

**City of Pompano Beach**  
**General Employees' Retirement System**

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Thank you for your interest in being appointed as a Trustee of the City of Pompano Beach General Employees' Retirement System. We have prepared this handout to provide you with more information concerning the responsibilities of this important position.

**General Responsibilities of a Trustee**

All Trustees are expected to:

- Act as fiduciaries
  - See the Board's definition of fiduciary, attached
- Attend a minimum of 75% of all scheduled Board Meetings during the fiscal year (October – September 30)
  - Regular meetings are held on the third Tuesday of each month, beginning at 1:30 p.m., unless otherwise re-scheduled in advance
  - Additional special meetings may be held from time to time, as determined by the Board
- Attend sessions required to obtain their Certified Public Pension Trustee (CPPT) designations from the Florida Public Pension Trustees Association, and to maintain their CPPT designations by continuing to attend continuing education (CEU) courses and programs.
  - This usually requires out-of-town travel for periods of 3-5 days at a time, at different times during the year, and usually includes travel on weekends as well as weekdays
- Become familiar with:
  - The Ordinance pertaining to the Retirement System
  - The Board's policies and procedures
  - The Board's Investment Policy
  - The general operation of the Retirement System
- Acquire knowledge regarding the State and Federal laws affecting the operation of the Retirement System, including Chapter 112, Part VII, Florida Statutes
- Become familiar with the various advisors providing services to the Board, such as Actuary, Auditor, Attorney, Custodian, Investment Consultant and Investment Managers and their functions

Please contact Executive Director Madelene Klein if you would like more information.

## BOARD OF TRUSTEES' DEFINITION OF FIDUCIARY

### What Does It Mean To Be A Fiduciary?

- I. There is a common law meaning of fiduciary that was explained by a Court in 1928:

"Many forms of conduct permissible in a work-a-day world for those acting at arms length, are forbidden to those bound by fiduciary ties. A Trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor most sensitive, is in the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of Courts of equity when petitioned to undermine the rule of undivided loyalty... Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd."

The common law fiduciary duty requires undivided loyalty, to be applied with "uncompromising rigidity."

- II. Florida statutes, enacted by the legislature, specifically state that trustees of a Florida government pension plan are fiduciaries. The standard of conduct for a fiduciary of a government pension plan is as follows:

A fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and--

- (A) For the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

- (B) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) By diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

- III. The fiduciary duty includes all aspects of the pension plan, including investment management and benefit administration. A fiduciary must be informed, careful, prudent and diligent. A fiduciary is responsible for exercising diligence in making certain that benefits are only paid to those who are entitled to receive the benefits, and only in the amount that those retirees are entitled to receive.
- IV. A fiduciary must act in accordance with the applicable rules of ethics. Florida State law provides a comprehensive system of ethics rules for Trustees. These rules are not burdensome, but are designed to ensure that the Trustees are exercising their discretion in the best interest of the beneficiaries, and no one else.

(d) Receipt of opinions. The public official who has received any opinions regarding the facts affecting the matter, or effects of possible decisions resulting from the hearing or proceedings, discloses those opinions and the basis for each opinion if known, and the source of each opinion. Disclosure shall be made at the beginning of the quasi-judicial hearing or proceeding, or at the public official's first reasonable opportunity if he is not present when the hearing or proceeding starts.

(2) The person receiving the ex parte communication does not:

(a) Participate in the deliberations nor decision-making process in the quasi-judicial proceeding; and

(b) Does not transmit nor otherwise communicate the ex parte communication, nor any part thereof, nor any summary of all or any portion thereof, to any other public official or member of a board or commission which deliberates on, or decides, the matter.

(C) Policy on ex parte communication. Notwithstanding the foregoing requirements when ex parte communications are received, all public officials and members of boards and commissions which conduct quasi-judicial proceedings are discouraged from receiving ex parte communications affecting those quasi-judicial proceedings because of the potential for discrediting or invalidating the outcome of affected quasi-judicial proceedings.

