

TITLE 9

PERSONNEL REGULATIONS AND BENEFITS

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CHAPTER 9-01. DEFINITIONS AND COVERAGE

9-01-01. Definition of Terms. The following terms in this title shall have the following meaning unless the context clearly indicates otherwise:

1. **Appointing Authority:** The department head, or with respect to the department heads, the Board of City Commissioners.

2. **Basic Salary:** References in this title to basic salary or to basic monthly compensation for purposes of establishing employees' contributions or assessments and for purposes of determining pension benefits shall include the amount of the assessment by the employee whether by payroll deduction or payroll reduction.

3. **Child or Children:** The surviving issue of a deceased active or retired employee or the child or children legally adopted by a deceased employee prior to his or her retirement from active service, or by an employee now retired prior to the date this plan takes effect.

4. **Classifications:** Grouping positions which are substantially similar in duties and responsibilities into classes.

5. **Class of Positions:** A group of one or more positions sufficiently similar in duties, authority and responsibility to justify the positions in the class, and the same class title, qualifications and schedule of pay to all positions in the group.

6. **Commission:** The civil service commission provided for by Chapter 40-44 of the North Dakota Century Code as amended and provided for by this chapter.

7. **Demotion:** A change in status from a position in one class to a position in another class having a lower rank, lesser duties or responsibilities or a lower maximum salary.

8. **Department Head:** A person classified as the head of a department pursuant to the city classification schedule.

9. **Eligible:** A person whose name is on an employment list for a specified class.

10. **Employment List:** A list of names of persons arranged in the order of final examination ratings who have

qualified through suitable entrance examinations for employment in a specific class of positions.

11. Examination: Employment applications, written or oral tests, background investigations, oral interviews, fitness tests, or any other device used to determine the fitness or qualifications of applicants for a position.

12. Full-time Employee: Any employee employed for 40 hours per week or more.

13. Gender: The masculine pronoun used in this plan shall include the feminine.

14. Part-time Employee: Any employee employed for less than 40 hours per week or for a period of less than 1200 hours in each calendar year. Part-time employees are not included in civil service and may be terminated at will.

15. Position: Any office and place of employment where the duties and responsibilities appertaining thereto are exercised by one person.

16. Probationary Period: A working test period during which the appointing authority is required to note the work and conduct of all new employees and determine whether they merit regular appointments.

17. Promotion: A change in status from a position in one class to a position in another class having a higher rank, greater duties or responsibilities or a higher maximum salary.

18. Regular Part-time Employee: Any employee employed for less than 40 hours per week but more than 1200 hours for each calendar year.

19. Salary Plan: The schedules of pay for each class of positions in such departments, showing minimum and maximum rates.

20. Widow or Husband: The surviving spouse of a marriage contracted prior to retirement of a deceased employee from active service, or of a retired employee contracted prior to the date this plan takes effect.

(Ord. 4367, 04-23-91)

9-01-02. Employees Covered; Exceptions. All full-time appointive employees and officers of the city are included in, and come under, the civil service system except:

1. Elective officers and officials.

2. Members and employees of commissions and boards appointed by the board of city commissioners.

3. Part-time employees or regular part-time employees as defined in this chapter.

4. The city attorney.

5. Volunteers appointed to serve without salary or other compensation, except per diem or other reasonable expenses.

6. The city administrator.

7. The assistant city administrator.

(Ord. 4367, 04-23-91; Ord. 4580, 02-15-94; Ord. 5512, 06-13-06)

9-01-03. ADA Coordinator for Employment. The human resources director shall be the designated Americans with Disabilities Act (ADA) coordinator for employment matters.
(Ord. 4479, 01-19-93)

CHAPTER 9-02. CIVIL SERVICE COMMISSION

9-02-01. Creation of Commission. There is created for the City of Bismarck a civil service commission of three members.
Reference: NDCC 40-44-01

9-02-02. Qualifications. The members of the civil service commission must be citizens of the city who advocate the principle of basing employment in the city service upon merit and fitness for the job. The provisions of Section 9-03-01 of the Code of Ordinances of the City of Bismarck shall apply to members of the civil service commission as well as persons holding an office or place in any department under the civil service system.

9-02-03. Appointment. The members of the commission shall be regularly appointed for a five-year period by the board of city commissioners following any selective process the board deems appropriate.
Reference: N.D.C.C. 40-44-05

9-02-04. Term of Office. The term of office is for a period of five years beginning on July 1st of the year of appointment. Any person appointed to fill a vacancy occurring prior to the expiration of the term of a commissioner is appointed for the remainder of the term.
Reference: N.D.C.C. 40-44-05

9-02-05. Removal of Members. Any member of the commission may be removed by a majority vote of the board of city commissioners.

9-02-06. Quorum. Two commissioners constitute a quorum for the transaction of official business.

9-02-07. Organization. The civil service commissioners shall meet and organize as a commission and shall hold such meetings as are called by the chairman. The commission shall elect its own chairman and determine the order of business for the conduct of its meetings.

9-02-08. Duties. The duties of the commission are:

1. To propose to the board of city commissioners for adoption by ordinance such rules and regulations deemed necessary for the administration of this title.

2. To hear appeals on disciplinary cases and other personnel matters as provided in this title.

3. To make investigations either on complaint or on its own motion concerning any matters touching the administration of this title and otherwise represent the public interest in the improvement of personnel administration and the protection of civil service principles.

4. To make reports to the board of city commissioners on its activities together with recommendations for improvement of the civil service system.

5. To make any special analysis or reports requested by the board of city commissioners.

*Reference: N.D.C.C. 40-44-07
(Ord. 4173, 12-08-87)*

9-02-09. Clerk and Duties. The city auditor is ex officio clerk of the commission.

The ex officio clerk shall be available to the civil service commission and the personnel director for consultation and assistance in managing the civil service system.

Reference: N.D.C.C. 40-44-05

9-02-10. Administrative Officer and Duties. The personnel director serves as the administrative officer of the civil service system and is accountable to the civil service commission for all duties relating to administration of the civil service system.

The personnel director shall:

1. Attend all meetings of the commission and maintain a record of its official proceedings.

2. Prepare and recommend rules and regulations to the commission for the execution of the provisions of this title which shall become effective after adoption by the board of city commissioners.

3. Administer such rules and regulations after adoption by the board of city commissioners.

4. Determine the detailed procedures for administering the civil service rules and regulations, provided, however, that the civil service commission may review the procedures on its own motion.

5. Develop and install the appropriate forms and records for the various personnel activities. Every appointment, transfer, promotion, demotion, suspension, dismissal, change of salary rate, and other temporary or permanent change in status of employees in civil service must be reported to the personnel director on such forms as the director may prescribe.

9-02-11. Scope of Title. The rules and regulations provided for by this title shall cover the following:

1. Preparation, installation and maintenance of the duties classification plan covering all positions in the civil service.

2. Establishment of procedures governing the public announcement of vacancies and competitive examinations and application for employment.

3. Selection and/or preparation of examinations and the development of other techniques designed to assist in passing on the qualification of applicants for original appointment to, or promotion within, city departments.

4. Establishment of original entrance, promotional and reemployment lists containing the names of eligibles.

5. Certification and appointment of eligibles to fill vacancies.

6. Provision for a probationary period.

7. Promotion from a position of lesser to one of greater responsibility.

8. Demotion from a position of greater to one of lesser responsibility.

9. Transfer from a position in one department to a position in the same class in another department.

10. Standardization of hours to work.

11. Attendance and leave regulations.

12. Establishment, installation and maintenance of a performance appraisal system.

13. Establishment, installation and maintenance of employee health and welfare programs.

14. Termination of the service of employees including layoffs due to lack of work or funds, suspension for disciplinary purposes and dismissals for just cause.

15. Certification of payrolls.

16. Preparation, installation and maintenance of necessary personnel records and forms.

Reference: N.D.C.C. 40-44-07

CHAPTER 9-03. CIVIL SERVICE PROGRAM

9-03-01. Political Activity.

1. An employee may not engage in political activities while on duty or in uniform. However, nothing in this section shall prevent any employee from becoming or continuing to be a member or officer of a political club or organization, from attendance at a political meeting, from contributing to or otherwise supporting candidates of his or her choice, or otherwise engaging in political activities while off duty, or from enjoying entire freedom from all interference in casting his or her vote or favoring candidates.

2. For the purposes of this section, "political activities" means those activities defined in Section 39-01-04 of the North Dakota Century Code.

9-03-02. Prohibition of Discrimination. An employee or applicant for employment may not be appointed, promoted, demoted, dismissed, or in any way favored or discriminated against on the basis of race, color, religion, sex, national origin, age, physical or mental handicap or status with regard to marriage or public assistance.

Reference: N.D.C.C. 14-02.4

9-03-03. Prohibition of Corruption. A person may not willfully make any false statement, certificate, mark, rating or report in regard to any test, certificate, or appointment held or made under the Bismarck civil service system or in any manner commit or attempt to commit any fraud preventing the impartial execution of the personnel rules. A person seeking employment or promotion may not either directly or indirectly give, tender, or pay any money, service or other valuable consideration to any person for or on account of or in connection with a test, proposed appointment, promotion, or proposed promotion. Provided, however, that nothing in this title shall prohibit persons from securing such employment through duly licensed employment agencies, and paying reasonable fees therefor.

9-03-04. Residence Requirements. Residence requirements for entrance to examinations may be determined by the Board of City Commissioners.

9-03-05. Nepotism.

1. A person related by blood or marriage to the president of the board of city commissioners, or any member of the board or the civil service commission, the personnel department, or the finance director, may not be appointed to any position or service in the city. Under no circumstances will persons who are related be employed in the same department, if one person has supervisory responsibilities in any respect with regard to the other person.

2. If two city employees, one having supervisory responsibilities with regard to the other, employed within the same department, marry, it is required that one or the other of them resign from his or her position with the city government. The person resigning will be eligible to have his or her name placed on the reemployment list for employment with one of the other city departments.

3. Provisions of these rules do not affect or bar continued employment or promotion of those relatives, as herein enumerated, employed by the city prior to the election or appointment of the city officials or employees specified in paragraph 1 of this section.

4. For purposes of this section, "related" means spouse, child, parent, grandchild, grandparent, brother, sister, half-brother, half-sister, or the spouses of any of them. All relationships include those arising from adoption.

(Ord. 4301, 10-31-89)

9-03-06. Vacancies. The personnel director must make a public announcement of all vacancies in positions in the civil service utilizing bulletin boards, the official city newspaper, professional publications, societies, and/or such other methods as are deemed appropriate for the vacant position.

The announcement shall specify the title and salary range of the position and the typical duties to be performed, the minimum qualifications required, final date on which applications will be received, and any other pertinent data.

Notwithstanding the provisions of this section, the personnel director with the approval of the civil service commission may establish a continuous recruitment program for any classes of positions in which applications may be accepted at any time. With the approval of the civil service commission vacancies may be announced by title of positions only.

9-03-07. Rejection of Application. The personnel director shall establish the procedures for notifying applicants of their rejection for employment or acceptance to participate in further tests of fitness based on preliminary examination, and may, for cause, reject any application prior to the date of the tests for which the applicant has filed.

The personnel director, subject to review by the civil service commission, may refuse to examine any applicant, or after examination remove his or her name from an employment list, or refuse to certify for appointment any applicant whom he or she finds lacks any of the preliminary requirements established for class of position.

9-03-08. Competitive Examinations. The relative fitness of applicants for appointment to or promotion within the civil service must be determined by competitive examinations. Examinations may consist of written applications, written or oral tests, including oral interviews, or any combination thereof, and may include consideration and rating of any or all of the following qualification factors: Education, training, experience, general adaptability, special aptitudes, physical fitness as determined by physical tests and medical examination, knowledge, skill, personality, character and such other qualifications as may be deemed necessary by the clerk and the civil service commission for the satisfactory performance of the duties of the respective positions. The clerk shall see that competitive examinations are administered in a manner to give all applicants equal opportunity to demonstrate their fitness.

9-03-09. Rating. The personnel director shall establish a system for scoring or rating the competitive examinations, subject to the approval of the commission. Sound measurement techniques and procedures shall be used in rating the results of

tests and determining the eligibility of applicants. Minimum ratings for eligibility for any position may be established.

9-03-10. Employment List. On the basis of ratings obtained in the competitive examinations, applicants must be ranked in the relative order of their final earned rating. In case two or more applicants obtain the same or equivalent final earned rating, applicants shall be given preference and ranked ahead of other applicants obtaining the same or equivalent final earned rating in the following order:

1. Full-time employees of the city.
2. Former employees who held a position in the civil service who were laid off without cause or who resigned in good standing within the previous twelve months.
3. Part-time or provisional employees of the city employed continuously for a period of three months or more.
4. Other applicants.

Eligible lists shall remain in force for one year unless depleted before that time, except that the personnel director may cancel any list less than one year old by substituting a more recently prepared list if deemed advisable.

9-03-11. Veterans' Preference. Notwithstanding section 9-03-10, veterans who are North Dakota residents shall be entitled to preference, over all other applicants, pursuant to N.D.C.C. Section 37-19.1-02, as follows:

1. No distinction or discrimination may be made in the administration of an examination because the applicant may be a veteran. Upon completion of an examination with a passing grade, the applicant must be informed of a veteran's right to employment preference. The applicant shall be required to furnish proof of his or her status as a veteran and, if disabled, proof of disability.

2. Upon receipt of proof required in subsection 1, on a one hundred point scale, the examiner shall add five points for a veteran and ten points for a disabled veteran to the examination grade of the applicant. The total is the veteran's examination score. If a scale other than a one hundred point scale is used, the examiner shall add five percent of the scale used for a veteran and ten percent of the scale used for a disabled veteran to the examination grade of the applicant. The total is the veteran's examination score.

3. The appointing authority shall designate a prescribed number of eligible individuals to be considered from the top number of the group of eligible candidates in rank order, from highest to lowest, based on the applicant's final score.

4. The appointing authority shall fill the position from the group of eligible individuals to be considered. The appointing authority may further inquire into the qualifications of each eligible individual from within that group through means including interviews, background checks, and skills testing.

5. The provisions of this section do not apply to the appointment of a chief deputy or private secretary of an elected or appointed official or to an internal promotion process.

6. An employee of the City is not eligible for preference when applying for a different job within the City.

*Reference: N.D.C.C. Section 37-19.1-02
(Ord. 5523, 06-27-06; Ord. 5845, 09-13-11)*

9-03-12. Removal from List. The personnel director may remove the name of an eligible from a list if:

1. He or she is found to lack any of the preliminary requirements established for the examination for the class of position.

2. He or she is so disabled as to be rendered unfit for the performance of the class.

3. He or she has been convicted of any felony or other crime involving moral turpitude within the previous ten years.

4. He or she has made a false statement of material fact in an application.

5. He or she has previously been dismissed from any public service for delinquency, misconduct, or other similar cause.

6. He or she has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment.

7. He or she has directly or indirectly obtained information regarding examinations to which an applicant is not entitled.

8. He or she has failed to submit an application correctly or within the prescribed time limits.

9. He or she has taken, without permission, part of the compilation, administration, or correction of the examination.

10. He or she is not a citizen of the United States of America.

11. He or she has otherwise violated provisions of these regulations.

12. The eligible cannot be located by postal authorities.

13. The eligible declines an appointment or states that he or she no longer desires consideration for a position with the city.

14. If three offers of a probationary appointment to the class for which the registrar was established have been declined and satisfactory evidence of such declination submitted to the personnel director.

The personnel director shall notify the eligible of this action and the reasons therefor by mail to the last known address. An eligible's name shall be reinstated on the register upon showing of cause satisfactory to the personnel director or in accordance with a decision of the civil service commission upon appeal.

9-03-13. Provisional Appointments. If necessary to prevent the stoppage of public business or inconvenience to the public, but not otherwise, provisional appointments of persons not on the eligible list may be approved by the appointing authority in the event that no appropriate eligible list has been prepared for the position or that those on the eligible list are not immediately available.

Provisional appointments may be made for a term of no longer than three months. Pension rights or civil service benefits may not be given for service rendered under the provisional appointment, except that provisional appointees are entitled to the same annual leave and sick leave allowance that are provided for full-time employees.

9-03-14. Appointment Procedure. Whenever an appointing authority desires to fill a vacancy in any position in the civil service, the appointing authority shall notify the personnel director giving pertinent facts relative to the duties, responsibilities and qualification requirements of the position

which is to be filled. The personnel director shall certify to the appointing authority the names of the three highest candidates on the employment list.

If the list does not contain three names, the appointing authority may make the appointment only from such lesser number of candidates as are eligible. If more than one vacancy is to be filled, two additional names must be certified for each additional vacancy. The appointing officer shall give notice in writing to the personnel director of the person or persons appointed and effective date.

This section does not apply to recruitment and appointment of department heads.

