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CHAPTER 1

General

Article I Compensation; Legal Representation

Sec. 2-1-1. Compensation of elective boards and commissions.

(a) Effective January 1, 1999, each member of the following boards and commissions shall receive the monthly compensation set forth after the name of such board or commission:

Civil Service Commission	\$225.00
Board of Waterworks	225.00

(b) The Chairman of each such board and commission shall receive as additional compensation the sum of twenty-five dollars (\$25.00) per month for each month of service as Chairman.

(c) The compensation of the Board of Waterworks shall be paid from revenues realized from the operation of the water system of the City. (1957 Code, §2-12.3; Ord. No. 5802, 4-26-93; Ord. No. 6314, 5-11-98)

Sec. 2-1-2. Compensation of appointive boards and commissions.

(a) Effective July 1, 2005, all members of the following boards and commissions shall receive as compensation the sum of twenty-five dollars (\$25.00) for each regular or special meeting actually attended by such member:

(1) Planning and Zoning Commission.

(2) Zoning Board of Appeals (the Planning and Zoning Commission member of this Board shall be compensated as all other members of said Board).

(3) Board of Elections, plus sixty dollars (\$60.00) full compensation for election day.

(4) Liquor and Beer Licensing Board.

(b) The Chairman of each such board and commission shall receive as additional compensation the sum of fifty dollars (\$50.00) per month for each month of service as Chairman.

(c) Ex officio members of such boards and commissions shall not receive any compensation or expenses for attendance at regular meetings, but may be compensated for special meetings attended, when provision in this Code is made for such compensation. (1957 Code, §2-12.4; Ord. No. 5624, 8-27-90; Ord. No. 5802, 4-26-93; Ord. No. 6314, 5-11-98; Ord. No. 7321 §1, 6-27-05)

Sec. 2-1-3. Legal representation.

The City Attorney shall advise all elective and appointive administrative boards and commissions except the Board of Waterworks concerning their duties and the administration of their functions under this Code. He or she shall represent and defend all such boards (except the Board of

Waterworks) as their attorney in all suits or actions that may be brought against them, and shall bring all actions in their behalf that may be required in order to obtain enforcement of this Code and rulings and orders of such boards and commissions made pursuant thereto.

Secs. 2-1-4—2-1-20. Reserved.

Article II
Miscellaneous Authorities

Sec. 2-1-21. Municipal day nursery; location; purpose; creation of managing authority; operations safeguarded.

The nursery building at Eighth and Greenwood Streets in the City is hereby designated and identified as a municipal institution and facility, available for general use, for the charitable purposes of daytime care of children of needy parents, without restrictions in favor of any individual or group of individuals, and the Pueblo Day Nursery, and its successors in function, is hereby created a municipal authority and agency for the management and operations of such institution. (1957 Code, §2-11)

Sec. 2-1-22. Welfare center; building; location; community chest as managing authority; safeguarding operations.

The Welfare Center Building, located at the corner of Fifth Street and Grand Avenue, within the City, is hereby designated, identified and dedicated as a municipal institution and facility, available for general use without discrimination for the public purposes hereinbefore set forth; and The Pueblo United Fund, Inc., of Pueblo County, Colorado, and its successors in function, is hereby created a municipal authority and agency for the management and operation of such institution and facility, and the performance of the public functions aforesaid in connection therewith. (1957 Code, §2-12)

CHAPTER 2

Firemen's Pensions

Sec. 2-2-1. Creation of Pension Fund; membership of Board.

There is hereby created in the City the Pueblo Firemen's Pension Fund, which shall be administered by a Board of Trustees composed of the President of the City Council, the Director of Finance, the City Clerk and three (3) active or retired members of the City Fire Department. (1957 Code, §19-37; Ord. No. 7756 §1, 2-25-08)

Sec. 2-2-2. Election; Fire Department members; terms; filling vacancies.

The three (3) active or retired members of the City Fire Department who shall be members of the Firemen's Pension Fund Board shall be selected in the following manner: During the month of December, the members of the Fire Department shall conduct an election by secret ballot, at which all active and retired members of the Fire Department shall be eligible to vote, for the purpose of determining membership on the Board. Members shall be elected for terms of two (2) years each. Such election shall be held in December of each year: one (1) member of the Board to be elected in

each even-numbered year, and two (2) members to be elected in each odd-numbered year following the original election of the members of the Board, such members of the Board to take office on the first day of January following their election. In case any member so elected to the Board shall become unable or ineligible to serve on the Board by reason of death or disability or for any other cause, a special election shall be held to fill the vacancy so created for the remainder of the unexpired term. As used in this Section and Section 2-2-1 of this Chapter, *retired member* shall mean a former uniformed employee of the City Fire Department meeting the qualifications set forth in Section 2-2-10 of this Chapter, and shall not be taken to include any family members of such present or former employees. (1957 Code, §19-38; Ord. No. 7756 §1, 2-25-08)

Sec. 2-2-3. President; Secretary.

The members of the Firemen's Pension Board shall elect a President of such Board, and a Secretary who shall be a member of such Board and keep a full record of the proceedings of the Board. (1957 Code, §19-39)

Sec. 2-2-4. Adoption of rules and regulations; approval.

The Board shall adopt suitable rules for its government and the administration of its trust, which rules shall become effective when approved by the City Council, and the rules now in force and effect are hereby declared approved. (1957 Code, §19-40)

Sec. 2-2-5. Fund assets and investments.

All assets of the Pueblo Firemen's Pension Fund shall be transferred to the Fire and Police Member's Benefit Fund created by Section 31-30-1012, C.R.S., and held, managed and invested by the Board of Directors of the Fire and Police Pension Association. All benefits payable under the Fund shall be paid by the Fire and Police Pension Association from the Fire and Police Member's Benefit Fund. (Ord. No. 5133, 2-27-84)

Editor's Note: Sections 2-2-5, 6, 8 and 9 were repealed in their entirety and reenacted as a new Section 5, Ord. No. 5133, 2-27-84.

Sec. 2-2-7. Sources of money for the Fund.

There shall be paid into and credited to the Fund money to be derived from the following sources:

(1) Such sums as the City Council shall provide in its annual budget and shall appropriate to such Fund annually.

(2) All monies that may be given to the Board or the Fund by any person for the use and purpose for which such Fund is created. Such Board may take by gift, grant, devise or bequest any money, personal property, real estate or interest therein as trustees for the uses and purposes for which the Fund is created. All donations and gifts which may be made to the Fund and net receipts from entertainments given for the Fund under the auspices of the Fire Department shall be credited to the Fund.

(3) There shall be paid into the Fund an assessment by each member of the Fire Department equal to the following percent of the salary paid to him or her by the City: seven percent (7%)

during the calendar year 1983; seven and one-half percent (7.5%) during the calendar year 1984; and eight percent (8%) during the calendar year 1985 and thereafter. The Director of Finance shall deduct such sum from the pay due each calendar month and deposit the total amount deducted to the credit of the Fund. The deduction by the Director of Finance for such monies shall be taken and considered to be a full receipt by each member of such Department for the assessment so deducted, and neither the City, any person, nor any officer of the City shall be in any manner liable to any member of the Department for the sum so deducted and transferred to the Fund.

(4) All monies paid to the Fund by the Treasurer of the State. (1957 Code, §19-43; Ord. No. 5133, 2-27-84)

Sec. 2-2-10. Persons entitled to benefits.

No person shall be entitled to the benefits of any of the provisions hereof or payments out of the Fund hereby created, unless he or she is now, or hereafter becomes a uniformed member or employee of the City Fire Department hired prior to April 8, 1978, within the classified service of the Civil Service regulations, or the Chief of the Fire Department if hired before April 8, 1978, or the members of the immediate family of such person herein designated, or those nonuniformed employees of the City Fire Department who were entitled to the benefits prior to the original date of adoption of this Section. (1957 Code, §19-46; Ord. No. 5133, 2-27-84)

Sec. 2-2-11. Escalation of benefits.

(a) Effective January 1, 1971, any officer, member or employee of the Fire Department, now or hereafter retired under the provisions of this Chapter, except as provided in Subsection (b) below, shall be paid a monthly pension equal to one-half ($1/2$) the amount of his or her monthly salary as of the date of his or her retirement plus an increase equal to one-half ($1/2$) of any increase in salary and longevity granted during the period of his or her retirement to the rank occupied by him or her in said Department.

(b) Any officer, member or employee of the Fire Department, now or hereafter retired for disability under the provisions of Section 31-30-407(1)(f), C.R.S., shall be paid a monthly benefit from the Firemen's Pension Fund equal to five percent (5%) of the amount set forth in Subsection (a) above, multiplied by the number of years he or she was in active service with said Department prior to retirement; but any such benefit payable from the Pueblo Firemen's Pension Fund under this Subsection shall not exceed one-half ($1/2$) of his or her monthly salary as of the date of his or her disability. In addition thereto, such officer, member or employee shall be paid from the Firemen's Additional Benefit Fund an amount which, when added to that sum made payable above, shall be equal to one-half ($1/2$) the amount of his or her monthly salary as of the date of his or her retirement plus an increase equal to one-half ($1/2$) of any increase in salary and longevity granted during the period of his or her retirement to the rank occupied by him or her in said Department.

(c) To pay the additional benefits provided for in Subsection (b) above, a fund is hereby established, to be known as the Firemen's Additional Benefits Fund, which shall be derived from such sums as the City Council shall annually appropriate.

(d) The provisions of this Section shall be applicable only in those cases where the monthly benefits payable would be increased; otherwise, the amount paid will be determined without reference to this Section. (1957 Code, §19-48; Ord. No. 3408, §3, 12-14-70)

Sec. 2-2-12. Benefits; applicable state law.

(a) All benefits to eligible persons shall become payable from Fund assets as provided by applicable state law.

(b) Notwithstanding any provision of this Chapter to the contrary, benefits and rights to benefits payable upon the death or disability of a fireman occurring on or after January 1, 1980, shall be those benefits set forth and established by Part 10 of Article 30, Title 31, C.R.S., or as the same may be subsequently amended.

