

CHAPTER 6

PENSIONS

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6-02	Pensions for City Employees Other Than Those In the Police and Fire Pension Systems, § 6-0201 to 6-0228.

ARTICLE 6-01

POLICE PENSIONS

Section	
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6-0101. Creation of pension and retirement system.--Under the authority of chapter 40-45 of the North Dakota Century Code and acts amendatory thereof there is hereby created a pension and retirement system for disabled or retired police department members, their spouses and children under 18 years of age.

Source: 1952 Rev. Ord. 6-0101, 904 (1953), 2657 (1993).

6-0102. Board of trustees--Officers--Compensation.--The board of trustees for management of the police pension fund shall consist of a member designated by the city commission of the city of Fargo and four persons elected by and from the members of the police department who are currently being assessed. No member shall be eligible for election until he or she has eight years' service. The election shall be held in the month of March of each year. Each elected member shall serve for a term of four years. A special election shall be held to replace a resigning or deceased trustee, such election to be for the remainder of such trustee's unexpired term. The terms of elected members shall commence immediately after their election. The president of the board shall be elected annually by the board of trustees. Such trustees shall receive no additional compensation for their services as members of the board.

Source: 1904 (1979), 2267 (1986), 2394 (1988), 2657 (1993).

6-0103. Investment of surplus in fund--Limitations--Securities deposited with treasurer.--At the end of the fiscal year, the board of trustees may invest any surplus left in the police pension fund, but no part of the moneys realized from any city contribution shall be used for any purpose other than the payment of pensions or related expenses. Such surplus funds may be invested in interest-bearing bonds of the United States or the state of North Dakota, or bonds or warrants of any county, township, or municipal corporation of this state which constitute the general obligations or contingent general obligations of the issuing tax authority, or investments with any federally insured bank or savings and loan association. All securities shall be deposited with the treasurer of the board for safekeeping. The board may also invest all or part of such surplus funds in other investments by selecting a funding agent or agents and establish an investment agreement contract regarding such surplus funds. The contract shall authorize the funding agent or agents to hold and invest such funds for the board and such funds shall be placed for investment only with a firm or firms whose primary endeavor is money management, and only after a trust agreement or contract has been executed.

Source: 1965 Rev. Ord. 6-0103, 1258 (1967), 2657 (1993).

6-0104. Acceptance of money, property and rewards by board--Limitations.--The board may take by gift, grant, devise, or bequest, any money or property, real or personal, or other thing of value for the benefit of the pension fund. All rewards in monies, fees, gifts, or emoluments of any kind or nature that may be paid or given to any police department or to any member thereof, except when allowed to be retained or given to endow a medal or other permanent or competitive reward on account of extraordinary services rendered by said department or any member thereof, and all fines and penalties imposed upon members shall be paid into the pension fund and become a part thereof.

Source: 1952 Rev. Ord. 6-0104.

6-0105. Membership fees and assessments--Employees' share picked up by city.--

- A. Every member of said system shall be required to pay annually an amount equal to 0.15% less than the then current rate of employee's contribution to Social Security. In addition, any member hired after April 1, 1986, shall also be assessed, and required to pay annually an amount equal to 1.45% per annum upon the amount of the annual salary paid to such member, which assessment shall be deducted and retained in equal monthly installments out of such salary, said assessments to continue for the entire term of employment of said member and to be used for the Medicare portion of Social Security. Said additional assessments shall be adjusted from time to time to reflect changes in the Medicare portion of Social Security. For purposes of this section, annual salary shall include base pay and longevity and shall not include overtime, bonuses, or cash payments for sick or annual leave. The member's contribution shall be deducted from the employee's pay and paid into the pension fund.
- B. The city shall pick up the member's contributions required by this section and such contributions shall be treated as employer contributions in determining federal tax treatment under section 414(h) of the United States Internal Revenue Code and such contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The city shall pay the member contributions from the same source of funds which is used in paying earnings to the employee. The city shall pick up the member contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase.
- C. Any member of said system may make, and this system will accept, qualified rollover contributions.

Source: 1965 Rev. Ord. 6-0105, 1289 (1969), 1728 (1976), 2012 (1981), 2239 (1986), 2385 (1987), 2411 (1988), 2541 (1990), 2657 (1993).

6-0106. Service in armed forces.--Any member of the police department who has resigned therefrom or who shall resign therefrom, or who has been granted or shall be granted a leave of absence to serve in the Army, Navy, Air Force, or Marine Corps of the United States, or as a member of the United States Army, Navy, Air Force, or Marine Corps Reserve, or as a trainee under the selective service provisions of the laws of the United States and who has returned with an honorable discharge or other document showing honorable service shall have the period of such military service included as part of their period of service in the department, provided that credit allowed for such service shall not exceed a total of five years. Any such employee who seeks credit for such military service shall, upon their return to the employment of the city, pay into the police pension fund for each year of military service three percent of their average annual salary paid by the city or three percent of their annual military pay, whichever is the lesser amount.

Source: 1952 Rev. Ord. 6-0106, 904 (1953), 2564 (1991).

6-0107. Retired members assigned for light duty.--

Source: 1952 Rev. Ord. 6-0107, repealed by Ord. No. 2657 (1993).

6-0108. Pensions not subject to debts, execution or other process.--All pensions paid under

the provisions of this article shall be exempt from liability for debts of the person to or on account of whom the same is paid and shall not be subject to seizure upon execution or other process.

Source: 1952 Rev. Ord. 6-0108.

6-0109. Warrants on pension fund--Financial report.--All pensions paid and all monies drawn from the pension fund under the provisions of this article shall be upon warrants signed by the person or persons designated by the board of trustees. The warrants shall designate the name of the person and purpose for which payment is made. The monthly financial report shall show the receipts and expenditures of such fund for the preceding month, the money on hand and how invested.

Source: 1952 Rev. Ord. 6-0109, 2657 (1993).

6-0110. Fiscal year.--The fiscal year for such fund shall commence on the first day of January of each year, and terminate on the thirty-first day of December of the same year.

Source: 1952 Rev. Ord. 6-0110, 2565 (1991).

6-0111. City contributions to plan.--The city's contribution to the police pension fund shall be an amount equal to a percentage of the pay of such employees in the police department, and such percentage shall be established by the board of city commissioners during the annual budget session.

Source: 1965 Rev. Ord. 6-0111, 1258 (1967), 2012 (1981).

6-0112. Actuary.--The pension fund shall be based upon actuarial tables and the board of trustees shall be empowered to engage the services of an actuary from time to time for the purpose of determining the conditions of such fund. Said actuary shall receive such compensation as the board may find to be fair and reasonable.

Source: 1952 Rev. Ord. 6-0112, 2657 (1993).

6-0113. Persons eligible for membership.--Every full-time employee of the police department of the city of Fargo shall be a member of the police pension fund, provided, however, that the chief of police appointed by the board of city commissioners pursuant to article 5-03 of the Fargo Municipal Code shall not be allowed to be a member of the police pension fund established by this chapter unless said appointed chief of police was a member of the police pension fund prior to appointment.

Source: 1014 (1957), 2266 (1986).

6-0114. Change in status of member--Notice to board.--It shall be the duty of the chief of police to give immediate notice in writing to the board of trustees of the change in status of any member in the department resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, death or other causes, and the chief of police shall furnish such other information concerning any member as the board may require.

Source: 1952 Rev. Ord. 6-0114, 2657 (1993).

6-0115. Regulations adopted by board--Member and beneficiary to furnish information.--The board of trustees, consistent with the terms and provisions of this article, shall be authorized from time to time to adopt such regulations as they deem necessary for governing the operation of the fund and the requirements as to members and payments to beneficiaries. Each member and beneficiary shall be subject to all the provisions of this article and to all rules and

regulations adopted by the board of trustees and shall furnish to the board such information affecting their status as a member or beneficiary of the system as the board may require.

Source: 1952 Rev. Ord. 6-0115, 2657 (1993).