9-03-15. Probationary Period. All appointments must be made for a probationary period of at least one year. The probationary period does not include any time served by an employee under a provisional appointment. At the end of every three months during the probationary period the appointing authority shall submit a rating of the probationary employee's performance on a report form prescribed by the personnel director. The appointing authority may extend the probationary period beyond one year upon notice given to the personnel director.

During the probationary period an employee may be dismissed by the appointing authority at will. Notice of such release with the reasons therefor must be immediately submitted to the personnel director who may, in the case of an employee serving a probationary period after promotion, reinstate the name of the employee to the employment list for the former position.

An employee shall retain probationary status until the appointing authority shall certify on a prescribed form to the personnel director, at the end of the probationary period, that the employee be retained and placed in the civil service. The personnel director shall notify the appointing authority at least ten days prior to the expiration of one year of the probationary period.

(Ord. 6315, 04-10-18)

9-03-16. Transfers. The civil service commission may authorize the transfer of an employee in the civil service from one position to another position in the same class. Transfers are permitted only with the consent of the civil service commission and the appointing authorities concerned.

Transfer of employees from positions in lower to higher classes and from higher to lower positions shall be deemed promotions and demotions respectively, and made subject only to the provisions of these rules governing such changes in employees' status.

9-03-17. Civil Service Ratings. The personnel director shall prepare, install and maintain a system of service ratings whereby the appointing authority reports on the performance of all employees in the civil service. Such reports shall be a part of the procedures dealing with promotion, demotion, salary advancement, and other changes in employee status.

9-03-18. Work Conditions. The personnel director shall review working conditions and propose to the civil service commission programs designed to make city employment attractive.

9-03-19. Hours of Work. The standard hours of work for employees in the civil service are such as may be determined by the board of city commissioners.

9-03-20. Absence Records and Reports. The personnel director shall maintain records of the absences of city employees. Each absence from duty of any employee or appointed official must be reported by the administrative officer of each department to the personnel director on the prescribed form.

9-03-21. Evaluation or Appraisal of Performance. It is the policy of the City of Bismarck to evaluate on a fair and equitable basis the performance of its employees. Appraisals must be done in accord with policies and procedures promulgated by the board of city commissioners and without due regard to race, sex, age, national origin, religion, political affiliation or other non-merit factor.

The City of Bismarck will establish and carry out this policy by utilizing the appraisal system set forth in this section:

1. General purposes of the appraisal system:
 - a. Provide supervisors and employees with an opportunity to discuss work and related matters.
 - b. Inform employees as to how well they are performing their present duties and responsibilities and to offer suggestions, assistance and support in helping employees perform their job more effectively.
 - c. Encourage employees to evaluate their own performance, in terms of specific or general problems, work unit and individual objectives, and career goals and interests.
 - d. Provide meaningful data to administrators in making key personnel management decisions such as

salary increases, transfers, promotions, layoffs and disciplinary actions.

e. Assist supervisors in recognizing employee capabilities, potential, interests and goals.

f. Provide supervisors with an opportunity to sense causes of and problems in job satisfaction and morale among employees individually or as a group.

Through proper use of this performance appraisal system, an increased and meaningful exchange of thoughts and ideas can occur between employees and supervisors.

2. The appraiser. Each employee covered by this system will be appraised by that person in the best position to do so. Normally, the appraiser will be the employee's immediate supervisor who has the responsibility for assigning, directing and reviewing the work of the employee. If, because of rotational assignments or other reasons, it is not clear to whom an employee reports, a decision will be made as to whom is best able to appraise the employee based on actual observation. An employee's peers may also be utilized in the appraisal process.

3. Who is appraised. All regular full-time and regular part-time employees will be appraised.

4. Probationary appraisal. An appraisal of performance will be made every three months prior to the conclusion of the probationary period. The appraiser will be geared to helping the new employee, and will allow sufficient time before the end of probationary period for the appraiser to note improvements in performance. A final appraisal at the end of the probationary period will be made to provide the basis for retention or termination of the employee.

5. Frequency of appraisal. Appraisals will be completed once a year for all regular full-time and regular part-time employees who have completed the probationary period. An appointing authority may order additional appraisals at appropriate intervals to address substandard performance or as a part of progressive discipline or any disciplinary action.

6. Appraisal follow-up. A periodic informal discussion between the supervisor and the employee will be part of the formal appraisal system. This discussion will focus on progress the employee has made in improving performance in weak areas, where job assignments can be changed to better meet employee goals, progress made in

meeting work objectives, and other areas of interest or concern.

7. The appraisal form. A separate appraisal form will be completed for each employee. Every supervisor or appraiser should be thoroughly familiar with the form, how to use it and what its purposes are. A "performance appraisal guide" shall be prepared and available for this purpose. It is important to the validity of the system that supervisors be:

a. As objective as possible in completing appraisal forms, and

b. Realistic in determining performance levels for individual performance.

8. Signatures. The employee and the appraiser will sign and date the form after they have together discussed the appraisal form and made written comments.

9. Higher level review. After completion of the performance appraisal discussion between the appraiser and employee, there will be at least one further review of the completed performance appraisal form at a higher level of supervision or management, unless the appraiser is a department head or city commissioner.

10. Distribution of the employee appraisal form. After all levels of review have taken place, the employee will receive a copy of his or her appraisal, a copy will be retained internally within the department and a copy will be placed in the employee's personnel file.

(Ord. 4989, 05-25-99; Ord. 5136, 10-09-01)

9-03-22. Employee Assistance Program.

1. Statement of policy:

a. The city has a vital concern for its employees' personal problems when those problems impair an employee's ability to perform satisfactorily in his or her job. These may be problems such as alcohol abuse, drug abuse, or other behavior/medical disorders which either endanger fellow employees, or result in poor interpersonal relations, excessive absenteeism, and/or deteriorating work performance.

b. The purpose of this policy is to assist employees with disabling personal problems, in finding help and assuring that the employee will receive the same careful consideration and assistance that is presently extended to city employees who become ill or disabled.

c. It is expected that a city-wide program will enlighten employees that the social stigma of alcohol and other drug dependence is without foundation and that these conditions are treatable as are most other disorders.

d. The city's concern with alcohol and other drug abuse or dependency is strictly limited to its effects on the employee's performance on the job. Whether an employee chooses to drink or not drink socially is the individual's concern.

e. For the purpose of this policy, alcoholism and other drug dependency is defined as an illness in which an employee's consumption of alcoholic beverage or drugs definitely and repeatedly interferes with his or her job performance and/or health.

2. Procedures:

a. It is the responsibility of all supervisors of all departments of the city to implement this policy, and to follow procedures which assure that no employee with an alcohol or drug dependency will have his or her job security or promotional opportunities jeopardized by referral or request for consultation and/or treatment. (An employee who complies with a request for consultation, submits to an evaluation, and satisfactorily completes treatment as indicated, may not be suspended, demoted or terminated, or have his or her job security or promotional opportunities jeopardized by such referral, evaluation or by any absence from work necessary for treatment.)

b. It is recognized that supervisors do not have the professional qualifications to permit judgment as to whether or not an employee has alcohol or other drug dependency. Referral to Human Resources for consultations and subsequent offer of assistance will be based upon unsatisfactory work performance resulting from an apparent medical or behavioral problem, regardless of its nature.

c. An employee must report to Human Resources for consultation when directed to do so by a supervisor or appointing authority.

d. An employee's continued refusal to report for consultation and/or refusal of assistance or refusal to submit to an evaluation and/or treatment if

indicated will be dealt with in accord with section 9-06-02.

e. It is expected that through this policy, employees who suspect that they may have a medical, alcohol, or drug-related problem, even in its early stages, will be encouraged to voluntarily seek consultation and, when indicated, follow through with prescribed treatment.

f. The confidential nature of medical records of employees with alcohol or drug-related problems will be preserved to assure privacy in the same manner as all other medical records.

g. Implementation of this policy will not require, or result in, any special social regulations, privileges, or exemptions from the standard administrative practices applicable to job performance requirements, except as provided in paragraph (a) of this section.

3. Applicability. The program and policies contained in this section apply to all full-time employees of the City.

4. Employee Assistance Program.

a. General statement:

City of Bismarck recognizes that some employees may experience a wide range of personal problems that may adversely affect their job performance. It is also recognized that most personal problems can be dealt with successfully when identified early and referred for appropriate care. The purpose of the Employee Assistance Program is to provide these services leading to appropriate care.

The Employee Assistance Program is designed to deal with a broad spectrum of human problems, such as personal problems, interpersonal problems, financial concerns, problems with addiction, parent/child conflict, marital problems, and other concerns. Most employees may overcome personal problems without professional assistance, but at times professional counseling and/or referral to appropriate community agencies may be beneficial. The Program provides problem assessment and short-term counseling, not to exceed five sessions, and referral to community resources when deemed appropriate.

The cost for assessment, short-term counseling, and referral is covered by City of Bismarck. If costs are incurred for other services that are not covered by City of Bismarck or other benefits, those costs will be the responsibility of the employee.

Employees will be given prompt, careful, confidential consideration.

b. Below are the guidelines for utilizing the Employee Assistance Program:

1) City of Bismarck is concerned with an employee's personal problem when the problem adversely affects job performance.

2) The Employee Assistance Program extends to each employee, regardless of job title or responsibility.

3) Since problems at home can affect job performance, the Employee Assistance Program is also available to each employee's immediate family on a self-referral basis. If an employee or immediate family member has personal problems that may benefit from assistance, the employee or immediate family member is encouraged to use the program. Immediate family is defined as spouse and/or children living in the same household as the employee. Dependent children living outside the home, i.e. college students, will be considered eligible for EAP services. Children under age 18 will be provided an initial assessment by phone, however, will be required to have parental permission to receive EAP services beyond the initial phone contact.

4) Should a performance problem occur at work, employees may be encouraged to seek assistance to determine if personal problems are causing unsatisfactory job performance. Supervisors will not be able to insist that the employee seek Employee Assistance Program assistance. If performance problems are corrected, no further action will be taken. If performance problems persist, the employee will be subject to the normal progressive discipline procedures.

5) All employees are responsible for using this program, when appropriate, to assist in resolving job performance deficiencies related to

personal problems. Supervisors and administrative representatives have been given a comprehensive orientation session. The session identified the goals and objectives of the Employee Assistance Program. Also, the mechanism for referring employees for services through the Employee Assistance Program was explained. Employees received a general orientation session to provide information regarding the Assistance Program. This information provides an overview of what services are available and how to make use of those services. New employees will receive information about the Employee Assistance Program at the time of their initial orientation provided by Human Resources. Quarterly representatives from the provider will be available to provide a group orientation for all new employees if so requested by Human Resources. Annual supervisory sessions will also be made available for any new supervisory staff.

6) When an employee voluntarily comes for assistance, no contact is made with the supervisor. When the employee comes for services at the request or referral of a supervisor, there will be a follow-up contact with the referring supervisor which will discuss whether the employee came for the appointment and whether the employee is following general recommendations relating to treatment/follow-up services.

7) Participation in the program will not jeopardize an employee's job security or promotional opportunities.

All records and discussions of the personal problem will be handled in a confidential manner. These records will be considered as EAP records and will be maintained by the EAP. Records maintained by the EAP are not part of the providers regular medical record. They will not be released without the expressed, written consent of the employee. These records will not become a part of the employee personnel file.

8) Employees and members of their immediate families will receive an assessment and up to four additional counseling sessions for further assessment, evaluation, or treatment of that problem. During the contract period, employees and members of their immediate families may experience multiple problems for which

assessment, evaluation or treatment by the program may be appropriate. Under the provisions of this program, an eligible employee and/or member of his/her immediate family would receive additional services from the program providing the new problem is not related to a situation for which services have already been received. The employee and/or family member will receive an assessment of their new problem and up to four additional assessments.

Depending on the type of problem experienced, a referral to a community agency or resource may be the most appropriate service provided.

9) Where necessary, leave will be granted in accordance with established procedure. If a supervisor refers an individual based on performance concerns or an employee requests of the supervisor to be referred, sick leave will be granted.

10) The employee may request that his/her supervisor attend counseling sessions with the employee.

c. This program and the policies contained herein shall be implemented under a city-wide program under the administration of Human Resources which shall:

1) Enlist the active cooperation and participation of the city health officer and all supervisory personnel in the implementation of the program.

2) Train supervisory personnel in documentation and referral procedures as set forth in this program on the basis of deteriorating work performance.

3) Receive and evaluate (with the aid and counsel of the city health officer) those cases referred by supervisory personnel.

4) Refer those cases which indicate a need for professional evaluation and/or treatment to the appropriate community service agencies both public and private, for evaluation and/or treatment.

5) Oversee the implementation of the provisions of this program with supervisory personnel in order to assure (a) the referral of employees with deteriorating work performance and (b) that referred individuals follow through with prescribed treatment.

6) Report progress of referred cases to the appropriate appointing authority.

7) Issue further directives and instructions as are required, consistent with the policies enunciated in this section.

8) Supervisory personnel shall cooperate and actively participate in this program by documenting and referring cases of deteriorating work performance of employees under their supervision.

9) All evaluations ordered by an appointing authority or Human Resources shall be at no cost to the employee.

(Ord. 4126, 2-10-87; Ord. 4382, 07-02-91)

9-03-23. Sexual Harassment. The City of Bismarck will not tolerate sexual harassment in the work place by any of its employees. The city shall adopt a policy regarding sexual harassment and that policy will be available upon request from the human resources department. Any person aggrieved by any conduct of a City of Bismarck employee that is alleged to be sexual harassment and a violation of Title VII of the Civil Rights Act of 1964 or NDCC Chapter 14-02.4 may file a grievance pursuant to City Ordinance 9-06-06(1), if the grievant is a city employee and 9-06-06(2), if the grievant is a non-city employee.

(Ord. 4480; 01-19-93)

CHAPTER 9-04. CLASSIFICATION AND SALARY PLANS

9-04-01. Development and Implementation of Classification Plan. The personnel director shall analyze all positions in the civil service and develop a duties classification plan which groups together all positions with substantially similar duties and responsibilities, to be known as classes of positions. For each class of position, a class specification shall be prepared which contains a descriptive class title, examples of the work commonly performed in a position in the class, and a statement of the minimum qualifications for appointment to a position in the class.

The personnel director shall present the proposed classification plan to the civil service commission. The plan when adopted by the commission shall constitute the official

duties classification plan for the civil service in the city. The personnel director, subject to review by the civil service commission, shall allocate each position to its appropriate class of positions. The class title applying to the various positions shall be used in all payrolls and other official communications. Employees shall be notified of the class to which the position they hold has been allocated and may within five days following such notification submit in writing to the civil service commission a request for a review of the allocation. The civil service commission shall make an allocation of the position and its decision as to the correctness of the allocation shall be final.

9-04-02. Updating of Plan. The duties classification plan must be kept current as follows:

1. The personnel director shall study the duties and responsibilities of all new positions created and place such positions in their appropriate class.

2. Whenever a change is made in the duties and responsibilities of a position which is intended to be permanent, it must be so reported to the personnel director who shall investigate the position and place it in its appropriate class.

3. The personnel director shall periodically check duties classification of any position in the service and may combine existing classes or abolish old ones. The establishment of new classes or the abolition of old ones shall be submitted to the civil service commission for its approval.

4. An employee may at any time request in writing to the civil service commission a review of the allocation of his or her position. Such request shall give the employee's reason for review, and the civil service commission may in its own discretion proceed to investigate the position. The decision of the civil service commission based on such investigation as to the correctness of the allocation shall be final.

9-04-03. Age Limits. The class specification for positions in the civil service may contain age limits as the civil service commission may determine, provided such limits are consistent with federal and state laws and regulations.

9-04-04. Development and Implementation of Salary Plan.

1. The personnel director shall prepare and submit annually for the approval of the civil service commission a salary plan applicable to all positions in the civil

service. In establishing a salary plan consideration shall be given to wages prevailing in business and industry in this city and vicinity for comparable positions, the pay levels of other municipalities and public units in the area, and the city's ability to pay. The salary plan must be comprised of salary ranges showing minimum and maximum rates for each class of position.

2. Following approval of the salary plan by the civil service commission, the personnel director shall submit the plan to the board of city commissioners for its approval.

3. Upon approval by the board of city commissioners, the plan shall constitute the official salary plan for the civil service of the city, and no base salary in excess of the maximum rate or less than the minimum rate established for a class or position may be paid to any employee holding a position in that class.

9-04-05. Certification of Payrolls. The personnel director shall audit the payment of salaries of persons in the civil service for compliance with the salary plan. The personnel director shall require a certificate on all payrolls from the department heads that persons named therein have complied with the regulations governing uniform hours of work, holidays and leaves of absence.