(c) Firemen hired on or after April 8, 1978, shall not be covered by this Chapter but shall be covered under the statewide plan established by Part 10 of Article 30, Title 31, C.R.S., and their benefits, rights and eligibility shall be governed by said Part 10, or as the same may be subsequently amended.

(d) The contributions of firemen to the pension plan who are covered by this statewide plan shall be at the same rate as members of the plan created by this Chapter.

(e) This Chapter and the plan set forth herein are subject to and should be interpreted consistently with Parts 8, 9 and 10 of Article 30, Title 31, C.R.S., or as the same may be subsequently amended. (1957 Code, §19-47; Ord. No. 3408, §2, 12-14-70; Ord. No. 5133, 2-27-84)

Sec. 2-2-13. Reexamination.

(a) Times; Refusal. At least once each year for the first five (5) years following the retirement of a member with a disability pension, and at least once in each three-year period thereafter, the Board shall require such retirant, who has not attained the age of fifty (50) years, or who has not completed twenty (20) years of active service before retirement, to undergo a medical examination to be made by or under the direction of a physician or physicians designated by the Board. Should any such retirant refuse to submit to such medical examination in any such period, his or her disability pension may be discontinued by the Board until his or her withdrawal of such refusal, and should his or her refusal continue for one (1) year, all his or her rights in and to disability pension may be revoked by the Board. If upon such medical examination of such retirant, the physician certifies to the Board that such retirant is physically able and capable of resuming employment with the City, he or she shall be restored to Fire Department service and his or her disability pension shall be terminated.

(b) Return to Service. A disability retirant who has been, or shall be, returned to active service in the employ of the Fire Department, as provided in Subsection (a) above, shall again become a member of the retirement system. He or she shall be given service credit for the period he or she was receiving a disability pension payable from funds of the retirement system if during such period he or she was in receipt of workmen's compensation benefits on account of his or her City employment.

Sec. 2-2-14. Insufficiency of funds; proration; later payment.

If at any time the money, securities and other property to the credit of such Fund are insufficient to make the monthly payments accruing hereunder, then the beneficiaries shall equally prorate the amount of the payments to them until such time as there is sufficient money in the Fund to make payment to such beneficiaries of their just claims in full. Any or all arrearages of benefits, without interest, may be paid in any future year and shall enter into and form part of the basis of distribution for such year, but shall not otherwise be preferred. (1957 Code, §19-57)

Sec. 2-2-15. Report to Council; dates.

On or before the first Monday of November in each year, the Board shall report to the City Council as to the condition of the Fund and shall, on or before January 15 of each year, make a full detailed report to the City Council of receipts and expenditures on account of the Fund for the preceding year. (1957 Code, §19-59)

Sec. 2-2-16. Effect of Chapter.

Nothing in this Chapter shall be construed to give to any person entitled to benefits by the provisions hereof any vested interest in any monies, except such installments thereof as may have become actually due and payable, and shall have actually been paid into the Firemen's Pension Fund; nor shall any of the provisions of this Chapter be construed as a promise, express or implied by contract or otherwise, or in any event, or on the part of the City to pay to the Fund any particular sum or any sum at all. Nothing in the provisions of this Chapter shall be construed to give any member, officer or employee of the Fire Department any vested interest in and to the Fund because of monies paid, except as a beneficiary under the terms and on the conditions above set forth, and then only to such monthly installments as may then be due and payable. Upon the retirement, dismissal or withdrawal in any form from the service of the Fire Department, except as a beneficiary as hereinabove set forth, such person shall forfeit to the Fund any claim or right therein as a beneficiary or otherwise. (1957 Code, §19-60)

Sec. 2-2-17. Service beyond normal retirement date.

(a) Notwithstanding any provision of this Chapter to the contrary, the retirement benefit of fifty percent (50%) of salary upon reaching eligibility for retirement (at least age fifty [50] and at least twenty [20] years of active service) shall increase by an additional three percent (3%) for each full year of active service after the eligibility date is reached, provided that the full year of service occurs after January 1, 1994. Additionally, for persons retiring on or after October 25, 2000, for each partial year of active service after eligibility date is reached, the retirement benefit shall increase by an additional percentage calculated by multiplying twenty-five one hundredths of one percent (0.25%) times the number of full months of active service rendered after eligibility date is reached during such partial year of active service after eligibility date is reached. In no case shall the total benefit exceed eighty percent (80%) of salary.

(b) The rank escalation benefit for retired firefighters shall be calculated using the percentage of salary due at retirement as determined by Subsection (a) above.

(c) Nothing contained in this Chapter shall allow a firefighter to receive pension benefits in excess of those allowed by the Internal Revenue Code for qualified pension plans. (Ord. No. 6024, 10-23-95; Ord. No. 6585, 9-25-00)

Sec. 2-2-18. Joint and survivor pension.

(a) Notwithstanding any provision of this Chapter to the contrary, the firefighter may elect to receive retirement benefits as a benefit payable throughout the firefighter's life, called a regular pension, or may elect to receive the actuarially equivalent amount, computed as of the effective date of retirement, of the regular pension in a reduced pension payable throughout the firefighter's life, and nominate a survivor beneficiary, in accordance with the provisions of Option A or B, as set forth below:

(1) Option A. Joint and survivor pension. Upon the death of a retirant, the firefighter's reduced pension shall be continued throughout the life of, and paid to, such person having an insurable interest in the firefighter's life, as the firefighter shall have nominated by written designation duly executed and filed with the Colorado Fire and Police Pension Association Board prior to the effective date of retirement; or

(2) Option B. Modified joint and survivor pension. Upon the death of a retirant, one-half ($1/2$) of the reduced pension shall be continued throughout the life of, and paid to, such person having an insurable interest in the fire-fighter's life, as the firefighter shall have nominated by written designation duly executed and filed with the Colorado Fire and Police Pension Association Board prior to the effective date of his or her retirement.

(b) The election of a regular pension or one (1) of the options for survivors set forth in Subsection (a) above shall be made prior to the effective date of the firefighter's retirement. After an election has been made and the firefighter has cashed the first pension check, or sixty (60) days from date of issuance of said check have elapsed, whichever occurs first, the election shall be irrevocable. The firefighter's beneficiary designation shall also be irrevocable at such time unless the firefighter's marital status changes as the result of dissolution of marriage, death of a beneficiary, marriage or remarriage or in the event of the death of a beneficiary. In such case, the firefighter may designate a new beneficiary.

(c) In the event of a change in beneficiary designation pursuant to Subsection (b) above, the joint pension payable shall be recalculated so as to be the actuarial equivalent of the remainder of the original pension benefits based upon the member's initial beneficiary designation, if any.

(d) Effective on and after March 24, 1997, upon the death of an active fire-fighter who has attained age fifty (50) with at least twenty (20) years of active service and has achieved full eligibility to receive retirement benefits prior to his or her death but who had not so retired prior to death, the lawful spouse of the firefighter at the time of death shall receive, for the life of such spouse, a reduced survivor pension actuarially equivalent to the reduced pension which would have been paid to such spouse had the firefighter retired the day before his or her death, elected to receive the Option A Joint and Survivor Pension available pursuant to Subsection (a)(1) above, and designated such spouse as the surviving beneficiary. This paragraph is not intended to provide a reduced survivor benefit to any person except the lawful surviving spouse of an eligible firefighter.

(e) Nothing contained in this Section shall affect whatever other benefits a fire-fighter's surviving spouse or dependent children may be entitled to. (Ord. No. 6025, 10-23-95; Ord. No. 6181, 3-24-97; Ord. No. 6188, 4-28-97)

Sec. 2-2-19. Deferred Retirement Option Program; benefits.

(a) This Section adds, effective prospectively after October 25, 2000, or the date upon which the City receives a favorable determination letter from the Internal Revenue Service with respect to the changes made by this Section to the retirement plan for those uniformed employees of the City Fire Department hired prior to April 8, 1978, (hereinafter referred to as the "plan"), whichever is later, as part of the plan, an optional benefit known as the Deferred Retirement Option Program.

(b) The provisions of this Section are applicable only with respect to those otherwise eligible members of the plan whose election to participate in the Deferred Retirement Option Program occurs on or after the effective date of this Section. An *eligible member* is any member hired as a City fireman prior to April 8, 1978, who elected to be covered by the plan and who has met all of the requirements of this Chapter and Section 31-30.5-602, C.R.S., for a pension but has not yet submitted an application for retirement to the Board which has been approved by the Board.

(c) The provisions of this Section may be cited as the "DROP Program" or "DROP."

(d) The purpose of the DROP Program is to grant additional benefits to the members. The DROP Program allows an eligible member to accrue into a special member account, referred to as the member's DROP account, for a period not to exceed five (5) years, the monthly pension benefits the member would otherwise be eligible to receive upon retirement (including periodic pension increases) without the member actually having retired. During this period, referred to as the period of participation in the DROP, the employee would not actually be retired and would therefore also be eligible to directly receive the full compensation and benefits, including periodic pay increases, payable to members who are active employees of the City. Additionally, during the member's participation in the DROP, the statutorily required member contributions to the plan would not accrue generally to the plan, but instead would be earmarked and accrue to the participating member's DROP account. At the end of the period of participation in the DROP, the member shall cease all employment with the City, will begin to directly receive the monthly pension payments and, in addition, will be entitled to receive a distribution of all amounts credited to the member's DROP account and net investment earnings thereon in accordance with one (1) of the distribution methods specified in Subsection (m) of this Section. Participation in the DROP Program is subject to all of the requirements and limitations set forth in this Section.

(e) An eligible member may participate in the DROP Program only once.

(f) The duration of an eligible member's participation in the DROP Program shall not exceed a total of five (5) years. As a condition precedent to participation in the DROP, the member shall execute, in multiple original counterparts, an irrevocable agreement with the City, which agreement shall, among other items, clearly and unequivocally state that the member must retire and cease all employment with the City no later than the fifth anniversary of the member's participation in the DROP, and that the member shall also acknowledge that no disbursement of any DROP account funds can occur absent the retirement or death of the member. One (1) signed counterpart of the agreement shall be retained by the City, one (1) counterpart shall be provided to the Board of the

Colorado Fire and Police Pension Association (FPPA), and one (1) counterpart shall be provided to the participating member.