6-0116. Refund upon termination of employment--Rights to pension benefits during leave of absence.--Any employee of the police department who shall have contributed to the police pension fund, and leaves the employment of the city, shall be entitled, upon application at the time of such termination, to a refund of all contributions made by them. For members leaving the employment of the city (or by death as provided for in section 6-0125(B) entitled "Members entitled to pension--Conditions--Amount.--") after 1970, interest at the legal rate (currently 6% per annum) or such legal rate as may be established by the state legislature hereafter, shall be paid with and in addition to the refund of all contributions made by the employee. Said interest shall not be payable for the year in which the contributions are made but shall be calculated as of the end of the next year of employment (on the preceding year's contribution amount) and shall be simple interest compounded yearly thereafter. It is intended that for the first year of employment, no interest will be payable and for the second year of employment (and each year thereafter) interest shall be payable at the end of the year on the preceding year's contribution total. No rights to pension benefits shall accrue to any employee of the police department or to their beneficiaries during any leave of absence. Any employee of the police department who is displaced through privatization activities of the city, and who is not eligible for early retirement, shall receive 80% of the city's contribution to the pension, together with interest compounded annually at the legal rate (currently 6% per annum) or such legal rate as may be established by the state legislature hereafter. The city's pension contribution as aforesaid shall be combined with the employee's contribution to the pension, together with interest at the legal rate as aforesaid and shall be distributed to the employee in one lump sum.

Source: 904 (1953), 2268 (1986), 2657 (1993), 2752 (1995).

6-0117. Administrative costs.--

Source: 1952 Rev. Ord. 6-0117, repealed by Ord. No. 2657 (1993).

6-0118. Re-entering pension system.--Any member who, within two years after discontinuance of city service, but not otherwise, re-enters such service, may redeposit in the pension fund, in one sum or in not to exceed 6 monthly or 12 semi-monthly payments, an amount equal to that which they withdrew therefrom at the last termination of their membership and, thereupon, shall acquire credit for the years of service prior to their leaving the employment of the department. If a member upon re-entering the employ of the city within two years after a termination of their membership shall not make such redeposit, within one year of re-employment, they shall re-enter as a new member without credit for any service.

Source: 1952 Rev. Ord. 6-0118, 2657 (1993).

6-0119. Disability retirement.--

- A. Retirement of a member for permanent disability shall be made by the board of trustees upon examination as follows: Any member while in the city service or within 90 days after the discontinuance of city service or while physically or mentally incapacitated for the performance of their duty (if such incapacity has been continuous since discontinuance of city service) shall be examined by two competent physicians selected by the board of trustees, and

reviewed by the city health officer. The examination shall be made upon the board's own motion following the application of said member, or a person acting on the member's behalf stating that said member is physically or mentally incapacitated for the performance of duty and ought to be retired and provided said member shall have been credited with ten or more years of continuous city service or shall have become physically or mentally incapacitated in the line of duty, provided, however, that the board of trustees, in its discretion, may accept, receive and consider any information pertaining to an employee's possible disability which may have been received under section 7-0305 of the Revised Ordinances of the city of Fargo. Such information may include medical reports which may be utilized by the board of trustees in addition to or in lieu of the medical examinations referred to hereinbefore. Any decision of the board established by the civil service commission shall not be binding on the board of trustees of the police pension system provided, however, that the board of trustees may consider any such information submitted to it in arriving at a final decision relative to the member's disability.

- B. If such medical examination and other available evidence show to the satisfaction of the board of trustees: (1) that the said member is permanently physically or mentally disabled and incapacitated for the performance of duty; and (2) that said permanent disability was received in the line of duty or that said member had been on active duty with the police department for at least 10 years prior to such disability; then and not otherwise, the board of trustees shall retire the said member for disability.
- C. The board of trustees shall secure medical services and advice as may be necessary to carry out the purpose of this section and section 6-0120 and the costs of such medical services and advice shall be paid from the police pension fund.

Source: 1965 Rev. Ord. 6-0119, 1929 (1979), 2012 (1981), 2657 (1993).

6-0120. Retired member re-entering city service.--

- A. Should a beneficiary, after retirement for disability, re-enter the police department service at a pay range equal to or higher than the pay range which said member has been drawing pension on, the member's retirement allowance shall be canceled and they shall immediately become a member of the pension fund. Credit will be given for previous years of service.
- B. Should the member re-enter police department service at a lesser pay range, their retirement allowance shall not be reduced until the member's pay range is equivalent to what said member was making prior to retirement for disability, it being the intent of this provision that member shall suffer no pay loss by reason of re-entering the police department service.

Source: 1965 Rev. Ord. 6-0120, 1930 (1979), 2012 (1981), 2657 (1993).

6-0121. Decision of board on re-examination.--The decision of the board upon re-examination, in the absence of fraud, and no appeal shall be allowed therefrom. Such disabled member shall remain upon the pension roll unless and until reinstated in such department by reason of such examination. Such reinstatement shall be evidenced by a certificate in writing signed by

members of the board and filed with the police department.

Source: 1952 Rev. Ord. 6-0121.

6-0122. Retirement allowances payable.--A pension or retirement allowance granted under the provisions hereof shall be payable in equal monthly installments commencing in the month (and including payment for the entire month) that said pension or retirement allowance was granted.

Source: 1952 Rev. Ord. 6-0122; 4104 (2001).

6-0123. Members may receive workmen's compensation in addition to pension--Approval of board of trustees--Payment of workmen's compensation premiums from pension fund.--

Source: 1965 Rev. Ord. 6-0123, 1931 (1979), repealed by Ord. No. 2657 (1993).

6-0124. Pensions, basis of.-- Repealed by Ord. No. 1061 (1959).

6-0125. Members entitled to pension--Conditions-- Amount.--

- A. 1. Any member of the police pension fund who while a member of such fund, shall suffer permanent mental or physical disability as determined in accordance with section 6-0119 of this article, so that he or she is unable to discharge his or her duties shall be entitled to be retired and upon retirement shall be paid a monthly pension equal to 45% of the average monthly salary received during the highest paid consecutive 36-month period prior to such disability retirement. Any member who, at the time of being granted the disability retirement referred to herein, shall have served in the police department more than 20 years, shall upon attaining 88 points as defined in subsection (3) hereinafter, and if still on disability retirement, be entitled to an adjustment of their pension benefit and shall receive from that date a monthly pension benefit equal to 2% of the average monthly salary received during the highest paid consecutive 36-month period prior to the member's disability retirement multiplied by the years of service in the police department at the time said member actually retired on disability pension not to exceed 30 years.
2. For members retiring after the effective date of this ordinance (July 25, 1983), in addition to the pensions provided for in the foregoing subsections, each such retiree shall receive an additional \$250 per month provided, however, that those retirees having less than 30 years of service shall receive such percentage of \$250 per month as the years of their service bear to 30 years, and further provided that those members on disability retirement prior to the adoption of this ordinance shall not be entitled to any portion of such additional \$250 per month.
3. After October 1, 1985, any member may retire at such time as he or she attains at least 78 points provided such member

shall have attained at least 20 years of service. Points will be assigned as follows: One point will be assigned for each year of the member's age and one point will be assigned for each year of the member's service with the Fargo police department. Years of service and age will be calculated to the nearest six months (i.e. six months or more will constitute a completion of that year of service or that year of the member's age). If a member shall have attained 88 points, said member shall receive a full pension equal to 60% of the average monthly salary received during the highest paid consecutive 36-month period prior to retirement. In addition, said member shall receive the additional \$250 per month provided for in the preceding subsection. For those members retiring with less than 88 points, the full pension will be reduced by 1/24th for each point less than 88. The additional \$250 per month provided for in the preceding subsection shall be payable at the rate of \$8.33 per month times each year of service but not to exceed a maximum of said \$250. A table showing the various retirement benefits payable at points ranging from 78 to 88 will be maintained by the board of trustees and shall be open to inspection by members of the Fargo police fund. Any member terminating employment prior to attaining 78 points will be ineligible for retirement benefits unless said member has served at least 20 years. Such member's points would be determined by adding their years of service as of their termination date to their age when benefits commence.

