



City of Deltona

CITY COMMISSION WORKSHOP MONDAY, MARCH 24, 2014 5:30 P.M.

Mayor
John Masiarczyk

Vice Mayor
Heidi Herzberg
District 3

Commissioners:

Zenaida Denizac
District 1

Webster Barnaby
District 2

Nancy Schleicher
District 4

Fred Lowry
District 5

Chris Nabicht
District 6

City Manager
William D. Denny

**2ND FLR CONFERENCE ROOM
2345 PROVIDENCE BLVD.
DELTONA, FLORIDA**

AGENDA

1. **CALL TO ORDER:**
2. **ROLL CALL – CITY CLERK:**
3. **PLEDGE TO THE FLAG:**

PUBLIC COMMENTS- Citizen comments limited to items on the agenda and will take place after discussion of each item.
4. **BUSINESS:**
 - A. **Discussion and review re: Boards, Committees, and Sub-Committees.**
 - B. **Review of all Deltona Facility Use Agreements (Policy #CC99-004, Guidelines for use of City Facilities & CC004-001, Facility Use and Agreement Requirements), Policy # CC99-005, In-Kind Donations to Deltona-based Not-for-Profit entities.**
5. **CITY MANAGER COMMENTS:**
6. **ADJOURNMENT:**

NOTE: If any person decides to appeal any decision made by the City Commission with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings, and for such purpose he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).

Individuals with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk, Joyce Raftery 48 hours in advance of the meeting date and time at (386) 878-8500.



AGENDA MEMO

TO: Mayor & City Commission **AGENDA DATE:** 3/24/2014
FROM: William D. Denny, City Manager **AGENDA ITEM:** 4 - A
SUBJECT: Discussion and review re: Boards, Committees, and Sub-Committees.

LOCATION:

N/A

BACKGROUND:

Attached for the Commission's information for this agenda item, is a listing including the name, composition, and duties and responsibilities of each advisory board/committee and the By-Laws for each that have specific board/committee By-Laws. The Firefighters' Pension Plan is governed under Chapter 46, *Pension Plans*, and the Planning and Zoning Board is governed under Chapter 110, *Zoning*, Article XII, *Planning and Zoning Board* of the City's Code of Ordinances (see attached copies).

ORIGINATING DEPARTMENT:

City Clerk's Office

SOURCE OF FUNDS:

N/A

COST:

N/A

REVIEWED BY:

City Clerk, City Manager

STAFF RECOMMENDATION PRESENTED BY:

N/A - For discussion and direction to staff as necessary.

POTENTIAL MOTION:

N/A - For discussion and direction to staff as necessary.

AGENDA ITEM APPROVED BY:

William D. Denny, City Manager

ATTACHMENTS:

- Information on City Advisory Boards
- Economic Development Advisory Board By-Laws
- W.S.H. Deltona Scholarship Advisory Board By-Laws

- P & R Advisory Board By-Laws
- Article II. Firefighters Pension Plan
- Article XII. Planning and Zoning Board
- Policy #CC06-001 - Limitation of Service on Citizen Boards and Committees

- **Affordable Housing Advisory Committee**

(11 voting members); Meetings to be determined.

DUTIES AND RESPONSIBILITIES:

The purpose of this Board is to:

Advise the City Commission on affordable housing related established policies, procedures, ordinances, land development regulations, and review of the Comprehensive Plan to include recommended changes to Section 420.9076, F.A.C.

- **Charter Review Committee**

(5 voting members); Meetings to be determined.

DUTIES AND RESPONSIBILITIES:

The purpose of this Board is to:

Advise the City Commission on City Charter related changes to municipal powers, rights and privileges of the City of Deltona including form of government, powers and duties of the City Commission and City Manager, designated Charter Officers, type of elections conducted, and identifies City boundaries.

- **Economic Development Advisory Board**

(7 voting members); Meets as needed, quarterly at 6:30 p.m., in the City Hall, 2nd Floor Conference Room, 2345 Providence Blvd.

DUTIES AND RESPONSIBILITIES:

The purpose of this Board is to:

Advise the City Commission on issues and programs involving economic development.

The Board shall issue a draft written five-year plan setting forth the strategies, goals and procedural steps necessary to actively seek new business and support the expansion of existing business that will enhance the quality of life in the community.

The Board shall explore funding sources for economic development activities.

- **DEDAB Commerce Park Research Project Sub-Committee**

(8 voting members); Meets the 2nd Friday of each month at 3:30 p.m., in the City Hall, 2nd Floor Conference Room, 2345 Providence Blvd.

DUTIES AND RESPONSIBILITIES:

The purpose of this Board is to:

Advise the City Commission on research toward the development of a Commerce Park within the City of Deltona.

- **DEDAB Educational and Medical Sub-Committee**

(7 voting members); Meets the 2nd Friday of each month at 10:00 a.m., in the City Hall, 2nd Floor Conference Room, 2345 Providence Blvd.

DUTIES AND RESPONSIBILITIES:

The purpose of this Board is to:

Advise the City Commission on research, determine best practice strategies, evaluate infrastructure modifications and/or required support, and provide recommendations for the purpose of establishing both an Educational Campus and a Medical Park in the City of Deltona.

Determine locations that are acceptable to the targeted businesses, determine the best businesses to solicit, and develop a process to initiate those solicitations.

- **Firefighters' Pension Plan Board of Trustees**

(5 members): Meets on an as-needed basis, at least quarterly, at 5:00 p.m., in the City Hall, 2nd Floor Conference Room, 2345 Providence Blvd.

DUTIES AND RESPONSIBILITIES:

The Board of Trustees shall meet at least quarterly. The Trustees shall by a majority vote elect a chair and a secretary. The Trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by Florida law.

The Board shall engage such actuarial, accounting, legal, and other services as shall be required to transact the business of the Plan. The compensation of all persons engaged by the Board and all other expenses of the Board necessary for the operation of the Plan shall be paid from the Fund at such rates and in such amounts as the Board shall agree. In the event the Board chooses to use the City's legal counsel, actuary or other professional, technical or other advisors, it shall do so only under terms and conditions acceptable to the Board.

The duties and responsibilities of the Board shall include, but not necessarily be limited to, the following:

To construe the provisions of the Plan and determine all questions arising there under

To determine all questions relating to eligibility and participation

To determine and certify the amount of all retirement allowances or other benefits hereunder

To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the Plan

To distribute to participants, at regular intervals, information concerning the Plan

To receive and process all applications for benefits

To authorize all payments whatsoever from the Fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the Plan and Fund

To have performed actuarial studies and valuations at least as often as required by law, and make recommendations regarding any and all changes in the provisions of the Plan

To perform such other duties as are required to prudently administer the Plan

The attorney of the City shall give advice to the Board of Trustees in all matters pertaining to its duties in the administration of the Fund whenever requested; and he or she shall represent and defend the Board as its attorney in all suits and actions at law or in equity that may be brought against it and bring all suits and actions in its behalf that may be required or determined upon by the Board. However, if the Board of Trustees so elects, it may employ independent legal counsel at the Fund's expense for the purposes contained herein, together with such other professional, technical, or other advisers, as the Board deems necessary.

- **Park & Recreation Advisory Committee**

(7 members): Meets on the 2nd Monday of each month, at 6:30 p.m., in the City Hall, 1st Floor Kitchen, 2345 Providence Blvd.

DUTIES AND RESPONSIBILITIES:

The Advisory Committee shall serve in an advisory capacity only to make recommendations to the Parks and Recreation Department on parks and recreation projects, programs, or activities.

- **Parks & Recreation Citizen Accessibility Advisory Sub-Committee**

(Currently 8 members) Meetings held the 3rd Thursday of each month at 5:45 p.m. in the City Hall, 1st Floor Kitchen, 2345 Providence Blvd.

DUTIES AND RESPONSIBILITIES:

This sub-committee shall serve in an advisory capacity only to make recommendations to the Parks & Recreation Department on barrier free parks and recreation projects, programs or activities.

- **Parks & Recreation Senior Advisory Sub-Committee**

(Currently 4 members) Meets on the 3rd Tuesday of each month at 6:00 p.m. at Deltona City Hall, 1st Floor Kitchen, 2345 Providence Blvd.

DUTIES AND RESPONSIBILITIES:

This advisory sub-committee shall serve in an advisory capacity only to make recommendations to the Parks and Recreation Advisory Board on senior projects, programs or activities to improve the well being of Deltona residents.

- **Parks & Recreation Youth Advisory Sub-Committee**

(Currently 10 members) Meets once a month at 5:30 p.m. at City Hall, 2345 Providence Blvd., Deltona. For the current month's meeting date, please call the Parks & Recreation Department at 386-878-8900.

DUTIES AND RESPONSIBILITIES:

This advisory sub-committee shall serve in an advisory capacity to make recommendations to the Parks & Recreation Advisory Board regarding suggestions and ideas related to park and recreation projects, programs or activities.

- **Planning and Zoning Board**

(7 members); Meets the 3rd Wednesday of each month, at 7:00 p.m. in the City Commission Chambers, 2345 Providence Blvd.

DUTIES AND RESPONSIBILITIES:

Designation as Local Planning Agency: The Board is designated as the local planning agency as required by the Local Government Comprehensive Planning and Land Development Regulation Act, Section 163.3161, et seq., and Section 163.3174, Florida Statutes. The Board shall prepare, or cause to be prepared, the elements of the Comprehensive Plan required in Section 163.3177, Florida Statutes, and any other appropriate elements, and shall make recommendations regarding the Comprehensive Plan to the City Commission. The Board shall have the general responsibility for the conduct of the Comprehensive Planning Program. The Board and the Comprehensive Planning Program shall comply with all requirements of the Local Government Comprehensive Planning and Land Development Regulation Act and shall monitor and oversee the effectiveness and status of the Comprehensive Plan, and recommend to the City Commission such changes in

the Comprehensive Plan as may from time to time be required. The Board shall perform any other duties assigned by the City Commission, and may prepare and recommend to the City Commission any other proposals to implement the Comprehensive Plan.

Designation as Land Development Regulations Commission: The Board is hereby also designated as the land development regulations commission in accordance with the provisions of the Local Government Comprehensive Planning and Land Development Regulations Act, Section 163.161, et seq., and Section 163.3194, Florida Statutes. The Board shall develop and recommend to the City Commission land development regulations that implement the Comprehensive Plan and review land development regulations or amendments thereto for consistency with the adopted Comprehensive Plan.

Annual Work Program: The Board shall receive recommendations from the Department of Development Services regarding an annual work program. Following receipt of those recommendations, the Board shall prepare an annual work program for recommendation to the City Commission. The work program shall include an estimated budget for its implementation. The work program shall be in a format developed by the staff and approved by the City Manager. The City Manager and the City Commission shall determine the priorities given the individual items in the work program in the proposed annual budget and in the adopted budget, respectively.

Five Year Capital Improvements Program and Annual Capital Improvements Budget: The Board shall review the City's proposed Capital Improvements Plan and Budget, and make recommendations on capital budget priorities to the City Commission annually. This review shall require one public hearing with due public notice. This public hearing shall be conducted in accordance with the requirements of Subsection 163.3181(3), Florida Statutes, as it may be amended from time to time. The proposed five-year Capital Improvements Plan is mandated by the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes, and shall be developed annually for presentation to the Board by an interagency Capital Improvements Committee chaired by the Director of Development Services. The Capital Improvements Committee shall consist of the Director of Development Services; the Director of Finance and Internal Services; the Director of Public Works; Parks and Recreation Coordinator; the Fire Chief; and such other members as may be appointed by the City Manager. The City Manager shall determine the priorities and recommended funding levels given to the Planning and Zoning Board's recommended Capital Improvements Budget for the capital improvements program and budget annually proposed to the City Commission. The City Commission shall determine the priorities and funding given to the recommendations of the Board and the City Manager for the adopted Capital Improvements Program and budget.