(g) If the member's participation in the DROP is interrupted by military service, reduction in work force or job-related disability, then, upon reestablishment of membership and provided that the member has not received any distribution from his or her DROP account, the member shall be immediately eligible for resumption of participation in the DROP for the balance of the five-year maximum. Other than the above-described types of interruptions of participation, the five-year period shall continue to run in all other cases.

(h) Upon commencement of the member's participation in the DROP, the member shall remain an active member. Nevertheless, the member shall thereafter earn no additional service credit or additional benefits under the plan, and both years of service and the rank escalator provisions described in Section 2-2-11 of this Chapter shall be established and calculated by utilizing the years of credited service accrued and rank held by the member at the time of the member's commencement of participation in the DROP Program.

(i) Upon commencement of the member's participation in the DROP, the retirement benefit provided in Section 31-30.5-602, C.R.S. or Section 2-2-18 of this Chapter, calculated based upon the member's years of service and average final compensation as of commencement of participation in the DROP Program, shall be paid into the member's individual DROP account by FPPA. The member's required contribution to the plan shall also be credited by FPPA to the member's individual DROP account. Effective upon commencement of the member's participation in the DROP Program, no further employer contributions shall be paid by the City as a match or otherwise on account of the member's employment during the member's participation in the DROP.

(j) The DROP assets shall continue to be commingled for investment purposes as part of the fire and police members' benefit fund and shall be credited with net investment earnings and losses at the same rate as other assets of the fund. FPPA shall be authorized to charge each DROP account a fee for the administration of the DROP account.

(k) The Board is authorized to adopt rules and regulations governing the DROP, provided, however, that such rules and regulations shall not modify the requirements of this Section.

(l) The DROP account shall not be subject to any fees or charges of any kind for any purpose, except as otherwise provided in this Section.

(m) (1) A participant in the DROP who terminates employment or reaches the five-year limit for participation shall become a retiree and shall select a distribution method for the retiree's individual DROP account from among the following distribution methods:

a. Deferral of any payments from the individual DROP account until a specified date if a participant shall select one (1) of the following distribution methods. However, all distributions must start no later than the year in which the participant attains the age of 70½.

b. A lump sum distribution of the entire individual DROP account balance.

c. Periodic monthly payments with a designated amount until the balance of the individual DROP account has been entirely distributed.

d. Periodic payments for a designated period of years. The FPPA will calculate the dollar amount of the participant's periodic payment, so that the entire balance in the participant's individual DROP account will have been distributed to the participant by the end of the period selected by the participant. This amount will be recalculated annually during April.

e. Initial minimum required distribution. The FPPA will calculate the dollar amount of the participant's periodic payment based on the participant's current individual DROP account balance. The minimum distribution is based on the participant's life expectancy (and the life expectancy of his/her beneficiary, if any).

f. Combination of lump sum and periodic payments by designating an initial lump sum payment of a specified amount and a balance to be paid in a specified number of monthly payments of a specified dollar amount until the balance of the individual DROP account has been entirely distributed to the participant.

If no selection is made by the retiree within thirty (30) days of retirement, the lump sum payment method shall be utilized.

(2) Regardless of the form of the payment the participant chooses, the minimum distribution amount will be determined by FPPA and made in accordance with Internal Revenue Code ("Code") Section 401(a)(9) and the regulations thereunder, including the minimum distribution incidental death benefit requirement.

(n) If the member dies during the period of the member's participation in the DROP and the member's designated beneficiary is the member's surviving spouse to whom the member was legally married at the time of the member's death, the member's designated beneficiary shall select a distribution method for the retiree's individual DROP account from among the distribution methods specified in Subsection (m) of this Section. If no selection is made by the designated beneficiary within thirty (30) days of the death of the member, the lump sum payment method shall be utilized.

(o) If the member dies during the period of the member's participation in the DROP and the member's designated beneficiary is someone other than the member's surviving spouse to whom the member was legally married at the time of the member's death, the designated beneficiary shall receive a lump sum payment equal to the member's individual DROP account balance plus net investment earnings and losses.

(p) If the member dies during the period of the member's participation in the DROP and the designated beneficiary has not survived the member, the member's estate shall receive a lump sum payment equal to the member's individual DROP account balance plus net investment earnings and losses.

(q) Except for assignments for child support purposes as provided for in Sections 14-10-118(l) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to Section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, and for payments made in

compliance with a properly executed court order approving a written agreement entered into pursuant to Section 14-10-113(6), C.R.S., no portion of an individual DROP account, before or after their order for distribution by the Board to the persons entitled thereto, shall be held, seized, taken, subjected to, detained or levied on by virtue of any attachment, execution, injunction, writ, interlocutory or other order or decree, or process or proceeding whatsoever, issued out of or by any court of this State for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demand or judgment against the City or the beneficiary of the DROP account. (Ord. No. 6586, 9-25-00; Ord. No. 6923 §1, 12-23-02)

Sec. 2-2-20. Additional provisions applicable to plan (tax qualification).

(a) The compensation of each member taken into account for determining all contributions under the plan for any year shall not exceed any applicable limit imposed by the Internal Revenue Code ("Code"), including but not limited to those set forth in Code Section 401(a)(17) to the extent such limits apply to the plan or a particular member. The limits of Code Section 401(a)(17) shall not apply to a member who first became a member in the plan before January 1, 1996, or such later date as permitted by Treasury Regulations.

(b) This plan incorporates by reference the requirements of Code Section 415 and final regulations interpreting Code Section 415, as applicable to this governmental retirement plan. The cost-of-living increase of Code Section 415(d) shall continue to apply to increase the dollar benefit limit of Code Section 415(b) after the member's severance from employment. The limitation on contributions of Code Section 415(c) shall apply to member contributions that are made to the DROP account, as described in Section 2-2-19(i). The limitation year is the calendar year.

(c) Notwithstanding any provisions of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

(d) For distributions made on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of applying this Subsection, the following definitions shall apply:

(1) *Direct rollover*: A *direct rollover* is a payment by the plan to the eligible retirement plan specified by the distributee.

(2) *Distributee*: A *distributee* includes a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse are distributees with regard to the interest of the spouse or former spouse.

(3) *Eligible retirement plan*: An *eligible retirement plan* is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code or a qualified trust described in Section 401(a) of the Code that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an *eligible retirement plan* is an individual retirement account or individual retirement annuity.

Effective January 1, 2002, an *eligible retirement plan* shall also mean 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 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 to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p).

(4) *Eligible rollover distribution*: An *eligible rollover distribution* is any distribution of all or any portion of the balance to the credit of the distributee, except that an *eligible rollover distribution* does not include:

- a. Any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more;
- b. Any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and
- c. The portion of any distribution that is not includible in gross income.

For distributions on or after January 1, 2002, and before January 1, 2008, a portion of distribution shall not fail to be an *eligible rollover distribution* merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution is not so includible.

For distributions made after December 31, 2007, a portion of a distribution shall not fail to be an *eligible rollover distribution* merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or in a direct trustee-to-trustee transfer to a qualified trust described in Section 401(a) of the Code which is exempt from tax under Section 501(a) of the Code or to an annuity contract described in Section 403(b) of the Code, provided that such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separate accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(e) A member's nonspouse beneficiary may elect to have any portion of an eligible plan distribution paid in a direct trustee-to-trustee transfer to an individual retirement account or annuity described in Section 402(c)(8)(B)(i) or (ii) of the Code that is established to receive the plan distribution on behalf of the beneficiary. For purposes of this Subsection, a trust maintained for the benefit of one (1) or more designated beneficiaries may be the beneficiary to the extent provided in rules prescribed by the Secretary of Treasury. If the member dies after the member's required

beginning date as defined in Subsection (f) below, the required minimum distribution in the year of death may not be transferred according to this Subsection. The requirements of Code Section 402(c)(11) apply to distributions under this Subsection.

(f) Distributions under this plan shall be made in accordance with the requirements of regulations under Code Section 401(a)(9), as applicable to governmental plans, including the minimum incidental death benefit requirements and the required beginning date rule. The required beginning date rule is that distribution of a member's benefit shall begin no later than the April 1 next following the calendar year in which the member attains age seventy and one-half (70½) or terminates employment with the City, whichever occurs later. (Ord. No. 6740, 10-9-01; Ord. No. 6923 §2, 12-23-02; Ord. No. 7956 §2, 1-12-09)

CHAPTER 3

Police Pensions

Editor's Note: This Chapter derives from Ord. No. 2075, passed and approved by the people of the City of Pueblo at an election held 7-17-54 and became effective 1-1-55; amended by Ord. No. 3484, passed and approved by the people of the City of Pueblo at an election held 11-2-71 and became effective immediately; also amended by Ord. No. 3756, passed and approved by the people of the City of Pueblo at an election held 11-6-73 and became effective immediately.

Sec. 2-3-1. Plan established.

(a) The Pueblo Policemen Retirement Plan, hereinafter called the plan, is hereby created and established to provide for the retirement of policemen in the employ of the City; provide them with pensions; provide certain benefits to be paid beneficiaries of the policemen who die before or after their retirement; provide for contributions to be made by the City and the policemen; provide for the investment of the monies of the plan and provide for the general administration of the plan.

(b) Notwithstanding any other provisions hereof or any amendment hereto to the contrary, at no time shall any assets of the Pension Accumulation Fund revert to, or be recoverable by, the City or be used for, or diverted to, purposes other than for the exclusive benefit of members, retirants or their beneficiaries under the plan and the payment of plan expenses except such funds which upon termination of the plan are in excess of the amount required to fully fund the plan and are due to erroneous actuarial calculations. (1957 Code, §16-1; Ord. No. 5847, 12-27-93)

Sec. 2-3-2. Definitions.

The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) *Retirement system* means the City of Pueblo Policemen Retirement System created and established under the provisions of this Chapter.