(D) Legislative matters. Restrictions on ex parte communications do not apply to matters which both:

(1) Are legislative in nature, and

(2) Do not violate Florida's "Government in the Sunshine" Law.  
(Ord. 96-40, passed 2-13-96)

## **GENERAL EMPLOYEES' RETIREMENT SYSTEM**

### **§ 34.010 DEFINITIONS.**

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**AMENDED PLAN OR SYSTEM or PLAN.** The City General Employees Retirement System as contained herein and all amendments thereto.

**AVERAGE MONTHLY EARNINGS.** One thirty-sixth of the earnings paid for the highest completed 78 bi-weekly pay periods preceding the actual retirement or termination date of a member times 1.0048. Compensation in excess of limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for an "eligible employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. "Eligible employee" is an individual who was a member before the first plan year beginning after December 31, 1995.

**BENEFICIARY.** The person or persons entitled to receive any benefits at the death of a member who has or have been designated in writing by the member and filed with the Board. If no designation is in effect at the time of death of the member, or if no person so designated is living at that time, the Board shall have the authority to designate the beneficiary or beneficiaries as provided herein.

**BOARD.** The Board of Pension Trustees, which shall hold the plan assets for the city and shall supervise, administer, and manage the system herein provided and serve as trustees of the fund.

**CONTINUOUS SERVICE.** Uninterrupted service by a member (expressed as years and completed months), from the date he last entered employment as an employee until the date his employment shall be terminated by death, retirement or discharge; however, the continuous service of any member shall not be deemed to be interrupted by, although credit for benefit purposes shall not be granted for, the following.

(1) Any authorized leave of absence, provided all members similarly situated in similar circumstances are treated alike pursuant to uniform, nondiscriminatory rules.

(2) Any service, voluntary or involuntary, in the armed forces of the United States, provided the member is legally entitled to reemployment under the provisions of the Universal Military Training and Service Act and any amendments thereto, or any law applicable to such reemployment, and provided further, that the member applies for reemployment within three months following termination of the service.

(3) Transfer of employment category within the city to one not covered by this plan.

**COST OF LIVING ADJUSTMENT (COLA).** A permanent increase in the retiree's monthly benefit calculated by multiplying the COLA amount by the retiree's existing monthly pension benefit immediately prior to the time the COLA takes effect.

**DEFERRED RETIREMENT CALCULATION DATE.** The date prior to a member's entering the DROP period when benefits under the DROP shall be calculated as provided in § 34.0263.

**DROP.** The Deferred Retirement Option Plan established by § 34.026(E).

**DROP ACCOUNT.** The bookkeeping account established by the plan for each member of the DROP pursuant to § 34.0263.

**DROP ELECTION DATE.** The date a member elects to participate in the DROP.

**DROP PARTICIPANT.** Any eligible member of the General Employees Retirement System who has validly elected to participate in the DROP.

**DROP PERIOD.** The period of time commencing on the deferred retirement calculation date and ending on the member's DROP termination date, which period may not exceed 60 months of elapsed time.

**DROP TERMINATION DATE.** The date a DROP participant ceases to be an employee of the city and begins receiving their calculated retirement benefit.

**EARNINGS.** Basic wages and regular longevity wages paid to a member, excluding overtime, bonuses, and any other nonregular payments.

**EFFECTIVE DATE.** Thirty days following final approval of Ordinance No. 73-3 on the second reading by the City Commission (i.e. 11-8-72 is the second reading approval date).

**ELECTED OFFICIALS AND APPOINTEES.** The Mayor, City Commissioners, City Clerk, City Attorney, City Auditor and City Manager on the effective date of Ord. 2005-16, and any person who is elected or appointed to any of the foregoing positions after such date. A member shall be considered to be **ELECTED OFFICIALS AND APPOINTEES** as long as he or she holds one of the foregoing positions.