9-04-06. Longevity Pay Plan. The longevity pay plan expired and terminated on 12-31-94.
(Ord. 4366, 04-23-91; Ord. 4575, 01-04-94; Ord. 6308, 02-13-18)

CHAPTER 9-05. LEAVE PROGRAM

9-05-01. Holidays.

1. Holidays for full-time and regular part-time employees of the city are those designated by state law for state employees except that Sundays shall not be considered as holidays.

2. Regular full-time employees whose duties require them to work a regular shift on a holiday must be given an additional eight hours of vacation leave at the discretion of the department head.

3. Employees who have a regular work week in excess of forty hours per week are granted additional time at a rate adjusted to take into account the extra hours so that their holiday computation is comparable to a forty hour per week employee.

4. Shift workers whose duties require them to work an irregular work week, including, but not limited to, police and fire department employees, must be given additional hours of annual leave if they do not work on a holiday because the holiday coincides with a regularly scheduled time off.

5. Regular part-time employees shall be granted a prorated amount of holiday time payable at their usual rate of compensation.

(Ord. 4367, 04-23-91; Ord. 4493, 04-13-93; Ord. 4707, 07-25-95)

9-05-02. Annual Leave. Annual leave shall accrue and be taken as follows:

1. Eligible regular full-time employees working a forty hour week (average) are granted annual leave with pay based upon their total years of service with the city except that an employee who leaves employment with the City and then returns to employment with the City more than five years after leaving employment shall not retain the prior years of service for purposes of determining annual leave. Annual leave shall be awarded as follows:

<u>Years of Service</u>	<u>Hours per Month</u>	<u>Hours Per Year</u>
0-3	8	96
4-7	10	120
8-12	12	144
13-18	14	168
Over 18	16	192

An hour of leave shall be used for each hour of absence from employment.

2. Fire employees who have a regular work week in excess of 40 hours per week are granted annual leave at a rate adjusted to take into account the extra hours so that their annual leave is comparable to the leave granted for 40 hour per week employees. Eligible fire employees are granted annual leave with pay based upon their total years of service with the city except that a fire employee who leaves employment with the City and then returns to employment with the City more than five years after leaving employment shall not retain the prior years of service for purposes of determining annual leave. Annual leave shall be awarded as follows:

<u>Years of Service</u>	<u>Hours per Month</u>	<u>Hours Per Year</u>
0-3	10.6	127.2
4-7	13.3	159.6
8-12	15.9	190.8
13-18	18.6	223.2
Over 18	21.2	254.4

An hour of leave shall be used for each hour of absence from employment.

3. Annual leave accrued in excess of three hundred sixty hours for all covered employees or four hundred seventy-seven hours for fire fighters is forfeited without compensation on the day before the start of the last full pay period of any year.

4. Annual leave with pay may be taken by the employee at such time as approved by the head of the department. Hours for the days the employee would normally have off shall not be counted in the vacation period. No employee may waive leave for the purpose of receiving double compensation.

5. Regular part-time employees shall earn a prorated number of working days vacation payable at their usual rate of compensation.

(Ord. 4189, 1-05-88; Ord. 4488, 03-03-93; Ord. 5377, 01-11-05; Ord. 5710, 03-24-09)

9-05-03. Sick Leave. Sick leave shall accrue and be granted as follows:

1. Sick leave with pay shall accrue to each forty hour per week employee at the rate of eight hours of leave for each full month of service. Employees who have a regular work week in excess of forty hours shall accrue sick leave in hours that are comparable to an equivalent day in an average work week.

2. A maximum of twenty-four hours sick leave may be taken in the event of death in the immediate family of a regular full-time employee or a regular full-time employee's spouse. Fire employees who have a regular work period of 204 hours shall be granted 48 hours of leave. As used in this section, "immediate family" means spouse, parent, grandparent, child, step-child, brother or sister, grandchild, step parent, or step brother or sister.

3. Sick leave may be accumulated to a maximum of 960 hours, 1272 hours for fire employees who have a regular work period of 204 hours. During each year, the excess of earned and unused hours over 960/1272 will be paid annually at a rate of 40%. The balance of hours and the employee's rate of pay will be determined as of 12-31 of each year. Payment shall be made to each qualifying employee on the first payroll following the hour calculation. At the time of payment, the employee's sick leave hours will be reduced to 960/1272.

4. An hour of sick leave shall be used for each hour of absence from employment. Sick leave is granted as a privilege and not as a right, and the claim for such leave is subject to such investigation as the department head deems necessary. If an employee takes sick leave for three or more consecutive calendar days or more than 24 consecutive hours of leave, the department head may request a doctor's certificate stating the cause of the incapacity before the employee may return to work.

5. Regular part-time employees shall be granted a prorated amount of sick leave payable at their usual rate of compensation.

6. Sick leave shall not be used in combination with any other employer-funded program that results in payment to an employee in excess of the employee's base salary. Sick leave shall be on the basis of hours actually used. In the case of a Workers Compensation claim, sick leave will be used until Workers Compensation time-loss benefits begin. After the injured employee begins receiving Workers Compensation time-loss benefits, he or she will be placed on injury leave pursuant to City Ordinance 9-05-04.

7. A total of 60 hours sick leave per year may be taken in the case of the illness of a member of the employee's immediate family that requires the employee to care for that individual. Fire employees who have a regular work period of 204 hours shall be granted 79.5 hours of leave. The care authorized by this section may not include any visitation but must be for actual care.

(Ord. 4367, 04-23-91; Ord. 4353 and Ord. 4354, 07-21-92; Ord. 4487, 03-30-93; Ord. 4493, 04-13-93; Ord. 5491, 03-28-06; Ord. 5522, 07-27-06; Ord. 5631, 09-11-07; Ord. 5776, 06-22-10; Ord. 5884, 05-22-12)

9-05-04. Injury Leave.

1. Injury leave shall be available to any employee eligible for the City's leave program and who was injured on the job and is receiving Workers Compensation time-loss benefits.

2. Any employee injured on the job and receiving Workers Compensation time-loss benefits will be placed on injury leave until such time a determination is made as to when and if he/she can return to work. While on injury leave, the employee will use sick leave in an amount that when combined with the Workers Compensation time-loss benefits, will bring the employee to regular salary. All normal benefits (pension, leave, health insurance) will continue to accrue.

3. The injured employee on injury leave will have his or her status reviewed on an at-least-monthly basis by

the City Health Officer or his designee and will submit to examinations as requested by the City Health Officer or designee. The City Health Officer may promulgate a policy concerning the review of these cases.

4. As opportunities become available, an injured employee may be asked to return to work in a temporary position, doing work that has been cleared by the City Health Officer.

(Ord. 4454, 07-21-92; Ord. 4465, 08-18-92; Ord. 4886, 02-10-98)

9-05-05. Maternity Leave. Section 9-05-05 relating to maternity leave is hereby repealed.

(Ord. 4692, 06-13-95)

9-05-06. Jury Leave. An employee summoned for jury duty shall receive an amount which will equal the employee's regular rate of pay when added to the compensation received for jury duty, or the employee may take annual leave and retain the amount received for jury duty.

9-05-07. Military Leave. Military leave must be granted in accordance with Sections 37-01-25 and 37-01-25.1 of the North Dakota Century Code for full-time employees who:

1. Are members of the National Guard;
2. Are members of the armed forces reserves of the United States of America;
3. Shall be subject to call into federal service by the President of the United States; or
4. Shall volunteer for such service.

When ordered by proper authority to active non-civilian employment the employee is entitled to a leave of absence from the civil service without loss of status or efficiency rating. If such employee has been continuously employed for ninety days immediately preceding the leave of absence, he/she is eligible to receive up to 160 hours (212 for firefighters) each calendar year without loss of pay.

During a full or partial mobilization of the reserve and National Guard forces, the employee is entitled to thirty days leave of absence with pay less any paid leave of absence previously granted during the calendar year pursuant to this section.

Leave shall be utilized only for scheduled work hours missed for qualifying military duty.

(Ord. 5344, 07-13-04)

9-05-08. Leave of Absence. Leave of absence may be granted as follows:

1. A leave of absence without pay may be granted to an employee pursuant to the Family and Medical Leave Act of 1993 (FMLA) for the following reasons:

a. The birth of a child and in order to care for that child.

b. Adoption of a child or placement for adoption or foster care.

c. To care for a spouse, child, or parent with a serious health condition; or

d. The serious health condition of the employee.

2. To be eligible, an employee must qualify under the FMLA. The City shall adopt a policy regarding medical and family leave of absences pursuant to the terms and requirements of the FMLA.

3. Leave of absence or leave without pay may be granted for educational purposes, but only if it is determined by the department head that such leave will be beneficial to the employee's department and that it will not interfere with the normal operation of the department.

4. Employees who fail to return to duty upon completion of a leave of absence without pay shall be considered as separated from the civil service without prejudice on the intended date of return. If an employee chooses not to return to work for reasons other than a continued serious health condition, the City will require the employee to reimburse the City the amount it paid for the employee's health insurance premium during the leave period.

5. A leave of absence without pay may be granted to an employee serving in the legislature in conformance with a City Commission-approved legislative service policy.

6. A leave of absence without pay may be granted to an employee with no available leave balance at the discretion of the department.

(Ord. 4593, 03-29-94; Ord. 5884, 05-22-12)

CHAPTER 9-06. EMPLOYEE SEPARATION AND DISCIPLINE

9-06-01. Employee Separation. An appointing authority may:

1. Lay off an employee in the civil service whenever necessary because of a change in duties or organization or shortage of work or funds. The order in which employees will be laid off must be determined in accordance with the employee's performance ratings with the city. Employees thus separated from the service through no fault of their own shall, upon request, be placed on the employment list for their former classes of positions as provided by this article.

2. Suspend a full-time employee without pay up to a period of thirty days within one calendar year. If an exempt employee is suspended it must be for a minimum of one week.

3. Demote a full-time employee from a position in one class to a position in a lower class.

4. Dismiss a full-time employee for cause.

5. Place an employee on paid or unpaid leave pending the investigation of a complaint or incident which may subject the employee to discipline or pending treatment resulting from an on-duty incident.

6. Take such other progressive discipline or disciplinary action or actions as are deemed appropriate.

(Ord. 4971, 04-27-99; Ord. 5136, 10-09-01; Ord. 5884, 05-22-12)

9-06-02. Causes for Suspension, Demotion or Dismissal. An employee may be subject to disciplinary action for conduct impairing their performance or that of the city government, including, but not limited to:

1. Consumption of alcoholic beverages or unlawful use of any drugs, narcotic or other controlled substance while on duty, or reporting to work when under the influence of intoxicants or any narcotic or controlled substance.

2. Failure to follow orders of superiors.

3. Inability to get along with fellow employees or the citizenry resulting in interference with the performance of duties of any employee.

4. Being absent from work without permission or failure to report to the supervisor or department head when one is absent.

5. Being habitually tardy.

6. Continued failure to perform the assigned work in a satisfactory manner.

7. Being habitually wasteful of material, property or working time.

8. Failure to pay just debts to the best of one's ability and means, if such failure impairs job performance or interferes with normal and efficient city government.

9. On or off duty conduct that is felonious or a misdemeanor involving dishonesty regardless of whether or not the person is charged or convicted with a criminal offense.

10. Violation of city ordinances or official written policies adopted by the board of city commissioners or departments.

11. Careless or negligent operation of city vehicles or equipment.

(Ord. 4187, 12-22-87; Ord. 4587, 03-15-94; Ord. 4971, 04-27-99; Ord. 5136, 10-09-01)

9-06-03. Notice of Suspension, Demotion or Dismissal. A written notice of proposed suspension, demotion or dismissal, stating the reason for the action and when it is to be effective, must be given to the official or employee or mailed by registered or certified mail to the last known place of residence no later than 48 hours prior to the proposed action. A copy of the notice of suspension, demotion or dismissal must be immediately filed with the personnel director. The notice shall state that the employee has a right to an informal hearing with the personnel director, the appointing authority and the employee and/or employee's representative, and an opportunity to be heard at that hearing prior to termination upon request. Following the hearing, if requested, the proposed action may be affirmed, modified or withdrawn.

9-06-04. Appeal.

1. Within five business days after the effective date of suspension, demotion or termination and receipt of written notice of suspension, demotion or termination, issued pursuant to section 9-06-03, or written response to a grievance made pursuant to section 9-06-06(1), any official or employee affected may appeal in writing to the civil service commission for a hearing. The written notice or written response shall contain a statement advising the employee of the right to a hearing upon request made within five days.

2. The commission, upon receiving notice of appeal, shall set a date for a hearing, which may not be less than

seven nor more than sixty days after the date of the filing of the notice of appeal, unless otherwise ordered by the commission. Notice of the time and place of the hearing must be served upon the appealing official or employee or his/her legal counsel and upon the authority imposing the suspension, demotion, termination, or other action complained of, personally or by certified mail or to legal counsel by regular mail with an affidavit of service at least five business days before the date of the hearing.

3. The commission shall hear the appeal at the time set by it. The commission may hear the evidence and facts to be presented by the appealing official or employee and the authority imposing the suspension, demotion or dismissal, or other action complained of in any order it deems appropriate so long as all parties are given a full opportunity to be heard. The evidence of the parties may be through sworn testimony of witnesses or through exhibits introduced through sworn witnesses. After all parties have presented their evidence and have been given a full opportunity to be heard, the commission may call other persons or witnesses to ascertain the on which it deems proper.

4. After having completed the hearing and any investigation which it has chosen to undertake, the commission shall decide the appeal on its merits. The commission can fully uphold the discipline imposed upon the appealing official or employee. The commission can find that there was no just cause for the imposition of the discipline and it can reinstate the employee to the status held immediately prior to the discipline and restore to the employee any pay lost as a result. The commission can also find that it was proper to discipline the employee or official, but that the level of discipline imposed did not fit the offense committed. It may therefore impose upon the employee or official some lesser form of discipline. Or, the commission can issue its findings and an appropriate order with respect to an appeal of a grievance filed pursuant to section 9-06-06(1). In all cases the commission shall issue its written findings, conclusions and order within five days of the hearing. A hearing may be continued from time to time by the commission.

5. The commission shall also hear appeals under the procedures set forth above from any employee or official aggrieved as a result of disciplinary action or from any employee or official who alleges discrimination due to race, color, creed, sex, age, marital status, national origin, or physical disability or other grievance relating to employment laws, rules, regulations or ordinances, or any other grievance relating to personnel matters.

6. A decision of the commission is final.
(Ord. 4173, 12-08-87; Ord. 5130, 08-28-01)

9-06-05. Compulsory Retirement. An appointing authority may dismiss or involuntarily retire a full-time employee who is physically or mentally unable to perform the duties of the employee's position. The appointing authority may direct any employee to submit to an examination of the city health officer and two other physicians named by the personnel director for the purpose of determining if the employee is physically or mentally unable to perform the duties of the employee's position. Refusal to be examined shall be deemed grounds for suspension, demotion or dismissal. Upon the concurring report of at least two physicians that the employee is physically or mentally unable to perform his or her duties, the employee may be dismissed or involuntarily retired. The employee may appeal the action pursuant to section 9-06-04.
(Ord. 4114, Sec. 1, 12-02-86)

9-06-06. Grievance Procedure.

1. An employee who is adversely affected by an action or decision of another employee, other than suspension, demotion or termination that may be in violation of any federal, state or city law, statute, regulation, ordinance or written policy may file a grievance utilizing the following procedures:

a. The employee shall first discuss the grievance with the immediate supervisor or department head, unless the grievance involves unlawful acts or conduct by the supervisor or the department head. If the grievance involves unlawful acts or conduct on the part of the immediate supervisor or department head, the employee shall discuss the grievance with the department head or file a written grievance with the human resources director, respectively.

b. If the grievance is not resolved by informal discussion or agreement, the employee may file a written grievance, setting out in detail the action or decision complained of and the specific law, statute, regulation, ordinance or written policy which has been violated, with the human resources director. The human resources director shall immediately provide a copy of the written grievance to the city commissioner assigned the portfolio for the department in which the employee is employed, and the department head. The commissioner, department head, human resources director and the employee and/or the employee's representative, shall meet and attempt to resolve the grievance within ten business days of the filing of

the grievance. On or before the fifth business day following the date of the meeting, the human resources director shall issue a written reply to the grievance and provide copies to all of the parties involved in the matter. The written reply shall set forth any agreement that was reached between the parties, or the response of the department head and/or city commissioner to the grievance.

c. If the employee is not satisfied by the written reply, the employee may, within five business days of receipt of the reply, submit an appeal in writing to the Civil Service Commission, by filing it in the office of the human resources director. The commission shall thereupon schedule a hearing and proceed in accordance with the procedures set forth in section 9-06-04.

d. An employee may not utilize the procedure under this section to appeal or grieve a letter of reprimand, a letter of caution, an oral reprimand or any other personnel action unless that action satisfies the requirements of paragraph one.