(2) *Board* means the Board of Trustees provided for in this Chapter.

(3) *Member* means any person hired by the City as a policeman prior to April 8, 1978, who is included in the membership of the retirement system.

(4) *Retirant* means a member who retires with a pension payable under the provisions of this Chapter.

(5) *Beneficiary* means any person, other than a retirant, in receipt of a pension payable from funds provided by the retirement system.

(6) *Service* means service rendered to the City by a person as a policeman in the service of the City.

(7) *Credited service* means service credited to a member to the extent provided under this Chapter.

(8) *Regular interest* means such rate or rates of interest per annum, compounded annually, as the Board shall from time to time determine.

(9) *Compensation* means the salary paid by the City to a member for service rendered by him or her to the City as a policeman, including contributions picked up and paid by the City under Subsection 2-3-25(b)(2). The compensation of each member taken into account for determining all contributions under the plan for any year shall not exceed any applicable limit imposed by the Internal Revenue Code, including but not limited to those set forth in Internal Revenue Code Section 401(a)(17) to the extent such limits apply to the plan or a particular member.

(10) *Average final compensation* means the highest annual compensation received by a member during any year of his or her credited service.

Editor's Note: Ord. No. 3008, §1, adopted November 2, 1965, amended Ord. No. 2075 to redefine average final compensation.

(11) *Final compensation* means a member's annual rate of compensation at the time his or her employment with the City is terminated.

(12) *Accumulated contributions* means the sum of all amounts deducted from the compensation of a member and credited to his or her individual account in the Pension Savings Fund, together with regular interest thereon.

(13) *Pension* means an annual amount payable, in equal monthly installments, for life, from funds of the retirement system.

(14) *Pension reserve* means the present value of all payments to be made on account of any pension, or benefit in lieu of any pension, computed upon the basis of such mortality and other tables of experience, and regular interest, as the Board shall from time to time adopt.

(15) *Policeman* means an employee of the Police Department of the City holding the rank of patrolman, including probationary patrolman, or higher rank. The term policeman shall not include:

- a. Privately employed policemen;
- b. Persons temporarily employed as policemen during emergencies; and

c. Civilian employees of the Police Department.

(16) *Former plan* means the Police Pension Fund operating under prior ordinances in force on the date preceding the effective date of this retirement system.

Editor's Note: For former plan, see Ord. No. 1306; Ord. No. 1459.

(17) *Retirement* means withdrawal from service with a pension payable from funds of the retirement system. (1957 Code, §19-2; Ord. No. 5132, 2-27-84; Ord. No. 5832, 10-25-93; Ord. No. 5847, 12-27-93; Ord. No. 6969 §1, 4-14-03)

Sec. 2-3-3. Board of Trustees; creation; membership.

There is hereby created a Board of Trustees in whom is vested the general administration, management and responsibility for the proper operation of the retirement system, and for making effective and construing the provisions of this Chapter. The Board shall consist of five (5) trustees, as follows:

(1) The Mayor.

(2) The City Manager.

(3) The City Clerk.

(4) Two (2) members of the retirement system to be elected by the members of the retirement system under such rules and regulations as the Board shall from time to time adopt. (1957 Code, §19-3)

Sec. 2-3-4. Terms of office.

Each policeman member of the former plan Police Pension Board holding office of board member on the day preceding the effective date of this retirement system shall continue as trustee, provided for in Section 2-3-3(4) of this Chapter, until the term of the board member to which he or she was last elected under the former plan expires. Thereafter, the terms of trustees, provided for in Section 2-3-3(4), shall be two (2) years. (1957 Code, §19-4)

Sec. 2-3-5. Filling vacancies.

In the event a policeman trustee ceases to be a policeman in the service of the City, the Board shall declare his or her office of trustee vacated. If a vacancy occurs in the position of trustee, provided for in Section 2-3-3(4), the vacancy shall be filled within ninety (90) days after the date of the vacancy, for the unexpired term, in the same manner as the office was previously filled. (1957 Code, §19-5)

Sec. 2-3-6. Meetings.

The Board shall hold meetings regularly, at least quarterly, and shall designate the time and place thereof. All meetings of the Board shall be public. Each trustee shall be entitled to one (1) vote in the meetings of the Board. Three (3) trustees shall constitute a quorum at any meeting of the Board and at least three (3) concurring votes shall be necessary for a decision by the Board at any of its

meetings. The Board shall adopt its own rules of procedure and shall keep a record of its proceedings. (1957 Code, §19-6)

Sec. 2-3-7. Officers.

(a) Chairman. The Board shall elect from its members a chairman pro tem.

(b) Secretary, Administrative Officer. The Finance Director shall be secretary to the Board and the administrative officer of the retirement system.

(c) Treasurer, Custodian. The Finance Director shall be treasurer of the retirement system and the custodian of its funds.

(d) Legal Advisor. The City Attorney shall be legal advisor to the Board.

(e) Technical Advisor. The Board shall designate an actuary who shall be technical advisor to the Board on matters regarding the operation of the retirement system on an actuarial basis, and who shall perform such other duties as are required in connection therewith.

(f) Medical Committee. The Board shall designate a medical committee consisting of three (3) physicians. The medical committee shall serve for such terms as the Board shall from time to time determine. The medical committee shall be medical advisor to the Board and shall perform such duties as are required of it in this Chapter. (1957 Code, §19-7)

Sec. 2-3-8. Records, report; purpose; times.

(a) The secretary shall keep, or cause to be kept, such data as shall be necessary for an actuarial valuation of the liabilities of the retirement system.

(b) The Board shall render a report to the Mayor and the City Council, on or before February 15 of each year, showing the fiscal transactions of the retirement system for the year ended the preceding December 31 and the results of the last actuarial valuation of the pension liabilities of the retirement system. (1957 Code, §19-8)

Sec. 2-3-9. Experience tables.

The Board shall from time to time adopt such mortality and other tables of experience, as are necessary in the operation of the retirement system on an actuarial basis. (1957 Code, §19-9)

Sec. 2-3-10. Membership; persons included.

The membership of the retirement system shall include all policemen, as defined in this Chapter:

(1) Who are in the employ of the City on the effective date of the retirement system; and

(2) Who enter the City employment after the effective date of the retirement system and before April 8, 1978. (1957 Code, §19-10; Ord. No. 5132, 2-27-84)

Sec. 2-3-11. Termination.

Except as otherwise provided in this Chapter, should any member cease to be a policeman in the employ of the City, for any reason except to become a retirant or by his or her death, he or she shall thereupon cease to be a member and his or her credited service at the date of such separation from service shall be forfeited by him or her. In the event such person is reemployed by the City as a policeman, he or she shall again become a member, and should his or her reemployment occur within a period of three (3) years from and after the date he or she last ceased to be a member, any credited service forfeited by him or her at the date he or she last ceased to be a member shall be restored to his or her credit, subject to the provisions of Section 2-3-25(d). In the event a member becomes a retirant or dies, he or she shall thereupon cease to be a member. (1957 Code, §19-11)

Sec. 2-3-12. Service credit.

(a) The Board shall fix and determine by appropriate rules and regulations the amount of service to be credited a member in any year; provided that in no case shall less than ten (10) days of service rendered in a calendar month be credited as a month of service, nor shall less than eleven (11) months of service rendered in a calendar year be credited as a year of service, nor shall more than one (1) year of service be credited for all service rendered in any calendar year.

(b) A policeman who, during his or her employment with the City, was called to, or enlisted in, any armed service of the United States; or a member who shall be called to, or who shall enlist in, any armed service of the United States, and who has been, or who shall be, on active duty during the time of war or other national emergency, shall have such war service credited to him or her as City service in the same manner as if he or she had served the City uninterrupted; provided that he or she shall have been or shall be reemployed by the City within one (1) year from and after termination of such war service required of him or her. In any case of doubt as to the service to be so credited, the Board shall have final power to determine such period. During the period of such war service and until his or her reemployment by the City, his or her contributions to the Pension Savings Fund shall be suspended and his or her balance in the Fund shall remain therein and shall be accumulated at regular interest. (1957 Code, §19-12)

Sec. 2-3-13. Crediting account.

In accordance with such rules and regulations as the Board shall adopt, not inconsistent with the provisions of this Chapter, the Board shall credit each member's service account with the number of years and months of service to which he or she may be entitled. (1957 Code, §19-13)

Sec. 2-3-14. Retirement; voluntary; age requirement; application.

Any member who has either (1) attained or attains the age of fifty-five (55) years and has twenty (20) or more years of credited service or (2) after October 25, 2000, has twenty-five (25) or more years of credited service, regardless of age, may retire, upon his or her written application filed with the Board setting forth at what time, neither less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing thereof, he or she desires to be retired. Upon his or her retirement, he or she shall be entitled to a pension provided for in Section 2-3-17(a) and he or she shall have the right to elect an option provided for in Section 2-3-19. (1957 Code, §19-14; Ord. No. 6015, 9-25-95; Ord. No. 6584, 9-25-00)

Sec. 2-3-15. Normal; age requirement.

Any member who has attained or attains the age of sixty (60) years shall be retired from service as a policeman on the first day of the calendar month next following his or her attainment of such age, subject to Section 2-3-16. Upon his or her retirement, he or she shall be entitled to a pension provided for in Section 2-3-17(a) and he or she shall have the right to elect an option provided for in Section 2-3-19. (1957 Code, §19-15)

Sec. 2-3-16. Extended period.

Any member who attains the age of sixty (60) years may be continued in service for periods not to extend beyond his or her attainment of age sixty-five (65) years; provided that such continuance in service is:

(1) Requested by him or her in writing; and

(2) Approved by the City Manager. Upon his or her retirement, he or she shall be entitled to a pension provided for in Section 2-3-17(a) and he or she shall have the right to elect an option provided for in Section 2-3-19. (1957 Code, §19-16)

Sec. 2-3-17. Pension; computation.

(a) Living.

