

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ORMOND BEACH, FLORIDA, AMENDING ARTICLE IV, POLICE OFFICERS' PENSION TRUST FUND, OF CHAPTER 16, PENSIONS AND RETIREMENT, OF THE CODE OF ORDINANCES; AMENDING SECTION 16-71, DEFINITIONS BY AMENDING THE DEFINITIONS OF "ACTUARIAL EQUIVALENT", "CREDITED SERVICE" AND "SPOUSE"; AMENDING SECTION 16-76, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 16-78, DISABILITY; AMENDING SECTION 16-80, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 16-85, MAXIMUM PENSION; AMENDING SECTION 16-95, PRIOR POLICE SERVICE; AMENDING SECTION 16-98, DEFERRED RETIREMENT OPTION PLAN; ADDING SECTION 16-99.1, SUPPLEMENTAL BENEFIT COMPONENT FOR SPECIAL BENEFITS; CHAPTER 185 SHARE ACCOUNTS PROVIDING FOR SEVERABILITY OF PROVISIONS; PROVIDING FOR CODIFICATION; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF ORMOND BEACH, FLORIDA, THAT:

SECTION 1: Section 16-71, Definitions, of Article IV, Police Officers' Pension Trust Fund, of Chapter 16, Pensions and Retirement, of the City of Ormond Beach, Florida, *Code of Ordinances*, is hereby amended by amending the definitions of "*Actuarial equivalent*", "*Credited service*" and "*Spouse*", to read as follows:

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Actuarial equivalent means a benefit or amount of equal value, based upon the RP 2000 Combined Healthy Unisex Mortality Table and an interest rate of ~~seven and one half (7.5) per cent per annum~~ equal to the investment return assumption set forth in the last actuarial valuation report approved by the board. This definition may only be amended by the city pursuant to the recommendation of the board using the assumptions adopted by the board with the advice of the plan's actuary, such that actuarial assumptions are not subject to city discretion.

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

member's accumulated contributions, all of his rights and benefits under the system are forfeited and terminated. Upon any reemployment, a police officer shall not receive credit for the years and fractional parts of years of service for which he has withdrawn his accumulated contributions from the fund, unless the police officer repays into the fund the contributions he has withdrawn, with interest, as determined by the board, within ninety (90) days after his reemployment.

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

- (1) The member is entitled to reemployment under the provisions of USERRA.
- (2) The member returns to his employment as a police officer within one (1) year from the date of his military discharge or release from active service, unless otherwise required by USERRA.
- (3) The maximum credit for military service pursuant to this paragraph shall be five (5) years.
- (4) This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

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

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

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

In the event that a member of this system has also accumulated credited service in another pension system maintained by the city, then such other credited service shall be used in determining the vesting as provided for in section 16-79 or for determining eligibility for early or normal retirement. Such other credited service will not be considered in determining benefits under this system. Only his credited service and salary under this system on or after his date of participation in this system will be considered for benefit calculation for benefits from this system and the accrual rate shall be that in effect on his termination as a member in this system.

* * *

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

* * *

SECTION 2: Section 16-76, Benefit amounts and eligibility, of Article IV, Police Officers' Pension Trust Fund, of Chapter 16, Pensions and Retirement, of the City of Ormond Beach, Florida, *Code of Ordinances*, is hereby amended by amending subsection (a) *Normal retirement date*, to read as follows:

~~(a) *Normal retirement date.* A member's normal retirement date shall be the first day of the month coincident with, or next following the earlier of the attainment of age sixty (60), the attainment of age fifty-five (55) and the completion of ten (10) years of credited service or the completion of twenty (20) years of credited service. A member may retire on his normal retirement date or on the first day of any month thereafter, and each member shall become one hundred (100) per cent vested in his accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date.~~

(a) *Normal retirement age and date.* A member's normal retirement age is the earlier of the attainment of age sixty (60), the attainment of age fifty-five (55) and the completion of ten (10) years of credited service or the completion of twenty (20) years of credited service. Each member shall become one hundred percent (100%) vested in his accrued benefit at normal retirement age. A member's normal retirement date shall be the first day of the month coincident with or next following the date the member retires from the city after attaining normal retirement age.