Applications and Proposals Requiring Public Hearings: Prior to the transmittal of an application or proposal to the City Commission, the Board shall hold one public hearing with due public notice on the following applications and proposals, whether initiated by the City or by other applicants:

1. Plan amendments, including future land use map amendments;
2. Zoning map changes;

3. Changes to the Deltona Zoning Ordinance or a proposed new zoning ordinance;
4. Changes to the Deltona Sign Ordinance or a proposed new sign ordinance;
5. Changes to the Land Development Code or a proposed new Land Development;
6. Code, including subdivision regulations;
7. Planned Unit Developments;
8. Conditional Uses;
9. Zoning Variances;
10. Amendments to the approved Capital Improvements Program or Budget;
11. The establishment of, or changes to established Community Development Districts;
12. Changes to or proposed architectural design standards;
13. Changes to or proposed landscaping ordinances, tree preservation ordinances, or environmental protection ordinances;
14. Proposed Development Agreements created pursuant to the “Florida Local Government Development Agreement Act”;
15. Proposed Developments of Regional Impact; and
16. Development Review Final Site Plans for buildings over 5,000 square feet in area under heating and cooling; and proposed subdivisions containing more than 25 lots.

The Board shall review all such applications for consistency with the adopted Comprehensive Plan, for consistency with the purposes and intent of the Zoning Ordinance, and for the ability of the application to meet the standards for approval of the application that are contained in the relevant laws and ordinances governing the application’s approval. The Board shall also consider:

1. Noise, vibrations, odor, glare, shadows, or visual impacts on the neighborhood and adjoining properties.
2. Any impacts on environmentally sensitive lands or natural resources, including but not limited to water bodies, wetlands, xeric communities, wildlife habitats, endangered or threatened plants or animal species or species of special concern, well fields, and individual wells.
3. Adequacy of public facilities to serve the development, including but not limited to roads, sidewalks, bike paths, potable water, wastewater treatment, drainage, fire and police safety, parks and recreational facilities, and public schools.
4. On-site and off-site traffic impacts, pedestrian safety and adequate access and egress for city service and emergency vehicles.
5. Use of space from a functional and aesthetic perspective.
6. Safety of occupants, visitors, and the surrounding neighborhood.
7. Proposed use of materials and architectural features in relationship to neighborhood or surrounding area character, and aesthetic considerations.

Advisory Recommendations to the City Commission: The Board shall make a recommendation to the City Commission by formal written approved motion of the Board as to the conclusion of the Board that an application or proposal should be considered by the City Commission for approval, approval with specific conditions recommended by the Board, or denial. The Board's recommendation shall be transmitted to the City Commission with all related staff reports, an index and executive summary of the staff reports prepared by the Department of Development Services, a summary of written materials submitted by the public for consideration at the Board's public hearing, a summary of public comments at the hearing, and the complete application or proposal.

Applications and Proposals Exempt from Board Review: Planning and Zoning Board review shall not be required for amendments to City ordinances that are initiated by the staff or the City Commission to correct grammar and spelling errors, change fees, change the organization of the ordinances, or change processing procedures when mandated by State Statutes, provided such changes do not affect consistency with the Comprehensive Plan, the use of land, or change the meaning of the adopted regulations.

- **William S. Harvey Deltona Scholarship Advisory Board**

(7 members); Meetings to be scheduled as needed; Meetings held in City Hall, 2nd Floor Conference Room, 2345 Providence Blvd. Scholarship Advisory Board meetings will start up again in the Fall of 2008.

DUTIES AND RESPONSIBILITIES:

In late 2007, the City Commission agreed to establish a Scholarship Program to provide financial assistance for college/university related expenses to outstanding Deltona students. The William S. Harvey Scholarship Selection Committee will be responsible for reviewing applications from area students and recommending scholarship awards to the City Commission.

- **Special Magistrate**

Meets the 4th Wednesday of each month, at 5:30 p.m. in the City Commission Chambers, 2345 Providence Blvd.



Deltona Economic Development Advisory Board By-Laws

Article I. **Purpose:**

Section 1. The Deltona Economic Development Advisory Board was created by the adoption of Resolution No. 2007-04 and became effective May 7, 2007, as adopted by the City Commission. The Board/Committee shall provide information and suggestions regarding economic development and programs involving economic development and the Staff Liaison will present the recommendations to the City Commission on a quarterly basis or as needed. The Advisory Board/Committee shall not have the authority or take any action that will commit the expenditure of public funds, the use of City equipment or personnel and shall not make monetary or other commitments on behalf of the Advisory Board/Committee, the City Commission, or the City of Deltona.

Article II. **Staff Liaison:**

Section 1. The Advisory Board/Committee Liaison shall serve as the Staff Liaison to the Advisory Board/Committee. In the event the Staff Liaison is unavailable, the appointed designee will assume their responsibilities for the period of their absence.

Section 2. The Advisory Board/Committee Liaison shall provide a summary of the discussion(s) and recommendation(s) of the Board/Committee to the City Commission on a quarterly basis. The schedule of which City Commission Meeting the Boards/Committees will present their quarterly report at is provided by the City Clerk's Office.

Article III. **Membership:**

Section 1. The Advisory Board/Committee shall consist of seven (7) members. The Mayor and each Commissioner shall each appoint or re-appoint one (1) member to the Advisory Board/Committee during the first regularly scheduled Commission meeting in December of each year. Each member shall serve a 12 month term and may be re-appointed for additional terms. These terms do not apply to the Firefighter's Pension Plan Board of Trustees, P & Z Board and Deltona Economic Development Advisory Board.

Section 2. All applicants to be considered for appointment to the Advisory Board/Committee shall complete a City of Deltona Citizen Board/Committee application form, which will be kept on file by the City Clerk.

Section 3. Each member of the Advisory Board/Committee shall be a resident of the City of Deltona, a business owner, or commercial landowner within the City limits and shall serve his or her term without compensation.

Section 4. Any vacancy occurring during the term of an Advisory Board/Committee member shall be filled or replaced by appointment by their respective appointing member of the City Commission for the remainder of the vacancy term.

Article IV. Attendance:

Section 1. Members' office may be declared vacant by reason of death, resignation, mental or physical incapacity, absenteeism as prescribed hereafter, or for conduct bringing discredit to the City of Deltona or the Advisory Board/Committee.

Section 2. So that the Advisory Board/Committee may responsibly carry out its duties, all members should make every effort to attend all meetings. If a member has three (3) unexcused absences, the Advisory Board/Committee shall terminate the individual's membership and the Staff Liaison shall advise the appointing Commissioner of the vacancy. The Staff Liaison will also advise the City Clerk of the vacancy. The City Clerk will advertise the opening and place the appointment of a new member on a Regular City Commission Meeting Agenda.

Section 3. Absences may be excused by notifying the Staff Liaison of the circumstances prior to the meeting.

Article V. Officers and Duties:

Section 1. The members of the Advisory Board/Committee shall elect a Chairperson and a Vice-Chairperson each December to serve for a period of one (1) year. If a Chairperson and/or a Vice-Chairperson position become vacant for any reason, a replacement shall be elected by a majority of the full Advisory Board/Committee at their next regularly scheduled Advisory Board/Committee meeting.

Section 2. The Chairperson shall perform the duties ordinarily performed by a Chairperson. All requests and communications shall be channeled through the Staff Liaison. Any and all correspondence by any Board/Committee member shall be directed to the Staff Liaison only and the Staff Liaison will forward the information to the City Commission or staff as necessary. Under no circumstances should a Board/Committee member be directly discussing Board/Committee business with staff or the City Commission. Members of the Advisory Board/Committee may not at any time represent themselves or mislead anyone that they are an employee of the City of Deltona.

Section 3. The Vice-Chairperson shall preside at any meeting in the absence of the Chairperson. If both the Chairperson and Vice-Chairperson are absent, the remaining members, if a quorum is present, shall elect a temporary presiding officer.

Section 4. The Chairperson, Vice-Chairperson or the temporary officer shall ensure that all members of the Advisory Board/Committee are aware of all applicable rules, laws, regulations, policies and procedures.

Article VI. Quorum:

Section 1. In order to have an Advisory Board/Committee meeting, a quorum must be present. The majority of the members must be present to constitute a quorum. A quorum consists of half the Board, Committee or Sub-Committee members, plus one.

Section 2. There must be an affirmative vote of a majority of voting members present in order for any action to be taken by the Advisory Board/Committee.

Article VII. Meetings:

Section 1. Meetings of the Advisory Board/Committee will be held as needed and directed by the City Commission, generally once per month. Meetings will be held at a location to be determined by the Staff Liaison.

Section 2. All meetings of the Advisory Board/Committee or any two (2) members thereof, are declared to be public meetings open to the public at all times, and may not be held unless due notice to the City and the public is given as required by Florida's Government-in-the-Sunshine Laws.

Article VIII. Order of Business:

Section 1. At all regular Advisory Board/Committee meetings, the following shall be the general order of business:

- 1) Call to order by the Chairperson
- 2) Roll call
- 3) Approval of minutes
- 4) Public Comments
- 5) Old business
- 6) New business
- 7) Member comments
- 8) Adjournment

Section 2. In order to provide an opportunity for discussion of business before the Advisory Board/Committee prior to a motion, it shall be the duty of the Chairperson to state the matter of business to the Advisory Board/Committee and

to provide a period of discussion of the facts relevant to the topic prior to entertaining a motion. After a motion is made and seconded, the Chairperson shall allow additional discussion by the Advisory Board/Committee members. Any member may call for a vote if additional discussion becomes repetitive or irrelevant to the motion.

Article IX. Minutes:

Section 1. The Staff Liaison or the appointed designee shall be responsible for preparing written minutes of all meetings and notices of such meetings in accordance with the Advisory Board/Committee Meeting Agenda Procedure as approved by the City Clerk. The “Draft” minutes, which should be marked “Draft”, of each meeting shall be open for public inspection two (2) weeks following the meeting date on the City’s Website. The “Approved” minutes which will replace the “Draft” minutes shall be properly recorded and open for public inspection the day following the date the minutes were approved by the Advisory Board/Committee, with the original signed minutes kept in the City Clerk’s Office. The Staff Liaison or the appointed designee will be responsible for all public notifications.

Section 2. All communications by or on behalf of the board or any board member(s) shall be made either in public at a board meeting, through communications to the Staff Liaison, or through items placed in the minutes of the board. Neither the board, nor any board member(s), shall purport to speak on behalf of the board or as an official board member through any other means of communication. This restriction shall not prevent any board member from expressing his or her individual ideas or opinions relating to any matter, so long as such expression of ideas or opinions are expressed as that *individuals’* ideas or opinions, and not as the ideas or opinions of the board, or the ideas or opinions of such individual *as a board member*.

Article X. Voting:

Section 1. Any member of the Advisory Board/Committee having a personal or financial interest in any matter shall disclose such interest to the Advisory Board/Committee and shall complete and file with the City Clerk such Memorandum of Voting Conflict as required by law. No member present shall abstain from voting on any matter except as provided by Florida Statutes.

Article XI. By-Laws:

Section 1. The City Commission has final approval of all By-Laws or By-Law changes as recommended by the Staff Liaison, the appointed designee or the Advisory Board/Committee.