(1) With respect to members retiring on or after December 15, 1995, and prior to January 1, 1999, upon a member's retirement from service, a member who has attained age fifty-five (55) years and has twenty (20) or more years of credited service shall receive a service retirement pension equal to two percent (2%) of his or her average final compensation multiplied by the number of years, and fraction of a year, of his or her credited service.

(2) With respect to members retiring on or after January 1, 1999, and prior to October 25, 2000, upon a member's retirement from service, a member who has attained age fifty-five (55) years and has twenty (20) or more years of credited service shall receive a service retirement pension equal to two and one-half percent (2.5%) of his or her average final compensation multiplied by the number of years, and fraction of a year, of his or her credited service; provided, however, that such pension shall in no case exceed eighty-five percent (85%) of the member's average final compensation, regardless of the number of years of credited service.

(3) With respect to members retiring on or after October 25, 2000, upon a member's retirement from service, a member who has either:

a. attained age fifty-five (55) years and has twenty (20) or more years of credited service,
or

b. regardless of age, has twenty-five (25) years or more of credited service,

shall receive a service retirement pension equal to two and one-half percent (2.5%) of his or her average final compensation multiplied by the number of years, and fraction of a year, of his or her credited service; provided, however, that such pension shall in no case exceed eighty-five percent

(85%) of the member's average final compensation, regardless of the number of years of credited service.

(b) Deceased. In the event a retirant dies before he or she has received pension payments, provided for in Subsection (a) above, in an aggregate amount equal to his or her accumulated contributions standing to his or her credit in the Pension Savings Fund at the time of his or her retirement, the difference between such accumulated contributions and the aggregate amount of pension payments received by him or her shall be paid from the Pension Reserve Fund to such person as he or she shall have nominated by written designation duly executed and filed with the Board. In the event there is no such designated person surviving the retirant, then such differences, if any, shall be paid to his or her legal representative. In no case shall any benefits be paid under this Section 2-3-17(b) on account of the death of a retirant if he or she elected either Option A, B, C or D provided for in Section 2-3-19. (1957 Code, §19-17; Ord. No. 6189, 4-28-97; Ord. No. 6189, 12-22-97; Ord. No. 6281, 12-22-97; Ord. No. 6459, 7-12-99; Ord. No. 6584, 9-25-00)

Sec. 2-3-18. Deferred service.

(a) Separation.

(1) In the event a member who has twenty (20) or more years of credited service separates from the service of the City prior to his or her attainment of the age of fifty-five (55) years, for any reason except to become a retirant or his or her death, he or she shall remain a member during the period of his or her absence from City service for the exclusive purpose only of receiving a pension provided in Subsections 2-3-17(a) and (b). His or her pension shall begin as of the first day of the calendar month next following the month in which he or she files his or her application for the same with the Board on or after his or her attainment of the age of fifty-five (55) years; provided that if such a member is employed by the City on or after his or her attainment of the age of fifty-five (55) years, payment of his or her pension shall be suspended for the period he or she is so employed. In no case shall service credit be given any such member for the time following the date he or she ceases to be employed by the City as a policeman, except as is specifically provided in this Chapter. In the event such a member withdraws all or part of his or her accumulated contributions from the Pension Savings Fund, he or she shall thereupon cease to be a member and he or she shall forfeit all his or her rights and his or her surviving spouse's rights in and to a deferred pension provided for in this Section.

(2) Effective on and after August 10, 1998, in the event a member who has twenty (20) or more years of credited service separates from the service of the City prior to his or her attainment of the age of fifty-five (55) years, for any reason except to become a retirant or his or her death, and such member thereafter dies prior to submission of an application for retirement under Subsection (a)(1) of this Section, the lawful spouse of the member at the time of death shall receive one (1) of the following benefit options which shall be irrevocably elected by such spouse within ninety (90) days of the death of the member:

a. Payment of the deceased member's accumulated contributions, less interest additions, paid as provided in Section 2-3-24(b); or

b. After the date of death of the member or the date on which the deceased member would have attained the age of fifty-five (55) years but for the member's death, whichever is later, a

reduced survivor pension actuarially equivalent to the reduced pension which would have been paid to such spouse had the member attained the age of fifty-five (55) years, retired under the provision of Subsection (a)(1) of this Section on either the day before his or her death or the day of attainment of age fifty-five (55), whichever is later, elected to receive the Option A joint and survivor pension available pursuant to Subsection (a)(1) of Section 2-3-19, and designated such spouse as the surviving beneficiary.

If the lawful spouse fails to make such election within said ninety-day period, the lawful spouse shall be deemed to have irrevocably elected option a. above. If such a member was not lawfully married at the time of death, the member's accumulated contributions, less interest additions, shall be paid as provided in Section 2-3-24(b).

(b) Different Classification. In the event a member who has five (5) or more years of credited service ceases to be a policeman in the employ of the City but becomes employed by the City in another classification, and is continuously so employed for at least five (5) years, he or she shall remain a member for the exclusive purpose only of receiving a pension provided in Section 2-3-17(a). Such pension shall begin as of the first day of the calendar month next following the month in which he or she files his or her application for the same with the Board on or after his or her attainment of the age of fifty-five (55) years; provided that if such a member continues in City employment on or after his or her attainment of the age of fifty-five (55) years, payment of his or her pension shall be suspended for the period he or she is so employed. In no case shall service credit be given any such member for time following the date he or she ceases to be employed by the City as a policeman, except as is specifically provided in this Chapter. In the event such a member withdraws all or part of his or her accumulated contributions from the Pension Savings Fund, he or she shall thereupon cease to be a member and he or she shall forfeit all his or her rights in and to a deferred pension provided for in this Section, and no survivor benefits shall be provided under Subsection (a)(2) of this Section. (1957 Code, §19-18; Ord. No. 6015, 9-25-95; Ord. No. 6338, §2, 8-10-98)

Sec. 2-3-19. Regular, joint and survivor options.

(a) Prior to the effective date of his or her retirement, but not thereafter, a member may elect to receive his or her pension provided for in Section 2-3-17(a) as a benefit payable throughout his or her life, called a regular pension, or he or she may elect to receive the actuarial equivalent, computed as of the effective date of his or her retirement, of his or her regular pension in a reduced pension payable throughout his or her life, and nominate a survivor beneficiary, in accordance with the provisions of Option A, B, C or D, as hereinafter set forth:

(1) Option A. Joint and survivor pension. Upon the death of a retirant, his or her reduced pension shall be continued throughout the life of, and paid to, such person having an insurable interest in his or her life, as he or she shall have nominated by written designation duly executed and filed with the Board prior to the effective date of his or her retirement;

(2) Option B. Modified joint and survivor pension. Upon the death of a retirant, one-half (½) of his or her reduced pension shall be continued throughout the life of, and paid to, such person having an insurable interest in his or her life, as he or she shall have nominated by written designation duly executed and filed with the Board prior to the effective date of his or her retirement;

(3) Option C. Actuarially equivalent "Pop-Up" joint and survivor pension. Upon the death of a retirant, his or her reduced pension shall be continued throughout the life of, and paid to, such person having an insurable interest in his or her life, as he or she shall have nominated by written designation duly executed and filed with the Board prior to the effective date of his or her retirement; provided, however, that if the member's designated beneficiary predeceases the member, the member's pension shall increase to the amount of the member's regular pension computed in accordance with Section 2-3-17(a), effective the first day of the month next following the date of death of the member's designated beneficiary; or

(4) Option D. Actuarially equivalent "Pop-Up" 50% joint and survivor pension. Upon the death of a retirant, one-half (½) of his or her reduced pension shall be continued throughout the life of, and paid to, such person having an insurable interest in his or her life, as he or she shall have nominated by written designation duly executed and filed with the Board prior to the effective date of his or her retirement; provided, however, that if the member's designated beneficiary predeceases the member, the member's pension shall increase to the amount of the member's regular pension computed in accordance with Section 2-3-17(a), effective the first day of the month next following the date of death of the member's designated beneficiary.

Members retired under the former plan shall have the right for ninety (90) days after November 2, 1971, to elect an option under this Section. Surviving spouses of deceased members who retired under the former plan shall be classed and receive benefits under Option B above.

(b) Effective on and after August 10, 1998, upon the death of an active member who has twenty (20) or more years of credited service, has attained age fifty-five (55) years, and has achieved full eligibility to receive a pension prior to his or her death but who had not so retired prior to death, the lawful spouse of the member at the time of death shall receive, for the life of such spouse, a reduced survivor pension actuarially equivalent to the reduced pension which would have been paid to such spouse had the member retired the day before his or her death, elected to receive the Option A joint and survivor pension available pursuant to Subsection (a)(1) of this Section, and designated such spouse as the surviving beneficiary. If such an eligible member was not lawfully married at the time of death, the member's accumulated contributions shall be paid as provided in Section 2-3-24(b).

(c) Effective on and after August 10, 1998, upon the death of an active member who has twenty (20) or more years of credited service but has not attained age fifty-five (55) years, the lawful spouse of the member at the time of death shall receive one (1) of the following benefit options which shall be irrevocably elected by such spouse within ninety (90) days of the death of the member:

(1) Payment of the deceased member's accumulated contributions paid as provided in Section 2-3-24(b);

(2) Payment of the applicable survivor benefits provided in Section 31-31-807, C.R.S.; or

(3) Upon application filed with the Board after the date on which the deceased member would have attained the age of fifty-five (55) years but for the member's death, a reduced survivor pension actuarially equivalent to the reduced pension which would have been paid to such spouse had the member separated from service as provided in Section 2-3-18 as of the date of the member's death, retired under the provisions of Section 2-3-18(a)(1) on the day of attainment of

age fifty-five (55), elected to receive the Option A joint and survivor pension available pursuant to Subsection (a)(1) of this Section, and designated such spouse as the surviving beneficiary.

If the lawful spouse fails to make such election within said ninety-day period, the lawful spouse shall be deemed to have irrevocably elected option (c)(2) above. An election by the lawful spouse of the benefit under Subsection (c)(2) above shall be deemed an irrevocable waiver and relinquishment of all benefits otherwise available to such spouse pursuant to Subsections (c)(1) and (c)(3) above. If such a member was not lawfully married at the time of death, the member's accumulated contributions shall be paid as provided in Section 2-3-24(b).