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SECTION 3: Section 16-78, Disability, of Article IV, Police Officers' Pension Trust Fund, of Chapter 16, Pensions and Retirement, of the City of Ormond Beach, Florida, *Code of Ordinances*, is hereby amended by amending subsections (a) *Disability benefits in-line of duty*, (c) *Disability benefits not-in-line of duty* and (g) *Workers' compensation*, to read as follows:

(a) *Disability benefits in-line of duty.* Effective October 1, 2003, any member who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a police officer, on or after September 1, 2002, which disability was directly caused by the performance of his duty as a police officer, shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to three and thirty hundredths (3.30) per cent of his average final compensation multiplied by the total years of credited service, ~~but~~. Effective August 21, 2012, the monthly retirement benefit shall equal two and seventy-five hundredths (2.75) per cent of average final compensation for each year of credited service. In any event the minimum amount paid to the member shall be forty-two (42) per cent of the average final compensation of the member. Terminated persons, either vested or non-vested, are not eligible for disability benefits, ~~except that those terminated by the city for medical reasons may apply for a disability within thirty (30) days after termination.~~ Notwithstanding the previous sentence, if a member is terminated by the city for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the board within thirty (30) days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the board otherwise determines that he is totally and permanently disabled as provided for above.

* * *

(c) *Disability benefits not-in-line of duty.* Effective October 1, 2003, any member with ten (10) years or more credited service who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a police officer, on or after September 1, 2002, which disability is not directly caused by the performance of his duties as a police officer shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to three and thirty hundredths (3.30) per cent of his average final compensation multiplied by the total years of credited service. Effective August 21, 2012, the monthly retirement benefit shall equal two and seventy-five hundredths (2.75) per cent of average final compensation for each year of credited service.

Terminated persons, either vested or non-vested, are not eligible for disability benefits, ~~except that those terminated by the city for medical reasons may apply for a disability within thirty (30) days after termination.~~ Notwithstanding the previous sentence, if a member is terminated by the city for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the board within thirty (30) days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the board otherwise determines that he is totally and permanently disabled as provided for above.

* * *

(g) *Workers' compensation.* When a member is receiving a disability pension and workers' compensation benefits pursuant to Chapter 440, Florida Statute, and/or payments under any city salary continuation program for the same disability, and the total monthly benefits received from all sources exceed one hundred (100) per cent of the member's final full month's salary, not including accumulated pay items, the disability pension benefit shall be reduced so that the total monthly amount received by the member does not exceed one hundred (100) per cent of such salary. The amount of any lump sum workers' compensation payment shall be converted to an equivalent monthly benefit payable for ten (10) years certain by dividing the lump sum amount by 83.9692. Notwithstanding the foregoing, in no event shall the disability pension benefit be reduced below the greater of forty-two (42) per cent of average final compensation and two and seventy-five hundredths (2.75) per cent of average final compensation times years of credited service.

SECTION 4: Section 16-80, Optional forms of benefits, of Article IV, Police Officers' Pension Trust Fund, of Chapter 16, Pensions and Retirement, of the City of Ormond Beach, Florida, *Code of Ordinances*, is hereby amended by amending subsection (b), to read as follows:

* * *

(b) The member, upon electing any option of this section, will designate the joint pensioner (subsection (a)(2) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one (1) or more primary beneficiaries where applicable. A member may change his beneficiary at any time. If a member has elected an option with a joint pensioner and the member's retirement income benefits have commenced, the member may thereafter change his designated beneficiary at any time, but may only change his joint pensioner twice. Subject to the restriction in the previous sentence, a member may substitute a new joint pensioner for a deceased joint pensioner. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume that the joint pensioner has deceased for purposes of calculating the new payment.

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SECTION 5: Section 16-85, Maximum Pension, of Article IV, Police Officers' Pension Trust Fund, of Chapter 16, Pensions and Retirement, of the City of Ormond Beach, Florida, *Code of Ordinances*, is hereby amended by amending subsections (f) *Less than Ten (10) Years of Participation or Service* and (l) *Additional limitation on pension benefits* and adding subsection (m) *Effect of direct rollover on 415(b) limit*, to read as follows:

* * *

(f) *Less than Ten (10) Years of Participation ~~or Service~~.* The maximum retirement benefits payable under this section to any member who has completed less than ten (10) years of ~~credited service with the City~~ participation shall be the amount determined under subsection (a) of this section multiplied by a fraction, the numerator of which is the number of the member's years of ~~credited service~~ participation and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without

regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits paid pursuant to Sec. 16-78, or pre-retirement death benefits paid pursuant to Sec. 16-77.