2. An employee of the city or any other person who has knowledge of suspected violations of laws, ordinances, city policies or department rules and regulations, sexual harassment, or other misconduct or impropriety by any city employee or department head may file a complaint. A complaint may not be filed regarding a matter of prosecutorial discretion or regarding a case in Municipal Court. A complaint may be filed utilizing the following procedures:

a. The employee or other person shall file a written report setting out in detail the nature of the violation with the human resources director and the department head with responsibility for the employee in question. If the allegations involve misconduct or impropriety on the part of a department head, the commissioner assigned the portfolio for that department shall be substituted for the department head.

The human resources director shall immediately provide a copy of the complaint to the commissioner assigned the portfolio for that department and the city attorney. The city attorney shall promptly review the complaint to determine if it should properly be referred to the state's attorney because it alleges violation of a criminal law or Chapter 34-11.1 of the North Dakota Century Code. Unless the complaint is referred to the state's attorney, within

ten business days of the receipt of the complaint, the human resources director shall meet with the department head or city commissioner and employee or other person to attempt to resolve the complaint. On or before the fifth business day following that meeting, the department head, or city commissioner if the complaint was against the department head, shall issue a written reply to the complaint, and provide copies to all of the involved parties. The written reply shall set forth the agreement or understanding made to resolve the complaint, if one was achieved, or proposed action, including referral to the board of city commissioners.

b. If the employee or other person is not satisfied by the written reply, he or she may, within five business days of receipt of the reply, submit an appeal in writing to the board of city commissioners by filing a written appeal in the office of the city auditor. The commission shall thereupon schedule a hearing and proceed substantially in conformance with the procedures set forth in section 9-06-04 that are applicable to the civil service commission.

3. Any applicant for employment with the City of Bismarck who may be adversely affected by the decision of an employee of the City of Bismarck relating to alleged protected class discrimination, ADA violations, or other statutory or constitutional violations may file a grievance using the following procedures:

a. The applicant shall file a written report of the grievance with the human resources director. The human resources director shall immediately provide a copy of the report to the city commissioner assigned to the portfolio in which the applicant had applied for employment and to the department head of that department. Within 10 business days of receipt of the written grievance, the human resources director, city commissioner, department head and the applicant and/or the applicant's representative shall meet and attempt to resolve the grievance. Within five business days of the meeting, the human resources director shall issue a written reply to the grievance and provide copies to all involved parties. The reply shall set forth any agreement that was reached between the parties or the response of the department head and/or the city commissioner to the grievance.

b. If the grievance is unresolved or the applicant is not satisfied by the written reply, the applicant may, within five business days of receipt of the written reply, submit an appeal in writing to the

board of city commissioners by filing it with the human resources director. The board of city commissioners shall set a time to hear the appeal not less than five or more than 30 days after receipt of the notice of appeal.

c. The board of city commissioners shall hear the appeal at the time set by it. The commission may hear the evidence and facts presented by each party in any order it deems appropriate so long as all parties are given full opportunity to be heard. The evidence presented may be through sworn testimony of witnesses or through exhibits authenticated and introduced through sworn witnesses. After all parties have been given a full opportunity to present all of their evidence, the board of city commissioners may call other persons or witnesses to give information relevant to the matter and may continue the hearing to undertake any further investigation which it deems proper. After completing the hearing and investigation, the board of city commissioners shall decide the appeal on its merits. The commission shall issue its written findings, conclusions and appropriate order within 5 days of the closing of the hearing.

(Ord. 4173, 12-08-87; Ord. 4477, 01-19-93; Ord. 5135, 10-09-01; 05-10-05)

CHAPTER 9-07. CITY EMPLOYEE PENSION PLAN

9-07-01. Assessments; Pick-up Provision. Each full-time employee of the city who is a participant in the city employee pension plan pursuant to section 9-07-11 shall be assessed and required to pay monthly an amount of five percent upon the amount of the basic salary that would be paid to the employee but for this provision, which shall be deducted and retained out of such salary.

The amount of assessment provided under this section 9-07-01 shall be applied by a payroll reduction agreement to be remitted through an executed trust agreement or contract with an insurance company in such a manner so far as practicable as to be exempt from any federal or state income taxes on the assessment or on investment income until an act of constructive receipt of these funds occurs.

Although these assessments may be designated as employee contributions, they are deemed to have been paid to the city employee's pension fund by the city in lieu of contributions by the employee; and the employee has no option to receive the contributed amounts directly.

(Ord. 5153, 01-08-02)

9-07-02. Board of Trustees and Duties. The superintendent of the park district, and city librarian, and all other department heads, with the exception of the chief of police, shall constitute the board of trustees for the management of the pension and retirement system and the fund created for the same. The city administrator shall be president and the city investment officer shall be an ex-officio member and act as treasurer of the board. The trustees shall not receive any compensation for their services as members of the board. The director of human resources shall act as clerk of the board and shall keep such records and accounts as the board may direct. The board shall have such powers and perform such duties as may be provided by law. Department heads shall mean those persons classified as department heads pursuant to the City Classification schedule.
(Ord. 5041, 04-11-00; Ord. 5153, 01-08-02)

9-07-03. Investment of Surplus. At the end of each fiscal year, the board of trustees may invest any surplus left in the city employee's pension fund, but no part of the moneys realized from any tax levy shall be used for any purpose other than the payment of pensions. Surplus funds may be invested in:

a. interest-bearing bonds of the United States or the state, 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;

b. investments with any federally-insured bank or savings and loan association; or

c. other investments by selecting a funding agent or agents and establishing an investment agreement contract regarding surplus funds. The contract shall authorize the funding agent or agents to hold and invest funds for the board. 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.

All securities, in which moneys belonging to the fund are invested, shall be deposited with the treasurer of the board for safekeeping.

In no event shall any part of the city employees' pension fund be paid to or become vested in the city, or be used for any purpose whatsoever other than for the exclusive benefit of contributing members, former contributing members and their beneficiaries, except as provided in section 9-07-21 and section 9-07-22 of this chapter, except that contributions of the city may be returned if:

1. The contribution was conditioned on the qualification of the plan under Internal Revenue Code Section 401(a), the plan does not so qualify and the contribution is returned within one year after the plan is found to not so qualify; or

2. The contribution was made due to a mistake of fact, the contribution is returned within one year of the mistaken payment of the contribution and the return satisfied the requirements of the last paragraph of this section.

The return of a contribution (or portion of a contribution) to the city satisfies the requirements of this paragraph if the amount so returned (a) does not exceed the excess of the contribution over the amount which could have been contributed had there been no mistake of fact, (b) does not include the net earnings attributable to such excess contributions, and (c) is reduced by any net losses attributable to the excess contribution.

(Ord. 5041, 04-11-00; Ord. 5153, 01-08-02)

9-07-04. Gifts, Devises or Bequests. The board may take by gift, devise or bequest any money or property, real or personal, or other thing of value for the benefit of the fund. All rewards in moneys, fees, gifts or emoluments of any kind or nature that may be paid or given to the city or to any employee, except when allowed to be retained or given for endowing a medal or other permanent or competitive reward on account of extraordinary services rendered by the city or any employee shall be paid into the pension fund.

(Ord. 5153, 01-08-02)

9-07-05. Military Service. Any employee of the city subject to the provisions of this chapter who has resigned or who resigns to serve in the Army, Navy, Air Force or Marine Corps, or Reserves of the United States, or who has been selected for training 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, and who applies for reemployment with the city within 90 days of discharge, shall have the period of military service included as part of his or her period of service in the city, provided that credit allowed for military service shall not exceed a total of five years. Any employee who seeks credit for military service shall, upon return to the employment of the city, pay into the fund for each year of military service, five percent of the last full year's salary paid by the city, or five percent of annual military pay, whichever is less. Notwithstanding the foregoing, effective December 12, 1994, contributions, benefits and service credited with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u).

(Ord. 5041, 04-11-00)

9-07-06. Retired Employees, Re-employment. An appointing authority may hire any former employee of this city retired under the provisions of this chapter 9-07, chapter 9-08 or the Bismarck Fire Fighters Relief Association pension plan to work part-time for the City. The salary received by any person so employed plus the pension received under the terms and provisions of this chapter 9-07, Chapter 9-08 or the Bismarck Fire Fighters Relief Association pension plan shall not exceed the regular pay for the position from which the employee has retired. All part-time positions must be filled pursuant to chapter 9-03.

(Ord. 5153, 01-08-02; Ord. 5571, 01-09-07)

9-07-07. Exemption. All pensions paid under the provisions of this chapter shall not be subject to assignment and shall be exempt from liability for debts of the person to or on account of whom they are paid, and shall not be subject to seizure upon execution or other process. The foregoing prohibition on assignment and seizure and exemption from liability expressly includes exemption from assignment, seizure or liability pursuant to any domestic relations order, including divorce decrees and child or spousal orders.

(Ord. 5153, 01-08-02)

9-07-08. Fiscal Year. The fiscal year for the fund shall commence on the first day of January of each year and terminate on the 31st day of December of the same year. The fiscal year shall be considered the limitation year for purposes of Internal Revenue Code Section 415.

(Ord. 5041, 04-11-00)

9-07-09. Contribution of City. The board of city commissioners shall annually levy a tax as may be needed to maintain the pension fund in a sound actuarial condition, the proceeds of which shall be placed in the pension fund. The levy shall be in addition to any other levies authorized by law for a general purpose; provided, however, that when there is a sufficient balance in the fund to meet any proper or legitimate charges that may be made against it, the city shall not be required to levy a tax for this purpose.

(Ord. 5153, 01-08-02)

9-07-10. Actuary. The pension and retirement system shall be based upon actuarial tables and the board of trustees shall, from time to time, be empowered to engage the services of an actuary for the purpose of determining the condition of the fund. The actuary shall be paid by check issued by the board of trustees in a reasonable amount determined by the board of trustees.

In calculating the actuarial equivalence of one form of benefit to another, the interest rate to be used shall be 7% and

the mortality table to be used shall be the "applicable mortality table", defined as the mortality table based upon the Internal Revenue Service Commissioner's standard table used to determine reserves for group annuity contracts issued on the date as of which present value is determined, as published by the Department of the Treasury for purposes of Section 417(e)(3) of the Code.

Notwithstanding the foregoing, effective January 1, 2000, for the purpose of determining the lump sum value of a participant's benefit, the interest rate shall be the "applicable interest rate", defined as the annual interest rate on 30-year United States Treasury Securities as published by the Department of the Treasury and Federal Reserve as in effect for the second month (the "look-back month") preceding the first day of the "stability period." The "stability period" shall be the plan year.

(Ord. 5225, 01-07-03)

9-07-11. Persons Included. Every full-time employee, other than sworn members of the police department, non-sworn members of the police department who begin employment before December 31, 2006 and members of the firefighter's relief association, shall be a participant of the city employee pension fund. Effective January 1, 2007, every full-time employee of the city shall be a participant in the city employee pension fund except:

(a) members of the police department who are sworn officers;

(b) members of the firefighter's relief association; and

(c) employees who perform any fire suppression duties.

(Ord. 4308, 12-19-89; Ord. 5153, 01-08-02; Ord. 5555, 10-24-06)

9-07-12. Notice of Change in Status. It shall be the duty of the clerk or the department head in the absence of the clerk to give immediate notice of the change in pension status of any employee of the city, other than employees of the police department and fire department, resulting from death or other cause, and he or she shall furnish such other information concerning any employee, other than policemen and firemen, as the board of trustees may require.

9-07-13. Regulations Governing Fund. The board of trustees shall be authorized from time to time to adopt such regulations as may be deemed necessary, consistent with the terms and provisions of this chapter 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 chapter 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 chapter and to all rules and regulations adopted by the board of trustees and shall furnish to the board of trustees such information affecting the employee's status as a member or beneficiary of the system as the board of trustees may require.

9-07-14. Refunds of Contributions. Any employee of the city subject to the provisions of this chapter who has contributed to the pension retirement system adopted under Chapter 207 of the Session Laws of 1941, and continued under Chapter V of the Revised Ordinances of 1966 and subsequent amendments, and discontinued, who leaves employment shall be entitled upon application at the time of termination of employment, to a refund of the employee's "entire interest." The employee's entire interest shall be the sum of all an employee's contributions made under Section 9-07-01 plus interest earnings at two and one-half percent (2.5%) per annum on contributions made through 1972 and plus interest earnings at five percent (5%) per annum on all employee contributions thereafter. No rights to pension benefits shall accrue to an employee or to the employee's beneficiary during any leave of absence, except that this clause shall not be construed to deprive any employee of pension benefits accrued during a regular annual leave or sick leave or absence duly granted, as provided by this chapter, nor to an employee referred to in section 9-07-05.

Notwithstanding any other provision of this chapter, effective with respect to distributions on or after March 28, 2005, any account with a value that exceeds \$1000, including any rollover amounts, shall not be distributed to the participant during his/her lifetime and prior to his/her normal retirement date as set in this chapter, without the consent of the participant.

Any member of this pension retirement system who leaves the employment of the city and elects a refund in accordance with this section forfeits all rights to any other form of benefit under this pension retirement system.

(Ord. 4944, 09-22-98; Ord. 5153, 01-08-02; Ord. 5376, 12-28-04; Ord. 5572, 03-13-07)

9-07-15. Pension Eligibility; Computations; Required Distributions. Every employee of the city who is a participant in the city employee pension plan pursuant to section 9-07-11 or the surviving spouse of any such employee who is deceased, provided said participant or said surviving spouse has made application to the board of trustees and been certified by the board of trustees as entitled to a pension, shall be paid out of the city employees' pension fund an amount determined in accordance with the following:

1. Any contributing member who has served in active employment until the age of sixty-two shall be eligible for a monthly pension benefit computed by multiplying the member's highest thirty-six (36) months (or total months of employment, if less) of average basic monthly compensation times one and three-quarters percent (1.75%) and then multiplying the resultant product by the member's number of full and fractional years of recognized service as defined in section 9-07-23. Notwithstanding the foregoing, with respect to any member who terminated employment or retired from the city prior to January 1, 2002, the phrase "highest thirty-six (36) months" in the foregoing sentence shall be replaced with "highest sixty (60) months." In computing benefits accruing on and after January 1, 2005, "one and three-quarters percent (1.75%)" in the foregoing sentence shall be replaced with "two and one-quarter percent (2.25%)."

On or after January 1, 2005, a participant may elect to apply the two and one-quarter percent multiplier to all or any portion of the participant's recognized service prior to January 1, 2005. The additional cost to the pension fund of applying the higher multiplier to such prior recognized service, as determined by the plan's actuary, shall be borne by the participant. The participant may elect one or more of following options to fund said additional cost:

(a) The participant may make an irrevocable election to contribute to the plan, on a pre-tax basis, compensation not yet earned. The election shall specify an amount to be deducted and retained from the participant's salary each month, for payment to the pension fund, until said additional cost has been funded. Such contributions shall be deemed to have been paid to the plan by the city in lieu of contributions by the employee and the employee shall have no option to receive the contributed amounts directly.

(b) The participant may make an irrevocable election to contribute all or any portion of any payout for sick, vacation or other paid time off accrued but not taken up to the day prior to the date of the election, to fund said additional cost. Such a contribution shall be deemed to have been paid to the plan by the city in lieu of contributions by the employee and the employee shall have no option to receive the contributed amounts directly.

(c) The participant may make an election to transfer all or any portion of the participant's excess account, as described in paragraph 4 of section 9-07-22, to fund said additional cost.

The City intends that the foregoing provisions shall be applied and interpreted consistent with applicable law. Any election made pursuant to the foregoing provisions shall be effective only to the extent consistent with applicable law, this ordinance and any rules and procedures adopted by the City. Participants making any election under this section shall do so in compliance with any rules and procedures adopted by the City and any limits imposed by other sections of this ordinance or applicable law.

Effective for benefits accruing after December 31, 1988, the annual compensation of each employee taken into account under the plan shall not exceed \$200,000 (\$150,000 for fiscal years beginning on or after January 1, 1996), as adjusted by the Secretary of the Treasury for cost of living adjustments. For fiscal years prior to January 1, 1997, in determining the compensation of an employee, the rules of Internal Revenue Code Section 414(9)(6) shall apply, except that the term "family" shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the plan year.

2. Any contributing member who has served at least sixty (60) months of contributing service, whether or not consecutive, in the employment of the city, shall be entitled to retirement. Notwithstanding the foregoing, with respect to any member who terminated employment or retired from the city prior to January 1, 2002, the phrase "sixty (60) months of contributing service" in the foregoing sentence shall be replaced with "one hundred twenty (120) months of contributing service." Such member's retirement benefit shall be equal to the member's accrued normal retirement benefit as determined under the preceding subsection 1 of this section 9-07-15 multiplied by the actuarial equivalent factor set forth below, interpolated to the nearest monthly age at the date upon which the pension benefits commence.