Section 2. Motions to amend or add to the By-Laws shall be made in writing to the Staff Liaison. Voting on such motions shall be considered at the next regular meeting of the Advisory Board/Committee.

Article XII. Sub-Committees:

Section 1. Each Sub-Committee would need to go before the City Commission for approval and justification.

Section 2. The Advisory Board/Committee shall select Sub-Committee Chairpersons from among its members to serve as Chairperson of each Sub-Committee, where applicable. The Sub-Committee Chairperson shall select volunteers, from among residents of the City, to serve on each Sub-Committee.

Section 3. All individuals considered for appointment to a Sub-Committee shall complete a City of Deltona Citizen Board/Committee application form, which will be kept on file by the City Clerk.

Section 4. Each Sub-Committee member's term shall expire one (1) year after the member is appointed or re-appointed.

Section 5. Each member of the Sub-Committee shall reside within the City limits of the City of Deltona. Every effort will be made to include representation from each Commission district on the Sub-Committee where possible.

***Section 6 only applies to the Youth Advisory Sub-Committee and would not be included in any other Board/Committee By-Laws.**

Section 6. Members of the Youth Advisory Sub-Committee, excluding the Chairperson, shall be 15 thru 20 years of age.

Section 7. Each member shall serve his or her term without compensation.

Section 8. The Chairperson of each Sub-Committee shall ensure that all members of the Sub-Committee are aware of all applicable rules, laws, regulations, policies and procedures.

Article XIII. Dual Office Holding:

Section 1. It is the policy of the City of Deltona that no citizen may, simultaneously, serve on more than one City Board, Committee or Sub-Committee. This policy does not apply to citizens serving on Sub-Committees, or Committees and Boards of a temporary nature, and does not apply to citizens serving on Sub-Committees of the actual board or committee on which such citizen serves.

Section 2. This policy limiting the number of Boards/Committees on which a citizen may serve shall apply prospectively only, and shall not affect the current term being served by citizens on any Board and/or Commission within the City of Deltona. (Commission Policy/Procedure: CC06-001)

Article XIV. Sunset Provision:

Section 1. The Advisory Board/Committee and Sub-Committees shall be sunset upon determination by the Deltona City Commission that the Advisory Board/Committee has served its purpose and is no longer needed for recommendations on related matters.



William S. Harvey Deltona Scholarship Advisory Board By-Laws

Article I. **Purpose:**

Section 1. The William S. Harvey Deltona Scholarship Advisory Board was created by the approval and adoption of Agenda Item 9-L and became effective November 5, 2007 by the City Commission. The Board/Committee shall provide information, recommendations and suggestions regarding reviewing scholarship applications and recommending award recipients to the City Commission and the Staff Liaison will present the recommendations to the City Commission on a quarterly basis or as needed. The Advisory Board/Committee shall not have the authority or take any action that will commit the expenditure of public funds, the use of City equipment or personnel and shall not make monetary or other commitments on behalf of the Advisory Board/Committee, the City Commission, or the City of Deltona.

Article II. **Staff Liaison:**

Section 1. The Advisory Board/Committee Liaison shall serve as the Staff Liaison to the Advisory Board/Committee. In the event the Staff Liaison is unavailable, the appointed designee will assume their responsibilities for the period of their absence.

Section 2. The Advisory Board/Committee Liaison shall provide a summary of the discussion(s) and recommendation(s) of the Board/Committee to the City Commission on a quarterly basis. The schedule of which City Commission Meeting the Boards/Committees will present their quarterly report at is provided by the City Clerk's Office.

Article III. **Membership:**

Section 1. The Advisory Board/Committee shall consist of seven (7) members. The Mayor and each Commissioner shall each appoint or re-appoint one (1) member to the Advisory Board/Committee during the first regularly scheduled Commission meeting in May of each year. Each member shall serve a 12 month term and may be re-appointed for additional terms. These terms do not apply to the Firefighter's Pension Plan Board of Trustees, P & Z Board and Deltona Economic Development Advisory Board.

Section 2. All applicants to be considered for appointment to the Advisory Board/Committee shall complete a City of Deltona Citizen Board/Committee application form, which will be kept on file by the City Clerk.

Section 3. Each member of the Advisory Board/Committee shall reside within the City limits of the City of Deltona and shall serve his or her term without compensation.

Section 4. Any vacancy occurring during the term of an Advisory Board/Committee member shall be filled or replaced by appointment by their respective appointing member of the City Commission for the remainder of the vacancy term.

Article IV. Attendance:

Section 1. Members' office may be declared vacant by reason of death, resignation, mental or physical incapacity, absenteeism as prescribed hereafter, or for conduct bringing discredit to the City of Deltona or the Advisory Board/Committee.

Section 2. So that the Advisory Board/Committee may responsibly carry out its duties, all members should make every effort to attend all meetings. If a member has three (3) unexcused absences, the Advisory Board/Committee shall terminate the individual's membership and the Staff Liaison shall advise the appointing Commissioner of the vacancy. The Staff Liaison will also advise the City Clerk of the vacancy. The City Clerk will advertise the opening and place the appointment of a new member on a Regular City Commission Meeting Agenda.

Section 3. Absences may be excused by notifying the Staff Liaison of the circumstances prior to the meeting.

Article V. Officers and Duties:

Section 1. The members of the Advisory Board/Committee shall elect a Chairperson and a Vice-Chairperson at their first meeting each to serve for a period of one (1) year. If a Chairperson and a Vice-Chairperson position become vacant for any reason, a replacement shall be elected by a majority of the full Advisory Board/Committee at their next regularly scheduled Advisory Board/Committee meeting.

Section 2. The Chairperson shall perform the duties ordinarily performed by a Chairperson. All requests and communications shall be channeled through the Staff Liaison. Any and all correspondence by any Board/Committee member shall be directed to the Staff Liaison only and the Staff Liaison will forward the information to the City Commission or staff as necessary. Under no circumstances should a Board/Committee member be directly discussing Board/Committee business with staff or the City Commission. Members of the

Advisory Board/Committee may not at any time represent themselves or mislead anyone that they are an employee of the City of Deltona.

Section 3. The Vice-Chairperson shall preside at any meeting in the absence of the Chairperson. If both the Chairperson and Vice-Chairperson are absent, the remaining members, if a quorum is present, shall elect a temporary presiding officer.

Section 4. The Chairperson, Vice-Chairperson or the temporary officer shall ensure that all members of the Advisory Board/Committee are aware of all applicable rules, laws, regulations, policies and procedures.

Article VI. Quorum:

Section 1. In order to have an Advisory Board/Committee meeting, a quorum must be present. The majority of the members must be present to constitute a quorum. A quorum consists of half the Board, Committee or Sub-Committee members, plus one.

Section 2. There must be an affirmative vote of a majority of voting members present in order for any action to be taken by the Advisory Board/Committee.

Article VII. Meetings:

Section 1. Meetings of the Advisory Board/Committee will be held as needed and directed by the City Commission, generally once per month. Meetings will be held at a location to be determined by the Staff Liaison.

Section 2. All meetings of the Advisory Board/Committee or any two (2) members thereof, are declared to be public meetings open to the public at all times, and may not be held unless due notice to the City and the public is given as required by Florida's Government-in-the-Sunshine Laws.

Article VIII. Order of Business:

Section 1. At all regular Advisory Board/Committee meetings, the following shall be the general order of business:

- 1) Call to order by the Chairperson
- 2) Roll call
- 3) Approval of minutes
- 4) Public Comments
- 5) Old business
- 6) New business
- 7) Member comments
- 8) Adjournment

Section 2. In order to provide an opportunity for discussion of business before the Advisory Board/Committee prior to a motion, it shall be the duty of the Chairperson to state the matter of business to the Advisory Board/Committee and to provide a period of discussion of the facts relevant to the topic prior to entertaining a motion. After a motion is made and seconded, the Chairperson shall allow additional discussion by the Advisory Board/Committee members. Any member may call for a vote if additional discussion becomes repetitive or irrelevant to the motion.

Article IX. Minutes:

Section 1. The Staff Liaison or the appointed designee shall be responsible for preparing written minutes of all meetings and notices of such meetings in accordance with the Advisory Board/Committee Meeting Agenda Procedure as approved by the City Clerk. The “Draft” minutes, which should be marked “Draft”, of each meeting shall be open for public inspection two (2) weeks following the meeting date on the City’s Website. The “Approved” minutes which will replace the “Draft” minutes shall be properly recorded and open for public inspection the day following the date the minutes were approved by the Advisory Board/Committee, with the original signed minutes kept in the City Clerk’s Office. The Staff Liaison or the appointed designee will be responsible for all public notifications.

Section 2. All communications by or on behalf of the board or any board member(s) shall be made either in public at a board meeting, through communications to the Staff Liaison, or through items placed in the minutes of the board. Neither the board, nor any board member(s), shall purport to speak on behalf of the board or as an official board member through any other means of communication. This restriction shall not prevent any board member from expressing his or her individual ideas or opinions relating to any matter, so long as such expression of ideas or opinions are expressed as that *individuals’* ideas or opinions, and not as the ideas or opinions of the board, or the ideas or opinions of such individual *as a board member*.

Article X. Voting:

Section 1. Any member of the Advisory Board/Committee having a personal or financial interest in any matter shall disclose such interest to the Advisory Board/Committee and shall complete and file with the City Clerk such Memorandum of Voting Conflict as required by law. No member present shall abstain from voting on any matter except as provided by Florida Statutes.

Article XI. By-Laws:

Section 1. The City Commission has final approval of all By-Laws or By-Law changes as recommended by the Staff Liaison, the appointed designee or the Advisory Board/Committee.

Section 2. Motions to amend or add to the By-Laws shall be made in writing to the Staff Liaison. Voting on such motions shall be considered at the next regular meeting of the Advisory Board/Committee.

Article XII. Sub-Committees:

Section 1. Each Sub-Committee would need to go before the City Commission for approval and justification.

Section 2. The Advisory Board/Committee shall select Sub-Committee Chairpersons from among its members to serve as Chairperson of each Sub-Committee, where applicable. The Sub-Committee Chairperson shall select volunteers, from among residents of the City, to serve on each Sub-Committee.

Section 3. All individuals considered for appointment to a Sub-Committee shall complete a City of Deltona Citizen Board/Committee application form, which will be kept on file by the City Clerk.

Section 4. Each Sub-Committee member's term shall expire one (1) year after the member is appointed or re-appointed.

Section 5. Each member of the Sub-Committee shall reside within the City limits of the City of Deltona. Every effort will be made to include representation from each Commission district on the Sub-Committee where possible.

***Section 6 only applies to the Youth Advisory Sub-Committee and would not be included in any other Board/Committee By-Laws.**

Section 6. Members of the Youth Advisory Sub-Committee, excluding the Chairperson, shall be 15 thru 20 years of age.

Section 7. Each member shall serve his or her term without compensation.

Section 8. The Chairperson of each Sub-Committee shall ensure that all members of the Sub-Committee are aware of all applicable rules, laws, regulations, policies and procedures.

Article XIII. Dual Office Holding:

Section 1. It is the policy of the City of Deltona that no citizen may, simultaneously, serve on more than one City Board, Committee or Sub-Committee. This policy does not apply to citizens serving on Sub-Committees, or Committees and Boards of a temporary nature, and does not apply to citizens serving on Sub-Committees of the actual board or committee on which such citizen serves.