## **EMPLOYEE.**

(1) All regular employees of the city's classification service except the members of the Fire Department with the job title of firefighter, driver/engineer, Fire Inspector, Fire Lieutenant, Paramedic Lieutenant, Fire Captain, Fire Marshal, Division Chief, Assistant Fire Chief, and Fire Chief and members of the Police Department with the job title of patrolman, Sergeant, Detective, Lieutenant, Captain, Major, Commander, Assistant Police Chief, or Police Chief. For this purpose, the term **REGULAR EMPLOYEE** shall include those who work for 26 hours or more per week and five months or more per year. This definition shall also include all former **EMPLOYEES** who were transferred to the Broward County Library System pursuant to the Interlocal Agreement between Broward County and the City of Pompano Beach Library, effective October 1, 1991, and who elected to remain in this System, all former **EMPLOYEES** who transferred to the Broward County Sheriff's Office and elected to remain in this system pursuant to the Interlocal Agreement between the Sheriff's Office of Broward County and the city relating to dispatch services, dated October 16, 1998, and all former **EMPLOYEES** who transferred to the Broward County Sheriff's Office and elected to remain in this system pursuant to the Agreement for Services adopted by Resolution No. 99-223 and Ordinance No. 99-46, effective August 1, 1999. Effective on the effective date of Ord. 2005-16, **EMPLOYEE** shall include elected officials and appointees as defined herein.

(2) Commencing October 1, 1996, the following positions shall not be included in this pension plan:

(a) Director of Planning and Growth Management

(b) Assistant City Manager

(c) Assistant to City Manager

(d) Budget Officer

(e) Public Works Director

(f) Utilities Director

(g) Parks and Recreation Director

(h) City Engineer

(i) Finance Director

(j) Personnel Director

- (k) Public Works Administrator
- (l) Special Projects Manager
- (m) Capital Projects Manager.

However, those persons who are presently in those positions and members of this plan prior to December 1, 1995, and those other members of this plan who, after the passage of this division, are members of this plan and are transferred or promoted to one of the aforementioned positions, shall remain in this plan. This division applies only to those new employees of the city who have commenced their employment with the city after December 1, 1995, and fill one of the aforementioned positions at the time of commencement of their employment.

**FISCAL AGENT.** The person or entity designated to serve as investment agent, or custodian of the fund of the retirement system.

**FUND.** The trust fund originally established and continued hereunder as part of the plan.

**HIGHLY COMPENSATED EMPLOYEE.** A **HIGHLY COMPENSATED EMPLOYEE** is a member of this plan who, during the taxable year or the preceding taxable year, received compensation in excess of \$75,000 from the city, or received compensation in excess of \$50,000 from the city and was in the top-paid group. An employee is considered to be in the top-paid group of employees for any year if the employee is in the group consisting of the top 20% of employees ranked on the basis of compensation paid during the year. For the purpose of determining the number of employee in the top-paid group, the following employees are excluded and disregarded:

- (1) Employees who have not completed six months of service;
- (2) Employees who normally work less than 17½ hours per week;
- (3) Employees who normally work six months or less during any year;
- (4) Employees under age 21;
- (5) Employees included in a unit of employees covered by a collective bargaining agreement (between employee representatives and the employer, and approved by the Secretary of Labor), except to the extent IRS regulations provide otherwise; and

(6) Employees who are nonresident aliens and who receive no Code Sec. 911(d)(2) earned income (foreign earned income exclusion per Code Sec. 911) which is Code Sec. 861(a)(3) U.S. source income (source of income from personal services Code Sec. 862(a)(3)). With regard to items (1), (2), (3) and (4), above, the city may substitute a shorter period of service, smaller number of hours or months, or lower age, as the case may be. Any alternative used must be made on a uniform and consistent basis. The exclusions may be modified to substitute a zero service or age requirement for the year at issue.

**MEMBER.** An employee who fulfills the prescribed participation requirements.

**NEW EMPLOYEE.** A member who joins the system with no vested benefit due him at the time he joins the system, or a member that retired and received or is receiving benefits from this system and then returns to the employment of the city.

**PLAN ADMINISTRATOR and ASSISTANT PLAN ADMINISTRATOR.** The then current and serving Chairman and Vice-Chairman, respectively, of the Board.

**PRIOR PLAN.** The city's employees' pension plan as in effect prior to the adoption of this system.

**RE-ENTERED EMPLOYEE.** A former member of this system who is rehired by the city as a **REGULAR EMPLOYEE** and who has vested benefits no part of which he has received.