<u>Age</u>	<u>Actuarial Equivalent Factors</u>
50	.4287
51	.4567
52	.4870
53	.5199
54	.5557
55	.5947
56	.6373

57	.6841
58	.7353
59	.7918
60	.8542
61	.9233
62	1.0000

3. Any contributing member who has served at least sixty (60) months of contributing service, whether or not consecutive, in the employment of the city and who terminates employment with the city, may elect a deferred retirement benefit to commence at the elected age from age fifty to age sixty-two. Notwithstanding the foregoing, with respect to any member who terminated employment or retired from the city prior to January 1, 2002, the phrase "sixty (60) months of contributing service" in the foregoing sentence shall be replaced with "one hundred twenty (120) months of contributing service." The deferred benefit shall be equal to the member's accrued normal retirement benefit as determined in subsection 1 of this section 9-07-15, (based upon service and compensation to the date of employment termination) multiplied by the actuarial, equivalent factor set forth in subsection 2 of this section 9-07-15, determined on the basis of the age elected for deferred benefits to commence hereunder.

4. To the surviving spouse as long as he or she remains unmarried, a sum equal to two-thirds of the pension to which the employee would have been entitled under the provisions of sections 9-07-15(1)-(3), 9-07-16 and 9-07-17, not less, however, than \$65.00 per month, provided the employee served at least sixty (60) months of contributing service, whether or not consecutive, in the employment of the city. Notwithstanding the foregoing, with respect to any member who died prior to January 1, 2002, the phrase "sixty (60) months of contributing service" in the foregoing sentence shall be replaced with "one hundred twenty (120) months of contributing service." A spouse shall be considered to be a surviving spouse only if the spouse was married to the employee when the employee separated from service, or, if such separation occurred prior to the plan's effective date, the spouse was also married to the employee on the effective date of the plan.

5. A surviving spouse has the option to withdraw all of the employee's entire interest as defined in Section 9-07-14. A surviving spouse who elects to withdraw an employee's entire interest does so in lieu of all benefits outlined in subsection 4 of this section 9-07-15.

6. If there is no surviving spouse, then the employee's entire interest, as defined in Section 9-07-14, will be paid to the employee's estate.

7. Distribution Upon Death.

(a) Death After Commencement of Benefits. If distribution of an employee's interest has begun in accordance with subsection 1, 2, or 3 of this section 9-07-15, and the employee dies before his or her entire interest has been distributed to him or her, then the remaining portion of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of his or her death.

(b) Death Before Commencement of Benefits. If an employee dies before distribution of the employee's interest has begun, the entire interest of the employee shall be distributed no later than December 31 of the calendar year which contains the fifth anniversary of the date of the employee's death. This five-year distribution rule shall not apply if (1) any portion of the employee's interest (or of the deceased spouse of such employee, as provided below) is payable to or for the benefit of a designated beneficiary, as determined pursuant to Proposed Treasury regulations § 1.401(a) (9)-1 (or any successor regulation); (2) this portion will be distributed over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of the designated beneficiary), and (3) the distributions commence no later than December 31 of the calendar year immediately following the calendar year in which the employee died. If the surviving spouse is the beneficiary and dies before payments are deemed to have begun, the five-year distribution rule and the exception to it stated in this paragraph are to be applied as if the surviving spouse were the employee and the spouse's date of death shall be substituted for the employee's date of death.

This five-year distribution rule shall also not apply if: (1) the portion of the employee's interest to which the surviving spouse is entitled will be distributed over the life of the surviving spouse (or over a period not extending beyond the life expectancy of the surviving spouse, which may be recalculated not more frequently than annually); and (2) the distributions commence on or before the later of December 31 of the calendar year in which the employee would have attained age 70½ or December 31 of the calendar immediately following the calendar year in which the employee died.

(c) Designated Beneficiary. For purposes of this section, the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

8. Required Distributions. Notwithstanding any provision of the plan to the contrary, the following provisions shall control:

(a) General Rule. The entire interest of each employee shall be distributed to such employee not later than the required beginning date (as defined below), or will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

(b) Required Beginning Date. For purposes of this section, the term "required beginning date" means April 1st of the calendar year following the later of (i) the calendar year in which the employee attains age 70 1/2; or (ii) the calendar year in which the employee retires.

(c) Designated Beneficiary. For purposes of this section, the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

(d) Continued Service Beyond Age 62. An employee may at his or her request be continued in employment beyond age 62. In such event, no retirement benefit will be paid to such employee until he or she actually retires, subject, however, to any required minimum distributions pursuant to this section 9-07-15. Such an employee shall continue to accrue credit for years of service after attainment of age 62, and changes in average basic monthly compensation shall also be taken into account.

(e) With respect to distributions under the city employee pension plan made for calendar years beginning on or after January 1, 2001, the plan will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the plan to the contrary. This amendment

shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

(Ord. 4299, 10-17-89; Ord. 5041, 04-11-00; Ord. 5153, 01-08-02; Ord. 5376, 12-28-04)

9-07-16. Cost of Living Adjustment Procedure. Persons receiving pension payments under the provisions of this chapter shall be eligible for cost of living adjustments in an amount determined by the board of trustees. The adjustment, if any, will be effective at the same time as the city employees' salary adjustment made in the same year. The adjustment may not exceed the lesser of:

1. The city employees' adjustments; or
2. 3%.

Cost of living adjustments shall be made in respect to pensioners and surviving spouses who are receiving pension benefits at the time the cost of living adjustments are made.

(Ord. 4878, 12-09-97; Ord. 5041, 04-11-00; Ord. 5153, 01-08-02)

9-07-17. Optional Settlements and Life Annuity Limitations. Any optional settlements under this plan shall be limited to the life expectancy of the participating member or the surviving spouse of the participating member. In no event is an "interest only" option permissible whereunder the total payout would extend beyond the life expectancy of the member and the member's spouse. The following restrictions and limitations shall apply to benefit payments.

1. Benefit Limited to Maximum Permissible Benefit. The Annual Benefit otherwise payable to a member at any time shall not exceed the Maximum Permissible Benefit. If the benefit the member would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the rate of accrual shall be limited, or the rate of accrual reduced, to a benefit that does not exceed the Maximum Permissible Benefit.

2. Adjustment if in Two or More Defined Benefit Plans. If the member is, or has ever been, a member of another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the city, the sum of the member's Annual Benefits from all such plans may not exceed the Maximum Permissible Benefit. Where the member's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the Maximum Permissible Benefit applicable at

that age, the city shall limit a member's benefit in accordance with the terms of the plans.

3. Definitions. For purposes of this Section 9-07-17, the following terms shall have the respective meanings set forth below, unless expressly provided for herein, and when the defined meaning is intended, the term is capitalized.

a. "Annual Benefit" means a benefit that is payable annually in the form of a Straight Life Annuity. Except as provided below, where a benefit is payable in a Straight Life Annuity, the benefit shall be adjusted to an actuarially equivalent Straight Life Annuity that begins at the same time as such other form of benefit and is payable on the first day of each month before applying the limitations of this Section 9-07-17. For a member who has or will have distributions commencing at more than one Annuity Starting Date, the Annual Benefit shall be determined as of each such Annuity Starting Date (and shall satisfy the limitations of this Section 9-07-17 as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other Annuity Starting Dates. For this purpose, the determination of whether a new Annuity Starting Date has occurred shall be made without regard to Regulations Section 1.401(b)-20, Q&A 10(d), and with regard to Regulations Section 1.415(b)-1(b)(1)(iii)(B) and (C).

No actuarial adjustment to the benefit shall be made for (1) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code Section 417(e)(3) and would otherwise satisfy the limitations of this Section 9-07-17, and the Plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Section 9-07-17 applicable at the Annuity Starting Date, as increased in subsequent years pursuant to Code Section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the

benefits paid in that form.

The determination of the Annual Benefit shall take into account benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Regulations Section 1.411(d)-4, Q&A-3(c), but shall disregard benefits attributable to member contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a Straight Life Annuity shall be made in accordance with (i) or (ii) below.

(i) Benefit forms not subject to Code Section 417(e)(3). The Straight Life Annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection (i) if the form of the member's benefit is either (1) a nondecreasing annuity (other than a Straight Life Annuity) payable for a period of not less than the life of the member (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or (2) an annuity that decreases during the life of the member merely because of (A) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (B) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).

(1) Limitation Years beginning before July 1, 2007. For Limitation Years beginning before July 1, 2007, the actuarially equivalent Straight Life Annuity is equal to the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and (II) 5% interest rate assumption and the applicable mortality table under Section 417(e)(3) of the Code for the calendar year in which the Annuity Starting Date occurs.

(2) Limitation Years beginning on or after July 1, 2007. For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent Straight Life Annuity is equal to the greater of (a) the annual amount of the Straight Life Annuity (if any) payable to the member under the Plan commencing at the same Annuity Starting Date as the member's form of benefit; and (b) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the member's form of benefit, computed using a 5% interest rate assumption and the applicable mortality table under Section 417(e)(3) of the Code for the calendar year in which the Annuity Starting Date occurs.

(ii) Benefit Forms Subject to Code Section 417(e)(3). The Straight Life Annuity that is actuarially equivalent to the member's form of benefit shall be determined under this paragraph if the form of the member's benefit is other than a benefit form described in subsection 3(a)(i) above. The actuarially equivalent Straight Life Annuity is equal to the greatest of (a) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the member's form of benefit, computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; (b) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the member's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table under Section 417(e)(3) of the Code for the calendar year in which the Annuity Starting Date occurs; and (c) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate and applicable mortality table, both as described in Section 417(e)(3) of the Code, divided by 1.05.

b. "Maximum Permissible Benefit" means, effective for Limitation Years ending after December

31, 2001, \$160,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a Straight Life Annuity. The new limitation shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a member's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

(i) Adjustment for Less Than 10 Years of Participation or Service: If the member has less than 10 years of participation in the Plan, the Maximum Permissible Benefit shall be multiplied by a fraction - (i) the numerator of which is the number of Years of Participation in the Plan (or part thereof, but not less than one year), and (ii) the denominator of which is ten (10). In the case of a member who has less than ten Years of Service with the city, the Maximum Permissible Benefit shall be multiplied by a fraction - (i) the numerator of which is the number of Years of Service with the city (or part thereof, but not less than one year), and (ii) the denominator of which is ten (10).

(ii) Adjustment for Benefit Commencement Before Age 62 or after Age 65: Effective for benefits commencing in Limitation Years ending after December 31, 2001, the Maximum Permissible Benefit shall be adjusted if the Annuity Starting Date of the member's benefit is before age 62 or after age 65.

(iii) Adjustment for Benefit Commencement Before Age 62:

(1) Limitation Years Beginning Before July 1, 2007. If the Annuity Starting Date for the member's benefit is prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the Maximum Permissible Benefit for the member's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the member's Annuity Starting Date that is the actuarial equivalent of the Maximum Permissible benefit (adjusted under subsection (i) for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following

produces the smaller annual amount: (a) the interest rate and mortality table (or other tabular factor) specified in the Plan; or (b) a five-percent (5%) interest rate assumption and the applicable mortality table as defined in the Plan.

(2) Limitation Years Beginning on or After July 1, 2007.

(A) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the member's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing Straight Life Annuity payable at both age 62 and the age of benefit commencement, the Maximum Permissible Benefit for the member's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the member's Annuity Starting Date that is the actuarial equivalent of the Maximum Permissible Benefit (adjusted under subsection(i) for years of participation less than ten (10), if required) with actuarial equivalence computed using a five-percent (5%) interest rate assumption and the applicable mortality table for the Annuity Starting Date as defined in the Plan (and expressing the member's age based on completed calendar months as of the Annuity Starting Date).

(B) Plan Has Immediately Commencing Straight Life Annuity Payable at both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the member's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing Straight Life Annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for

the member's Annuity Starting Date is the lesser of the limitation determined under subsection (b)(iii) and the Maximum Permissible benefit (adjusted under subsection (i) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the immediately commencing Straight Life Annuity under the Plan at the member's Annuity Starting Date to the annual amount of the immediately commencing Straight Life Annuity under the Plan at age 62, both determined without applying the limitations of this Section 9-07-17.

Notwithstanding the foregoing, no age adjustment to the Maximum Permissible Benefit shall be required for commencement of benefits before age 62 for any member who is a full-time employee of any police department or fire department that is organized and operated by the city to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of the city and with respect to whom the service taken into account in determining the amount of the benefit under the plan includes at least 15 years of service of the member. For purposes of this section, only the classification of the city, not the job classification of the member, is relevant in determining whether this paragraph applies.

(iv) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age 65:

(1) Limitation Years Beginning Before July 1, 2007. If the Annuity Starting Date for the member's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Maximum Permissible Benefit for the member's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the member's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under subsection (i)

for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (A) the interest rate and mortality table (or other tabular factor) specified in the Plan; or (B) a five-percent (5%) interest rate assumption and the applicable mortality table under Section 417(e)(3) for the calendar year in which the Annuity Starting Date occurs.

(2) Limitation Years Beginning on or After July 1, 2007.

(A) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing Straight Life Annuity payable at both age 65 and the age of benefit commencement, the Maximum Permissible Benefit at the member's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the member's Annuity Starting Date that is the actuarial equivalent of the Maximum Permissible Benefit (adjusted under subsection (i) for years of participation less than 10, if required), with actuarial equivalence computed using a 5% interest rate assumption and the applicable mortality table under Section 417(e)(3) for the calendar year in which the Annuity Starting Date occurs (and expressing the member's age based on completed calendar months as of the Annuity Starting Date).

(B) Plan Has Immediately Commencing Straight Life Annuity Payable at both Age 65 and the Age of Benefit Commencement. If the Annuity Starting Date for the member's benefit is after age 65 and occurs in a

Limitation Year beginning on or after July 1, 2007, and the plan has an immediately commencing Straight Life Annuity payable at both age 65 and the age of benefit commencement, the Maximum Permissible Benefit at the member's Annuity Starting Date is the lesser of the limitation determined under subsection 3(b)(iv) and the Maximum Permissible Benefit (adjusted under subsection (i) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing Straight Life Annuity under the Plan at the member's Annuity Starting Date to the annual amount of the adjusted immediately commencing Straight Life Annuity under the Plan at age 65, both determined without applying the limitations of this Section 9-07-17. For this purpose, the adjusted immediately commencing Straight Life Annuity under the Plan at the member's Annuity Starting Date is the annual amount of such annuity payable to the member, computed disregarding the member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing Straight Life Annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical member who is age 65 and has the same accrued benefit as the member.

(v) Notwithstanding the other requirements of this section, no adjustment shall be made to the Maximum Permissible Benefit to reflect the probability of a member's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the member prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the

member's death if the Plan does not charge members for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c), upon the member's death.

(vi) Minimum benefit permitted: Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a member under this Plan shall be deemed not to exceed the Maximum Permissible Benefit if:

(1) the retirement benefits payable for a Limitation Year under any form of benefit with respect to such member under this Plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the city do not exceed \$10,000 multiplied by a fraction - (a) the numerator of which is the member's number of Years (or part thereof, but not less than one year) of Service (not to exceed ten (10)) with the city, and (b) the denominator of which is ten (10); and

(2) the city has not at any time maintained a defined contribution plan in which the member participated (for this purpose, mandatory member contributions under a defined benefit plan, individual medical accounts under Code Section 401(h), and accounts for post-retirement medical benefits established under Code Section 419A(d)(1) are not considered a separate defined contribution plan).

c. "Straight Life Annuity" means an annuity payable in equal installments for the life of a member that terminates upon the member's death.

4. Application of Code Section 415. Notwithstanding any other provision of the plan, this Section shall be construed in a manner which is consistent with Code Section 415 (which is hereby incorporated herein.) and the rulings and regulations issued there under.

(Ord. 5041, 04-11-00; Ord. 5153, 01-08-02; Ord. 5225, 01-07-03; Ord. 5749, 12-22-09)

9-07-18. Money Drawn; How Paid; Report. All pensions paid and all moneys drawn from the pension fund under the provisions of this chapter shall be upon checks authorized by the board of trustees, and issued by the treasurer of the board, which shall designate the name of the person 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 invested. The report shall be made to the board of trustees and shall be filed with the clerk of the board.

9-07-19. Reduction of Pension. Whenever the amount realized from the tax levy, assessment upon salary, fees, gifts and grants as provided for, shall be insufficient to meet the demands of the withdrawals due to retirement or disability, the board of trustees shall have the power and authority, in order to safeguard the future of this plan and for the future purpose of ensuring that there shall be no accumulated liability upon the city for unpaid pensions, to make the adjustments and the apportionments of the pensions to be paid as in their judgment will safeguard the pension fund and protect the city from any accumulative liability for pension except such as is provided by the amount of levy authorized by the city employees' pension law. For that purpose and to that end the board of trustees may in their judgment make such reductions and apportionments in the payments of the amount to the employees entitled to a pension or their dependents as is available and increase contributions in a manner to safeguard the future of the pension plan.