Section 2. This policy limiting the number of Boards/Committees on which a citizen may serve shall apply prospectively only, and shall not affect the current term being served by citizens on any Board and/or Commission within the City of Deltona. (Commission Policy/Procedure: CC06-001)

Article XIV. Sunset Provision:

Section 1. The Advisory Board/Committee and Sub-Committees shall be sunset upon determination by the Deltona City Commission that the Advisory Board/Committee has served its purpose and is no longer needed for recommendations on related matters.



Parks & Recreation Advisory Committee By-Laws

Article I. **Purpose:**

Section 1. The Parks & Recreation Advisory Committee was created by the approval and adoption of Resolution No. 2000-04 and became effective April 3, 2000 as adopted by the City Commission. The Board/Committee shall provide information and suggestions regarding topics that are provided to the Advisory Board/Committee by the City Commission and the Staff Liaison will present the recommendations to the City Commission on a quarterly basis or as needed. The Advisory Board/Committee shall not have the authority or take any action that will commit the expenditure of public funds, the use of City equipment or personnel and shall not make monetary or other commitments on behalf of the Advisory Board/Committee, the City Commission, or the City of Deltona.

Article II. **Staff Liaison:**

Section 1. The Advisory Board/Committee Liaison shall serve as the Staff Liaison to the Advisory Board/Committee. In the event the Staff Liaison is unavailable, the appointed designee will assume their responsibilities for the period of their absence.

Section 2. The Advisory Board/Committee Liaison shall provide a summary of the discussion(s) and recommendation(s) of the Board/Committee to the City Commission on a quarterly basis. The schedule of which City Commission Meeting the Boards/Committees will present their quarterly report at is provided by the City Clerk's Office.

Article III. **Membership:**

Section 1. The Advisory Board/Committee shall consist of seven (7) members. The Mayor and each Commissioner shall each appoint or re-appoint one (1) member to the Advisory Board/Committee during the first regularly scheduled Commission meeting in December of each year. Each member shall serve a 12 month term and may be re-appointed for additional terms. These terms do not apply to the Firefighter's Pension Plan Board of Trustees, P & Z Board and Deltona Economic Development Advisory Board.

Section 2. All applicants to be considered for appointment to the Advisory Board/Committee shall complete a City of Deltona Citizen Board/Committee application form, which will be kept on file by the City Clerk.

Section 3. Each member of the Advisory Board/Committee shall reside within the City limits of the City of Deltona and shall serve his or her term without compensation.

Section 4. Any vacancy occurring during the term of an Advisory Board/Committee member shall be filled or replaced by appointment by their respective appointing member of the City Commission for the remainder of the vacancy term.

Article IV. Attendance:

Section 1. Members' office may be declared vacant by reason of death, resignation, mental or physical incapacity, absenteeism as prescribed hereafter, or for conduct bringing discredit to the City of Deltona or the Advisory Board/Committee.

Section 2. So that the Advisory Board/Committee may responsibly carry out its duties, all members should make every effort to attend all meetings. If a member has three (3) unexcused absences, the Advisory Board/Committee shall terminate the individual's membership and the Staff Liaison shall advise the appointing Commissioner of the vacancy. The Staff Liaison will also advise the City Clerk of the vacancy. The City Clerk will advertise the opening and place the appointment of a new member on a Regular City Commission Meeting Agenda.

Section 3. Absences may be excused by notifying the Staff Liaison of the circumstances prior to the meeting.

Article V. Officers and Duties:

Section 1. The members of the Advisory Board/Committee shall elect a Chairperson and a Vice-Chairperson each December to serve for a period of one (1) year. If a Chairperson and a Vice-Chairperson position become vacant for any reason, a replacement shall be elected by a majority of the full Advisory Board/Committee at their next regularly scheduled Advisory Board/Committee meeting.

Section 2. The Chairperson shall perform the duties ordinarily performed by a Chairperson. All requests and communications shall be channeled through the Staff Liaison. Any and all correspondence by any Board/Committee member shall be directed to the Staff Liaison only and the Staff Liaison will forward the information to the City Commission or staff as necessary. Under no circumstances should a Board/Committee member be directly discussing Board/Committee business with staff or the City Commission. Members of the Advisory Board/Committee may not at any time represent themselves or mislead anyone that they are an employee of the City of Deltona.

Section 3. The Vice-Chairperson shall preside at any meeting in the absence of the Chairperson. If both the Chairperson and Vice-Chairperson are absent, the remaining members, if a quorum is present, shall elect a temporary presiding officer.

Section 4. The Chairperson, Vice-Chairperson or the temporary officer shall ensure that all members of the Advisory Board/Committee are aware of all applicable rules, laws, regulations, policies and procedures.

Article VI. Quorum:

Section 1. In order to have an Advisory Board/Committee meeting, a quorum must be present. The majority of the members must be present to constitute a quorum. A quorum consists of half the Board, Committee or Sub-Committee members, plus one.

Section 2. There must be an affirmative vote of a majority of voting members present in order for any action to be taken by the Advisory Board/Committee.

Article VII. Meetings:

Section 1. Meetings of the Advisory Board/Committee will be held as needed and directed by the City Commission, generally once per month depending on the topic(s) provided by the Commission for discussion. Meetings will be held at a location to be determined by the Staff Liaison.

Section 2. All meetings of the Advisory Board/Committee or any two (2) members thereof, are declared to be public meetings open to the public at all times, and may not be held unless due notice to the City and the public is given as required by Florida's Government-in-the-Sunshine Laws.

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Section 1. The Advisory Board/Committee and Sub-Committees shall be sunset upon determination by the Deltona City Commission that the Advisory Board/Committee has served its purpose and is no longer needed for recommendations on related matters.

Deltona, Florida, Code of Ordinances >> PART II - CODE OF ORDINANCES >> **Chapter 46 - PENSION PLANS >> ARTICLE II. FIREFIGHTER'S PENSION PLAN >>**

ARTICLE II. FIREFIGHTER'S PENSION PLAN ^[1]

Sec. 46-26. Definitions.

Sec. 46-27. Participation—Conditions of eligibility.

Sec. 46-28. Board of trustees.

Sec. 46-29. Finances and fund management.

Sec. 46-30. Use of annuity or insurance policies.

Sec. 46-31. Contributions.

Sec. 46-32. Past service credit option.

Sec. 46-33. Benefit amounts and eligibility.

Sec. 46-34. Pre-retirement death.

Sec. 46-35. Disability.

Sec. 46-36. Separation from service.

Sec. 46-37. Optional forms of benefits.

Sec. 46-38. Beneficiaries.

Sec. 46-39. Claims procedures.

Sec. 46-40. Annual report to division of retirement.

Sec. 46-41. Actuarial valuations.

Sec. 46-42. Roster of retirees.

Sec. 46-43. Maximum pension.

Sec. 46-44. Minimum distribution of benefits.

Sec. 46-45. Miscellaneous provisions.

Sec. 46-46. Domestic relations orders; retiree directed payments; exemption from execution, non-assignability.

Sec. 46-47. Pension validity.

Sec. 46-48. Conviction and forfeiture; false, misleading or fraudulent statements.

Sec. 46-49. Amendment of the plan.

Sec. 46-50. Indemnification.

Sec. 46-51. Direct transfers of eligible rollover distributions, elimination of mandatory distributions.

Sec. 46-52. Repeal or termination of system.

Sec. 46-53. Forfeiture of pension.

Sec. 46-54. Deferred retirement option plan.

Sec. 46-55. Reemployment after retirement.

Sec. 46-56. Retirement subsidy (RS).

Sec. 46-26. Definitions.

- (a) As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

Accumulated contributions means a participant's mandatory contributions and any amounts directly transferred from the Deltona Fire District money purchase pension plan and trust to this plan pursuant to [section 46-32](#) on behalf of a participant. Participant's accumulated contributions shall not be adjusted for interest or any other gains or losses thereon.

Actuarial equivalent means a benefit or amount of equal value, based upon the RP-2000 Mortality Table and an interest rate of eight percent per annum. Notwithstanding the preceding sentence, for purposes of calculating the maximum pension limitations contained in [section 46-43](#) (i.e., the code § 415 limitations) "actuarial equivalence" shall be determined by utilizing the group mortality table described in code § 807(d)(5)(A) which is presently set forth in Revenue Ruling 95-6 and by utilizing the interest rate contained in the preceding sentence except to the extent otherwise provided in [section 46-43](#) or otherwise required by the code. This definition may only be amended by the city pursuant to the recommendation of the board using the assumptions adopted by the board with the advice of the plan's actuary and the city's actuary, such that actuarial assumptions are not subject to city discretion.

Average final compensation means one-twelfth of the average salary of the five best years of the last ten years of credited service prior to retirement, termination, or death, or the career average as a full-time firefighter, whichever is greater. A year shall be 12 consecutive months.

Beneficiary means the person or persons entitled to receive benefits hereunder at the death of a participant who has or have been designated in writing by the participant and filed with the board. If no such designation is in effect, or if no person so designated is living, at the time of death of the participant, the beneficiary shall be the estate of the participant.

Board means the board of trustees, which shall administer and manage the system herein provided and serve as trustees of the fund.

City means City of Deltona, Florida.

Code means the Internal Revenue Code of 1986, as amended from time to time.

Creditable (or credited) years of service means the total number of years, and fractional parts of years, of service of any participant completed after October 1, 1997 omitting intervening years and fractional parts of years, when such participant may not be employed by the city. However, a participant may receive creditable years of service for service completed prior to October 1, 1997 under the plan under [section 46-32](#), subject to the requirements and limitations contained therein. Service completed prior to October 1, 1997 that is credited pursuant to [section 46-32](#) is sometimes referred to as "years of past service credit". However, no participant will receive credit for years or fractional parts of years of service for which he or she has withdrawn his or her accumulated contributions to the fund for those years or fractional parts of years of service, unless the participant repays into the fund the accumulated contributions he or she has withdrawn, with interest, as determined by the board, within 90 days after reemployment. Further, a participant may voluntarily leave his or her accumulated contributions in the fund for a period of five years after leaving the employ of the fire department, pending the possibility of being rehired by the same department, without losing credit for the time he or she was a participant. If he or she is not reemployed as a firefighter, with the same department within five years, his or her accumulated contributions shall be returned to him or her only upon his or her written request. If a participant who is not vested is not reemployed as a firefighter with the fire department within five years, his accumulated contributions, if \$1,000.00 or less, shall be returned. If a participant who is not vested is not reemployed within five years, his accumulated contributions, if more than \$1,000.00, will be returned only upon the written request of the participant and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the board.

The years or fractional parts of a year that a participant performs "qualified military service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the

Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L.103-353), after separation from employment as a firefighter with the city to perform training or service, shall be added to his or her years of credited service for all purposes, including vesting, provided that:

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

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

Division means the division of retirement of the department of management services.

Enrolled actuary means an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a participant of the Society of Actuaries or the American Academy of Actuaries.

Firefighter means an actively employed full-time person employed by the city, including his or her initial probationary employment period, who is certified as a firefighter as a condition of employment in accordance with the provisions of F.S. § 633.35, and whose duty it is to extinguish fires, to protect life and to protect property. The term includes all certified, supervisory, and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters but does not include part-time firefighters or auxiliary firefighters.

Fund means the trust fund established herein as part of the system.

Gender and number mean the masculine gender, where used herein, unless the context specifically requires otherwise, shall include both the feminine and masculine genders. The singular shall include the plural, unless the context clearly indicates otherwise.

