5) years of credited service and shall count for all purposes, except vesting and eligibility for not-in-line of duty disability benefits. There shall be no maximum purchase of credit for prior service with the City of Cocoa and such credit shall count for all purposes, including vesting.
- (5) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal, county or state law enforcement department, 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 2-205, subsection .(k){2}.

For purposes of determining credit for prior service as a police officer as provided for in this section, in addition to service as a police officer in this state, credit may be given for federal, other state, or county service if the prior service is recognized by the Criminal Justice Standards and Training Commission within the Department of Law Enforcement, as provided under Chapter 943, Florida Statutes. or the police officer provides proof to the board that such service is equivalent to the service required to meet the definition of a police officer under Sec. 2-191.

SECTION 16: That Chapter 2, Administration, Article VII, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Cocoa, is hereby amended by amending section 2-218, Deferred Retirement Option Plan, subsection (d)(2)a., to read as follows:

* * * * *

- 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.

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SECTION 17: Incorporation Into the Code. Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Cocoa.

SECTION 18: Repeal of Prior Inconsistent Ordinances and Resolutions. All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 19: Severability. 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 20: Effective Date. That this Ordinance shall become effective upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF COCOA, FLORIDA, IN A
REGULAR MEETING ASSEMBLED ON THE **26th** DAY OF
January, **2010**.

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MICHAEL C. BLAUGHER

ATTEST

First Reading: **January 12, 2010**
Second Reading: **January 26, 2010**
Effective Date: **January 26, 2010**

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