9-07-20. Direct Rollovers

1. General Rule. If a "distributee" of any "eligible rollover distribution":

(a) elects to have such eligible rollover distribution paid directly to an "eligible retirement plan," and

(b) specifies the eligible retirement plan to which such eligible rollover distribution is to be paid (in such form and at such time as the city may prescribe), such eligible rollover distribution shall be made in the form of a "direct rollover" to the eligible retirement plan so specified by the distributee.

Notwithstanding the foregoing, this section 9-07-20 shall apply only to the extent the eligible rollover distribution would be includible in gross income if not transferred as provided above.

2. Definitions.

A "direct rollover" is an eligible rollover distribution that is paid directly to an eligible retirement plan for the benefit of the distributee.

"Distributee" means the employee or the surviving spouse of an employee.

An "eligible retirement plan" is an individual retirement account described in Internal Revenue Code Section 408(a), an individual retirement annuity (other than an endowment contract) described in Internal Revenue Code Section 408(b), a qualified defined contribution retirement plan that accepts rollover distributions, or an annuity plan described in Internal Revenue Code Section 403(a) that accepts rollover distributions. Notwithstanding the foregoing, if the distributee is the employee's surviving spouse, "eligible retirement plan" shall mean either an individual retirement account or an individual retirement annuity (other than an endowment contract).

For the purposes of the direct rollover provisions in this Section 9-07-20, for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p).

"Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of an employee in a qualified plan, provided, however, that an eligible rollover distribution does not include:

(a) any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, for the life or life expectancy of the distributee, or for the joint lives or life expectancies of the distributee and his or her spouse or designated beneficiary, or for a specified period of 10 years or more;

(b) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9), relating to minimum distribution requirements; or

(c) the portion of any distribution that is not includible in income.

3. Procedures.

(a) In General. The city may prescribe any procedure for a distributee to elect a direct rollover provided the procedure is reasonable. Such procedure may include any reasonable requirement for information or documentation from the distributee.

(b) Notice and Waiver of Notice Period. At least thirty (30) days and no more than ninety (90) days before making any distribution subject to this section 9-08-19, the city shall provide to the distributee a written explanation of the rules concerning direct rollovers, income tax withheld on distributions not rolled over, and any other information required by Internal Revenue Code Section 402(f) (the "402(f) notice"). Such distribution may commence less than 30 days after the 402(f) notice is given, provided that: (i) the city clearly informs the employee that the employee has a right to a period of at least 30 days after receiving the 402(f) notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and (ii) the employee, after receiving the 402(f) notice, affirmatively elects a distribution.

(c) \$500 Rule. A distributee may elect to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to have the remainder paid to the distributee only if the portion paid to the eligible retirement plan equals at least \$500.

(d) Direct Rollover to One Account Only. An eligible rollover distribution (or portion thereof) may be distributed in a direct rollover only to a single eligible retirement plan selected by the distributee.

(e) \$200 Rule. A distributee may not elect a direct rollover with respect to eligible rollover distributions during a year if such distributions are reasonably expected to total less than \$200.

(f) Method of Making a Direct Rollover. The city may accomplish a direct rollover by any reasonable means of direct payment to an eligible retirement plan including providing a distributee with

a check payable to the eligible retirement plan with instructions to the distributee to deliver the check to the eligible retirement plan.

(g) Default Option. If the distributee does not so elect or does not provide the required information in the form and at the time required by the city, the city shall direct that the distribution be made directly to the distributee and to withhold income taxes on such distribution equal to 20% of the value of such distribution (or such other amount provided under Internal Revenue Code Section 3405(c), as amended). Provided, however, that the city shall not make a distribution under this default option earlier than the date which is 60 days after the distributee is provided with the 402(f) notice. The city shall not withhold tax from an eligible rollover distribution if such distribution is not subject to a direct rollover election because the distribution was not reasonably expected to total \$200 in the year.

(h) Periodic Payments. If a distribution subject to this section 9-07-20 is to be paid in a series of periodic payments that are eligible rollover distributions, the following rules shall apply:

(i) a distributee's election to make or not make a direct rollover with respect to a single payment shall control whether a direct rollover is made of all subsequent payments unless the distributee changes the previous election; and

(ii) the city shall provide the 402(f) notice described in the foregoing paragraph at least once annually for as long as the periodic payments continue.

(Ord. 5153, 01-08-02; Ord. 5268, 08-12-03)

9-07-21. Pension Claims Theretofore Allowed. There shall be paid out of the pension fund pension claims theretofore allowed in the same amounts as were in effect on the date discontinuance of the employees' pension plan under Article 2 of Chapter V of the Revised Ordinances of 1966, until the death or disqualification of the pension claimant in the same manner as if the plan had been discontinued.

9-07-22. Variable Annuity; Application of Contributions Thereto.

1. For receipt of any benefits, a member must make application through the city and such benefits will be paid by and controlled by the city. Benefit payments from an executed trust agreement or contract with an insurance

company will be paid to the city for distribution of the eligible recipient.

2. Prior to January 1, 2005, a member may have the option of having his or her contributions invested in fixed income investments or equity variable income investments or any permissible combination. Effective January 1, 2005, members shall have no investment authority with regard to any assets of the plan, including contributions made pursuant to Section 9-07-01 and earnings thereon. The City shall direct the investment of all plan assets.

3. The pension benefits available under section 9-07-15(1)-(3) shall be provided from all plan assets, whether contributed pursuant to Section 9-07-01 or Section 9-07-09 or whether attributable to earnings on such contributions.

4. Effective January 1, 2005, all contributions made prior to January 1, 2005, pursuant to Section 9-07-01 on behalf of an employee plus net investment earnings thereon up to an amount that is equal to said contributions plus interest at five percent per annum accumulated through December 31, 2004, shall be transferred into the control of the City to be used to pay benefits as provided in this chapter and shall no longer be invested at the direction of the employee. If, as of January 1, 2005, said contributions plus net earnings exceeds an amount that is equal to said contributions plus interest at five percent per annum accumulated through December 31, 2004, the excess amount will be determined and will be placed into an account that will continue to be invested at the direction of the employee (hereinafter the "excess amount"). No further contributions made pursuant to Section 9-07-01 or any other provision of this chapter shall be directed into an employee's excess account or be subject to the investment direction of the employee.

5. Notwithstanding any provision to the contrary, forfeitures of benefits under this pension retirement system because an employee leaves the employ of the city for any reason shall not be used to increase the pension benefits any member would otherwise receive under the plan at any time prior to termination of the plan or the complete discontinuance of contributions, and any amounts so forfeited shall be used as soon as possible to reduce the city's contributions under the plan.

(Ord. 5041, 04-11-00; Ord. 5153, 01-08-02; Ord. 5376, 12-28-04)

9-07-23. Recognized Service. Recognized service prior to December 28, 1971, shall be based upon recognized service according to the city's record as applicable under the pension ordinances in effect at that time. Recognized service

subsequent to that time shall be defined as full and fractional years of service during which (a) the employee contributed to the city employee pension fund pursuant to section 9-07-01 and (b) the employee was a participant pursuant to section 9-07-11.
(Ord. 5153, 01-08-02)

9-07-24. Additional Internal Revenue Code Requirements.

1. It is hereby expressly provided that upon the partial or complete termination of the city employees' pension system, or upon the complete discontinuance of contributions hereunder, the rights of each employee to benefits accrued to the date of termination or discontinuance, to the extent then funded, or the rights of each employee to the amounts credited to his or her account at the time, shall become nonforfeitable. This requirement shall not apply in respect to benefits for the twenty-five highest paid employees to the extent such benefits may be restricted in the event of early termination in accordance with the requirements of section 9-07-25.

2. It is further provided that any previously unallocated funds shall be allocated to the employees covered by this program in the event of termination or complete discontinuance of contributions under the city employees' pension system. The allocation shall be in the following order. The total allocation shall represent the actuarial reserve requirements for benefits accrued under the plan and may be distributed either in the form of cash or deferred annuities.

(a) All employees' total contribution accounts with accumulated income.

(b) All retired participants of beneficiaries receiving payments (reserves in excess of (a) above).

(c) All vested participants (reserves in excess of (a) above).

(d) All others (reserves in excess of (a) above). In the event there are not sufficient assets to fully comply with the reserve requirements of any of the groups defined above the total remaining assets shall be allocated to that group on a pro rata basis based upon actuarial reserve requirements.

3. In no event shall the city receive any amounts from the pension fund upon termination of the city employees' pension system, except that, and notwithstanding any other provision of the plan, the city shall receive such amounts, if any, as may remain after the satisfaction of all liabilities of the plan

and arising out of any variations between actual requirements and expected actuarial requirements.

(Ord. 5153, 01-08-02)

9-07-25. Early Termination.

1. If the plan is terminated or the full current costs are not met within ten years after its establishment or until the full current costs are funded for the first time, the amount of the fund to be used for the benefit of any employee or the beneficiary of any employee who is among the twenty-five highest paid employees of the employer at the time the plan is established, and whose anticipated annual benefit exceeds one thousand five hundred dollars (\$1,500.00) shall not exceed the larger of twenty thousand dollars (\$20,000.00) or twenty percent of the first fifty thousand dollars (\$50,000.00) of his or her annual average compensation multiplied by the number of years between the effective date of this agreement, and

(a) Termination of the plan;

(b) Date the benefit of the employee becomes payable, if before the date of termination of the plan;

(c) Date of the failure to meet the full current costs of the plan;

(d) Any excess reserves arising by application of the foregoing provisions shall be used and applied equitably for the benefit of other employees, retired employees and their beneficiaries and beneficiaries of deceased retired employees on the basis value of the respective portions of the full retirement allowance accrued to the date of the termination of the plan to such employees.

2. If a participant to whom this limitation may be applied leaves the employ of the city or withdraws from participation, prior to his or her normal retirement date, when the full current costs have been met, the benefits which he or she may receive from the employer's contributions shall not at any time, within the first ten years after the effective date, exceed the benefits set forth in paragraph (1).

3. The foregoing conditions shall not restrict the current payment of any retirement allowance called for by the plan to any retired employee or his or her spouse while the plan is in full effect and its full current costs have been met.

(Ord. 5153, 01-08-02)

CHAPTER 9-08. POLICE PENSION

9-08-01. Membership Fee; Assessments. Every full-time police employee who is a member of the police pension shall be assessed and required to pay an amount of six percent upon the amount of the basic salary that would be paid to said employee but for this provision, which assessment shall be deducted and retained out of such salary. Effective January 1, 2005, "six percent" in the foregoing sentence shall be replaced with "9.4 percent."

For all calendar years after December 31, 1983, and prior to January 1, 1999:

1. Although these assessments may be designated as employee contributions, they are deemed to have been paid to the police department employee's pension fund by the city in lieu of contributions by the employee; and

2. All full-time police employees under city civil service shall be deemed as having no option to receive the contributed amounts directly, except as provided in section 9-08-14.

For all calendar years after December 31, 1998:

1. Although these assessments may be designated as employee contributions, they are being paid to the police department employees' pension fund by the city in lieu of contributions by the employees; and

2. All full-time police employees have no option to receive the contributed amounts directly, except as provided in section 9-08-14.

(Ord. 4943, 09-22-98; Ord. 5042, 04-11-00; Ord. 5366, 11-09-04; Ord. 5555, 10-24-06)

9-08-02. Board of Trustees and Duties. The chief of police, two members of the police department appointed by the chief of police, each with no less than eight years of service, and two elected members of the police department, each with no less than eight years of service, shall constitute the board of trustees for the management of the police pension plan and the fund created for the same. The appointed and elected trustees shall be chosen by and from employees of the police department who are currently contributing members of the police pension plan. The election for the elected trustees shall be held on the second Tuesday in June of each year and each elected trustee shall serve for a two-year term. Each appointed trustee shall serve for a two-year term.

In the event of the death, retirement, resignation or other incapacitation of an elected or appointed trustee occurring more than ninety days prior to expiration of his or her term, a

special election will be conducted within thirty days to fill the unexpired term of an elected trustee and the chief of police shall appoint a qualified member to fill the unexpired term of an appointed trustee. The terms of elected and appointed trustees shall commence on July 1 of the year elected or appointed.

The chief of police shall be president, the board shall elect a vice president, and the chief financial officer of the city shall act as treasurer of the board. The director of human resources shall act as clerk of the board and shall keep such records and accounts as the board may direct. Trustees shall not receive any compensation for their services as members of the board. The board shall have such powers and perform such duties as may be provided by law.

(Ord. 5151, 01-08-02; Ord. 5608, 06-26-07)

9-08-03. Investment of Surplus. At the end of the fiscal year, the board of trustees may invest any surplus left in the police department employees' pension fund, but no part of moneys realized from any tax levy shall be used for any purposes other than the payment of pensions. Surplus funds may be invested in interest-bearing bonds of the United States or the state, 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 surplus funds in other investments by selecting a funding agent or agents and establishing an investment agreement contract regarding surplus funds. The contract shall authorize the funding agent or agents to hold and invest funds for the board. 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.

In no event shall any part of the city police department employees' pension fund be paid to or become vested in the city, or be used for any purpose whatsoever other than for the exclusive benefit of contributing members, former contributing members and their beneficiaries, except as provided in section 9-08-21 and section 9-08-23, except that contributions of the city may be returned if:

1. The contribution was conditioned on the qualification of the plan under Internal Revenue Code Section 401(a), the plan does not so qualify and the contribution is returned within one year after the plan is found to not so qualify; or

2. The contribution was made due to a mistake of

fact, the contribution is returned within one year of the mistaken payment of the contribution and the return satisfies the requirements of the last paragraph of this section.

The return of a contribution (or a portion of a contribution) to the city satisfies the requirements of this paragraph if the amount so returned (a) does not exceed the excess of the contribution over the amount which could have been contributed and there has been no mistake of fact; (b) does not include the net earnings attributable to such excess contributions; and (c) is reduced by any net losses attributable to the excess contribution.

(Ord. 5042, 04-11-00)

9-08-04. Gifts, Devises or Bequests. 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 fund. All rewards, in moneys, fees, gifts, or emoluments of any kind or nature that may be given to the police department or to any member, except when allowed to be retained or given for endowing a medal or other permanent or competitive reward on account of extraordinary services rendered by this city or any employee shall be paid into the pension fund.

(Ord. 5151, 01-08-02)

9-08-05. Military Service. Any member of the police department of the city subject to the provisions of this chapter who has resigned or who shall resign to service in the Army, Navy, Air Force or Marine Corps, or Reserves of the United States, or who shall have been selected for training 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, and who applies for reemployment with the city within 90 days of discharge, shall have a period of military service included as part of his or her period of service in the city, provided that credit allowed for military service shall not exceed a total of five years. Any employee who seeks credit for military service shall, upon return to the employment of the city, pay into the fund for each year of military service nine and four tenths percent (9.4%) of the last full year's salary paid by the city, or annual military pay, whichever is the lesser amount. Notwithstanding the foregoing, effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u).

(Ord. 5042, 04-11-00; Ord. 5402, 04-12-05)

9-08-06. Retired Employees, Re-employment. The chief of police may hire any former employee of this city retired under the provisions of this chapter 9-08, chapter 9-07 or the Bismarck Fire Fighters Relief Association pension plan, to work

part-time for the department. The salary received by any person so employed plus the pension received under the terms and provisions of this chapter 9-08, chapter 9-07 or the Bismarck Fire Fighters Relief Association pension plan shall not exceed the regular pay for the position from which the employee has retired. All part-time positions must be filled pursuant to chapter 9-03.

(Ord. 5571, 01-09-07)

9-08-07. Exemption. All pensions paid under the provisions of this chapter shall not be subject to assignment and shall be exempt from liability for debts of the person to or on account of whom they are paid, and shall not be subject to seizure upon execution or other process. The foregoing prohibition on assignment and seizure and exemption from liability expressly includes exemption from assignment, seizure or liability pursuant to any domestic relations order, including divorces, decrees and child or spousal support orders.

(Ord. 5151, 01-08-02)

9-08-08. Fiscal Year. The fiscal year for the fund shall commence on the first day of January of each year and terminate on the 31st day of December of the same year. The fiscal year shall be considered the limitation year for purposes of Internal Revenue Code Section 415.

(Ord. 5042, 04-11-00)

9-08-09. Contribution of City. The board of city commissioners shall annually levy a tax as may be needed to maintain the pension fund in a sound actuarial condition, the proceeds of which shall be placed in the police pension fund. The levy shall be in addition to any other levies authorized by law for a general purpose; provided, however, that when there is sufficient balance in the fund to meet any proper or legitimate charges that may be made against it, the city shall not be required to levy a tax for this purpose.