Participant means an actively employed firefighter who fulfills the prescribed or participation requirements. Benefit improvements which, in the past, have been provided for by amendments to the plan adopted by city ordinance, and any benefit improvements which might be made in the future shall apply prospectively and shall not apply to participants who terminate employment or who retire prior to the effective date of any ordinance adopting such benefit improvements, unless such ordinance specifically provides to the contrary.

Participant mandatory contributions means the amounts that each participant is required to contribute to the plan pursuant to subsection (a) of [section 46-31](#). These contributions shall be designated as "employer contributions" pursuant to code § 414(h). Such designation is contingent upon such contributions being excluded from the participant's gross income for federal income tax purposes. For all other purposes of the plan, such contributions shall be considered participant contributions.

Plan means the City of Deltona Firefighters' Pension Plan as contained herein and all amendments thereto.

Plan year means the 12-month period beginning October 1 and ending September 30 of the following year.

Retiree means a participant who has entered retirement status.

Retirement means a participant's separation from city employment with eligibility for immediate receipt of benefits under the system or entry into the deferred retirement option plan.

Salary or compensation means the fixed monthly compensation paid a participant, exclusive of any unscheduled overtime (non Fair Labor Standards Act (FLSA) hours) or allowances paid a participant over and above the fixed monthly compensation.

Compensation in excess of the limitations set forth in section 401(a)(17) of the code as of the first day of the plan year shall be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each participant taken into account in determining benefits or employee contributions for any plan year beginning on or after January 1, 2002, may not exceed \$200,000.00, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). Compensation means compensation during the fiscal year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a participant's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The limitation on compensation for an "eligible employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. "Eligible employee" is an individual who was a participant before the first plan year beginning after December 31, 1995.

Spouse means the lawful wife or husband of a participant or retiree at the time benefits become payable.

System means the City of Deltona Firefighters' Pension Plan as contained herein and all amendments thereto.

Vested means that a participant has ten or more creditable years of service.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 34-2007, § 1, 1-22-2008; Ord. No. 20-2010, § 1, 10-18-2010; Ord. No. 03-2013, § 1, 2-4-2013)

Sec. 46-27. Participation—Conditions of eligibility.

All full-time firefighters shall, as a condition of employment, become participants in this plan as of the later of the October 1, 1997 or his or her date of employment (or reemployment, if applicable) with the city. However, the fire chief shall have the option to participate in the plan or to participate in the City of Deltona General Employees' Pension Plan.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 20-2010, § 2, 10-18-2010)

Sec. 46-28. Board of trustees.

- (a) The sole and exclusive administration of and responsibility for the proper operation of the system and for making effective the provisions of this article is hereby vested in a board of trustees. The board is hereby designated as the plan administrator. The board shall consist of five trustees, two of whom, unless otherwise prohibited by law, shall be legal residents of the city, who shall be appointed by the Deltona City Commission, and two of whom shall be participants of the system, who shall be elected by a majority of the firefighters who are participants of the system. The fifth trustee shall be chosen by a majority of the previous four trustees as provided for herein, and such person's name shall be submitted to the Deltona City Commission. Upon receipt of the fifth person's name, the Deltona City Commission shall, as a ministerial duty, appoint such person to the board as its fifth trustee. The fifth trustee shall have the same rights as each of the other four trustees appointed or elected as herein provided and shall serve a four-year term unless he sooner vacates the office. Each resident trustee shall serve as trustee for a period of four years, unless he sooner vacates the office or is sooner replaced by the Deltona City Commission at whose pleasure he shall serve. Each participant trustee shall serve as trustee for a period of four years, unless he sooner leaves the employment of the city as a firefighter or otherwise vacates his or her office as trustee, whereupon a successor shall be chosen in the same manner as the departing trustee. Each trustee may succeed himself in office. DROP participants can be elected as but not vote for elected trustees. The board shall establish and administer the nominating and election procedures for each election. The board shall meet at least quarterly each year. The board shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.
- (1) All communications by or on behalf of the board or any board member(s) shall be made either in public at a board meeting, through communications to the staff liaison, or through items placed in the minutes of the board. Neither the board, nor any board member(s), shall purport to speak on behalf of the board or as an official board member through any other means of communication. This restriction shall not prevent any board member from expressing his or her individual ideas or opinions relating to any matter, so long as such expression of ideas or opinions are expressed as that individuals' ideas or opinions, and not as the ideas or opinions of the board, or the ideas or opinions of such individual as a board member.
- (b) The trustees shall, by a majority vote, elect a chairman and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.
- (c) Each trustee shall be entitled to one vote on the board. Three affirmative votes shall be necessary for any decision by the trustees at any meeting of the board. A trustee shall abstain from voting as the result of a conflict of interest and shall comply with the provisions of F.S. § 112.3143.
- (d) The board shall engage such actuarial, accounting, legal, and other services as shall be required to transact the business of the system. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the system shall be paid from the fund at such rates and in such amounts as the board shall agree. In the event the board chooses to use the city's legal counsel, actuary or other professional,

technical or other advisors, it shall do so only under terms and conditions acceptable to the board.

- (e) The duties and responsibilities of the board shall include, but not necessarily be limited to, the following:
- (1) To construe the provisions of the system and determine all questions arising there under.
 - (2) To determine all questions relating to eligibility and membership.
 - (3) To determine and certify the amount of all retirement allowances or other benefits hereunder.
 - (4) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system.
 - (5) To distribute to participants, at regular intervals, information concerning the system.
 - (6) To receive and process all applications for benefits.
 - (7) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund.
 - (8) To have performed actuarial studies and valuations, at least as often as required by law, and make recommendations regarding any and all changes in the provisions of the system.
 - (9) To perform such other duties as are required to prudently administer the system.
- (f) The attorney of the city shall give advice to the board of trustees in all matters pertaining to its duties in the administration of the fund whenever requested; and he or she shall represent and defend the board as its attorney in all suits and actions at law or in equity that may be brought against it and bring all suits and actions in its behalf that may be required or determined upon by the board. However, if the board of trustees so elects, it may employ independent legal counsel at the fund's expense for the purposes contained herein, together with such other professional, technical, or other advisers, as the board deems necessary.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 20-2010, § 3, 10-18-2010; Ord. No. 21-2011, § 1, 9-6-2011)

Sec. 46-29. Finances and fund management.

- (a) As part of the system, there is hereby established the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the system, including the assets of the prior firefighters' pension plan.
- (b) The actual custody and supervision of the fund (and assets thereof) shall be vested in the board. Payment of benefits and disbursements from the fund shall be made by the disbursing agent but only upon written authorization from the board.
- (c) All funds of the firefighters' pension plan may be deposited by the board with the finance director of the city, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he is liable for the safekeeping of funds for the city. However, any funds so deposited with the finance director of the city shall be kept in a separate fund by the finance director or clearly identified as such funds of the firefighters' pension plan. In lieu thereof, the board shall deposit the funds of the firefighters' pension plan in a qualified public depository as defined in F.S. § 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of F.S. § 280.02. In order to fulfill its investment responsibilities as set forth herein, the board may retain the services of a custodian bank, an investment advisor registered under the Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance

- company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.
- (d) All funds and securities of the system may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:
- (1) Current amounts of accumulated contributions of participants on both an individual and aggregate account basis, and
 - (2) Receipts and disbursements, and
 - (3) Benefit payments, and
 - (4) Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city, and
 - (5) All interest, dividends and gains (or losses) whatsoever, and
 - (6) Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.
- (e) An audit shall be performed annually by a certified public accountant for the most recent fiscal year of the system showing a detailed listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete evaluation of assets on both a cost and market basis, as well as other items normally included in a certified audit.
- (f) Investment of assets of the plan by the board must be consistent with a written investment policy adopted by the board in accordance with F.S. § 112.661.
- (g) The board shall have the following investment powers and authority:
- (1) The board shall be vested with full legal title to said fund, subject, however, and in any event to the authority and power of the Deltona City Commission to amend or terminate this fund, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this system, except as otherwise provided herein. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund.
 - (2) All monies paid into or held in the fund shall be invested and reinvested by the board and the investment of all or any part of such funds shall be limited to:
 - a. Annuity and life insurance contracts with life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the fund shall be entitled under the provisions of this system and pay the initial and subsequent premium thereon.
 - b. Time or savings accounts of a national bank, a state bank insured by the bank insurance fund or a savings/building and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.
 - c.

Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States or by an agency of the government of the United States.

- d. Bonds issued by the State of Israel.
 - e. Stocks traded through a major electronic exchange. The board shall not directly invest in individual securities such that more than five percent of its assets are invested in the common stock, capital stock, or convertible securities of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent of the outstanding capital stock of that company; nor shall the aggregate of its investments in common stock, capital stock and convertible securities at market exceed 65 percent of the assets of the fund.
 - f. Bonds or other evidences of indebtedness.
 - g. Real estate.
 - h. Up to 25 percent of the assets of the fund at market value may be invested in foreign securities. Foreign securities shall be defined as individual securities that are issued or guaranteed by a corporation not organized under the laws of the United States, or any state or organized territory of the United States, or the District of Columbia.
 - i. Pooled funds, group trusts or other such collective investment funds including but not limited to mutual funds. For purposes of this subsection, pooled funds include, but are not limited to, mutual funds, commingled funds, exchange-trade funds, limited partnerships and private equity. Pooled funds may be governed by separate documents which may include investments not expressly permitted. The investment consultant shall periodically review with the board any material changes in the prospectus or governing policy of a pooled fund.
 - j. The board may, upon recommendation by the board's investment consultant, make investments in group trusts meeting the requirements of Internal Revenue Service Revenue Ruling 81-100 or successor rulings or guidance of similar import, and while any portion of the assets of the fund are invested in such a group trust, such group trust is itself adopted as a part of the system or plan.
- (3) At least once every three years, and more often as determined by the board, the board shall retain a professionally qualified independent consultant, as defined in F.S. § 175.071, to evaluate the performance of all current investment managers and make recommendations regarding the retention of all such investment managers. These recommendations shall be considered by the board at its next regularly scheduled meeting. The date, time, place, and subject of this meeting shall be advertised in the same manner as for any meeting of the board.
- For purposes of this paragraph (3), the term "professionally qualified independent consultant" means a consultant who, based on education and experience, is professionally qualified to evaluate the performance of professional money managers, and who, at a minimum:
- a. Provides his or her services on a flat-fee basis.
 - b. Is not associated in any manner with the money manager for the fund.
 - c. Make calculations according to the American Banking Institute method of calculating time-weighted rates of return. All calculations must be made net of fees.
 - d. Has three or more years of experience working in the public sector.

- (4) The board may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the system.
- (5) Neither the board nor any trustee shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the fund, except that due to his or her or its own negligence, willful misconduct or lack of good faith.
- (6) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.
- (7) The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the fund which it may deem to be to the best interest of the fund to exercise.
- (8) The board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power contained herein.
- (9) Where any action which the board is required to take or any duty or function which it is required to perform either under the terms herein or under the general law applicable to it as trustee under this ordinance, can reasonably be taken or performed only after receipt by it from a participant, the city, or any other entity, of specific information, certification, direction or instructions, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.
- (10) Any overpayments or underpayments from the fund to a participant, retiree or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board in such a manner that the actuarial equivalent of the benefit to which the participant, retiree or beneficiary was correctly entitled, shall be paid. Overpayments shall be charged against payments next succeeding the correction or collected in another manner if prudent. Underpayments shall be made up from the fund in a prudent manner.
- (11) The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits provided for herein.
- (12) In any application to or proceeding or action in the courts, only the board shall be a necessary party, and no participant or other person having an interest in the fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.
- (13) Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to said fund shall always remain in the board.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 20-2010, § 4, 10-18-2010; Ord. No. 03-2013, § 2, 2-4-2013)

Sec. 46-30. Use of annuity or insurance policies.