4. Members reaching the age of 50 years may retire and shall receive a pension equal to 2.65 percent (effective January 1, 2004) of the member's average monthly salary received during the highest paid consecutive 36-month period prior to retirement times the years of said member's service. In addition, said member shall receive an additional sum per month equal to \$8.33 per month times each year of service but not to exceed a maximum of \$250 per month. Members joining the pension system prior to August 1, 1990, shall have the option of selecting the pension benefits provided under this subsection or the pension provided for in the preceding subsection, at the election of such member at the time of retirement. The retirement benefits provided for hereunder shall, however, be mandatory for persons joining the police pension system after August 1, 1990. Notwithstanding the actual date of adoption, the provisions of this subsection shall be effective for members retiring after July 1, 2000.
5. Members retiring after May 1, 1989, may request joint survivorship benefits for his or her designee. The amount of the survivor's monthly benefit and the diminution in the

amount of the retiree's monthly benefit shall be determined by actuarial principals. Retiree may, at his or her option, elect to accept the reduced monthly benefit and the survivor benefit, as an alternative to the benefit otherwise determined in accordance with this article; provided, however, that should the retiree's designee die prior to the death of the retiree, the benefit shall revert back to the original amount of the benefit. Joint survivorship must be applied for at the time retirement benefits are requested. The member's designee will be required to sign an affidavit acknowledging the member's option regarding joint survivorship.

- B. Any member who has reached retirement age and actually retires shall be entitled to be paid the amount of pension benefits in effect at the time such member actually leaves the employ of the police department. In addition, the board of trustees pursuant to section 6-0115 of this article may adopt rules and regulations providing for additional payments to retirees from any excess interest earnings as determined by the said board of trustees provided, however, that in any one year, such additional payments shall not exceed a sum equal to two month's pension received by the retiree, and further provided that retirees have been retired for one complete year before any such additional sums are paid out to said retirees. The foregoing monthly pension together with the additional payment referred to, if any, shall continue from the member's retirement date and shall end with the last monthly payment due prior to the member's death. In the event a member or their beneficiaries, if any, die before the aggregate amount of pension payments received equal the total amount of the member's contributions made to the retirement plan (with such interest as is provided for in section 6-0116 hereof), the difference between the total amount of the member's contributions and the aggregate amount of pension benefit received by the member and beneficiaries, if any, shall be paid in a single lump sum to the person or persons designated by the member.
- C. Notwithstanding the foregoing provisions, members having at least ten years of service and leaving the employment of the Fargo police department prior to age 50, may retire and receive pension benefits upon reaching the age of 50 years as provided herein. Those members shall receive a pension presently equal to 2.65% (effective January 1, 2004) of the member's average monthly salary received during the highest paid consecutive 36-month period prior to leaving the employment of the Fargo police department times the years of said member's service. It is provided, however, that the percentage to be paid upon the member's reaching the age of 50 years shall be the percentage in effect at the time the said member actually left the employment of the Fargo Police Department. It is further provided, however, that no other benefits shall be payable hereunder.

Source: 1258 (1967), 1264 (1968), 1290 (1969), 1890 (1979), 1932 (1979), 2012 (1981), 2106 (1983), 2265 (1986), 2384 (1987), 2472 (1989), 2540 (1990), 2542 (1990), 2657 (1993), 2751 (1995), 2878 (1998), 2962 (1998), 3083 (1999), 4067 (2000), 4068 (2000), 4415 (2004).

6-0126. Payments to beneficiaries.--Upon the death of any active or retired member (subject to the limitation contained in subparagraph (C)) of such department leaving a spouse, minor children or other beneficiaries surviving them, there shall be paid out of said fund pensions as follows:

- A. To the surviving spouse of a member retiring prior to September 30, 1985, the sum of \$240 per month effective January 1, 1989.
- B. To the guardian of each surviving child under 18 years of age, for the benefit of such child, the sum of \$80 per month.
- C. Upon the death of any active or retired member of such department, a death benefit payment will be made to his or her spouse, other designated beneficiary, or if no designated beneficiary, to the member's estate. The amount of the payment shall be \$2,500, provided, however, that such death benefit shall not apply to any active member or member retiring after July 25, 1983. After July 25, 1983, and prior to September 30, 1985, the amount of the payment was \$50,000 for active members and was and shall remain \$25,000.00 for members retiring between July 25, 1983, and September 30, 1985. After September 30, 1985, the amount of the payment shall be \$65,000 for active members and \$40,000 for members retiring after such date. After October 1, 2001, the beneficiary of an active member who has died may elect to choose to take the full \$65,000 death benefit, plus the member's contributions (with interest as allowable under § 6-0116), or to receive the \$40,000 death benefit and a monthly pension based upon the regular retirement of the deceased employee and 100% survivorship option. This pension will begin at the time the deceased would have reached the age of 50 and would have been eligible to collect the pension. This election, however, is contingent upon the active member being vested at the time of death. Said payments shall be provided by the pension fund. The \$2,500 death benefit provided for herein shall be payable upon the filing of written proof of eligibility to receive payment. Payment may be made in a lump sum or prorated over a 6-month period, at the election of the beneficiary.

Source: 1728 (1976), 2105 (1983), 2232 (1985), 2262 (1986), 2425 (1988), 2657 (1993), 4232 (2002).

6-0127. Partial benefits.--

Source: 1965 Rev. Ord. 6-0127, 1474 (1973), 1892 (1979), repealed by Ord. No. 2657 (1993).

6-0128. Current retirees.--Current retirees including members on disability retirement, as of July 1, 1983, shall have their retirement benefit increased by 3% for each year of retirement from their retirement date to July 1, 1983. In the event of a partial year, the 3% shall be prorated for that year.

Source: 2104 (1983).

ARTICLE 6-02

PENSIONS FOR CITY EMPLOYEES OTHER THAN THOSE IN THE POLICE AND FIRE PENSION SYSTEMS

Note: Article 6-02 of chapter 6 of the Revised Ordinances of 1965 (sections 6-0201 to 6-0226) was repealed by Ord. No. 1964 (1980), which enacted new article 6-02 (sections 6-0201 to 6-0217).

Section	
6-0201	Creation of pension and retirement system.
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6-0201. Creation of pension and retirement system.--Pursuant to authority of the Home Rule Charter of the city of Fargo, there is hereby created a pension and retirement system to provide monthly retirement compensation for eligible retired or totally disabled city employees (exclusive of those in the police and fire pension systems) and to provide for survivors' benefits in the event of death of such employee or retiree.

Source: 1964 (1980), 2238 (1985), 2269 (1986).

6-0201.1. Qualification.--

- A. Coverage. This plan is intended to qualify under section 401 of the Internal Revenue Code. As such, for fiscal years prior to August 5, 1997, the plan shall be treated at all times as benefiting either:
1. 70 percent or more of all the employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have been employed not more than a minimum period prescribed by the plan, employees whose customary employment is for not more than 20 hours in any one week, and employees whose customary employment is for not more than 5 months in any calendar, or
 2. Such employees as qualify under a classification set up by the City and found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers. persons whose principal duties consist in supervising the work of other employees, or highly compensated employees.

For fiscal years beginning after August 5, 1997, this subsection shall not apply.

- B. Nondiscrimination. For fiscal years prior to August 5, 1997, the benefits provided under the plan shall be treated as not discriminating in favor of employees who are officers, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees. For fiscal years beginning after August 5, 1997, this subsection shall not apply.
- C. Quarterly Participation Test. For fiscal years prior to August 5, 1997, the plan shall be treated as meeting the requirements of § 6-0201.1B on at least one day in each quarter of the fiscal year. For fiscal years beginning after August 5, 1997, this subsection shall not apply.
- D. Vesting. Upon the termination of the plan or upon complete discontinuance of contributions, the rights of all members to benefits accrued to the date of such termination or discontinuance under the terms of this ordinance, to the extent then funded, shall be nonforfeitable. This section (D) shall not apply to benefits which, under provisions of the ordinance adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by § 6-0201.1B may not be used for designated employees in the event of early termination of the plan.

Source: 4078 (2000), 4272 (2002).

6-0201.2. Exclusive Benefit Rule.--

- A. The corpus or income of any trust or custodial account maintained to fund benefits provided under the terms of the plan may not be diverted to or used for other than the exclusive benefit of the members or their beneficiaries.
- B. If plan benefits under the terms of the plan are provided through the distribution of annuity or insurance contracts, any refunds or credit in excess of plan benefits (on account of dividends, earnings, or other experience rating credits. or surrender or cancellation credits) will be paid to the trust or custodial account maintained to fund benefits provided under the terms of the plan.
- C. If upon plan termination all liabilities are satisfied, any excess assets arising from erroneous actuarial computations shall revert to the City.
- E. Any contribution made by the employer because of a mistake of fact must be returned to the City within one year of the contribution.