(Ord. 5151, 01-08-02)

9-08-10. Actuary. The pension and retirement system shall be based upon actuarial tables and the board of trustees shall, from time to time, be empowered to engage the services of an actuary for the purpose of determining the condition of the fund. The actuary shall be paid by check issued by the board of trustees in a reasonable amount determined by the board of trustees.

In calculating the actuarial equivalence of one form of benefit to another, the interest rate to be used shall be 7% and the mortality table to be used shall be the "applicable mortality table", defined as the mortality table based upon the Internal Revenue Service Commissioner's standard table used to determine reserves for group annuity contracts issued on the date as of which present value is determined, as published by

the Department of the Treasury for purposes of Section 417(e)(3) of the Code.

Notwithstanding the foregoing, effective January 1, 2000, for the purpose of determining the lump sum value of a participant's benefit, the interest rate shall be the "applicable interest rate", defined as the annual interest rate on 30-year United States Treasury Securities as published by the Department of the Treasury and Federal Reserve as in effect for the second month (the "look-back month") preceding the first day of the "stability period." The "stability period" shall be the plan year.

(Ord. 5226, 01-07-03)

9-08-11. Persons Included. Every full-time police employee shall be included in this pension fund. Non-sworn police employees beginning employment after December 31, 2006, shall be members of the city employees' pension plan.

(Ord. 5411, 05-10-05; Ord. 5555, 10-24-06)

9-08-12. Notice of Change in Status. It shall be the duty of the chief of police to give immediate notice to the director of human resources of the change in pension status of any member of the police department subject to the provisions of this chapter as the result of death or other cause, and he or she shall furnish such other information concerning any member as the board of trustees may require.

(Ord. 5151, 01-08-02)

9-08-13. Regulations Governing Fund. The board of trustees shall be authorized from time to time to adopt such regulations as may be deemed necessary, consistent with the terms and provisions of this chapter 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 chapter and to all the rules and regulations adopted by the board of trustees, and shall furnish to the board of trustees such information affecting his or her status as a member or beneficiary of the system as the board of trustees may require.

9-08-14. Refund of Contribution. Any employee of the police department subject to provisions of this chapter who has contributed to the pension and retirement system adopted under Chapter 174 of the Sessions Law of 1936, continued on to Chapter V of the Revised Ordinance of 1966, or revised ordinances of 1973, and discontinued, who leaves employment shall be entitled upon application at the time of termination of employment to a refund of the employee's "entire interest." The employee's entire interest shall be the sum of all an employee's contributions made under Section 9-08-01 plus interest earnings at two and one-half percent (2.5%) per annum on contributions made through 1972 and plus interest earnings at five percent

(5%) per annum on all employee contributions thereafter. No rights to pension benefits shall accrue to any employees or their beneficiaries during any leave of absence, except this clause shall not be construed to deprive any employee of pension benefits accrued during the regular annual leave or sick leave or absence duly granted, as provided by this chapter, nor to any employee referred to in section 9-08-05.

Notwithstanding any other provision of this chapter, effective with respect to distributions on or after March 28, 2005, any account with a value that exceeds \$1000, including any rollover amounts, shall not be distributed to the participant during his/her lifetime and prior to his/her normal retirement date as set in this chapter, without the consent of the participant.

Any member of this pension retirement system who leaves the employment of the police department and elects a refund in accordance with this section forfeits all rights to any other form of benefit under this pension retirement system.

(Ord. 4945, 09-22-98; Ord. 5042, 04-11-00; Ord. 5151, 01-08-02; Ord. 5378, 12-28-04; Ord. 5573, 03-13-07)

9-08-15. Pension Eligibility; Computations; Required Distributions. Every member of the police department who is a participant in the police pension fund pursuant to Section 9-08-11 or the surviving spouse of any such employee who is deceased, provided said participant or said surviving spouse has made application to the board of trustees and been certified by the board of trustees as entitled to a pension, shall be paid out of the police pension fund an amount determined in accordance with the following:

1. Any contributing member who has served in active employment until the age of fifty-five is eligible for a monthly pension benefit computed by multiplying his or her highest thirty-six months (or total months of employment, if less) of average basic monthly compensation times two percent and then multiplying that resultant product by his or her number of full and fractional years of recognized service as defined in Section 9-08-22. Effective January 1, 2005, "two percent" in the foregoing sentence shall be replaced with "two and a half percent." Effective January 1, 2005, the maximum monthly pension benefit payable shall not exceed ninety percent of the average of the participant's compensation for the highest thirty-six months of his or her employment as a member of the police department.

"Average basic monthly compensation" means the average of the monthly base compensation of a participant over the thirty-six month period described above. "Monthly base compensation" means the monthly base compensation paid by the city to the participant, excluding the following:

- (a) overtime;
- (b) bonuses;
- (c) severance payments; and
- (d) other remuneration in excess of base compensation.

All elective contributions made by the city on behalf of an employee that are not includible in the gross income of the employee under Code Sections 125, 132(f)(4), 402(e)(3), 402(h) and 403(b) shall be included in monthly base compensation.

Effective for benefits accruing after December 31, 1988, the annual compensation of each employee taken into account under the plan shall not exceed \$200,000 (\$150,000 for fiscal years beginning on or after January 1, 1996), as adjusted by the Secretary of the Treasury for the cost of living adjustments. For fiscal years prior to January 1, 1997, in determining the compensation of an employee, the rules of Internal Revenue Code Section 414 (q)(6) shall apply, except that the term "family" shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the plan year.

2. Any contributing member who has served at least sixty consecutive months of contributing service in the employment of the police department and has attained at least age forty-eight is eligible for a monthly pension benefit. Notwithstanding the foregoing, with respect to any member who terminated employment or retired from the city prior to January 1, 2002, the phrase "sixty consecutive months" in the foregoing sentence shall be replaced with "one hundred twenty (120) consecutive months." The monthly pension benefit shall be equal to the accrued normal retirement benefit as determined under subsection 1 of this section 9-08-15 and then multiplied by the actuarial factor set forth below, interpolated to the nearest monthly age at the date upon which the pension benefits commence.

<u>Age</u>	<u>Actuarial Equivalent Factor</u>
48	.6070
49	.6492
50	.6952
51	.7455
52	.8004
53	.8607

3. Any contributing member who has served at least 60 consecutive months of contributing service in the employment of the police department and terminates employment with the police department may elect a deferred retirement benefit to commence at an elected age from age forty-eight to fifty-five. Notwithstanding the foregoing, with respect to any member who terminated employment with the city prior to January 1, 2002, the phrase "60 consecutive months" in the foregoing sentence shall be replaced with "one hundred twenty (120) consecutive months." The deferred benefit shall be equal to the member's accrued normal retirement benefit as determined under subsection 1 of this section 9-08-15, (based upon service and compensation to the date of employment termination) multiplied by the actuarial equivalent factor set forth in subsection 2 of this section 9-08-15 determined on the basis of the age elected for deferred benefits to commence.

4. To the surviving spouse as long as he or she remains unmarried, a sum equal to two-thirds of the amount of pension earned by the member under this plan to the date of his or her death, but not less than one hundred dollars (\$100.00) per month, provided the employee served at least sixty consecutive months of contributing service in the employment of the police department. Notwithstanding the foregoing, with respect to any member who died prior to January 1, 2002, the phrase "sixty consecutive months" in the foregoing sentence shall be replaced with "one hundred twenty (120) consecutive months." The term "surviving spouse" shall mean only the surviving spouse of a deceased employee if such spouse was married to the employee on the date the employee separated from service and the separation from service occurred after the plan's effective date, or of an employee who retired prior to the date this plan took effect if such spouse was married to such employee on the plan's effective date.

5. A surviving spouse has the option to withdraw all of the employee's entire interest, as defined in Section 9-08-14. A surviving spouse who elects to withdraw an employee's entire interest does so in lieu of all benefits outlined in subsection 4 of this section.

6. If there is no surviving spouse, then the employee's entire interest, as defined in Section 9-08-14, will be paid to the employee's estate.

7. Distribution Upon Death.

(a) Death After Commencement of Benefits. If

distribution of an employee's interest has begun in accordance with subsection 1, 2 or 3 of this section 9-08-15, and the employee dies before his entire interest has been distributed to him or her, then the remaining portion of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of his or her death.

(b) Death Before Commencement of Benefits. If an employee dies before distribution of the employee's interest has begun, the entire interest of the employee shall be distributed no later than December 31 of the calendar year which contains the fifth anniversary of the date of the employee's death.

This five-year distribution rule shall not apply if: (1) any portion of the employee's interest (or of the deceased spouse of such employee, as provided below) is payable to or for the benefit of a designated beneficiary, as determined pursuant to Proposed Treasury Regulation § 1.401(a)(9)-1 (or any successor regulation); (2) this portion will be distributed over the life of the designated beneficiary (or over a period not extending beyond the life expectancy of the designated beneficiary); and (3) the distributions commence no later than December 31 of the calendar year immediately following the calendar year in which the employee died. If the surviving spouse is the beneficiary and dies before payments are deemed to have begun, the five-year distribution rule and the exception to it stated in this paragraph are to be applied as if the surviving spouse were the employee and the spouse's date of death shall be substituted for the employee's date of death.

This five-year distribution rule shall also not apply if: (1) the portion of the employee's interest to which the surviving spouse is entitled will be distributed over the life of the surviving spouse (or over a period not extending beyond the life expectancy of the surviving spouse, which may be recalculated not more frequently than annually); and (2) the distributions commence on or before the later of December 31 of the calendar year in which the employee would have attained age 70½ or December 31 of the calendar year immediately following the calendar year in which the employee died.

(c) Designated Beneficiary. For purposes of this section, the term "designated beneficiary" means any

individual designated as a beneficiary by the employee.

8. Required Distributions. Notwithstanding any provision of the plan to the contrary, the following provisions shall control:

(a) General Rule. The entire interest of each employee shall be distributed to such employee not later than the required beginning date (as defined below), or will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

(b) Required Beginning Date. For purposes of this section, the term "required beginning date" means April first of the calendar year following the later of (i) the calendar year in which the employee attains age seventy and one-half or (ii) the calendar year in which the employee retires.

Any participant who attains age 70½ on or prior to December 31, 2001, shall be entitled to commence distributions on the required beginning date set forth in the foregoing sentence or, if earlier, as of April 1 of the calendar year immediately following the calendar year in which the participant attains age 70½. Any participant who attained age 70½ prior to January 1, 2001, and who has not yet terminated employment with the City, may elect to stop distributions and recommence distributions by the April 1 of the calendar year following the year in which the participant retires. The recommencement of distributions shall not be considered a new annuity starting date for which spousal consent is required, except as spousal consent may be required under IRS Notice 97-75, 1997-2 C.B. 337.

(c) Designated Beneficiary. For purposes of this section, the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

(d) Continued Service Beyond Age 55. An employee may at his or her own request be continued in employment beyond age 55. In such event no retirement benefit will be paid to such employee until he or she

actually retires, subject, however, to any required minimum distributions pursuant to Section 9-08-15. Such an employee shall continue to accrue credit for years of service after attainment of age 55 and changes in average basic monthly compensation shall also be taken into account.

(e) With respect to distributions under the police pension plan made for calendar years beginning on or after January 1, 2001, the plan will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

Notwithstanding any other provision of this chapter to the contrary, effective July 1, 1974, any surviving spouse currently receiving less than one hundred dollars (\$100.00) per month shall commence to receive one hundred dollars per month.

(Ord. 4300, 10-17-89; Ord. 4997, 07-13-99; Ord. 5042, 04-11-00; Ord. 5151, 01-08-02; Ord. 5226, 01-07-03; Ord. 5366, 11-09-04; Ord. 5378, 12-28-04)

9-08-16. Cost of Living Adjustment Procedure. Persons receiving pension payments under the provision of this chapter shall be eligible for cost of living adjustments in an amount determined by the board of trustees. The adjustment, if any, will be effective at the same time as the city employees' salary adjustment is made in the same year. The adjustment may not exceed the lesser of:

1. The city employees' adjustment; or
2. 3%.

Cost of living adjustments shall be made in respect to pensioners and surviving spouses who are receiving pension benefits at the time the cost of living adjustments are made hereunder.

(Ord. 4879, 12-09-97; Ord. 5042, 04-11-00; Ord. 5151, 01-08-02)

9-08-17. Optional Settlements and Life Annuity Limitations. Any optional settlements under this plan shall be limited to the life expectancy of the participating member or the surviving spouse of the participating member. In no event is an "interest only" option permissible whereunder the total payout would extend beyond the life expectancy of the member and the member's spouse. The following restrictions and limitations shall apply to benefit payments.

1. Benefit Limited to Maximum Permissible Benefit. The Annual Benefit otherwise payable to a member at any time shall not exceed the Maximum Permissible Benefit. If the benefit the member would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the rate of accrual shall be limited, or the rate of accrual reduced, to a benefit that does not exceed the Maximum Permissible Benefit.

2. Adjustment if in Two or More Defined Benefit Plans. If the member is, or has ever been, a member of another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the city, the sum of the member's Annual Benefits from all such plans may not exceed the Maximum Permissible Benefit. Where the member's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the Maximum Permissible Benefit applicable at that age, the city shall limit a member's benefit in accordance with the terms of the plans.

3. Definitions. For purposes of this Section 9-08-17, the following terms shall have the respective meanings set forth below, unless expressly provided for herein, and when the defined meaning is intended, the term is capitalized.

a. "Annual Benefit" means a benefit that is payable annually in the form of a Straight Life Annuity. Except as provided below, where a benefit is payable in a Straight Life Annuity, the benefit shall be adjusted to an actuarially equivalent Straight Life Annuity that begins at the same time as such other form of benefit and is payable on the first day of each month before applying the limitations of this Section 9-08-17. For a member who has or will have distributions commencing at more than one Annuity Starting Date, the Annual Benefit shall be determined as of each such Annuity Starting Date (and shall satisfy the limitations of this Section 9-08-17 as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other Annuity Starting Dates. For this purpose, the determination of whether a new Annuity Starting Date has occurred shall be made without regard to Regulations Section 1.401(b)-20, Q&A 10(d), and with regard to Regulations Section 1.415(b)-1(b)(1)(iii)(B) and (C).

No actuarial adjustment to the benefit shall be made

for (1) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code Section 417(e)(3) and would otherwise satisfy the limitations of this Section 9-08-17, and the Plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Section 9-08-17 applicable at the Annuity Starting Date, as increased in subsequent years pursuant to Code Section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the Annual Benefit shall take into account benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Regulations Section 1.411(d)-4, Q&A-3(c), but shall disregard benefits attributable to member contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a Straight Life Annuity shall be made in accordance with (i) or (ii) below.

(i) Benefit forms not subject to Code Section 417(e)(3). The Straight Life Annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection (i) if the form of the member's benefit is either (1) a nondecreasing annuity (other than a Straight Life Annuity) payable for a period of not less than the life of the member (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or (2) an annuity that decreases during the life of the member merely because of (A) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (B) the cessation or reduction of Social Security supplements or qualified disability payments (as

defined in Code Section 401(a)(11)).

(1) Limitation Years beginning before July 1, 2007. For Limitation Years beginning before July 1, 2007, the actuarially equivalent Straight Life Annuity is equal to the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and (II) 5% interest rate assumption and the applicable mortality table under Section 417(e)(3) of the Code for the calendar year in which the Annuity Starting Date occurs.

(2) Limitation Years beginning on or after July 1, 2007. For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent Straight Life Annuity is equal to the greater of (a) the annual amount of the Straight Life Annuity (if any) payable to the member under the Plan commencing at the same Annuity Starting Date as the member's form of benefit; and (b) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the member's form of benefit, computed using a 5% interest rate assumption and the applicable mortality table under Section 417(e)(3) of the Code for the calendar year in which the Annuity Starting Date occurs.

(ii) Benefit Forms Subject to Code Section 417(e)(3). The Straight Life Annuity that is actuarially equivalent to the member's form of benefit shall be determined under this paragraph if the form of the member's benefit is other than a benefit form described in subsection 3(a)(i) above. The actuarially equivalent Straight Life Annuity is equal to the greatest of (a) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the member's form of benefit, computed using the interest rate and mortality table (or other

tabular factor) specified in the Plan for adjusting benefits in the same form; (b) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the member's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table under Section 417(e)(3) of the Code for the calendar year in which the Annuity Starting Date occurs; and (c) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate and applicable mortality table, both as described in Section 417(e)(3) of the Code, divided by 1.05.

b. "Maximum Permissible Benefit" means, effective for Limitation Years ending after December 31, 2001, \$160,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a Straight Life Annuity. The new limitation shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a member's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

(i) Adjustment for Less Than 10 Years of Participation or Service: If the member has less than 10 years of participation in the Plan, the Maximum Permissible Benefit shall be multiplied by a fraction -- (i) the numerator of which is the number of Years of Participation in the Plan (or part thereof, but not less than one year), and (ii) the denominator of which is ten (10). In the case of a member who has less than ten Years of Service with the city, the Maximum Permissible Benefit shall be multiplied by a fraction -- (i) the numerator of which is the number of Years of Service with the city (or part thereof, but not less than one year), and (ii) the denominator of which is ten (10).