If the board, in its sole discretion, decides to purchase annuity or life insurance contracts to provide all or any part of the benefits under the plan, the following principles shall be observed:

- (1) Only those participants who have participated in the plan for one year or more may participate in the insured arrangement.
- (2) Individual policies shall be purchased only when a group insurance plan is not feasible.
- (3) Each application and policy shall designate the fund as owner of the policy.
- (4) Policies shall be written on an annual premium basis.
- (5) The type of policy shall be one, which for the premium paid provides each individual with the maximum retirement benefit at his or her earliest statutory normal retirement age.
- (6) The death benefit, if any, may not exceed the greatest of:
 - a. One hundred times the estimated normal retirement income, based on the assumption that the present rate of compensation continues without change to normal retirement date, or
 - b. Twice the annual rate of compensation as of the date of termination of service, or
 - c. The single-sum actuarial equivalent of the accrued deferred retirement income (beginning at normal retirement date) at date of termination of service.
- (7) An insurance arrangement may provide that the assignment of insurance contract to separating participants shall be at least equivalent to the return of his or her accumulated contributions used to purchase the contract. An assignment of contract discharges the city from all further obligations to the participant under the plan even though the cash value of such contract may be less than the participant's accumulated contributions.
- (8) Provisions shall be made, either by issuance of separate policies or otherwise, that the separating participant does not receive cash value and other benefits under the policies assigned to him or her which exceed the present value of his or her vested interest under the plan, inclusive of his or her accumulated contributions and that state contributions shall not be exhausted faster merely because the method of funding adopted was through insurance companies.
- (9) The participant shall have the right at any time to give the board written instructions designating the primary and contingent beneficiaries to receive death benefits or proceeds and the method of settlement of the death benefit or proceeds, or requesting a change in the beneficiary designation or method of settlement previously made, subject to the terms of the policy or policies on his or her life. Upon receipt of such written instructions, the board shall take necessary steps to effectuate the designation or change of beneficiary or settlement option.

(Ord. No. 02-2005, § 1, 2-7-2005)

Sec. 46-31. Contributions.

- (a) *Participant mandatory contributions.* Participants are required to contribute the following amounts to the fund:

- (1) Except as otherwise provided in paragraph (2) below, a participant shall be required to contribute eight percent of his or her salary to the plan.
 - (2) Participants employed by the city prior to October 1, 1998 are only required to contribute two percent of salary to the plan for the plan year beginning October 1, 1997 and ending September 30, 1998. However, beginning October 1, 1998 these participants shall make contributions to the plan in the amount and for the period determined pursuant to the following sentence. Each such participant shall contribute ten percent of his or her salary until such participant's aggregate contributions equal an amount such participant would have contributed to the plan had such participant contributed eight percent of his or her salary to the plan between October 1, 1997 (or, if later, his or her date of hire, or rehire, if applicable) and September 30, 1998. Thereafter, each such participant shall be required to contribute eight percent of his or her salary to the plan.
 - (3) Participant mandatory contributions shall be withheld by the city on behalf of the participants and shall be deposited into the fund after each pay period.
- (b) *State contributions.* Any monies received or receivable by reason of laws of the State of Florida, for the express purpose of funding and paying for retirement benefits for firefighters of the city shall be deposited in the fund comprising part of this system immediately and under no circumstances more than five days after receipt by the city.
 - (c) *City contributions.* So long as this system is in effect, the city shall make quarterly contributions to the fund in an amount equal to the required city contribution as shown by the applicable actuarial valuation of the system.
 - (d) *Other.* Private donations, gifts and contributions may be deposited to the fund, but such deposits must be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used only for additional benefits for participants, as determined by the board, and may not be used to reduce what would have otherwise been required city contributions.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 20-2010, § 5, 10-18-2010)

Sec. 46-32. Past service credit option.

- (a) The plan specifically provides participants the option of receiving credited years of service for all years of service performed for the city (formerly the Deltona Fire District) as a full-time firefighter prior to October 1, 1997 pursuant to the provisions of this [section 46-32](#).
In order to receive credit for past service pursuant to this section, the participant must agree to the direct transfer of his or her account balance in the Deltona Fire District Money Purchase Pension Plan and Trust (the "money purchase plan") into this plan by September 30, 1999. The money purchase plan is a "qualified" plan described in code § 401(a), maintained by the city (formerly the Deltona Fire District) since 1981.
- (b) Any amounts transferred to this plan from the money purchase plan pursuant to this [section 46-32](#) shall be utilized for plan funding and shall not be allocated or earmarked to any particular participant. No participant shall have any right or claim over the amounts transferred to this plan from his or her account balance in the money purchase plan other than those specifically provided under this plan. However, all such amounts shall become part of such participant's accumulated contributions.
- (c) All past service credited under this [section 46-32](#) shall be considered credited years of service for all purposes of the plan; except that such past service shall not be considered

credited years of service and thus, shall not be taken into account under paragraph (1) of subsection (b) of [section 46-33](#) (i.e., the three percent benefit accrual rate).

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 20-2010, § 6, 10-18-2010)

Sec. 46-33. Benefit amounts and eligibility.

- (a) *Normal retirement date.* A participant's normal retirement date shall be the first day of the month coincident with, or next following the earlier of the attainment of age 55 and the completion of ten years of credited service or the completion of 25 years of credited service years regardless of age. A participant may retire on his or her normal retirement date or on the first day of any month thereafter, and each participant shall become 100 percent vested in his or her accrued benefit on the participant's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date.
- (b) *Normal retirement benefit.* The amount of monthly retirement income payable to a participant who retires on or after his or her normal retirement date shall be the sum of:
- (1) An amount equal to the number of his or her credited years of service completed after October 1, 1997 multiplied by three percent of his or her average final compensation as a full-time firefighter; plus
 - (2) An amount equal to the number of his or her years of past service credit multiplied by two percent of his or her average final compensation as a full-time firefighter.
The monthly retirement income payable in the event of normal retirement will be payable on the first day of each month. The first payment will be made on the participant's normal retirement date, or on the first day of the month coincident with or next following his or her actual retirement, if later, and the last payment will be the payment due next preceding the participant's death, except that, in the event the participant dies after retirement but before he or she has received retirement benefits for a period of ten years, the same monthly benefit will be paid to the beneficiary (or beneficiaries) as designated by the participant for the balance of such ten-year period. If a participant continues in the service of the city beyond his or her normal retirement date and dies prior to his or her date of actual retirement, without an option made pursuant to [section 46-37](#) being in effect, monthly retirement income payments will be made for a period of ten years to a beneficiary (or beneficiaries) designated by the participant as if the participant had retired on the date on which his or her death occurred.
 - (3) If a participant has attained 25 credited years of service which shall be determined by combining the credited years of service completed after October 1, 1997 with the number of years of past service credit received under [section 46-32](#) of the City Code or Ordinances, the benefit amount shall be equal to 75 percent of his or her average final compensation as a full-time firefighter plus three percent for all additional credited years of services beyond 25 years of service, not to exceed 100 percent.
- (c) *Early retirement date.* The early retirement date of each participant under the plan is the first day of any calendar month following such participant's actual retirement from the city which is prior to the participant's normal retirement date but subsequent to the date as of which he or she has both attained the age of 50 years and completed at least ten credited years of service.
- (d) *Early retirement benefit.* In the event of early retirement, the provisions of this subsection (d) shall govern payment of retirement income. The monthly amount of retirement income payable to a participant who retires prior to his or her normal retirement date shall be an

amount computed pursuant to subsection (b) as of his or her date of actual retirement but such amount of retirement income shall be actuarially reduced (pursuant to [the definition of "actuarial equivalent"] of [section 46-26](#)) to take into account the participant's younger age and the earlier commencement of retirement income benefits. The amount of monthly income payable in the event of early retirement will be paid in the same manner as in subsection [defining "actuarial equivalent"]. In no event shall the early retirement reduction exceed three percent for each year by which the participant's age at retirement preceded the participant's normal retirement date.

- (e) *Required distribution date.* The participant's benefit under this section must begin to be distributed to the participant no later than April 1 of the calendar year following the later of the calendar year in which the participant attains age 70½ or the calendar year in which the participant terminates employment with the city.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 03-2006, § 3, 6-5-2006; Ord. No. 20-2010, § 7, 10-18-2010)

Sec. 46-34. Pre-retirement death.

- (a) *Prior to vesting or eligibility for retirement.* If a participant dies prior to his or her normal retirement date or early retirement date, whichever first occurs, and has less than ten creditable years of service, no retirement benefit will be payable to any person, but the beneficiary (or beneficiaries) of such deceased participant shall be entitled to a refund of his or her accumulated contributions. Notwithstanding the preceding sentence, in the event an annuity or life insurance contract has been purchased by the board on such participant, then the participant's beneficiary (or beneficiaries) shall be entitled to the death benefits available under such life insurance or annuity contract subject to the limitations on such death benefits set forth in subsection (6) of [section 46-30](#), or a refund of the deceased participant's accumulated contributions, whichever amount is greater. In the event that the death benefit paid by a life insurance company exceeds the limit set forth in subsection (6) of [section 46-30](#), the excess of the death benefit over the limit shall be paid to the fund. However, the benefits as provided in F.S. § 112.191, shall not be included as death or retirement benefits under the provisions of F.S. Ch. 175.
- (b) *Deceased participants vested or eligible for retirement with spouse as beneficiary.* This subsection (b) applies only when the participant's spouse is the sole designated beneficiary. The spouse beneficiary of any participant who dies and who, at the date of his or her death had ten or more creditable years of service or was eligible for early or normal retirement, shall be entitled to a benefit as follows:
- (1) If the participant had ten or more creditable years of service, but was not eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the date that the deceased participant would have been eligible for early or normal retirement, at the option of the spouse beneficiary. The benefit shall be calculated as for normal retirement, determined as of the date of the participant's death, but reduced as for early retirement, if applicable. The spouse beneficiary may also elect to receive an immediate benefit, payable for ten years, which is actuarially reduced (pursuant to subsection 2 [definition of "actuarial equivalent"] of [section 46-26](#)) to reflect the commencement of benefits prior to the early retirement date.
 - (2) If the deceased participant was eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the first day of the month following the participant's death or at the deceased participant's otherwise early or normal retirement date, at the option of the spouse beneficiary. The benefit

- shall be calculated as for normal retirement, determined as of the date of the participant's death, but reduced as for early retirement, if applicable.
- (3) A spouse beneficiary may not elect an optional form of benefit pursuant to [section 46-37](#). However, the board may elect to make a lump sum payment pursuant to subsection (f) of [section 46-37](#)
 - (4) A spouse beneficiary may, in lieu of any benefit provided for in paragraph (a) or (b) above, elect to receive a refund of the deceased participant's accumulated contributions.
 - (5) Notwithstanding anything contained in this section to the contrary, in any event, distributions to the spouse beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by a date selected pursuant to the above provisions in this section that must be on or before December 31 of the calendar year in which the participant would have attained 70½.
 - (6) If the surviving spouse beneficiary commences receiving a benefit under subsection (1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the spouse beneficiary's estate in a lump sum.
- (c) *Deceased participants vested or eligible for retirement with non-spouse beneficiary.* This subsection applies only when the participant's spouse is not the beneficiary or is not the sole designated beneficiary, but there is a surviving beneficiary. The beneficiary of any participant who dies and who, at the date of his death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:
- (1) If the participant was vested, but not eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten years. The benefit will begin by December 31 of the calendar year immediately following the calendar year in which the participant died. The benefit will be calculated as for normal retirement based on the deceased participant's credited service and average final compensation and actuarially reduced to reflect the commencement of benefits prior to the normal retirement date.
 - (2) If the deceased participant was eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten years, beginning on the first day of the month following the participant's death. The benefit will be calculated as for normal retirement based on the deceased participant's credited service and average final compensation as of the date of his death and reduced for early retirement, if applicable.
 - (3) A beneficiary may not elect an optional form of benefit, however the board may elect to make a lump sum payment pursuant to [section 46-37](#), subsection (h).
 - (4) A beneficiary, may, in lieu of any benefit provided for in (1) or (2) above, elect to receive a refund of the deceased participant's accumulated contributions.
 - (5) If a surviving beneficiary commences receiving a benefit under subsection (1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the surviving beneficiary's estate by December 31 of the calendar year of the beneficiary's death in a lump sum.
 - (6) If there is no surviving beneficiary as of the participant's death, and the estate is to receive the benefits, the actuarial equivalent of the participant's entire interest must be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
 - (7)

The Uniform Lifetime Table in Treasury Regulations § 1.401(a)(9)-9 shall determine the payment period for the calendar year benefits commence, if necessary to satisfy the regulations.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 20-2010, § 8, 10-18-2010)

Sec. 46-35. Disability.