(d) After an election has been made of any of the options provided in Subsection (a) of this Section and the retired member has cashed the first pension check, or thirty (30) days from the date of issuance of the check have elapsed, whichever occurs first, the election shall become irrevocable. Notwithstanding the foregoing, effective on and after October 26, 1998, a retired member who was unmarried at the time of election and elected to receive the regular pension provided in Section 2-3-17(a), and who subsequently changes marital status as the result of a marriage or remarriage lawfully recognized in Colorado, may prospectively revoke his or her election and elect one (1) of the other options provided in Subsection (a) of this Section; provided, however, that if the member subsequently dies during the first six (6) months following such election, the only survivor benefit payable to the member's designated beneficiary shall be the difference between the member's regular pension payable prior to such election and the amount of the reduced benefit that was actually paid to the deceased member during the period between the member's election and the member's death. In the event of a change in option as provided in this Subsection (d), the joint and survivor pension payable shall be recalculated so as to be the actuarial equivalent of the remainder of the original pension payable to the retired member immediately prior to the change in option.

(e) Effective on and after October 25, 2000, upon the death of an active member who has twenty-five (25) or more years of credited service, regardless of age, and has achieved full eligibility to receive a pension prior to his or her death but who had not so retired prior to death, the lawful spouse of the member at the time of death shall receive, for the life of such spouse, a reduced survivor pension actuarially equivalent to the reduced pension which would have been paid to such spouse had the member retired the day before his or her death, elected to receive the Option A joint and survivor pension available pursuant to Subsection (a)(1) of this Section, and designated such spouse as the surviving beneficiary. If such an eligible member was not lawfully married at the time of death, the member's accumulated contributions shall be paid as provided in Section 2-3-24(b). (1957 Code, §19-19; Ord. No. 3484, §2, 11-2-71; Ord. No. 6338, §1, 8-10-98; Ord. No. 6362, §1, 10-26-98; Ord. No. 6662 §1, 3-26-01)

Editor's Note: Ord. No. 3484, §2, amended Ord. No. 2075, was passed and approved by the people of the City of Pueblo at an election held 11-2-71 and became effective immediately.

Sec. 2-3-20. Disability; retirement; conditions.

Upon the application of a member, or his or her department head, a member who becomes totally and permanently incapacitated for duty in the service of the City, by reason of a personal injury or disease, may be retired by the Board; provided that after a medical examination of such member, made by or under the direction of the medical committee, the medical committee certifies to the Board, by majority opinion in writing, that the member: (1) is mentally or physically totally

incapacitated for performance of duty in the service of the City; (2) will probably be permanently so incapacitated; and (3) should be retired. (1957 Code, §19-20)

Sec. 2-3-21. Benefits.

(a) Twenty-five Years and More. A member with twenty-five (25) or more years of credited service who retires on account of disability, as provided in Section 2-3-20, shall receive a disability pension computed according to the provisions of Subsection 2-3-17(a), notwithstanding that he or she may not have attained age fifty-five (55) years, and he or she shall have the right to elect an option provided for in Section 2-3-19. Such disability pension shall be subject to Subsection (c) of this Section and to Section 2-3-22.

(b) Less than Twenty-five Years with Workmen's Compensation. A member with less than twenty-five (25) years of credited service who retires on account of disability as provided in Section 2-3-20 shall receive a disability pension equal to fifty percent (50%) of his or her average final compensation, and he or she shall have the right to elect an option provided for in Section 2-3-19. The disability pension shall be subject to Subsection (c) of this Section and to Section 2-3-22.

(c) Credits. For the period a retirant is in receipt of workmen's compensation benefits, his or her disability pension shall in no case exceed the difference between his or her final compensation and such workmen's compensation benefits converted to an annual rate.

(d) Deceased. In the event a retirant dies before he or she has received in pension payments, provided for in Subsections (a) and (b) above, an aggregate amount equal to his or her accumulated contributions standing to his or her credit in the Pension Savings Fund at the time of his or her retirement, the difference between such accumulated contributions and such aggregate amount of pension payments received by him or her shall be paid from the Pension Reserve Fund to such person as he or she shall have nominated by written designation duly executed and filed with the Board. In the event there is no such designated person surviving the retirant, then such difference, if any, shall be paid to his or her legal representative. In no case shall any benefits be paid under this Subsection (d) on account of the death of a retirant if he or she elected either Option A or B provided for in Section 2-3-19. (1957 Code, §19-21)

Sec. 2-3-22. Reexamination.

(a) Times; Refusal. At least once each year for the first five (5) years following the retirement of a member with a disability pension, and at least once in each three-year period thereafter, the Board shall require such retirant, who has not attained the age of fifty-five (55) years, to undergo a medical examination to be made by or under the direction of a physician designated by the Board. Should any such retirant refuse to submit to such medical examination in any such period, his or her disability pension may be discontinued by the Board until his or her withdrawal of such refusal, and should his or her refusal continue for one (1) year, all his or her rights in and to a disability pension may be revoked by the Board. If upon such medical examination of such retirant, the physician certifies to the Board that such retirant is physically able and capable of resuming employment with the City, he or she shall be restored to City service and his or her disability pension shall be terminated.

(b) Return to Service. A disability retirant who has been, or shall be, returned to active service in the employ of the City, as provided in Subsection (a) above, shall again become a member of the

retirement system, notwithstanding that he or she may not be reemployed as a policeman. He or she shall be given service credit for the period he or she was receiving a disability pension payable from funds of the retirement system if during such period he or she was in receipt of workmen's compensation benefits on account of his or her City employment. (1957 Code, §19-22)

Sec. 2-3-23. Death benefits.

(a) Less than Ten Years' Service. In the event a member with less than ten (10) years of credited service dies while in the employ of the City, his or her credited service shall be increased to ten (10) years if his or her death is the result of causes:

- (1) Arising out of and in the course of his or her employment with the City; and
- (2) Entitling his or her dependents to workmen's compensation benefits.

(b) More than Ten Years. In the event a member with ten (10) or more years of credited service dies while in active employment with the City, the applicable benefits provided in Paragraphs (1), (2) and (3) of this Subsection shall be paid, subject to Subsections (d) and (e) hereof.

(1) If the deceased member leaves a surviving spouse, he or she shall receive a pension computed according to the provisions of Section 2-3-17 in the same manner in all respects as if the member had: (a) retired effective the day preceding the date of his or her death with twenty-five (25) years of credited service, notwithstanding that he or she may not have attained the age of fifty-five (55) years; (b) elected Option A provided for in Section 2-3-19; and (c) nominated his or her surviving spouse as survivor beneficiary. Upon the said surviving spouse's remarriage or death, his or her pension shall terminate.

(2) If the deceased member leaves an unmarried child or children under the age of eighteen (18) years, each such child shall receive a pension of four hundred eighty dollars (\$480.00) per annum. If there are more than two (2) such surviving children under the age of eighteen (18) years, each such child shall receive a pension of an equal share of the total sum of nine hundred sixty dollars (\$960.00) per annum. Upon the adoption, marriage, attainment of the age of eighteen (18) years or death of any such child, his or her pension shall terminate and there shall be a redistribution by the Board to the deceased member's remaining eligible children under the age of eighteen (18) years. In no case shall the pension payable to any child be less than one hundred twenty dollars (\$120.00) per annum or more than four hundred eighty dollars (\$480.00) per annum.

(3) If the deceased member leaves neither a surviving spouse nor children eligible to receive pensions under Paragraphs (1) and (2) of this Subsection, but he or she leaves a parent or parents whom the Board finds to have been dependent upon him or her for at least fifty percent (50%) of their support due to absence of earning power or because of physical or mental disability, each such parent shall receive a pension of an equal share of the total sum of seven hundred twenty dollars (\$720.00) per annum. Upon any such parent's remarriage or death, his or her pension shall terminate.

(c) With Workmen's Compensation. During the period workmen's compensation benefits are being paid, if any, on account of the death of a member, the pensions provided for in Paragraphs (1),

(2) and (3) of Subsection (b) above shall not exceed the difference between the member's final compensation and the workmen's compensation benefits converted to an annual basis.

(d) Terminations. In the event the pensions provided for in Subsection (b) above, Paragraphs (1), (2) and (3), payable on account of the death of a member, are terminated before there has been paid to the survivor beneficiary or beneficiaries an aggregate amount equal to the accumulated contributions standing to the member's account in the Pension Savings Fund at the time of his or her death, the difference between his or her accumulated contributions and such aggregate amount of pensions paid shall be paid from the Mortality Reserve Fund to such person as the member shall have nominated by written designation duly executed and filed with the Board. If there is no such designated person surviving the member, then such difference, if any, shall be paid to his or her legal representative. (1957 Code, §19-23; Ord. No. 3484, §3, 11-2-71)

Sec. 2-3-24. Refund of contributions.

(a) Leaving Prior to Eligibility. Should any member leave the service of the City prior to becoming eligible to receive a pension payable from funds of the retirement system, for any reason except to become a retirant or his or her death, he or she shall be paid all or part of the accumulated contributions standing to his or her credit in the Pension Savings Fund, less interest additions, as he or she shall demand in writing on forms furnished by the Board.

(b) Lack of Beneficiary. Should any member die and not leave a beneficiary entitled to a pension, his or her accumulated contributions standing to his or her credit in the Pension Savings Fund at the time of his or her death shall be paid to such person as he or she shall have nominated by written designation duly executed and filed with the Board. If there is no such designated person surviving the member, then his or her accumulated contributions shall be paid to his or her legal representative.

(c) Installments. Refund of accumulated contributions may be made in installments according to such rules and regulations as the Board shall from time to time adopt.