* * *

- (1) (2) No member of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter ~~67~~ 1223, Title 10, U.S. Code.

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

SECTION 6: Section 16-95, Prior police service, of Article IV, Police Officers' Pension Trust Fund, of Chapter 16, Pensions and Retirement, of the City of Ormond Beach, Florida, *Code of Ordinances*, is hereby amended by amending subsection (4), to read as follows:

* * *

- (4) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal, county or state law enforcement department, if such prior service forms, or will form, the basis of a retirement benefit or pension from another retirement system or plan as set forth in subsection 16-85(~~1~~)(2).

* * *

SECTION 7: Section 16-98, Deferred retirement option plan, of Article IV, Police Officers' Pension Trust Fund, of Chapter 16, Pensions and Retirement, of the City of Ormond Beach, Florida, *Code of Ordinances*, is hereby amended to read as follows:

Sec. 16-98. Deferred Retirement Option Plan.

- (a) *Definitions.* As used in this section 16-98, the following definitions apply:

DROP. The City of Ormond Beach Police Officers' Pension Trust Fund Deferred Retirement Option Plan.

(c) *DROP account.* The account established for each DROP participant under subsection (c) of this section.

"Total return of the assets" -- For purposes of calculating earnings on a member's DROP account pursuant to subsection (c)(2)b.2., for each fiscal year quarter, the percentage increase (or decrease) in the interest and dividends earned on investments, including realized and unrealized gains (or losses), of the total Plan assets.

- (b) *Participation.*

- (1) *Eligibility to participate.* In lieu of terminating his employment as a police officer, any member who was hired prior to August 21, 2012 and who is eligible for normal retirement under the system may elect to defer receipt of such service retirement

pension and to participate in the DROP. Any member hired on or after August 21, 2012 is not eligible to participate in the DROP.

- (2) *Election to participate.* A member's election to participate in the DROP must be made in writing, in a time and manner determined by the board and shall be effective on the first day of the first calendar month which is at least fifteen (15) business days after it is received by the board.
- (3) *Period of participation.* A member who elects to participate in the DROP under subsection (b)(2) of this section, shall participate in the DROP for a maximum period ending on a date that is the earlier of the completion of thirty (30) years of service or sixty (60) months from the date that the member's election to participate in the DROP first becomes effective. An election to participate in the DROP shall constitute an irrevocable election to resign from the service of the city not later than the date provided for in the previous sentence. A member may participate only once.
- (4) *Termination of participation.*
 - a. A member's participation in the DROP shall cease the earlier of:
 1. the end of his permissible period of participation in the DROP as determined in subsection (b)(3); or
 2. Termination of his employment as a police officer.

Any election made under subsection (b)(4)a.1. of this section shall be effective on the first day of the first calendar month which is at least fifteen (15) business days after it is received by the board.

- b. Upon the member's termination of participation in the DROP, pursuant to subsection (b)(4)a.1. or 2. of this section, all amounts provided for in subsection (c)(2) of this section, including monthly benefits and investment earnings and losses or interest, shall cease to be transferred from the system to his DROP account. Any amounts remaining in his DROP account shall be paid to him in accordance with the provisions of subsection (d) of this section when he terminates his employment as a police officer.
 - c. A member who elects to terminate his participation in the DROP under subsection (b)(4) of this section shall not be permitted to again become a participant in the DROP.
- (5) *Effect of DROP participation on the system.*
 - a. A member's credited service and his accrued benefit under the system shall be determined on the date his election to participate in the DROP first becomes effective. For purposes of determining the accrued benefit, the member's salary for the purposes of calculating his average final compensation shall include an amount equal to any lump sum payments which would have been paid to the member and included as salary as defined herein, had the member retired under normal retirement and not elected DROP participation. Member contributions attributable to any lump sums used in the benefit calculation and not actually received by the member shall be deducted from the first payments to the member's DROP account. The member shall not accrue any additional credited service or any additional benefits under the system (except for any supplemental benefit payable to DROP participants or any additional benefits provided under any cost-of-living adjustment for retirees in the system) while he is a participant in the

DROP. After a member commences participation, he shall not be permitted to again contribute to the system nor shall he be eligible for disability or pre-retirement death benefits, except as provided for in Sec. 16-99, Reemployment after retirement.