**RETIRED.** Retirees who are receiving monthly benefits from General Employees' Pension Plan or participating in the DROP.

**RETIREE.** A retired employee or, after the retired employee's death, the retired employee's survivor or beneficiary, who is receiving monthly benefits, normal retirement, early retirement, disability, or remainder of ten-year certain or survivor from the General Employees' Pension Plan. A DROP participant is considered a "retiree" for purposes of this subchapter. For purposes of this subchapter, a retired employee and, after the retired employee's death, the retired employee's survivor or beneficiary who is receiving monthly benefits on account of the retired employee's death, shall be considered the same retiree.

**RETIREMENT DATE.** The date the employee retired, entered the DROP, or if the employee died before retiring or entering the DROP, the date of death.

**SUFFICIENTLY FUNDED.** The most recent annual actuarial valuation performed by the pension fund actuary and approved by the Pension Board of Trustees shows that the required city contribution for general employees is less than zero, and after payment of any variable cost of living adjustment remains less than zero; or shows that there is an actuarial gain attributable to general employees sufficient to fully fund the cost of any variable cost of living adjustment. The required city contribution may be found in the Discussion of Valuation Results section of the annual actuarial report. The actuarial gain attributable to general employees may be found in the annual actuarial report in the exhibit entitled Liquidation of the Unfunded Actuarial Liability. Actuarial wins and losses for each year shall be determined based on the funding methods and actuarial assumptions used in the most recent annual actuarial valuation.

('58 Code, § 11.02) (Ord. 73-3, passed 11-8-72; Am. Ord. 75-81, passed 9-16-75; Am. Ord. 80-29, passed 12-26-79; Am. Ord. 83-37, passed 2-8-83; Am. Ord. 86-82, passed 7-29-86; Am. Ord. 88-60, passed 5-24-88; Am. Ord. 91-16, passed 12-4-90; Am. Ord. 92-53, passed 7-21-92; Am. Ord. 94-41, passed 5-24-94; Am. Ord. 94-55, passed 7-19-94; Am. Ord. 96-21, passed 11-28-95; Am. Ord. 96-28, passed 12-26-95; Am. Ord. 96-85, passed 9-10-96; Am. Ord. 97-52, passed 4-22-97; Am. Ord. 99-1, passed 10-27-98; Am. Ord. 99-61, passed 7-27-99; Am. Ord. 2001-50, passed 3-27-01; Am. Ord. 2002-43, passed 3-26-02; Am. Ord. 2004-55, passed 7-27-04; Am. Ord. 2005-16, passed 12-14-04)

**§ 34.011 ESTABLISHMENT.**

The City Commission determines that the city should establish and adopt an actuarially-sound retirement and pension plan or system available to all employees, officers, and agents of the city.

('58 Code, § 11.01) (Ord. 73-3, passed 11-8-72)

***Cross-reference:***

*Authority of city to provide a pension or retirement plan for its officers and employees, see*

*Charter section 5 (23)*

*Old age and survivor's insurance, see*

*§§ 34.080 - 34.087*

**§ 34.012 BOARD OF TRUSTEES.**

(A) The general administration and responsibility for the proper operation of this retirement system and for making effective the provisions of this subchapter are hereby vested in a Board of Trustees consisting of seven persons, as follows. Three persons who are not members, either active or retired, of the retirement system shall be appointed by the City Commission. Three members of the retirement system, either active or retired, shall be elected as hereinafter provided. One person shall be elected by the six trustees selected in accordance with the foregoing.

(1) The term of office of each trustee shall be three years; however, the initial terms of the trustees of each class shall respectively be for one, two, and three years. The initial terms shall commence on December 8, 1972. Initially as among the employee members, the trustee receiving the most votes shall serve the three-year term, the second most votes the two-year term. The City Commission shall determine the term of office of each appointive trustee.

(2) The trustee elected by the remaining six Board members shall serve three years, and each succeeding member so designated shall serve three years.