Source: 4078 (2000), 4272 (2002).

6-0202. Board of trustees--Management of pension fund--Officers--Compensation.--The mayor, the city auditor, the city attorney, director of finance and four persons elected by and from the members of the city employees' pension plan, which persons are currently being assessed, shall constitute the board of trustees for the management of the city employees' pension fund. No member shall be eligible to serve on the board until he or she has been a member of the plan for a minimum of five years. Two of the four members shall be elected each year and the election shall be held on the second Tuesday in June of each year, or such other date in June as the board may designate, and the terms of elected members shall commence on the first day of July following the election. Each elected member shall serve for a term of two years or until his successor is elected and qualified. The terms of the elected members shall be staggered so that two new members are elected each year. The president of the board of city commissioners shall be the president and the city auditor shall act as secretary-treasurer of such board. The faithful performance of the duties of the treasurer shall be secured by his official bond as city auditor. The trustees shall not receive any compensation for their services as members of said board.

Source: 1965 Rev. Ord. 6-0202, 1964 (1980), 2004 (1980), 2205 (1985), 2406 (1988), 2696 (1994), 4534 (2006).

6-0203. Investment of surplus in fund--Limitations-- Securities deposited with treasurer.--The board of trustees may invest any surplus left in the city employees' pension fund, but no part of the monies realized from any tax levy shall be used for any purpose other than payment of pensions. Such surplus funds may be invested in interest-bearing bonds of the United States or the state of North Dakota, or bonds or warrants of any county, township or municipal corporation of this state which constitutes the general obligations or contingent general obligations of the issuing tax authority, or investments with any federally insured bank or savings and loan association. All securities shall be deposited with the treasurer of the board for safekeeping. The board may also invest all or part of such surplus funds in other investments by selecting a funding agent or agents and establishing an investment agreement contract regarding such surplus funds. The contract shall authorize the funding agent or agents to hold and invest such funds for the board and such funds shall be placed for investment only with a firm or firms whose primary endeavor is money management, and only after a trust agreement or contract has been executed.

Source: 1964 (1980), 2269 (1986).

6-0204. Acceptance of money and property by board.--The board of trustees may take by gift, grant, devise or bequest any money or property, real or personal, or other thing of value for the benefit of the city employees' pension fund, and when received, such property shall become a part of such fund.

Source: 1965 Rev. Ord. 6-0204, 1964 (1980), 2238 (1985).

6-0205. Service in armed forces--Compliance with Uniformed Services Employment and Reemployment Rights Act of 1994.--Any employee of the city who is subject to the provisions of this article to whom has been granted or shall be granted a leave of absence to serve in the Army, Navy, Marine Corps, or Air Force of the United States, or is a member of the United States Army, Navy, Marine Corps or Air Force Reserves, or who shall have been selected for training under the selective service provisions of the laws of the United States and who has returned to the employ of the city with an honorable discharge, or other document showing honorable service in such service, shall have the period of such service included as a part of his period of service to the city, provided that credit allowed for such service shall not exceed a total of five years. Any such employee who seeks credit for such military service shall, upon his return to the employment of the city, pay into the employees' pension fund an amount equal to the amount such employee would have contributed if he had been a city employee during the period of his military service.

Effective for veterans re-hired on or after December 12, 1994, and notwithstanding any provision of this Article 6-02 to the contrary, contributions, benefits and service credit will be provided in accordance with section 414(u) of the Code. This shall not preclude any person from receiving more generous treatment for military service pursuant to state law or the provisions of this plan if such treatment is not inconsistent with the tax qualification requirements.

Source: 1965 Rev. Ord. 6-0205, 1964 (1980), 4078 (2000).

6-0206. Pensions not subject to assignment, debts, execution, or other process.--Any pension paid under the provisions of this article shall not be subject to assignment and shall be exempt from liability for debts of the person to or on account of whom the same is paid, and shall not be subject to seizure upon execution or other process.

Source: 1965 Rev. Ord. 6-0206, 1964 (1980).

6-0207. Payments from pension fund--Treasurer's report.--All pensions paid and all monies drawn from the pension fund under the provisions of this article shall be upon checks or drafts issued by the treasurer of such board. Such checks or drafts shall designate the person to whom and purpose for which payment is made. The treasurer's annual report shall show the receipts and expenditures of the fund for the preceding fiscal year, the money on hand, and how the same is invested. Such report shall be made to the board of trustees and shall be filed with the city auditor.

Source: 1964 (1980), 2269 (1986).

6-0208. Fiscal year.--The fiscal year for the pension fund shall commence the first day of January of each year and terminate on the last day of December of each year.

Source: 1965 Rev. Ord. 6-0208, 1964 (1980), 2238 (1985).

6-0209. Contributions to plan.—Member's share picked up by city.--

- A. The city's contribution to the employees' pension plan shall be an amount equal to 5.5% of payroll, less that amount of city matching contributions

which is contributed on behalf of a member to the deferred compensation program pursuant to section 3-0608. For purposes of this section, payroll shall include base pay and longevity and shall not include overtime, bonuses, or cash payments for sick or annual leave.

- B. The member's contribution shall be mandatory and equal to that percentage of salary as determined by the board of trustees but shall in no event be in excess of 3% of a member's pay through the last payroll period in 1999, and 4% beginning with the first payroll period in 2000, which is defined to include base pay and longevity and shall not include overtime, bonuses, or cash payments for sick or annual leave. Such reductions from base pay and longevity, although designated as member contributions, shall be deducted by the city at the normal payroll intervals and paid by the city as pick-up contributions in lieu of contributions by the member. The city shall deduct the member's mandatory contributions required by this section from a member's salary and longevity on or after the first payroll interval in 2000 following the effective date of this section, and the contributions so deducted shall be treated as city contributions in determining federal tax treatment under section 414(h) of the Internal Revenue Code of 1986, as amended. In no event shall a member have the option of receiving the amount of the picked-up member contribution in cash in lieu of the picked-up contribution to the plan.

Source: 1964 (1980), 2238 (1985), 2269 (1986), 2291 (1986), 2550 (1990), 2841 (1997), 2853 (1998), 3072 (1999), 4272 (2002).

6-0210. Actuary and actuarial equivalence.--Administration of the pension fund shall be based upon actuarial advice and the board of trustees shall be empowered to engage the services of an actuary for the purpose of assisting in the administration of such fund. The city shall pay such compensation for the services of an actuary as the board may find to be fair and reasonable. For purposes of this article, the term "actuarial equivalent" means the equivalent value as determined by the actuary, computed as follows:

- A. Mortality – the 1984 Unisex Pension Mortality Table; and,
B. Interest – 7 percent interest.

Source: 1965 Rev. Ord. 6-0210, 1964 (1980), 4272 (2002).

6-0211. Persons included in the system--Exception.--Except as hereinafter provided, all persons in the permanent employ of the city of Fargo, except the city administrator and all employees in the police and fire pension systems, shall be members of the plan. It is provided, however, that the director of finance at the time of adoption of this ordinance shall continue to be an optional member of the plan. Persons in the permanent employ of the city means those persons classified by the city as employed in a full-time regular position. Membership in the employees' pension plan shall be optional for any person employed by the city prior to November 1, 1986; provided, that any employee who is a member of the plan and has not withdrawn prior to November 1, 1986, shall remain a member for the duration of his or her employment. Any employee who shall have terminated his or her membership between November 1, 1985, and November 1, 1986, may re-enter the plan by reimbursing any refund of contributions which was received by that employee upon his or her termination, and by paying to the plan, the amount of the employee contribution which would have been made if he or she had not withdrawn from the plan. Employees re-entering

the plan as hereinabove provided shall be reinstated and given credit for longevity in the same manner as if said employee had never withdrawn from the plan. Any employee who was not a member of the plan on November 1, 1985, or did not re-enter the plan prior to November 1, 1986, as hereinabove provided, may enter the plan at any time and years of service for that employee for purposes of determining pension benefits shall be determined as of the date of entry into the plan. The board of trustees for the city employees' pension fund, with the consent of the board of city commissioners, have elected to permit existing city employees to choose whether to remain as a member of the city employees' pension plan, as governed by this article, or whether to join the North Dakota Public Employees Retirement System pension program, and to make contributions thereto. Further, individuals who become employed by the city on or after January 1, 2008, will be allowed only to join the North Dakota Public Employees Retirement System pension program. As to those city employees who have joined the North Dakota Public Employees Retirement System pension program, all benefits accruing as a result of contributions from and after an employee's entry in the North Dakota Public Employees Retirement System shall be subject to the bylaws, rules and regulations thereof.