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

(c) *Funding.*

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

(2) *Transfers from retirement system.*

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

- b. Except as otherwise provided in subsection (b)(4)b. of this section, a member's DROP account under this subsection (c)(2) shall be debited or credited ~~after each fiscal year quarter~~ with either:

- 1. Interest at an effective rate of six and one-half (6½) per cent per annum compounded monthly determined on the last business day of the prior month's ending balance and credited to the member's DROP account as of such date (to be applicable to all current and future DROP participants) for members who entered the DROP prior to August 21, 2012.

Interest at an effective rate of two (2) per cent per annum compounded monthly determined on the last business day of the prior month's ending balance and credited to the member's DROP account as of such date (to be applicable to all current and future DROP participants) for members who entered the DROP on or after August 21, 2012; or

- 2. Earnings, to be credited or debited to the member's DROP account, determined as of the last business day of each fiscal year quarter and debited or credited as of such date, determined as follows:

- The average daily balance in a member's DROP account shall be credited or debited at a rate equal to the actual net rate of

investment return realized by the system for that quarter. "Net investment return" for the purpose of this paragraph is the total return of the assets in which the member's DROP account is invested by the board net of brokerage commissions, transaction costs and management fees.

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

→ Upon electing participation in the DROP, the member shall elect to receive either earnings or interest on his account to be determined as provided above. The member may, in writing, elect to change his election only once during his DROP participation. An election to change must be made prior to the end of a quarter and shall be effective beginning the following quarter.

- c. A member's DROP account shall only be credited or debited with earnings or interest and monthly benefits while the member is a participant in the DROP and after the member dies, retires or terminates his employment as a police officer. If a member fails to terminate employment after electing to cease participation in the DROP pursuant to subsection (b)(4)a.1. of this section or after participating in the DROP for the period provided for in subsection (b)(3) of this section, then beginning with the next payment following cessation of participation or beginning with the month following the date specified in subsection (b)(3) of this section, whichever occurs first, the member's DROP account will no longer be credited or debited with earnings or interest, nor will monthly benefits be transferred to the DROP account. All such non-transferred amounts shall be forfeited and continue to be forfeited while the member is employed by the police department. A member employed by the police department after the date specified in subsection (b)(3) of this section will still not be eligible for pre-retirement death or disability benefits, nor will he accrue additional credited service, except as provided for in Sec. 16-99, Reemployment after retirement.

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

(1) *Eligibility for benefits.* A member shall receive the balance in his DROP account in accordance with the provisions of this subsection (d) upon his termination of employment as a police officer. Except as provided in subsection (d)(4) of this section, no amounts shall be paid to a member from the DROP prior to his termination of employment as a police officer.

(2) *Form of distribution.*

- a. Unless the member elects otherwise, distribution of his DROP account shall be made in a cash lump sum, subject to the direct rollover provisions set forth in subsection (d)(7) of this section. Elections under this paragraph shall be in writing and shall be made in such time or manner as the board shall determine.