(3) The elective trustees shall be elected in the following manner: by per capita vote of all members who come within the purview of this subchapter, both active and retired, at meetings to be held at places designated by the Board. At these meetings, all qualified members entitled to vote shall be notified in person or by mail, ten days in advance of the meeting. Voting shall be by secret paper ballot on a form provided by the Board Secretary either in person or by absentee ballot. An absentee ballot must be received by the Board Secretary on or before 4:00 p.m. on



the day of the election. No member shall be allowed to vote by proxy. In order to qualify as a candidate for election to the Trustee vacancy, each candidate must be nominated by three members of the system. The nomination period shall be held open for 15 days from the date of mailing of notification to the members. However, if only one candidate is duly nominated for the Trustee vacancy on the Board by the close of the nomination period as established by the Board, then there shall be no need for an election and that individual shall be deemed elected and shall fill the vacancy for the prescribed term. The candidate receiving the highest number of votes for each office shall be declared elected and shall take office immediately on commencement of the term of office for which elected or as soon thereafter as he shall qualify therefor. An election shall be held each year not more than 30 and not less than ten days prior to the commencement of the terms for which trustees are to be elected in that year. The Board of Trustees shall meet, organize, and elect one of their members as Chairman, and one member as Vice-Chairman, within ten days after trustees are elected and duly qualified.

(4) If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(5) The trustees shall serve without compensation but they may be reimbursed from the expense fund for all necessary expenses such as travel, which they may actually expend in the performance of their duties as a member of the Board. The expenditure shall not exceed the limits placed by law, including but not limited to F.S. § 112.061.

(6) Each trustee shall, within ten days after his appointment or election, take an oath of office before the City Clerk, that so far as it develops upon him, he will diligently and honestly administer the affairs of the Board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system. The oath shall be subscribed to by the members making it and certified by the Clerk and filed in his office.

(7) Each trustee shall be entitled to one vote on the Board. Four votes shall be necessary for a decision by the trustees at any meeting of the Board. The Chairman shall have the right to one vote only.

(8) Subject to the limitations of this subchapter, the Board of Trustees shall from time to time establish uniform rules and regulations for the administration of

funds created by this subchapter and for transactions of its business, including provisions for compulsory attendance of its members, which shall have the force of law. Board meetings shall be held in accordance with Robert's Rules of Order.

(9) The Board of Trustees shall by majority vote of its members appoint a Secretary, who may, but need not be, one of its members. It shall engage such actuarial and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by the Board of Trustees and all other expenses of the Board necessary for the operation of the retirement system shall be paid at those rates and in those amounts that the Board of Trustees shall agree, but in no case shall the expenditures for the services or operations exceed 3% of the maximum in the fund each fiscal year. All funds shall be disbursed by the Board of Trustees. The Secretary and any trustee authorized to handle or disburse funds or assets, or to sign checks, shall be bonded for a minimum of 10% of the assets of the fund with a maximum bond limit of \$100,000, the premium for the bond to be paid out of this fund.

(10) Any trustee who neglects the duties of his office shall be removed by the Board of Trustees upon affirmative vote of five members of the Board.

(11) The city may appoint employees to the Board to provide secretarial and clerical assistance, provided the Board reimburses the full cost of the employees to the city.  
(58 Code, § 11.18) (Ord. 73-13, passed 1-30-73; Ord. 78-78, passed 9-26-78; Ord. 83-42, passed 3-29-83; Am. Ord. 88-60, passed 5-24-88)

(B) The duties, responsibilities and powers of the Board of Trustees shall include the following.

(1) Construe the provisions of the system and determine all questions arising thereunder.

(2) Determine all questions relating to eligibility and participation.

(3) Determine and certify the amount of all retirement allowances or other benefits hereunder.

(4) Establish uniform rules and procedures to be followed for administrative purposes, benefit applications, and all matters required to administer the plan.

(5) Distribute at regular intervals to employees information concerning the plan.

(6) Receive and process all applications for participation and benefits.

(7) Authorize all payments whatsoever from the fund.

(8) Approve of any and all changes in the provisions of the system.

(9) Have performed an annual independent audit of the system's financial operations, books, and fund.