(a) *Disability benefits.*

- (1) A participant may retire from the service of the city under this plan at any time if the participant becomes totally and permanently disabled as defined in paragraph (2), and the disability occurred in the line of duty, or after completing ten creditable years of service if the disability occurred other than in the line of duty, by reason of any cause other than a cause set out in subsection (c). Such retirement shall herein be referred to as "disability retirement."
- (2) A participant will be considered totally disabled if, in the opinion of the board, he or she is wholly prevented from rendering useful and efficient service as a firefighter; and a participant will be considered permanently disabled if, in the opinion of the board, he or she is likely to remain so disabled continuously and permanently from a cause other than is specified in subsection (c). "Useful and efficient service as a firefighter" shall include the ability to perform jobs of an administrative nature including, but not be limited to, the ability to perform fire inspections on residential and commercial buildings.
- (3) Terminated persons, either vested or non-vested, are not eligible for disability benefits, except that those terminated by the city for medical reasons may apply for a disability within 30 days after termination.

(b) *In-line of duty presumptions.*

- (1) *Presumption.* Any condition or impairment of health of a participant caused by hypertension or heart disease shall be presumed to have been suffered in line of duty unless the contrary is shown by competent evidence, provided that such participant shall have successfully passed a physical examination upon entering into such service, which examination failed to reveal any evidence of such condition; and provided further, that such presumption shall not apply to benefits payable or granted in a policy of life insurance or disability insurance.
- (2) *Additional presumption.* The presumption provided for in this paragraph (2) shall apply only to those conditions described in this paragraph (2) that are diagnosed on or after January 1, 1996.
 - a. *Definitions.* As used in this subsection (b)(2), the following definitions apply:
 1. *"Body fluids"* means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the centers for disease control, apply. For purposes of potential transmission of meningococcal meningitis or tuberculosis, the term "body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, and saliva, mucous, and other fluids through which infectious airborne organisms can be transmitted between persons.
 2. *"Emergency rescue or public safety participant"* means any participant employed full time by the city as a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who,

- in the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis, or tuberculosis and who is not employed elsewhere in a similar capacity. However, the term "emergency rescue or public safety member" does not include any person employed by a public hospital licensed under F.S. Ch. 395, or any person employed by a subsidiary thereof.
3. "*Hepatitis*" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C, or any other strain of hepatitis generally recognized by the medical community.
 4. "*High risk of occupational exposure*" means that risk that is incurred because a person subject to the provisions of this subsection, in performing the basic duties associated with his or her employment:
 - i. Provides emergency medical treatment in a non-health-care setting where there is a potential for transfer of body fluids between persons;
 - ii. At the site of an accident, fire, or other rescue or public safety operation, or in an emergency rescue or public safety vehicle, handles body fluids in or out of containers or works with or otherwise handles needles or other sharp instruments exposed to body fluids;
 - iii. Engages in the pursuit, apprehension, and arrest of law violators or suspected law violators and, in performing such duties, may be exposed to body fluids; or
 - iv. Is responsible for the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, while on work detail outside the facility, or while being transported and, in performing such duties, may be exposed to body fluids.
 5. "*Occupational exposure*," in the case of hepatitis, meningococcal meningitis, or tuberculosis, means an exposure that occurs during the performance of job duties that may place a worker at risk of infection.
- b. *Presumption*. Any emergency rescue or public safety participant who suffers a condition or impairment of health that is caused by hepatitis, meningococcal meningitis, or tuberculosis, that requires medical treatment, and that results in total or partial disability or death shall be presumed to have a disability suffered in the line of duty, unless the contrary is shown by competent evidence; however, in order to be entitled to the presumption, the participant must, by written affidavit as provided in F.S. § 92.50, verify by written declaration that, to the best of his or her knowledge and belief:
1. In the case of a medical condition caused by or derived from hepatitis, he has not:
 - i. Been exposed, through transfer of bodily fluids, to any person known to have sickness or medical conditions derived from hepatitis, outside the scope of his or her employment;
 - ii. Had a transfusion of blood or blood components, other than a transfusion arising out of an accident or injury happening in connection with his or her present employment, or received any blood products for the treatment of a coagulation disorder since

- last undergoing medical tests for hepatitis, which tests failed to indicate the presence of hepatitis;
- iii. Engaged in unsafe sexual practices or other high-risk behavior, as identified by the centers for disease control or the surgeon general of the United States or had sexual relations with a person known to him to have engaged in such unsafe sexual practices or other high-risk behavior; or
 - iv. Used intravenous drugs not prescribed by a physician.
2. In the case of meningococcal meningitis, in the ten days immediately preceding diagnosis he was not exposed, outside the scope of his or her employment, to any person known to have meningococcal meningitis or known to be an asymptomatic carrier of the disease.
 3. In the case of tuberculosis, in the period of time since the participant's last negative tuberculosis skin test, he has not been exposed, outside the scope of his or her employment, to any person known by him to have tuberculosis.
- c. *Immunization.* Whenever any standard, medically recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is granted under this section, if medically indicated in the given circumstances pursuant to immunization policies established by the advisory committee on immunization practices of the U.S. Public Health Service, an emergency rescue or public safety participant may be required by the city to undergo the immunization or prophylaxis unless the participant's physician determines in writing that the immunization or other prophylaxis would pose a significant risk to the participant's health. Absent such written declaration, failure or refusal by an emergency rescue or public safety participant to undergo such immunization or prophylaxis disqualifies the participant from the benefits of the presumption.
- d. *Record of exposures.* The city shall maintain a record of any known or reasonably suspected exposure of an emergency rescue or public safety participant in its employ to the disease described in this section and shall immediately notify the participant of such exposure. An emergency rescue or public safety participant shall file an incident or accident report with the city of each instance of known or suspected occupational exposure to hepatitis infection, meningococcal meningitis, or tuberculosis.
- e. *Required medical tests; preemployment physical.* In order to be entitled to the presumption provided by this section:
1. An emergency rescue or public safety participant must, prior to diagnosis, have undergone standard, medically acceptable tests for evidence of the communicable disease for which the presumption is sought, or evidence of medical conditions derived therefrom, which tests fail to indicate the presence of infection. This paragraph does not apply in the case of meningococcal meningitis.
 2. On or after June 15, 1995, an emergency rescue or public safety participant may be required to undergo a preemployment physical examination that tests for and fails to reveal any evidence of hepatitis or tuberculosis.

(c)

Conditions disqualifying disability benefits. Each participant who is claiming disability benefits shall establish, to the satisfaction of the board, that such disability was not occasioned primarily by:

- (1) Excessive or habitual use of any drugs, intoxicants or narcotics.
 - (2) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections or while committing a crime.
 - (3) Injury or disease sustained while serving in any branch of the Armed Forces.
 - (4) Injury or disease sustained by the participant after his or her employment as a firefighter with the City of Deltona shall have terminated.
- (d) *Physical examination requirement.* A participant shall not become eligible for disability benefits until and unless he undergoes a physical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the board for that purpose. The board shall not select the participant's treating physician or surgeon for this purpose except in an unusual case where the board determines that it would be reasonable and prudent to do so.

Any retiree receiving disability benefits under provisions of this ordinance may be required by the board to submit sworn statements of his or her condition accompanied by a physician's statement (provided at the retiree's expense) to the board annually and may be required by the board to undergo additional periodic re-examinations by a qualified physician or physicians and/or surgeon or surgeons who shall be selected by the board, to determine if such disability has ceased to exist. If the board finds that the retiree is no longer permanently and totally disabled to the extent that he is unable to render useful and efficient service as a firefighter, the board shall recommend to the city that the retiree be returned to performance of duty as a firefighter, and the retiree so returned shall enjoy the same rights that he had at the time he was placed upon pension. In the event the retiree so ordered to return shall refuse to comply with the order within 30 days from the issuance thereof, he shall forfeit the right to his or her pension.

The cost of the physical examination and/or re-examination of the participant claiming or the retiree receiving disability benefits shall be borne by the fund. All other reasonable costs as determined by the board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the fund.

If the retiree recovers from disability and reenters the service of the city as a firefighter, his or her service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service of the city will not be considered as credited service for the purposes of the system.

The board shall have the power and authority to make the final decisions regarding all disability claims.

- (e) *Disability payments.* The benefits payable to a participant who retires from the service of the city due to total and permanent disability which occurred in the line of duty is the accrued normal retirement benefit paid monthly for life or ten years certain, but shall not be less than 60 percent of his or her average final compensation at the time of disability. If after attaining ten creditable years of service in the plan the disability is other than in the line of duty, the participant's monthly benefit shall be the accrued normal retirement benefit, but shall not be less than 25 percent of their average final compensation at the time of disability. No disability benefits shall be payable to a participant who has less than ten creditable years of service for a disability, other than in the line of duty.

The monthly retirement income to which a participant is entitled in the event of his or her disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determines such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be the payment due next preceding the date of such recovery or, if the participant dies without recovering from the disability, the payment due next preceding his or her death or the 120th monthly payment, whichever is later. In lieu of the benefit payment provided in this paragraph a participant may select an optional form as provided in [section 46-37](#). Any monthly retirement income payments due after the death of a disabled participant shall be paid to the participant's designated beneficiary (or beneficiaries) as provided in [section 46-34](#) or [section 46-38](#), whichever applies.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 20-2010, § 9, 10-18-2010)

Sec. 46-36. Separation from service.

- (a) If a participant leaves the service of the city before accumulating aggregate time of ten creditable years of service toward retirement and before being eligible to retire under the provisions of this plan, the participant shall be entitled to a refund of all of his or her accumulated contributions, less any disability benefits paid to him or her. However, if such participant has not made all of the additional participant mandatory contributions required by paragraph (2) of subsection (a) of [section 46-31](#), the amount of such participants refund shall be reduced by such deficit.
- (b) If the participant has ten or more creditable years of service upon termination, the participant shall be entitled to a monthly retirement benefit, calculated in the same manner as for normal or early retirement (with an actuarial reduction for early retirement) and computed as of the date of the participant's termination, payable to him or her at the participant's otherwise normal or early retirement date, determined as if he or she had remained employed, provided he or she does not elect to withdraw his or her accumulated contributions and provided the participant survives to his or her otherwise normal or early retirement date. If the participant does not withdraw his or her accumulated contributions and does not survive to his or her otherwise normal or early retirement date, his or her designated beneficiary shall be entitled to a benefit as provided herein for a deceased participant who is vested or eligible for retirement under [section 46-34](#).