Source: 1964 (1980), 2238 (1985), 2269 (1986), 2279 (1986), 2289 (1986), 2593 (1991), 4272 (2002), 4534 (2006), 4653 (2008).

6-0212. Change in employment status--Notice to board.--It shall be the duty of the personnel officer of the city of Fargo to give immediate notice in writing to the board of trustees of the change in status of any city employee who is subject to the provisions of this article. The changes to be reported are those resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, death, ceasing to be employed by the city in a full-time regular position, or other cause, and the personnel officer shall furnish such other information concerning any such employee as the board may require.

Source: 1965 Rev. Ord. 6-0212, 1964 (1980), 4272 (2002).

6-0213. Regulations--Duty of member and of beneficiary.--The board of trustees shall be authorized from time to time to adopt such regulations, subject to approval of the board of city commissioners, as may be deemed necessary, consistent with the terms and provisions of this article, to govern the operation of the pension fund and the requirements as to members and payments to beneficiaries. Each member and beneficiary shall be subject to all the provisions of this article and to all such rules and regulations as adopted by the board and shall furnish to the board such information affecting his status as a member or beneficiary of the system as the board may require.

Source: 1965 Rev. Ord. 6-0213, 1964 (1980).

6-0214. Accumulation accounts--Refund upon termination of employment or membership.--There is hereby established for each member of the plan a city accumulation account which shall be comprised of an amount equal to 2.75% of the member's annual salary since January 1, 1990, plus interest thereon at the rate of 5.0% per annum compounded annually at the end of each calendar year. In addition to the city accumulation account, there is also established for each member an employee accumulation account which shall consist of the total of the member's contributions to the plan during the member's period of city service. Interest on the employee accumulation account shall accrue at the rate of 5% per annum from and after January 1, 1986, compounded annually from the end of each calendar year. Upon termination of employment, a member shall be entitled to payment as follows:

A. If the terminating member has not yet reached the age of 55 years, the

member may, at his or her option, elect to receive:

1. The combined total of the member's city accumulation account and employee accumulation account, with interest credited to the distribution date; or
2. A single payment in an amount equal to the "actuarial equivalent" value of his or her deferred annuity benefit; or
3. A deferred retirement annuity.

Notwithstanding the foregoing, any member who is displaced through privatization activities, and who is not eligible for early retirement, shall receive 80% of the city's pension contribution, together with interest compounded annually at 6% per annum. The city's pension contribution as aforesaid shall be combined with the member's contribution to the pension, together with interest at 6% per annum as aforesaid and shall be distributed to the member in one lump sum.

Source: 1964 (1980), 2238 (1985), 2269 (1986), 2364 (1987), 2594 (1991), 2695 (1994), 2753 (1995), 4272 (2002), 4653 (2008).

6-0215. Administrative costs.--The administrative costs of the pension system shall be paid by the city, such payments to be charged against the appropriation for the system and the budget for the then current fiscal year.

Source: 1965 Rev. Ord. 6-0215, 1964 (1980).

6-0216. Re-entering system plan.--Any member subject to the provisions of this article who, after discontinuance of city service or membership in the plan, re-enters such service as an employee in the permanent employ of the city, subject to the provisions of this article, may redeposit into the pension fund an amount equal to that which he or she withdrew therefrom at the preceding termination of his or her membership, plus interest thereon at the rate of 1% higher than the average annual earnings of the pension fund for the 10-year period preceding the date of re-employment, or 1% higher than the current actuarial rate, whichever is higher, and thereupon shall acquire credit for the years of service prior to his or her leaving the employment of the city. If a member upon re-entering the employ of the city after a termination of his or her employment or membership in the plan, shall not make such redeposit within 60 days of his or her reemployment in the permanent employ of the city, he or she shall re-enter as a new member without credit for any prior service. Any employee who was terminated as a city employee and thereafter re-entered such service as an employee prior to January 1, 1993, and who makes written request on or before January 1, 1994, for credit for such prior service shall have 30 days from and after determination of the amount to be paid, to re-deposit the amount withdrawn, plus accrued interest as hereinabove provided, and shall thereupon acquire credit for his or her years of service prior to discontinuance of city service. A member and city employee who has elected to participate in the North Dakota Public Employees Retirement System effective on or after January 1, 2008, shall not be eligible, thereafter, to re-enter the city employee pension plan.

Source: 1965 Rev. Ord. 6-0216, 1964 (1980), 2641 (1993), 2675 (1993), 4272 (2002). 4653 (2008).

6-0217. Retirement--Application for benefits.--Any member who has reached the age of 55 years or older and has been a member of the plan for a minimum of ten years (for termination of employment or membership prior to July 1, 1994) and five years (for termination of employment or membership on or after July 1, 1994), may draw benefits from the pension plan at any time after termination of his employment with the city or membership in the plan and become a retiree. From

and after January 1, 2008, any member who has reached the age of 55 years or older may draw benefits from the pension plan at any time after termination of his employment with the city in the plan and become a retiree. After January 1, 2000, any member may also terminate his employment with the city and draw benefits from the pension plan as a retiree at such time as he or she attains at least 90 points while employed by the city in a regular full-time position. Any member attaining 90 points will be eligible to become a retiree with 100% benefits and not be affected by the factor for age as shown in 6-0218(C) of this chapter. Points will be assigned as follows: one point will be assigned for each year of the members age and one point will be assigned for each year of the members service based, however, on the hire date as a full-time employee. Years of service and age will be calculated to the nearest six months (i.e. six months or more will constitute a completion of that year of service or that year of the member's age). Actual benefits for those members attaining 90 points will be based on the number of years paid into the pension plan. Written application for benefits shall be made by the member and submitted to the board of trustees.

Source: 1964 (1980), 2238 (1985), 2269 (1986), 2594 (1991), 2695 (1994), 3073 (1999), 4272 (2002), 4653 (2008).

6-0218. Determination of monthly benefit.--The monthly benefit payable to a retiree who terminates his employment with the city or his membership in the plan on or before October 22, 1990, shall be determined at the time he or she makes application for benefits and shall be based upon the retiree's age, years of service with the city, subject to the application of section 6-0211, and highest average monthly salary and shall be determined as follows:

- A. Determine the highest average monthly salary received by the member during any consecutive 60-month period during his employment with the city. For purposes of this section, salary shall include base pay plus longevity but shall not include overtime, bonuses or cash payments for sick or annual leave.
- B. Multiply the highest average monthly salary by the member's total years of service, subject to the application of section 6-0211, expressed to the nearest month.
- C. Except as provided in section 6-0217 concerning attaining 90 points, (with respect to a member who terminates his employment with the city or his membership in the plan on or after January 1, 2000), multiply the total amount determined in accordance with (B) above by the appropriate age factor (applicable to a member who becomes a retiree on or after October 22, 1990), as listed below:

<u>AGE</u>		<u>FACTOR</u>	<u>AGE</u>		<u>FACTOR</u>
<u>YEARS</u>	<u>MONTHS</u>		<u>YEARS</u>	<u>MONTHS</u>	
55	0	.00700	59	0	.00833
	1	.00703		1	.00836
	3	.00708		2	.00839
	4	.00711		3	.00842
	5	.00714		4	.00844
	6	.00717		5	.00847
	7	.00719		6	.00850
	8	.00722		7	.00853
	9	.00725		8	.00856