(ii) Adjustment for Benefit Commencement Before Age 62 or after Age 65: Effective for benefits commencing in Limitation Years ending after December 31, 2001, the Maximum Permissible Benefit shall be adjusted if the Annuity Starting

Date of the member's benefit is before age 62 or after age 65.

(iii) Adjustment for Benefit Commencement Before Age 62:

(1) Limitation Years Beginning Before July 1, 2007. If the Annuity Starting Date for the member's benefit is prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the Maximum Permissible Benefit for the member's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the member's Annuity Starting Date that is the actuarial equivalent of the Maximum Permissible benefit (adjusted under subsection (i) for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (a) the interest rate and mortality table (or other tabular factor) specified in the Plan; or (b) a five-percent (5%) interest rate assumption and the applicable mortality table as defined in the Plan.

(2) Limitation Years Beginning on or After July 1, 2007.

(A) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the member's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing Straight Life Annuity payable at both age 62 and the age of benefit commencement, the Maximum Permissible Benefit for the member's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the member's Annuity Starting Date that is the actuarial equivalent of the Maximum Permissible Benefit (adjusted under subsection (i) for years of participation less than ten (10), if

required) with actuarial equivalence computed using a five-percent (5%) interest rate assumption and the applicable mortality table for the Annuity Starting Date as defined in the Plan (and expressing the member's age based on completed calendar months as of the Annuity Starting Date).

(B) Plan Has Immediately Commencing Straight Life Annuity Payable at both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the member's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing Straight Life Annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the member's Annuity Starting Date is the lesser of the limitation determined under subsection (b)(iii) and the Maximum Permissible benefit (adjusted under subsection (i) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the immediately commencing Straight Life Annuity under the Plan at the member's Annuity Starting Date to the annual amount of the immediately commencing Straight Life Annuity under the Plan at age 62, both determined without applying the limitations of this Section 9-08-17.

Notwithstanding the foregoing, no age adjustment to the Maximum Permissible Benefit shall be required for commencement of benefits before age 62 for any member who is a full-time employee of any police department or fire department that is organized and operated by the city to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of the city and with respect to whom the service taken into account in determining the amount of the benefit under the plan includes at least 15 years of service of the

member. For purposes of this section, only the classification of the city, not the job classification of the member, is relevant in determining whether this paragraph applies.

(iv) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age 65:

(1) Limitation Years Beginning Before July 1, 2007. If the Annuity Starting Date for the member's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Maximum Permissible Benefit for the member's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the member's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under subsection (i) for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (A) the interest rate and mortality table (or other tabular factor) specified in the Plan; or (B) a five-percent (5%) interest rate assumption and the applicable mortality table under Section 417(e)(3) for the calendar year in which the Annuity Starting Date occurs.

(2) Limitation Years Beginning on or After July 1, 2007.

(A) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing Straight Life Annuity payable at both age 65 and the age of benefit commencement, the Maximum Permissible Benefit at the member's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the member's Annuity

Starting Date that is the actuarial equivalent of the Maximum Permissible Benefit (adjusted under subsection(i) for years of participation less than 10, if required), with actuarial equivalence computed using a 5% interest rate assumption and the applicable mortality table under Section 417(e)(3) for the calendar year in which the Annuity Starting Date occurs (and expressing the member's age based on completed calendar months as of the Annuity Starting Date).

(B) Plan Has Immediately Commencing Straight Life Annuity Payable at both Age 65 and the Age of Benefit Commencement. If the Annuity Starting Date for the member's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the plan has an immediately commencing Straight Life Annuity payable at both age 65 and the age of benefit commencement, the Maximum Permissible Benefit at the member's Annuity Starting Date is the lesser of the limitation determined under subsection 3(b)(iv) and the Maximum Permissible Benefit (adjusted under subsection (i) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing Straight Life Annuity under the Plan at the member's Annuity Starting Date to the annual amount of the adjusted immediately commencing Straight Life Annuity under the Plan at age 65, both determined without applying the limitations of this Section 9-08-17. For this purpose, the adjusted immediately commencing Straight Life Annuity under the Plan at the member's Annuity Starting Date is the annual amount of such annuity payable to the member, computed disregarding the member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted

immediately commencing Straight Life Annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical member who is age 65 and has the same accrued benefit as the member.

(v) Notwithstanding the other requirements of this section, no adjustment shall be made to the Maximum Permissible Benefit to reflect the probability of a member's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the member prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the member's death if the Plan does not charge members for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c), upon the member's death.

(vi) Minimum benefit permitted: Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a member under this Plan shall be deemed not to exceed the Maximum Permissible Benefit if:

(1) the retirement benefits payable for a Limitation Year under any form of benefit with respect to such member under this Plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the city do not exceed \$10,000 multiplied by a fraction - (a) the numerator of which is the member's number of Years (or part thereof, but not less than one year) of Service (not to exceed ten (10)) with the city, and (b) the denominator of which is ten (10); and

(2) the city has not at any time maintained a defined contribution plan in which the member participated (for this purpose, mandatory member contributions under a defined benefit plan, individual medical accounts under Code Section 401(h),

and accounts for post-retirement medical benefits established under Code Section 419A(d)(1) are not considered a separate defined contribution plan).

c. "Straight Life Annuity" means an annuity payable in equal installments for the life of a member that terminates upon the member's death.

4. Application of Code Section 415. Notwithstanding any other provision of the plan, this Section shall be construed in a manner which is consistent with Code Section 415 (which is hereby incorporated herein.) and the rulings and regulations issued there under.

(Ord. 4879, 12-09-97; Ord. 5042, 04-11-00; Ord. 5151, 01-08-02; Ord. 5226, 01-07-03; Ord. 5750, 12-22-09)

9-08-18. Reduction of Pension. Whenever the amount realized from the tax levy, assessment upon salary, fees, gifts and grants as herein provided for, shall be insufficient to meet the demands of the withdrawals due to retirement or disability, the board of trustees shall have the power and authority, in order to safeguard the future of this plan and for the future purpose of ensuring that there be no accumulated liability upon the city for unpaid pensions, to make such adjustments and such apportionments of the pensions to be paid as in their judgment will safeguard the police department employee pension fund and safeguard the city from any accumulative liability for pension except such as is provided by the amount of levy authorized by the police employees' pension law. For that purpose and to that end the board of trustees may in their judgment make such reductions and apportionments in the payments of the amount to the employees entitled to a pension or their dependents as is available and increase contributions in a manner to safeguard the future of the pension plan.

9-08-19. Direct Rollovers.

1. General Rule. If a "distributee" of any "eligible rollover distribution":

(a) elects to have such eligible rollover distribution paid directly to an "eligible retirement plan," and

(b) specifies the eligible retirement plan to which such eligible rollover distribution is to be paid (in such form and at such time as the city may prescribe), such eligible rollover distribution shall be made in the form of a "direct rollover" to the eligible retirement plan so specified by the distributee.

Notwithstanding the foregoing, this section 9-08-19 shall apply only to the extent the eligible rollover distribution would be includible in gross income if not transferred as provided above.

2. Definitions.

A "direct rollover" is an eligible rollover distribution that is paid directly to an eligible retirement plan for the benefit of the distributee.

"Distributee" means the employee or the surviving spouse of an employee.

An "eligible retirement plan" is an individual retirement account described in Internal Revenue Code Section 408(a), an individual retirement annuity (other than an endowment contract) described in Internal Revenue Code Section 408(b), a qualified defined contribution retirement plan that accepts rollover distributions, or an annuity plan described in Internal Revenue Code Section 403(a) that accepts rollover distributions. Notwithstanding the foregoing, if the distributee is the employee's surviving spouse, "eligible retirement plan" shall mean either an individual retirement account or an individual retirement annuity (other than an endowment contract).

For the purposes of the direct rollover provisions in this Section 9-08-19, for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p).

"Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of an employee in a qualified plan, provided, however, that an eligible rollover distribution does not include:

(a) any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, for the life or life expectancy of the distributee, or for the joint lives

or life expectancies of the distributee and his or her spouse or designated beneficiary, or for a specified period of 10 years or more;

(b) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9), relating to minimum distribution requirements; or

(c) the portion of any distribution that is not includible in income.

3. Procedures.

(a) In General. The city may prescribe any procedure for a distributee to elect a direct rollover provided the procedure is reasonable. Such procedure may include any reasonable requirement for information or documentation from the distributee.

(b) Notice and Waiver of Notice Period. At least thirty (30) days and no more than ninety (90) days before making any distribution subject to this section 9-08-19, the city shall provide to the distributee a written explanation of the rules concerning direct rollovers, income tax withheld on distributions not rolled over, and any other information required by Internal Revenue Code Section 402(f) (the "402(f) notice"). Such distribution may commence less than 30 days after the 402(f) notice is given, provided that: (i) the city clearly informs the employee that the employee has a right to a period of at least 30 days after receiving the 402(f) notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and (ii) the employee, after receiving the 402(f) notice, affirmatively elects a distribution.

(c) \$500 Rule. A distributee may elect to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to have the remainder paid to the distributee only if the portion paid to the eligible retirement plan equals at least \$500.

(d) Direct Rollover to One Account Only. An eligible rollover distribution (or portion thereof) may be distributed in a direct rollover only to a single eligible retirement plan selected by the distributee.

(e) \$200 Rule. A distributee may not elect a direct rollover with respect to eligible rollover distributions during a year if such distributions are reasonably expected to total less than \$200.

(f) Method of Making a Direct Rollover. The city may accomplish a direct rollover by any reasonable means of direct payment to an eligible retirement plan including providing a distributee with a check payable to the eligible retirement plan with instructions to the distributee to deliver the check to the eligible retirement plan.

(g) Default Option. If the distributee does not so elect or does not provide the required information in the form and at the time required by the city, the city shall direct that the distribution be made directly to the distributee and to withhold income taxes on such distribution equal to 20% of the value of such distribution (or such other amount provided under Internal Revenue Code Section 3405(c), as amended). Provided, however, that the city shall not make a distribution under this default option earlier than the date which is 60 days after the distributee is provided with the 402(f) notice. The city shall not withhold tax from an eligible rollover distribution if such distribution is not subject to a direct rollover election because the distribution was not reasonably expected to total \$200 in the year.

(h) Periodic Payments. If a distribution subject to this section 9-08-19 is to be paid in a series of periodic payments that are eligible rollover distributions, the following rules shall apply:

(i) a distributee's election to make or not make a direct rollover with respect to a single payment shall control whether a direct rollover is made of all subsequent payments unless the distributee changes the previous election; and

(ii) the city shall provide the 402(f) notice described in the foregoing paragraph at least once annually for as long as the periodic payments continue.

(Ord. 5151, 01-08-02; Ord. 5268, 08-12-03)

9-08-20. Pension Claims Theretofore Allowed. There shall be paid out of the police employee pension fund pension claims theretofore allowed in the same amounts as were in effect on the date of discontinuance of the employees' pension plan under Article I of Chapter V of the Revised Ordinance of 1966, until

the death or disqualification of the pension claimant in the manner as if the plan has been continued.

9-08-21. Variable Annuity; Application of Contributions.

1. For receipt of any benefits, a member must make application through the city and such benefits will be paid by and controlled by the city. Benefit payments from an executed trust agreement or contract with an insurance company will be paid to the city for distribution of the eligible recipient.

2. Prior to January 1, 2005, a member may have the option of having his or her contributions invested in fixed income investments or equity variable income investments or any permissible combination. Effective January 1, 2005, members shall have no investment authority with regard to any assets of the plan, including contributions made pursuant to Section 9-08-01 and earnings thereon. The City shall direct the investment of all plan assets.

3. The pension benefits available under Section 9-08-15(1)-(3) shall be provided from all plan assets, whether contributed pursuant to Section 9-08-01 or Section 9-08-09 or whether attributable to earnings on such contributions.

4. Effective January 1, 2005, all contributions made prior to January 1, 2005, pursuant to Section 9-08-01 on behalf of an employee plus net investment earnings thereon up to an amount that is equal to said contributions plus interest at five percent per annum accumulated through December 31, 2004, shall be transferred into the control of the City to be used to pay benefits as provided in this chapter and shall no longer be invested at the direction of the employee. If, as of January 1, 2005, said contributions plus net earnings exceeds an amount that is equal to said contributions plus interest at five percent per annum accumulated through December 31, 2004, the excess amount will be determined and will be placed into an account that will continue to be invested at the direction of the employee (hereinafter the "excess amount"). No further contributions made pursuant to Section 9-08-01 or any other provision of this chapter shall be directed into an employee's excess account or be subject to the investment direction of the employee.

5. Notwithstanding any provision to the contrary, forfeitures of benefits under this pension retirement system because an employee leaves the employ of the city for any reason shall not be used to increase the pension benefits any member would otherwise receive under the plan

at any time prior to termination of the plan or the complete discontinuance of contributions, and any amounts so forfeited shall be used as soon as possible to reduce the city's contributions under the plan.

(Ord. 5151, 01-08-02; Ord. 5366, 11-09-04)

9-08-22. Recognized Service. Recognized service prior to December 28, 1971, shall be based upon recognized service according to the city's record as applicable under the pension ordinances in effect at that time. Recognized service subsequent to that time shall be defined as full and fractional years of service during which (a) the employee contributed to the police pension fund pursuant to Section 9-08-01 and (b) the employee was a participant pursuant to Section 9-08-11.

(Ord. 5151, 01-08-02)

9-08-23. Additional Internal Revenue Code Requirement.

1. It is hereby expressly provided that upon the partial or complete termination of the police employees pension system, or upon the complete discontinuance of contributions hereunder, the rights of each employee to benefits accrued to the date of termination or discontinuance, to the extent then funded, or the rights of each employee to the amounts credited to his or her account at the time, shall become non-forfeitable. This requirement shall not apply in respect to benefits for the twenty-five highest paid employees to the extent such benefits may be restricted in the event of early termination in accordance with the requirements of section 9-08-24.

2. It is further provided that any previously unallocated funds shall be allocated to the employees covered by this program in the event of termination or complete discontinuance of contributions under the police employees' pension system. The allocation shall be in the following order. The total allocation shall represent the actuarial reserve requirements for benefits accrued under the plan and may be distributed either in the form of cash or deferred annuities.

(a) All employees' total contribution accounts with accumulated income.

(b) All retired participants or beneficiaries receiving payments (reserves in excess of (a) above).

(c) All vested participants (reserves in excess of (a) above).

(d) All others (reserves in excess of (a) above).

3. In no event shall the city receive any amounts from the pension fund upon termination of the police employees' pension system, except that, and notwithstanding any other provision of the plan, the city shall receive such amounts, if any, as may remain after the satisfaction of all liabilities of the plan and arising out of any variations between actual requirements and expected actuarial requirements.

In the event there are not sufficient assets to fully comply with the reserve requirements of any of the groups defined above the total remaining assets shall be allocated to that group on a pro rata basis based upon actuarial reserve requirements.

(Ord. 5042, 04-11-00; Ord. 5151, 01-08-02)

9-08-24. Early Termination.

1. If the plan is terminated or the full current costs are not met within ten years after its establishment or until the full current costs are funded for the first time, the amount of the fund to be used for the benefit of any employee or the beneficiary of any employee who is among the twenty-five highest paid employees of the employer at the time the plan is established, and whose anticipated annual benefit exceeds one thousand five hundred dollars (\$1,500.00) shall not exceed the larger of twenty thousand dollars (\$20,000.00) or twenty percent of the first fifty thousand dollars (\$50,000.00) of his or her annual average compensation multiplied by the number of years between the effective date of this agreement and:

(a) Termination of the plan;

(b) Date the benefit of the employee becomes payable, if before the date of the termination plan;

(c) Date of the failure to meet the full current costs of the plan.

(d) Any excess reserves arising by application of the foregoing provisions shall be used and applied equitably for the benefit of other employees, retired employees and their beneficiaries and beneficiaries of deceased retired employees on the basis of the value of the respective portions of the full retirement allowance accrued to the date of termination of the plan to the employees.

(Ord. 5151, 01-08-02)

9-08-25. How Pension Paid. All pensions paid and all money drawn from the pension fund under the provisions of this chapter shall be upon checks authorized by the board of trustees, and

issued by the treasurer of the board. Each check shall designate the name of the person 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 invested. The report shall be made to the board of trustees and shall be filed with the city administrator.

(Ord. 5042, 04-11-00)