(10) Sue and be sued.  
( '58 Code, § 11.19) (Ord. 75-80, passed 9-16-75) (Ord. 73-3, passed 11-8-72)

#### § 34.013 PENSION BOARD.

(A) As part of the system there is hereby established the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the system. The actual custody and supervision of the fund and assets thereof shall be vested in the Pension Board. Payment of benefits and disbursements from the fund shall be made only on authorization from the Pension Board. ('58 Code, § 11.20)

(B) The Pension Board may hire and appoint those persons, agents, entities, (including corporate fiduciaries), or attorneys as in its discretion may be required or advisable to enable it to perform its custodial and investment duties. Further, the Pension Board may enter into agency, investment, advisory, and custodial agreements for the purpose of securing investment and custodianship services for the system and fund. ('58 Code, § 11.21) (Ord. 75-80, passed 9-16-75)

(C) All funds and securities of the system may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following.

(1) Current amounts of accumulated contributions of employees on both an individual and aggregate account basis.

(2) Receipts and disbursements.

(3) Payments to retirees.

(4) Current amounts clearly reflecting all moneys, funds, and assets whatsoever attributable to contributions and deposits from the city, including a valuation of all these, as well as other, assets of the fund on a market-value basis.

(5) All interest, dividends, gains, or losses whatsoever.

(6) Other entries that may be properly required to reflect a clear and complete financial report of the fund. ('58 Code, § 11.22) (Ord. 75-81, passed 9-16-75)

(D) The Board of Pension Trustees shall have the following investment powers and authority.

(1) The trustees shall invest and reinvest the funds in those securities or property real or personal wherever situated, as the trustees shall deem advisable, including but not limited to, stocks, common or preferred, bonds, and mortgages, and other evidences of indebtedness or ownership, although these may not be of the character permitted for trustees' investment by the laws of the state. The Board of Pension Trustees shall be vested with full legal title to the fund. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the Board or its agent in the fund, and the Board shall not be required to segregate or invest separately any portion of the fund.

(2) The Board may retain in cash and keep unproductive of income that amount of the fund it may deem advisable, having regard for the cash requirements of the system.

(3) Neither the Board nor any person or entity shall be liable for the making, retention, or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the fund, except that due to his or its own negligence, willful misconduct, or lack of good faith.

(4) The Board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of the nominee it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.

(5) The Board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to the securities; to deposit stock or other securities in any voting trust or any protective or like committee or with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally, to exercise any of the powers of an owner with respect to stocks, bonds, or other investments, comprising the fund which it may deem to be to the best interest of the fund to exercise.

(6) The Board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power herein contained.

(7) Where any action which the Board is required to take or any duty or function which it is required to perform either under the terms herein or under the general law applicable to it as a trustee under this subchapter, can reasonably be taken or performed only after receipt by it from a member, the city, or any person or entity, of specific information, certification, direction, or instructions, the Board shall incur no liability in failing to take that action or perform the duty or function until the information, certification, direction, or instruction has been received by it.

(8) Any significant or substantial overpayments or underpayments from the fund to a retired member or beneficiary caused by errors of computation may be adjusted by the Board, in its discretion, on a case by case basis. If, after appropriate investigation of the circumstances, an adjustment is found to be warranted based on the circumstances and evidence presented, the adjustment shall be made with interest at the rate per annum approved by the Board. If, in the Board's discretion, adjustments are found to be necessary, then overpayments shall be charged against retirement payments next succeeding the adjustment and, accordingly, underpayments shall be made up from the trust fund.

(9) The Board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits herein provided for and shall be under no duty or obligation to inquire into the sufficiency of the payments made into the fund by the city. However, the Board shall be required to have annual actuarial valuations of the system performed as of September 30 each year, by an independent actuary or actuarial firm with membership in either the Society of Actuaries or the American Academy of Actuaries.