	10	.00728		9	.00858
	11	.00731		10	.00861
56	0	.00733		11	.00864
	1	.00736	60	0	.00867
	2	.00739		1	.00872
	3	.00742		2	.00878
	4	.00744		3	.00883
	5	.00747		4	.00889
	6	.00750		5	.00894
	7	.00753		6	.00900
	8	.00756		7	.00906
	9	.00758		8	.00911
	10	.00761		9	.00917
	11	.00764		10	.00922
57	0	.00767		11	.00928
	1	.00769	61	0	.00933
	2	.00772		1	.00939
	3	.00775		2	.00944
	4	.00778		3	.00950
	5	.00781		4	.00956
	6	.00783		5	.00961
	7	.00786		6	.00967
	8	.00789		7	.00972
	9	.00792		8	.00978
	10	.00794		9	.00983
	11	.00797		10	.00989
58	0	.00800		11	.00994
	1	.00803	62 and Over	0	.01000
	2	.00806			
	3	.00808			
	4	.00811			
	5	.00814			
	6	.00817			
	7	.00819			
	8	.00822			
	9	.00825			
	10	.00828			
	11	.00831			

- D. Multiply the total amount determined in accordance with (C) above for members who terminated their employment with the city or their membership in the plan on or after October 22, 1990, and who have not attained 90 points as provided in section 60217:
1. by 1.10 for members who terminated their employment with the city or their membership in the plan before August 1, 1991,
 2. by 1.20 for members who terminated their employment with the city or their membership in the plan on or after August 1, 1991,

- and before January 1, 1998,
3. by 1.30 for members who terminated their employment with the city or their membership in the plan on or after January 1, 1998, and before January 1, 2000, and
 4. by 1.40 for members who terminated their employment with the city or their membership in the plan on or after January 1, 2000 and who have not attained 90 points as provided in section 6-0217, to determine the normal monthly retirement benefit.
- E. With respect to a member who terminates his employment with the city or their membership in the plan on or after January 1, 2000 and has attained 90 points as provided in section 6-0217, multiply the total amount determined in accordance with (B) above by .014.
- F. In addition to the retirement benefit determined as hereinabove provided, a retiree whose combined age and years of plan participation equal or exceed 87, shall be entitled to an additional benefit of \$200 per month, payable for a maximum of three years, or until the retiree is eligible for Medicare benefits, whichever occurs first, provided that upon the death of said retiree, the balance of said additional benefit then remaining unpaid shall be paid in a lump sum to the retiree's beneficiary, spouse, or estate, as the case may be.
- G. As of January 1, 2008, with some city employees having elected to join and contribute to the North Dakota Public Employees Retirement System pension plan, those benefits for city employees who are, or have been, contributing members of the city employee pension plan set forth in this article shall not be based upon an employee's years of service with the city while the employee was a contributing member of North Dakota Public Employees Retirement System. An employee's years of service prior to January 1, 2008, will remain eligible for benefits under the terms and conditions of this article.

The normal benefit form for retiring city members shall be a life only annuity with monthly benefit to be determined as hereinabove provided. The monthly benefit shall be payable for the life of the retiree and shall terminate upon such retiree's death; provided, that the retiree may elect to provide for spousal survivor benefits as hereinafter provided.

Source: 2269 (1986), 2452 (1989), 2550 (1990), 2587 (1991), 2594 (1991), 2695 (1994), 2726 (1995), 2841 (1997), 3074 (1999), 4272 (2002), 4653 (2008).

6-0218.1. Distribution Requirements.--

A. General Rules.

1. The requirements of this article shall apply to any distribution of a member's interest and will take precedence over any inconsistent provisions of this plan. Unless otherwise specified, the provisions of this article apply to calendar years beginning after December 31, 1984.
2. All distributions required under this article shall be determined and made in accordance with the Proposed Income Tax Regulations under section 401(a)(9) of the Code, including the minimum distribution incidental benefit requirement of section 1.401(a)(9)-2 of the Proposed Income Tax Regulations.

- B. Required Beginning Date. The entire interest of a member must be distributed or begin to be distributed no later than the participant's required beginning date.
- C. Limits on Distribution Periods. As of the first distribution calendar year, distributions, if not made in a single-sum may only be made over one of the following periods (or a combination thereof):
 - 1. the life of the member, or
 - 2. the life of the member and a designated beneficiary,
- D. Determination of amount to be distributed each year.
 - 1. If the member's interest is to be paid in the form of annuity distributions under the plan, payments under the annuity shall satisfy the following requirements:
 - a. the annuity distributions must be paid in periodic payments made at intervals not longer than one year;
 - b. the distribution period must be over a life (or lives) or over a period certain not longer than a life expectancy (or joint life and last survivor expectancy) described in section 401(a)(9)(A)(iii) or section 401(a)(9)(13)(iii) of the Code, whichever is applicable;
 - c. the life expectancy (or joint life and last survivor expectancy) for purposes of determining the period certain shall be determined without recalculation of life expectancy;
 - d. once payments have begun over a period certain, the period certain may not be lengthened even if the period certain is shorter than the maximum permitted;
 - e. payments must either be nonincreasing or increase only as follows:
 - i. with any percentage increase in a specified and generally recognized cost-of-living index;
 - ii. to the extent of the reduction to 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 section (C) above dies and the payments continue otherwise in accordance with that section over the life of the member;
 - iii. to provide cash refunds of member contributions upon the member's death; or
 - iv. because of an increase in benefits under the plan.
 - f. If the annuity is a life annuity (or a life annuity with

a period certain not exceeding 20 years), the amount which must be distributed on or before the member's required beginning date (or, in the case of distributions after the death of the member, the date distributions are required to begin pursuant to section (E) below) shall be the payment which 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., bimonthly, monthly, semi-annually, or annually.

If the annuity is a period certain annuity without a life contingency (or is a life annuity with a period certain exceeding 20 years) periodic payments for each distribution calendar year shall be combined and treated as an annual amount. The amount which must be distributed by the member's required beginning date (or, in the case of distributions after the death of the member, the date distributions are required to begin pursuant to section (e) above) is the annual amount for the first distribution calendar year. The annual amount for other distribution calendar years, including the annual amount for the calendar year in which the member's required beginning date (or the date distributions are required to begin pursuant to section (E) below) occurs, must be distributed on or before December 31 of the calendar year for which the distribution is required.

2. Annuities purchased after December 31, 1988, are subject to the following additional conditions:
 - a. Unless the member's spouse is the designated beneficiary, if the member's interest is being distributed in the form of a period certain annuity without a life contingency, the period certain as of the beginning of the first distribution calendar year may not exceed the applicable period determined using the table set forth in Q&A A-5 of section 1.401 (a)(9)-2 of the Proposed Income Tax Regulations.
 - b. 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 A-6 of section 1.401(a)(9)-2 of the Proposed Income Tax Regulations.

3. Transitional rule. If payments under an annuity which complies with section (A) above begin prior to January 1, 1989, the minimum distribution requirements in effect as of July 27, 1987, shall apply to distributions from this plan, regardless of whether the annuity form of payment is irrevocable. This transitional rule also applies to deferred annuity contracts distributed to or owned by the employee prior to January 1, 1989, unless additional contributions are made under the Plan by the employer with respect to such contract.
4. If the form of distribution is an annuity made in accordance with this section (D), any additional benefits accruing to the member after his or her required beginning date shall be distributed as a separate and identifiable component of the annuity beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
5. Any part of the member's interest which is in the form of an individual account shall be distributed in a manner satisfying the requirements of section 401(a)(9) of the Internal Revenue Code and the proposed regulations thereunder.

E. Death Distribution Provisions.

1. Distribution beginning before death. If the member dies after distribution of his or her interest has begun, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the member's death.
2. Distribution beginning after death. If the member dies before distribution of his or her interest begins, distribution of the member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the member's death except to the extent that an election is made to receive distributions in accordance with (a) or (b) below:
 - a. if any portion of the member's interest is payable to a designated beneficiary distributions may be made over the life or over a period certain not greater than the life expectancy of the designated beneficiary commencing on or before December 31 of the calendar year immediately following the calendar

year in which the member died.

- b. if the designated beneficiary is the member's surviving spouse, the date distributions are required to begin in accordance with (a) above shall not be earlier than the later of (1) December 31 of the calendar year immediately following the calendar year in which the member died and (2) December 31 of the calendar-year in which the member would have attained age 70½.