- b. If a member dies before his benefit is paid, his DROP account shall be paid to his beneficiary in such optional form as his beneficiary may select. If no beneficiary designation is made, the DROP account shall be distributed to the member's estate.
- (3) *Date of payment of distribution.* Except as otherwise provided in this subsection (d), distribution of a member's DROP account shall begin as soon as administratively practicable following the member's termination of employment. Distribution of the amount in a member's drop account will not be made unless the member completes a written request for distribution and a written election, on forms designated by the board, to either receive a cash lump sum or a rollover of the lump sum amount.
- (4) *Proof of death and right of beneficiary or other person.* The board may require and rely upon such proof of death and such evidence of the right of any beneficiary or other person to receive the value of a deceased member's DROP account as the board may deem proper and its determination of the right of that beneficiary or other person to receive payment shall be conclusive.
- (5) *Distribution limitation.* Notwithstanding any other provision of this subsection (d) of this section, all distributions from the DROP shall conform to the "Minimum distribution of benefits" provisions as provided for herein.
- (6) *Direct rollover of certain distributions.* This subsection applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the DROP to the contrary a distributee may elect to have any portion of an eligible rollover distribution paid in a direct rollover as otherwise provided under the system in section 16-96.
- (e) *Administration of DROP.*
- (1) *Board administers the DROP.* The general administration of the DROP, the responsibility for carrying out the provisions of the DROP and the responsibility of overseeing the investment of the DROP's assets shall be placed in the board. The members of the board may appoint from their number such subcommittees with such powers as they shall determine, may adopt such administrative procedures and regulations as they deem desirable for the conduct of their affairs; may authorize one (1) or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical, accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP; and may allocate among themselves or delegate to other persons all or such portion of their duties under the DROP, other than those granted to them as trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A trustee shall not vote on any question relating exclusively to himself.
- (2) *Individual accounts, records and reports.* The board shall maintain records showing the operation and condition of the DROP, including records showing the individual balances in each member's DROP account, and the board shall keep in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The board shall prepare and distribute to members participating in the DROP and other individuals or filed with the appropriate governmental agencies, as the case may be, all necessary descriptions, reports, information, returns, and data required to be distributed or filed for the DROP pursuant to the code, the applicable portions of the Act and any other applicable laws.
- (3) *Establishment of rules.* Subject to the limitations of the DROP, the board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The board shall have discretionary authority to construe and interpret

the DROP (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in the DROP). The determination of the board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law.

(4) *Limitation of liability.*

- a. The trustees shall not incur any liability individually or on behalf of any other individuals for any act or failure to act, made in good faith in relation to the DROP or the funds of the DROP.
- b. Neither the board nor any trustee of the board shall be responsible for any reports furnished by any expert retained or employed by the board, but they shall be entitled to rely thereon as well as on certificates furnished by an accountant or an actuary, and on all opinions of counsel. The board shall be fully protected with respect to any action taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.

(f) *General provisions.*

(1) *The DROP is not a separate retirement plan.* Instead, it is a program under which a member who is eligible for normal retirement under the system may elect to accrue future retirement benefits in the manner provided in this section 16-98 for the remainder of his employment, rather than in the normal manner provided under the plan. Upon termination of employment, a member is entitled to a lump sum distribution of his or her DROP account balance or may elect a rollover. The DROP account distribution is in addition to the member's monthly benefit.

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

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

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

(+ 5) *Amendment of DROP.* The DROP may be amended by an ordinance of the city at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP account of any member.

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

legal representative. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.

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

(4 8) *Prevention of escheat.* If the board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the board may, no earlier than three (3) years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the board or the city. If such person has not made written claim therefor within three (3) months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the system, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the system. Upon such cancellation, the system shall have no further liability therefor except that, in the event such person or his beneficiary later notifies the board of his whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.

(5 9) *Written elections, notification.*

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

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

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

(7 11) *Construction.*

a. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.

b. The titles and headings of the subsections in this section 16-98 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

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

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

SECTION 8: Section 16-99.1, Supplemental benefit component for special benefits; Chapter 185 share accounts, of Article IV, Police Officers' Pension Trust Fund, of Chapter 16, Pensions and Retirement, of the City of Ormond Beach, Florida, *Code of Ordinances*, is hereby added to read as follows:

Sec. 16-99.1. Supplemental benefit component for special benefits; Chapter 185 share accounts.

There is hereby established an additional plan component to provide special benefits in the form of a supplemental retirement, termination, death and disability benefits to be in addition to the benefits provided for in the previous Sections of this Plan, such benefit to be funded solely and entirely by F.S. Chapter 185, premium tax monies for each plan year which are allocated to this supplemental component as provided for in F.S. §185.35. Amounts allocated to this supplemental component ("Share Plan") shall be further allocated to the members and DROP participants in a manner to be agreed upon.

SECTION 9: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Ormond Beach.

SECTION 10: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrase under application shall not be affected thereby.

SECTION 11: All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

SECTION 12: This ordinance shall take effect immediately upon adoption.

PASSED ON FIRST READING THIS ___ day of _____, 2016.

PASSED AND ADOPTED ON SECOND READING THIS ___ day of _____, 2016.

EDWARD KELLEY
Mayor

ATTEST:

SCOTT MCKEE
City Clerk