(d) Disputes. In the event conflicting demands are made upon the Board by a person nominated by written designation or a deceased member's legal representative pursuant to Subsection (b) above and the election of survivor benefits by a surviving lawful spouse of a deceased member pursuant to Sections 2-3-19(b), (c) or (e) or 2-3-18(a)(2) of this Chapter, the Board shall resolve the conflict in favor of the election made by the surviving lawful spouse and shall, in such event, not pay accumulated contributions to the designated person or legal representative. (1957 Code, §19-24; Ord. No. 6338, §3, 8-10-98; Ord. No. 6662 §2, 3-26-01)

Sec. 2-3-25. Pension Savings Fund.

(a) Creation. The Pension Savings Fund is hereby created. It shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensations of members and from which shall be paid refunds of accumulated contributions.

(b) Member Contribution, Withholding.

(1) The contributions of a member to the Pension Savings Fund shall be seven percent (7%) of the compensation paid him or her by the City during calendar year 1983, seven and one-half percent (7.5%) of the compensation paid him or her by the City during calendar year 1984, and eight percent (8%) of the compensation paid him or her by the City during the calendar year 1985 and thereafter. The officer responsible for making up the payroll shall cause the contributions provided for herein to be deducted from the compensation of each member on each payroll, for each payroll period, beginning with the date of his or her entrance in the retirement system and continuing so long as he or she remains an active member in the employ of the City.

(2) Member's contributions shall be picked up and paid by the City as provided in Section 414(h) of the Internal Revenue Code, with the member's gross income being reduced by the amount of the contributions picked up by the City. For purposes of this plan, the member's contributions picked up by the City (and treated as City contributions) under this Subsection (b) shall be allocated to the member in the same manner as if it had been paid directly to the plan by the member.

(c) Implied Consent, Effect. The contributions provided for in Subsection (b) above shall be made, notwithstanding that: (1) the minimum compensation provided by law for any member shall thereby be changed; or (2) the rate of contribution is greater than the rate required to meet the minimum finding standards and provisions of Part 8 of Article 30, Title 31, C.R.S., or as the same may be subsequently amended. Every member shall be deemed to consent and agree to the deductions made as provided for herein, and payment of his or her compensation less such deduction for his or her contributions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered by such member during the period covered by such payment, except as to benefits provided under this Chapter.

(d) Deposit of Withdrawn Amounts. In addition to the contributions hereinbefore provided for, a member shall deposit in the Pension Savings Fund all amounts he or she may have withdrawn therefrom and not returned thereto, together with regular interest thereon from the date of withdrawal to the date of repayment. Such a member shall not be credited with service rendered prior to the date of withdrawal of accumulated contributions until he or she has returned to the Pension Savings Fund all amounts due such Fund from him or her. Such repayments may be made by a single contribution or by an increased rate of contribution as approved by the Board.

(e) Transfer of Prior Contributions. The contributions made to the former plan by a policeman who becomes a member of the retirement system shall be transferred to the funds of the retirement system and shall be credited to his or her individual account in the Pension Savings Fund and shall become a part of his or her accumulated contributions.

(f) Transfer on Retirement. The accumulated contributions of a member standing to his or her credit in the Pension Savings Fund shall be transferred to the Pension Reserve Fund upon his or her retirement or death if a pension becomes payable or will become payable by the retirement system on account of his or her retirement or death.

(g) Transfer of Balance. At the expiration of a period of two (2) years from the date an employee ceases to be a member, any balance of accumulated contributions standing to his or her credit in the Pension Savings Fund, unclaimed by the member or his or her legal representative, shall be transferred to the Pension Reserve Fund, except as otherwise provided in this Chapter. (1957 Code,

§19-25; Ord. No. 3484, §4, 11-2-71; Ord. No. 3756, §1, 11-6-73; Ord. No. 5132, 2-27-84; Ord. No. 5832, 10-25-93; Ord. No. 6015, 9-25-95)

Sec. 2-3-26. Allowance of interest.

At the end of each fiscal year, regular interest shall be allowed and credited to each member's account in the Pension Savings Fund; said interest for a member shall be computed on the member's balance in the Fund at the beginning of said fiscal year. At the end of each fiscal year regular interest shall be allowed and credited on the mean balances in the Pension Reserve Fund. The interest so allowed and credited shall be made from interest and other earnings on the monies of the retirement system. Any additional amount necessary to credit regular interest shall be charged to the Pension Accumulation Fund and all interest and other earnings on monies of the retirement system not required for the allowance of regular interest shall be credited to the Pension Accumulation Fund. (1957 Code, §19-26; Ord. No. 3756, §5, 11-6-73)

Sec. 2-3-27. Pension Accumulation Fund.

(a) The Pension Accumulation Fund is the Fund in which shall be accumulated the City's and other nonmember contributions to the system, and from which shall be paid pensions payable pursuant to the provisions of the former plan as provided in this Chapter, and from which shall be made transfers as provided in this Chapter.

(b) Upon the retirement of a member, the difference between his or her pension reserve and his or her accumulated contributions standing to his or her credit in the Pension Savings Fund at the time of his or her retirement shall be transferred from the Pension Accumulation Fund to the Pension Reserve Fund.

(c) Upon the death of a member, if a pension becomes payable or will become payable on account of his or her death, the difference between the pension reserve for the survivor benefits and the member's accumulated contributions standing to his or her credit in the Pension Savings Fund at the time of his or her death shall be transferred from the Pension Accumulation Fund to the Pension Reserve Fund.

(d) Any balance in the Mortality Reserve Fund on November 6, 1973, shall be transferred to the Pension Accumulation Fund.

(e) In the event the balance in the Pension Reserve Fund is insufficient to cover the liabilities for pensions likely to be paid, the amount of such insufficiency shall be transferred from the Pension Accumulation Fund to the Pension Reserve Fund. (1957 Code, §19-27; Ord. No. 3756, §2, 11-6-73)

Sec. 2-3-28. Pension Reserve Fund.

The Pension Reserve Fund shall be the fund from which shall be paid all pensions and benefits in lieu of pensions, payable as provided in this Chapter to retirants and beneficiaries of members and retirants. If a disability retirant returns to service with the City, his or her pension reserve computed as of the date of his or her return shall be transferred from the Pension Reserve Fund to the Pension Savings Fund and the Pension Accumulation Fund in the same proportion as the transfer to the Pension Reserve Fund at the time of his or her retirement. (1957 Code, §19-28; Ord. No. 3756, §3, 11-6-73)

Sec. 2-3-29. Plan assets, investments and City's contribution.

(a) The plan shall be financed in accordance with the minimum funding standards prescribed in Part 3 of Article 30.5, Title 31, C.R.S., or as the same may be subsequently amended.

(b) All assets of the plan shall be transferred to the Fire and Police Members' Benefit Fund created by Section 31-31-301, C.R.S., and invested and managed by the Board of Directors of the Fire and Police Pension Association. All benefits payable under the plan shall be paid by the Fire and Police Pension Association from the Fire and Police Members' Benefit Fund.

(c) The City's annual contribution to the plan shall be determined by the Board of Directors of the Fire and Police Pension Association pursuant to and in accordance with the provisions of Parts 2, 3 and 4 of Article 30.5, Title 31, C.R.S., or as the same may be subsequently amended.

(d) In accordance with Subsection (c) above, effective with the next monthly payroll made after the effective date of the ordinance adopting this Subsection (d), the rate of contributions of active members to the plan shall be equal in amount to one percent (1%) of salary, with the rate of contributions by the City equal to such member rate; and such contribution rates shall be biennially adjusted thereafter by resolution of the City Council to such minimum rates as are necessary to achieve compliance with the minimum contribution requirements of Subsection (c) above and Section 31-30.5-304, C.R.S. (Ord. No. 5132, 2-27-84; Ord. No. 6459, 7-12-99)

Editor's Note: Sections 29, 30 and 31 are repealed in their entirety and reenacted as Section 29, Ord. No. 5132, 2-27-84.

Sec. 2-3-32. False statements; penalty.

Any person who knowingly makes any false statements or who falsifies or permits to be falsified any record of the retirement system, in any attempt to defraud the retirement system, shall be punished as provided in Section 1-2-1 of this Code. (1957 Code, §19-32)

Sec. 2-3-33. Errors; correction.

In the event any change or error in the records of the retirement system results in any member, retirant or beneficiary receiving from the retirement system more or less than he or she would have been entitled to receive had the records been correct, the Board shall correct such error and as far as practicable shall adjust subsequent payments in such manner that the actuarial equivalent of the benefits to which such member, retirant or beneficiary was correctly entitled shall be paid. In the event of overpayment to any member, retirant or beneficiary, the Board may take legal action, if necessary, to recover such payment. (1957 Code, §19-33)

Sec. 2-3-34. Assignability; exemption from execution.

The right of a person to a pension, to the return of accumulated contributions, and any other right accrued or accruing to any member, retirant or beneficiary under the provisions of this Chapter shall be unassignable and shall not be subject to execution, garnishment, attachment, the operation or bankruptcy or insolvency law, or any other process of law whatsoever, except as is specifically provided in this Chapter. (1957 Code, §19-34)

Sec. 2-3-35. Transfer from former plan.

(a) All assets of every description credited to the former plan shall be transferred to the funds of the retirement system. Any balance of assets remaining, after crediting the Pension Savings Fund as provided in Subsection 2-3-25(e), shall be credited to the Pension Accumulation Fund. In the event the assets of the former plan so transferred are insufficient to cover the credits to be made to the Pension Savings Fund as provided in Subsection 2-3-25(e), the amount of such insufficiency shall be charged to the Pension Accumulation Fund.

(b) The retirement system created and established under this Chapter shall assume liability for the payment of all pensions being paid, as of the effective date of this retirement system, to retirants and beneficiaries of the former plan.

(c) All records, books, papers, supplies and other property belonging to the former plan shall be transferred to and become the property of the retirement system.

(d) All securities belonging to the former plan and registered in the name of the former plan may continue to be so registered until disposed of.

(e) The provisions of this Chapter shall include and be applicable to members retired under the former plan and their survivor beneficiaries; provided, however, that the pension of any retirant or survivor beneficiary under the former plan shall not be reduced to an amount less than the amount the retirant or survivor beneficiary was entitled to at the time of his or her retirement or death. (1957 Code, §19-35; Ord. No. 3484, §5, 11-2-71)

Sec. 2-3-36. Escalator clause.