If the member has not made an election pursuant to this section (E)(2) by the time of his or her death, the member's designated beneficiary must elect the method of distribution no later than the earlier of (1) December 31 of the calendar year in which distributions would be required to begin under this section, or (2) December 31 of the calendar year which contains the fifth anniversary of the date of death of the member. If the member has no designated beneficiary, or if the designated beneficiary does not elect a method of distribution, distribution of the member's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

3. For purposes of section (E)(2) above, if the surviving spouse dies after the member, but before payments to such spouse begin, the provisions of section (E)(2), with the exception of paragraph (b) therein, shall be applied as if the surviving spouse were the member.
4. For purposes of this section (E), any amount paid to a child of the member will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.
5. For the purposes of this section (E), distribution of a member's interest is considered to begin on the member's required beginning date (or, if section (E)(3) above is applicable, the date distribution is required to begin to the surviving spouse pursuant to section (E)(2) above). If distribution in the form of an annuity described in section (D)(1)(b) above irrevocably commences to the member before the required beginning date, the date distribution is considered to begin is the date distribution actually commences.

F. Definitions

1. "Designated beneficiary". The individual who is designated as the beneficiary under the plan in accordance with section 401(a)(9) of the Internal Revenue Code and the proposed regulations thereunder.

2. “Distribution calendar year”. A calendar year for which a minimum distribution is required. For distributions beginning before the member’s death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the member’s required beginning date. For distributions beginning after the member’s death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section (E) above.
 3. “Life expectancy”. The life expectancy (or joint and last survivor expectancy) calculated using the attained age of the member (or designated beneficiary) as of the member’s (or designated beneficiary’s) birthday in the applicable calendar year. The applicable calendar year shall be the first distribution calendar year. If annuity payments commence before the required beginning date, the applicable calendar year is the year such payments commence. Life expectancy and joint and last survivor expectancy are computed by use of the expected return multiples in Tables V and VI of section 1.72-9 of the Income Tax Regulations.
 4. “Required beginning date”.
 - a. General rule. The required beginning date of a member is the first day of April of the calendar year following the later of the calendar year in which the member attains age 70½ or the date of actual retirement.
 - b. Transitional rule. The required beginning date of a member who attains age 70½ before January 1, 1988, shall be the first day of April of the calendar year following the calendar year in which the later of retirement or attainment of age 70½ occurs. The required beginning date of a member who attains age 70½ during 1988 and who has not retired as of January 1, 1989, is April 1, 1990.
- G. “Transitional Rule”.
1. Notwithstanding the other requirements of this Article, distribution on behalf of any member, may be made in accordance with all of the following requirements (regardless of when such distribution commences):
 - a. The distribution by the Plan is one which would not have disqualified such Plan under section 401(a)(9) of the Internal Revenue Code as in effect prior to amendment by the Deficit Reduction Act of 1984.
 - b. The distribution is in accordance with a method of distribution designated by the member whose interest in the Plan is being distributed or, if the

- member is deceased, by a beneficiary of such member.
- c. Such designation was in writing, was signed by the member or the beneficiary, and was made before January 1, 1984.
 - d. The member had accrued a benefit under the plan as of December 31, 1983.
 - e. The method of distribution designated by the member or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the member's death, the beneficiaries of the member listed in order of priority.
2. A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the employee.
 3. For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the member, or the beneficiary to whom such distribution is being made will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections 6.0218.1(G)(1)(a)-(e).
 4. If a designation is revoked any subsequent distribution must satisfy the requirements of section 401(a)(9) of the Internal Revenue Code and the proposed regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy section 401(a)(9) of the Internal Revenue Code and the proposed regulations thereunder, but for the section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements in section 1.401(a)(9)-2 of the Proposed Income Tax Regulations. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution

or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life). In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in O&A J-2 and Q&A J-3 of section 1.401(a)(9)-I of the Proposed Income Tax Regulations shall apply.

Source: 4078 (2000), 4272 (2002).

6-0218.2. Limitation on Benefits.--

This section applies to any member of this plan and any member who is or who has ever been a participant in another qualified plan maintained by the City.

In addition to other limitations set forth in the plan, and notwithstanding any other provisions of the plan, the accrued benefit, including the right to any optional benefits provided in the plan and all other defined benefit plans required to be aggregated with this plan under the provisions of section 415 of the Internal Revenue Code, shall not increase to an amount in excess of the amount permitted under Internal Revenue Code section 415 at any time. Notwithstanding any provision of this plan to the contrary, for purposes of the preceding sentence and for purposes of determining whether the benefits of this Plan exceed the limitations of Internal Revenue Code section 415 with respect to limitation years beginning after December 31, 1986, the term "annual addition" shall include all member contributions to the plan, other than member contributions "picked-up" by the City. The picked-up contributions will not be treated as "annual additions" for purposes of section 415(c) of the Internal Revenue Code. This shall not require the recomputation of annual additions for limitation years beginning before January 1, 1987.

For the purposes of this paragraph and determining compliance with Internal Revenue Code section 415, for limitation years beginning before January 1, 1995, compensation shall mean compensation as defined in Internal Revenue Code section 415(b)(3), and the regulations thereunder. If the defined benefit of a member of this plan exceeds for any year the limitation imposed by rules under section 415 of the Internal Revenue Code, the defined benefit of the member under this plan shall automatically be reduced to the extent of the excess, and any other remedial action that may be necessary to correct this excess shall be made in this plan. If total benefits under this plan and the benefits and contributions to which any member is entitled under any other qualified plans maintained by the employer that employs the member would otherwise exceed the applicable limits under section 415 of the Internal Revenue Code, the benefits the member would otherwise receive from this plan shall be reduced to the extent necessary to enable the benefits to comply with section 415 of the Internal Revenue Code, unless the employer has provided other rules that satisfy those requirements. The provisions of Internal Revenue Code section 415, and the regulations thereunder, including the special rules under section 415(b) applicable to governmental plans and qualified participants in police and fire department plans, are hereby incorporated by reference as part of the terms and conditions of this plan.

Source: 4078 (2000), 4272 (2002).

6-0218.3. Maximum Annual Compensation.--

- A. Compensation. For the purposes of this section, "compensation" is defined as wages, salaries and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for

personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in 1.62-2(c)), and excluding the following:

1. Employer contributions to a plan of deferred compensation which are not includable in the employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension to the extent such contributions are deductible by the member, or any distributions from a plan of deferred compensation;
2. Other amounts which received special tax benefits, or contributions made by the employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in section 403(b) of the Internal Revenue Code (whether or not the contributions are actually excludable from the gross income of the employee).

Notwithstanding the above, if the member was a participant as of the first day of the first limitation year beginning after December 31, 1986, compensation shall include any amount which is contributed by the employer pursuant to a salary reduction agreement and which is not includable in the gross income of the employee under sections 125, 402(e)(3), 402(h), or 403(b) of the Internal Revenue Code.

- B. For fiscal years beginning on or after January 1, 1989 and before January 1, 1994, the annual compensation of each member taken into account for determining all benefits provided under the plan for any fiscal year shall not exceed \$200,000. This limitation shall be adjusted by the Secretary at the same time and in the same manner as under section 415(d) of the Internal Revenue Code, except that the dollar increase in effect on January 1 of any calendar year is effective for fiscal years beginning in such calendar year the first adjustment to the \$200,000 limitation is effective on January 1, 1990.
- C. For fiscal years beginning on or after January 1, 1994, the annual compensation limit of each member taken into account for determining all benefits provided under the plan for any determination period shall not exceed \$150,000, as adjusted for the cost-of-living in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning in such calendar year.
- D. If a 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 determination period, and the denominator of which is 12.

- E. Effective for fiscal years beginning before January 1, 1997, in determining the compensation of a member for purposes of this limitation, the rules of section 414(q)(6) of the Internal Revenue Code shall apply, except in applying such rules, the term “family” shall include only the spouse of the spouse and any lineal descendants of the member who have not attained age 19 before the close of the year. If, as a result of application of such rules, the adjusted annual compensation limitation is exceeded, then (except for purposes of determining the portion of compensation up to the integration level if this plan provides for permitted disparity), the limitation shall be prorated among the affected individuals in proportion to each such individual’s compensation as determined under this section prior to the application of this limitation.
- F. If compensation for any prior determination period is taken into account in determining a member’s benefits for the current fiscal year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. For this purpose, in determining benefits in fiscal years beginning on or after January 1, 1989, the annual compensation limit in effect for determination periods beginning before that date is \$200,000. In addition, in determining benefits in fiscal years beginning on or after January 1, 1994, the annual compensation limit in effect for determination period beginning before that date is \$150,000.