(10) In any application to, or proceeding or action in, the courts, only the city and the Board shall be necessary parties, and no member or other person having an interest in the fund shall be entitled to any notice of service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons. ('58 Code, § 11.23)

(E) Any of the foregoing powers and functions reposed in the Board may be performed and carried out by the Board through duly-authorized agents, provided the Board at all times maintains supervision over the acts of any agent. Further, legal title to the fund shall always remain in the Board of Pension Trustees. ('58 Code, § 11.24)

(F) No change in any of the provisions of the system shall be made without the approval of a majority of the Board of Trustees. ('58 Code, § 11.25)  
(Ord. 73-3, passed 11-8-72; Am. Ord. 94-55, passed 7-19-94; Am. Ord. 96-21, passed 11-28-95)

#### § 34.014 MEDICAL BOARD.

The Board of Trustees shall designate a Medical Board to be composed of three physicians who shall arrange for a pass on all medical examinations required under the provisions of this subchapter, shall investigate all essential statements or certificates made by or on behalf of a member in connection with an application for disability or retirement, and shall report in writing to the Board of Trustees its conclusions and recommendations on all matters referred to it. The payment for these services shall be determined by the Board of Trustees.

('58 Code, § 11.26) (Ord. 73-3, passed 11-8-72)

### § 34.015 CONDITIONS OF ELIGIBILITY.

(A) All employees at the time of the adoption of this retirement system, whether or not they are members of the city's employees' pension plan, shall be eligible to become members of this system. Membership shall be optional for these employees; however the option may be exercised only as of December 8, 1972.

(B) Provided the conditions of eligibility as set forth in division (C) hereof are met, any other employee upon employment by the city shall be required to become a member. However, that membership shall be optional for the Assistant City Manager.

(C) The following are conditions of eligibility for acceptance into the retirement system subsequent to December 8, 1972.

(1) The employee must satisfactorily complete and pass, subject to the approval of the Board of Pension Trustees, all medical examinations required by the city and the Board for an employee of his classification.

(2) The employee must meet all requirements of the merit system of the city.

(D) Reentry into the system after discontinuance of prior participation will be permitted on a uniform, nondiscriminatory basis, and in no event will any duplication of benefits result therefrom. All employees in similar circumstances shall be treated alike on a uniform, nondiscriminatory basis. Upon reentry, credit for prior service shall be granted only upon repayment in full; of all moneys previously refunded to the member, together with such interest at the rate or rates assumed for actuarial purposes, as shall be certified by the actuary to be due; one-half of the total amount due within three months from the date of reentry, and the balance of the total amount due within six months from the date of reentry. If repayment in full is not made as aforesaid, any moneys paid pursuant to this section shall be refunded, plus interest at the rate set forth in § 34.025(D)(1), and there shall be no further opportunity to obtain credit for prior service. Employees who have reentered the system prior to the effective date of

this chapter may obtain credit for prior service upon complying with all of the provisions listed above; provided, however, that the time periods for repayment shall run from the effective date.

(E) Repealed.

(F) Second retirement. If an employee retires, and then returns to work as a regular employee with the city, during this second term of employment with the city, the employee's pension payment shall not be suspended. A second pension benefit shall be earned by the employee for the additional years of employment with the city, and then calculated, based upon average monthly earnings as defined in § 34.010 for that second period of service; provided, however, that the employee shall have worked a minimum of three continuous years during that second period of service and be at least age 62.

('58 Code, § 11.03) (Ord. 73-3, passed 11-8-72; Am. Ord. 75-81, passed 9-16-75; Am. Ord. 83-37, passed 2-8-83; Am. Ord. 85-22, passed 2-5-85; Am. Ord. 88-60, passed 5-24-88; Am. Ord. 95-54, passed 4-11-95; Am. Ord. 96-71, passed 5-28-96; Am. Ord. 2003-23, passed 11-26-02; Am. Ord. 2006-34, passed 4-25-06)

### § 34.016 APPLICATION FOR MEMBERSHIP.

In order to become a member of this system, each employee shall complete an application form, covering the following points, as well as any other points or items that may be prescribed by the Board of Pension Trustees.

(A) Employee's acceptance of the terms and conditions of the system.

(B) For members as of the effective date of this section, the amount of optional additional death benefits desired.

(C) Employee's designation of a beneficiary or beneficiaries.

(D) Employee's acknowledgment under oath that he or she is not eligible for disability benefits of any type arising from a physical or mental condition which already existed at the time of employment by the city.

('58 Code, § 11.04) (Ord. 73-3, passed 11-8-72; Am. Ord. 79-3, passed 10-10-78)