(a) Effective January 1, 1971, each retirant or survivor beneficiary who retired before July 17, 1954, shall be entitled to an increased pension equal to one-half ($\frac{1}{2}$) of any increase in compensation granted during the period of his or her retirement to the rank occupied by him or her in the Police Department.

(b) Effective January 1, 1971, each surviving spouse of a retirant or survivor beneficiary who retired from the Police Department prior to July 17, 1954, shall be entitled to monthly payments in the sum of one hundred fifty dollars (\$150.00), so long as the surviving spouse shall remain unmarried.

(c) Effective November 2, 1971, each retirant or survivor beneficiary now or hereafter receiving a pension under this plan or the former plan shall receive an increase in the amount of said pension equal to one-half ($\frac{1}{2}$) of all increases in salary granted or to be granted from the date of said member's death or retirement to the rank held by him or her at the time of his or her death or retirement. (1957 Code, §19-17.1; Ord. No. 3407, 11-23-70; Ord. No. 3484, §1, 11-2-71)

Sec. 2-3-37. Disability or death on or after January 1, 1980.

(a) Notwithstanding any provision of this Chapter relating to disability retirement or death benefits to the contrary, the benefits and right to benefits payable upon the death or disability of a member occurring on or after January 1, 1980, shall be those benefits, rights and eligibility for benefits, set forth and established by Part 8 of Article 31, Title 31, C.R.S., or as the same may be

subsequently amended. The provisions of Sections 2-3-20 through 2-3-23 of this Chapter shall continue to apply to a member or the survivors of a member who died or became disabled prior to January 1, 1980.

(b) Notwithstanding Subsection (a) of this Section, upon the death on or after August 10, 1998, of a member hired before April 8, 1978, who has twenty (20) or more years of credited service, and who was, at the time of death, either an active member or separated from service under Section 2-3-18(a), the surviving lawful spouse of such member may elect to receive survivor benefits provided under either Section 2-3-19(b) or (c) or Section 2-3-18(a)(2), whichever is applicable, in lieu of the spousal survivor benefits set forth and established by Part 8 of Article 31, Title 31, C.R.S., or as same may be subsequently amended. Upon the death on or after October 25, 2000, of a member hired before April 8, 1978, who has twenty-five (25) or more years of credited service, and who was, at the time of death, an active member, the surviving lawful spouse of such member may elect to receive survivor benefits provided under Section 2-3-19(b) or (e), whichever is applicable, in lieu of the spousal survivor benefits set forth and established by Part 8 of Article 31, Title 31, C.R.S., or as same may be subsequently amended. Any such election shall be irrevocable and constitute a waiver and relinquishment of benefits otherwise available under Part 8 of Article 31, Title 31, C.R.S. (Ord. No. 5132, 2-27-84; Ord. No. 6338, §4, 8-10-98; Ord. No. 6662 §3, 3-26-01)

Sec. 2-3-38. Plan limited to old hires.

(a) Policemen hired on or after April 8, 1978, shall not be covered by the plan but shall be covered under the statewide plan established by Part 10 of Article 30, Title 31, C.R.S., and their benefits, rights and eligibility shall be governed by Part 10 or as the same may be subsequently amended.

(b) The contributions of policemen to the pension plan who are covered by the statewide plan shall be at the same rate as members of the plan created by this Chapter.

(c) This Chapter and the plan set forth herein are subject to and should be interpreted consistently with Parts 8, 9 and 10 of Article 30, Title 31, C.R.S, or as the same may be subsequently amended. (Ord. No. 5132, 2-27-84)

Sec. 2-3-39. Benefits and distributions limitations.

(a) Effective January 1, 1987, in any event, notwithstanding any provision of this plan to the contrary, pursuant to Section 401(a)(9) of the Internal Revenue Code, payment of benefit to any member shall commence not later than the later date of April 1 of the calendar year following the calendar year in which the member attains age seventy and one-half (70½) or terminates employment. Benefit payments will be determined and made in accordance with Internal Revenue Code Section 401(a)(9) and the regulations thereunder, as applicable to governmental plans, including the minimum distribution incidental death benefit requirement.

(b) This plan is subject to the limitations on benefits imposed by Internal Revenue Code Section 415(b) for government police pension plans, which are incorporated herein by this reference. The limitation year is the calendar year. This plan also incorporates by reference the final regulations interpreting Code Section 415, as applicable to this governmental retirement plan. The cost-of-living

increase of Code Section 415(d) shall continue to apply to increase the dollar benefit limit of Code Section 415(b) after the member's severance from employment.

(c) Notwithstanding any provisions of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code. (Ord. No. 5847, 12-27-93; Ord. No. 6969 §2, 4-14-03; Ord. No. 7957 §2, 1-12-09)

Sec. 2-3-40. Eligible rollover distributions.

(a) This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) For purposes of this Section, the following terms shall have the following meaning:

(1) *Direct rollover* means a payment by the plan to the eligible retirement plan specified by a distributee.

(2) *Distributee* means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, are distributees with regard to the interest of the spouse or former spouse.

(3) *Eligible retirement plan* means an individual retirement account described in Section 408(a), an individual retirement annuity described in Section 408(b), an annuity described in Section 403(a), or a qualified trust described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. Effective January 1, 2002, an *eligible retirement plan* shall also mean an annuity contract described in Section 403(b) and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or 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 to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code.

(4) *Eligible rollover distribution* means a distribution of all or any portion of the balance to the credit of the distributee, except that an *eligible rollover distribution* does not include:

a. Any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more;

b. Any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and

c. The portion of any distribution that is not includible in gross income.

For distributions on or after January 1, 2002, but before January 1, 2008, a portion of distribution shall not fail to be an *eligible rollover distribution* merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution is not so includible.

For distributions made after December 31, 2007, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or in a direct trustee-to-trustee transfer to a qualified trust described in Section 401(a) of the Code which is exempt from tax under Section 501(a) of the Code or to an annuity contract described in Section 403(b) of the Code, provided that such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separate accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(c) A member's nonspouse beneficiary may elect to have any portion of an eligible plan distribution paid in a direct trustee-to-trustee transfer to an individual retirement account or annuity described in Section 402(c)(8)(B)(i) or (ii) of the Code that is established to receive the plan distribution on behalf of the beneficiary. For purposes of this Subsection, a trust maintained for the benefit of one (1) or more designated beneficiaries may be the beneficiary to the extent provided in rules prescribed by the Secretary of Treasury. If the member dies after the member's required beginning date, as defined in Subsection 2-3-39(a) above, the required minimum distribution in the year of death may not be transferred according to this Subsection. The requirements of Code Section 402(c)(11) apply to distributions under this Subsection. (Ord. No. 5847, 12-27-93; Ord. No. 6969 §3, 4-14-03; Ord. No. 7957 §3, 1-12-09)

CHAPTER 5

Pueblo Commission on Energy

Sec. 2-5-1. Declaration of policy.

This Chapter is enacted to provide an entity through which the City may officially encourage and bring about better and more effective use of energy in all its forms within the City and to aid in the development of contingency plans as may be necessary in the event of emergency energy shortages.

Sec. 2-5-2. Establishment, membership and funds - Pueblo Commission on Energy.

(a) There is hereby created the Pueblo Commission on Energy as an advisory commission to the City Council. The Commission shall consist of ten (10) members to serve without compensation, who are broadly representative of the energy-related industries in the community and equally representative of the consumer interest. The City Council shall, by resolution, appoint the members of the Commission for terms of four (4) years. The Commission shall select a chairman and such other offices as it may determine necessary from among its members.

(b) The expense for carrying on the Commission's activities shall be paid out of the funds of the City as might be appropriated for such purpose by the City Council. (Ord. No. 4936, 1-25-82; Ord. No. 5165, 7-23-84)

Sec. 2-5-3. Functions of the Commission.

The functions of the Commission shall be to foster the concept of energy conservation and understanding among the citizens of the City, and to encourage and disseminate information as may be appropriate to this purpose; to cooperate with state and federal agencies and nongovernmental organizations having like or kindred functions; to make such investigations and studies in the field of energy conservation as in the judgment of the Commission will aid in effectuating its general purpose; and to recommend programs, activities and legislation to the City Council to carry out the functions of the Commission.

Sec. 2-5-4. Powers and duties.

The powers and duties of the Commission shall be as follows:

- (1) To advise the City Council in regard to energy matters.
- (2) To act as a clearing house for information on energy, its uses, regulation and development.
- (3) To, at the direction of the City Council, hold hearings, request without the power of subpoena the attendance of witnesses, hear the statements of any interested person, and request without the power of subpoena the production of any evidence relating to any matter under investigation or in question.
- (4) To make periodic reports to the City Council on its activities.
- (5) To develop a community awareness program as to the results of effective conservation practices.
- (6) To consult and cooperate with the various governmental and private agencies, including the Board of Education, in developing courses of instruction for presentation in public and private schools, public libraries, museums and other suitable places.
- (7) To submit an annual report to the City Manager and City Council.

(8) To adopt, amend and rescind such rules and regulations for the operation of the Commission as are consistent with the powers and duties of the Commission as expressly granted herein. (Ord. No. 4936, 1-25-82)

Sec. 2-5-5. Findings and recommendations.

The Commission after the completion of any investigation or hearing shall make a report in writing setting forth the facts found by it and its recommendations to the City Council and other organizations or parties involved.

Sec. 2-5-6. Appointment by staff.

The Commission shall have no regular staff or personnel unless specifically authorized by the City Council by resolution. (Ord. No. 4936, 1-25-82)

Sec. 2-5-7. Relation to City departments and agencies.

All departments of the City are to cooperate with the Commission and furnish information or documents from a department which is within the purview of the Open Records Act of the State or other applicable statutes. All other information or documents may be furnished at the discretion of the City Manager or City Council. All requests for information or documents shall be at the official request of the Commission and not by any individual member of the Commission. (Ord. No. 4299, 3-28-77)