Source: 4078 (2000), 4272 (2002).

6-0218.4. Forfeitures.--Forfeitures, if any, shall be used only to reduce the amount of Employer contribution under § 6-0218. In no event shall forfeitures be used to increase the benefits to which a participant is or shall be otherwise entitled under the plan.

Source: 4078 (2000).

6-0218.5. Rollover Contributions and Direct Rollovers.--

- A. This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee’s election under this part, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution that is equal to at least \$500 paid directly to an eligible retirement plan specified by the distributee in a direct rollover. Any member or survivor who receives any distribution that is an eligible rollover distribution as defined by section 402(c)(4) of the Internal Revenue Code is entitled to have that distribution transferred directly to another eligible retirement plan of the member’s or survivor’s choice upon providing direction to the board regarding that transfer in accordance with procedures established by the board.
- B. Definitions.
 - 1. “Eligible rollover distribution”: An eligible rollover distribution is any distribution of all or any portion of the

balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more, any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code, and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), and any other distribution(s) that is reasonably expected to total less than \$200 during a year.

2. "Eligible retirement plan": An eligible retirement plan is an individual retirement account described in section 408(a) of the Internal Revenue Code, an individual retirement annuity described in section 408(b) of the Internal Revenue Code, an annuity plan described in section 403(a) of the Internal Revenue Code, or a qualified plan described in section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
3. "Distributee": A distributee includes an employee or former employee. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code, are distributees with regard to the interest of the spouse or former spouse.
4. "Direct rollover": A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

Source: 4078 (2000), 4272 (2002).

6-0219. Benefits for surviving spouse of retiree.--A retiree, as part of his application for benefits in accordance with section 6-0217 of this article, may request joint survivorship benefits for his or her spouse. The amount of the survivor's monthly benefit and the diminution in the amount of the retiree's monthly benefit shall be determined by actuarial principals. Retiree may, at his option, elect to accept the reduced monthly benefit and the survivor benefit, as an alternative to the benefits determined in accordance with section 6-0218 of this article.

Source: 2269 (1986).

6-0220. Insurance--Death benefit.--The board of trustees may, at its option and if actuarially feasible, purchase group insurance on all city employees who are members of the pension plan, to fund the death benefit which is provided in subsection (B) of section 6-0221.

Source: 2269 (1986), 2695 (1994).

6-0221. Death of member.--In the event of death of an employee of the city, who is a member of the pension plan, the surviving spouse or other designated beneficiary of said deceased employee shall be entitled to payment from the plan as follows:

- A. Effective January 1, 1996, upon the death of an active employee, who is a member of the pension plan, regardless of age or years of service, the surviving spouse or other designated beneficiary of said deceased member may elect to receive the actuarial cash value of the immediate benefit.
- B. The additional sum of \$20,000, as a survivor's death benefit.

Source: 2269 (1986), 2695 (1994), 2787 (1996), 4272 (2002).

6-0222. Disability of a member.--Any member who is totally disabled and has been a member of the plan for a minimum of 5 years may draw benefits from the pension plan. The monthly benefit shall be determined as follows:

- A. If the disabled member is 55 years of age or older, the monthly benefit shall be determined in accordance with sections 6-0217 and 6-0218 of this article.
- B. If the disabled member is less than 55 years of age, the monthly benefit shall be the smaller of the following:
 - 1. An amount equal to the disabled member's highest average monthly salary determined in accordance with section 6-0218(A) of this article multiplied by a percentage which shall be equal to 1.4% for each year of service, expressed to the nearest month; or
 - 2. An amount equal to the highest average monthly salary determined in accordance with section 6-0218(A) of this article multiplied by a percentage which shall be equal to .7% for each year of service, expressed to the nearest month, which the disabled member would have had if his or her employment had continued to age 55.
- C. Monthly benefits payable to a disabled member who is less than 55 years of age shall be reduced by an amount equal to any workmen's compensation benefit payments which are made to such member.
- D. When the disabled member reaches the age of 55 years, the monthly benefit shall be determined in accordance with subparagraph (2) of paragraph (B) above.

An member shall be deemed to be disabled if the board of trustees determines, on the basis of the concurring report of at least two out of three physicians designated by the board, that such employee's termination of employment occurred on account of a physical or mental disability rendering him permanently incapable of performing the duties of his position with the city; and he has been determined to be totally disabled by the Social Security Administration and is qualified for total disability benefits from that agency.

Source: 2269 (1986), 2560 (1991), 2587 (1991), 3075 (1999), 4272 (2002).

6-0223. Re-examination of disabled member.--

- A. The board of trustees, at any time, may cause any member who has been retired by reason of physical or mental disability to be brought before it and again examined by three competent physicians appointed by the board to discover whether such disability continues, whether it can be improved, and whether such retired member should be continued on the pension role, and the board may examine witnesses for such purposes. The question of continued disability or ability to perform regular or like duty shall be determined by the concurring report of at least two of the three examining physicians. Such member shall have reasonable notice that the examination will be made and that he shall be present at the time of the taking of any testimony. The member may examine the witnesses brought before the board and introduce evidence in his own behalf. All witnesses shall be examined under oath which may be administered by any member of the board.
- B. Should any member retired from disability pursuant to section 6-0222 herein refuse to submit to medical re-examination, his pension shall be discontinued until the withdrawal of such refusal if he does not provide reasonable cause for such refusal to the satisfaction of the board of trustees. If the member has not submitted to reexamination as of the one-year anniversary of the board of trustee's request for reexamination, effective immediately, the member's entitlement to benefits under the pension plan, if any, shall thereafter be determined in accordance with sections 6-0217 and 6-0218 to the extent they may be applicable.
- C. The decision of the board of trustees upon the re-examination provided for in this section shall be final and conclusive in the absence of fraud and no appeal shall be allowed therefrom. The disabled member shall remain on the pension role unless and until reinstated in service by reason of the re-examination.

Source: 2269 (1986), 4272 (2002).

6-0224. Return to city service by disabled retired member.--Should a member after retirement or disability, re-enter the permanent employ of city and be eligible for membership in the employees' pension fund in accordance with the provisions of this article, his disability retirement allowance shall be cancelled and he shall immediately become a member of the pension system and shall be credited for years of service while he was disabled. He shall not be required to make any contribution for the period of his disability but shall, upon being re-employed with the city, begin making contributions to the plan.

Source: 2269 (1986), 4272 (2002).

6-0225. Death of disabled member.--In the event of death of a member who is under the age of 55 years, who has been determined to be totally disabled, and who has been drawing benefits from the plan, no survivors' benefits shall be payable. If said disabled member is 55 years of age or older, and has selected a survivor benefit option in accordance with section 6-0219 hereof, the surviving spouse of the deceased disabled member shall be entitled to benefits in accordance therewith.

Source: 2269 (1986), 4272 (2002).

6-0226. Death of retiree.--In the event of death of a retiree, survivors' benefits and death benefits shall be payable as follows:

- A. If the decedent retired prior to January 1, 1986, and is survived by a spouse to whom said member was married at the time of retirement, said surviving spouse shall be entitled to a monthly benefit in the amount of \$100 per month. In addition to the surviving spouse's benefit, the estate or designated beneficiary of said retiree shall receive a lump sum death benefit in the amount of \$3,000.
- B. If the decedent retired after January 1, 1986, and is survived by a spouse to whom said member was married at the time of retirement, said surviving spouse shall be entitled to a monthly benefit determined in accordance with the selection made by the retiree pursuant to section 6-0219 of this article. In addition to the surviving spouse's benefit, the estate or designated beneficiary of said retiree shall receive a lump sum death benefit in the amount of \$3,000.

Source: 2269 (1986), 2477 (1989), 4272 (2002).

6-0227. Pre-existing retirement benefits reserved-- Increases allowed.--All retirees who shall have retired prior to January 1, 1986, shall continue to receive minimum monthly benefits from the plan in the amount determined at the time of retirement; provided, that the board of trustees may, in their discretion, increase such benefits from time to time.

Source: 2269 (1986), 2441 (1989).

6-0228. Deferred compensation program--City matching contributions.--

Source: 2853 (1998), repealed by Ord. No. 4272 (2002).