(Ord. No. 02-2005, § 1, 2-7-2005)

Sec. 46-37. Optional forms of benefits.

- (a) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified herein, a participant, upon written request to the board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:
 - (1) A retirement income of a monthly amount payable to the retiree for his or her lifetime only.
 - (2) A retirement income of a modified monthly amount, payable to the retiree during the lifetime of the retiree and following the death of the retiree, 100 percent, 75 percent, 66²/₃ percent or 50 percent of such monthly amount payable to a joint pensioner for his or her lifetime. Except where the retiree's joint pensioner is his spouse, the payments to the joint pensioner as a percentage of the payments to the retiree shall

- not exceed the applicable percentage provided for in the applicable table in the Treasury regulations. (See Q & A-2 of 1.401(a)(9)-6)
- (3) If a participant retires prior to the time at which social security benefits are payable, he may elect to receive an increased retirement benefit until such time as social security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of retirement. The amounts payable shall be as recommended by the actuaries for the system, based upon the social security law in effect at the time of the participant's retirement.
- (b) The participant, upon electing any option of this section, will designate the joint pensioner (subsection (a)(2) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of participant's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. A participant may change his or her beneficiary at any time. If a participant has elected an option with a joint pensioner and participant's retirement income benefits have commenced, participant may thereafter change his or her designated beneficiary at any time, but may only change his or her joint pensioner twice. Subject to the restriction in the previous sentence, a participant may substitute a new joint pensioner for a deceased joint pensioner. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume that the joint pensioner is deceased for purposes of calculating the new payment.
- (c) The consent of a participant's or retiree's joint pensioner or beneficiary to any such change shall not be required. The rights of all previously-designated beneficiaries to receive benefits under the system shall thereupon cease.
- (d) Upon change of a retiree's joint pensioner in accordance with this section, the amount of the retirement income payable to the retiree shall be actuarially redetermined to take into account the age of the former joint pensioner, the new joint pensioner and the retiree and to ensure that the benefit paid is the actuarial equivalent of the present value of the retiree's then-current benefit at the time of the change. Any such retiree shall pay the actuarial recalculation expenses. Each request for a change will be made in writing on a form prepared by the board and on completion will be filed with the board. In the event that no designated beneficiary survives the retiree, such benefits as are payable in the event of the death of the retiree subsequent to his or her retirement shall be paid as provided in [section 46-36](#)
- (e) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:
- (1) If a participant dies prior to his or her normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under [section 46-34](#)
- (2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the participant's retirement under the system, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the participant upon his or her retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the participant prior to his or her retirement.
- (3) If both the retiree and the beneficiary (or beneficiaries) designated by participant or retiree die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of

- subsection (a), the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with [section 46-38](#)
- (4) If a participant continues beyond his or her normal retirement date pursuant to the provisions of [section 46-33](#), subsection (a), and dies prior to his or her actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the participant in the amount or amounts computed as if the participant had retired under the option on the date on which his or her death occurred.
- (5) The participant's benefit under this section must begin to be distributed to the participant no later than April 1 of the calendar year following the later of the calendar year in which the participant attains age 70 $\frac{1}{2}$ or the calendar year in which the participant terminates employment with the city.
- (f) A retiree may not change his or her retirement option after the date of cashing or depositing his or her first retirement check.
- (g) For the purposes of this [section 46-37](#), the normal form of benefit payment shall be considered an optional form of benefit payment, except to the extent otherwise provided in the plan.
- (h) Notwithstanding anything herein to the contrary, the board in its discretion, may elect to make a lump sum payment to a participant or a participant's beneficiary in the event that the total commuted value of the monthly income payments to be paid do not exceed \$1,000.00. Any such payment made to any person pursuant to the power and discretion conferred upon the board by the preceding sentence shall operate as a complete discharge of all obligations under the system with regard to such participant and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 34-2007, § 2, 1-22-2008; Ord. No. 20-2010, § 10, 10-18-2010)

Sec. 46-38. Beneficiaries.

- (a) Each participant or retiree may, on a form provided for that purpose, signed and filed with the board, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his or her death. Each designation may be revoked or changed by such participant or retiree by signing and filing with the board a new designation-of-beneficiary form. Upon such change, the rights of all previously designated beneficiaries to receive any benefits under the system shall cease.
- (b) If a deceased participant or retiree failed to name a beneficiary in the manner prescribed in subsection (a), or if the beneficiary (or beneficiaries) named by a deceased participant or retiree predeceases the participant or retiree, the death benefit, if any, which may be payable under the system with respect to such deceased participant or retiree, shall be paid to the estate of the participant or retiree and the board, in its discretion, may direct that the commuted value of the remaining monthly income benefits be paid in a lump sum.
- (c) Notwithstanding any other provision of law to the contrary, the surviving spouse of any participant killed in the line of duty shall not lose survivor retirement benefits if the spouse remarries.
- (d) Any payment made to any person pursuant to this section shall operate as a complete discharge of all obligations under the system with regard to the deceased participant and any other persons with rights under the system and shall not be subject to review by anyone but shall be final, binding and conclusive on all persons ever interested hereunder.

(Ord. No. 02-2005, § 1, 2-7-2005)

Sec. 46-39. Claims procedures.

- (a) The board shall establish administrative claims procedures to be utilized in processing written requests ("claims"), on matters which affect the substantial rights of any person ("claimant"), including participants, retirees, beneficiaries, or any person affected by a decision of the board.
- (b) The board shall have the power to subpoena and require the attendance of witnesses and the production of documents for discovery prior to and at any proceedings provided for in the board's claims procedures. The claimant may request in writing the issuance of subpoenas by the board. A reasonable fee may be charged for the issuance of any subpoenas not to exceed the fees set forth in Florida Statutes.

(Ord. No. 02-2005, § 1, 2-7-2005)

Sec. 46-40. Annual report to division of retirement.

Each year, on or before March 15, the board shall submit the following information to the division of retirement in order for the plan to receive a share of the state funds for the then current calendar year. When any of these items would be identical with the corresponding item submitted for a previous year, it is not necessary for the board to submit duplicate information if they make reference to the item in such previous year's report:

(Ord. No. 02-2005, § 1, 2-7-2005)

Sec. 46-41. Actuarial valuations.

An actuarial valuation of the plan must be made at least once every three years, as provided in F.S. § 112.63, commencing three years from the last actuarial valuation of the plan or commencing three years from issuance of the initial actuarial impact statement submitted under F.S. § 112.63, for newly created plans. An enrolled actuary, subject to the following conditions shall prepare such valuation:

- (1) The assets shall be valued as provided in F.S. § 112.63.
- (2) The cost of the actuarial valuation shall be paid by the fund.
- (3) A report of the valuation, including actuarial assumptions and type and basis of funding, shall be made to the division within three months after the date of valuation. If any benefits are insured with a commercial insurance company, the report must include a statement of the relationship of the retirement plan benefits to the insured benefits, the name of the insurer, the basis of premium rates, and the mortality table, interest rate, and method used in valuing the retirement benefits.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 20-2010, § 11, 10-18-2010)

Sec. 46-42. Roster of retirees.

The secretary of the board shall keep a record of all persons enjoying a pension under the provisions of this article in which it shall be noted the time when the pension is allowed and when the same shall cease to be paid. Additionally, the secretary shall keep a record of all participants in such a manner as to show the name, address, date of employment and date of termination of employment.

(Ord. No. 02-2005, § 1, 2-7-2005)

Sec. 46-43. Maximum pension.

- (a) *Basic limitation.* Notwithstanding any other provisions of this system to the contrary, the participant mandatory contributions paid to, and retirement benefits paid from, the system shall be limited to such extent as may be necessary to conform to the requirements of Code Section 415 for a qualified retirement plan. Before January 1, 1995, a plan participant may not receive an annual benefit that exceeds the limits specified in Code Section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a plan participant may not receive an annual benefit that exceeds the dollar amount specified in Code Section 415(b)(1)(A) \$160,000.00, subject to the applicable adjustments in Code Section 415(b) and subject to any additional limits that may be specified in this system. For purposes of this section, "limitation year" shall be the calendar year.
- (b) *Adjustments to basic limitation for form of benefit.* If the form of benefit without regard to any benefit increase feature is not a straight life annuity, then the Code Section 415(b) limit applicable at the annuity starting date is reduced to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the death benefits under the form of benefit.
- (c) *Benefits not taken into account.* For purposes of this section, the following benefits shall not be taken into account in applying these limits:
- (1) Any ancillary benefit which is not directly related to retirement income benefits;
 - (2) Any other benefit not required under § 415(b)(2) of the Code and Regulations thereunder to be taken into account for purposes of the limitation of Code Section 415(b)(1).
- (d) *COLA effect.* Effective on and after January 1, 2003, for purposes of applying the limits under Code Section 415(b) (the "limit"), the following will apply:
- (1) A participant's applicable limit will be applied to the participant's annual benefit in the participant's first calendar year of benefit payments without regard to any automatic cost of living adjustments;
 - (2) thereafter, in any subsequent calendar year, a participant's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable benefit limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Code Section 415(d), and the regulations thereunder; but,
 - (3) in no event shall a participant's benefit payable under the system in any calendar year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d) and the regulations thereunder.

Unless otherwise specified in the system, for purposes of applying the limits under Code Section 415(b), a participant's applicable limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Code and applicable Treasury Regulations.

- (e) *Other adjustments in limitations.*
- (1) In the event the participant's retirement benefits become payable before age 62, the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Code Section 415(b) of the Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a \$160,000.00 annual benefit beginning at age 62
 - (2)

In the event the participant's benefit is based on at least 15 years of credited service as a full-time employee of the fire or police department of the city, the adjustments provided for in (e)(1) above shall not apply.

- (3) The reductions provided for in (e)(1) above shall not be applicable to disability benefits pursuant to section 46-35, or pre-retirement death benefits paid pursuant to section 46-34
 - (4) In the event the participant's retirement benefit becomes payable after age 65, for purposes of determining whether this benefit meets the limit set forth in subsection (a) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age 65. This adjustment shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.
- (f) *Less than ten years of service.* The maximum retirement benefits payable under this section to any participant who has completed less than ten years of credited service with the city shall be the amount determined under subsection (a) of this section multiplied by a fraction, the numerator of which is the number of the participant's years of credited service and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below ten percent. The reduction provided for in this subsection shall not be applicable to disability benefits paid pursuant to section 46-35 or pre-retirement death benefits paid pursuant to section 46-34
- (g) *Participation in other defined benefit plans.* The limit of this section with respect to any participant who at any time has been a participant in any other defined benefit plan as defined in Code Section 414(j) maintained by the city shall apply as if the total benefits payable under all city defined benefit plans in which the participant has been a participant were payable from one plan.
- (h) *Ten thousand dollar (\$10,000.00) limit.* Notwithstanding the foregoing, the retirement benefit payable with respect to a participant shall be deemed not to exceed the limit set forth in this section if the benefits payable, with respect to such participant under this system and under all other qualified defined benefit pension plans to which the city contributes, do not exceed \$10,000.00 for the applicable plan year and for any prior plan year and the city has not any time maintained a qualified defined contribution plan in which the participant participated.
- (i) *Reduction of benefits.* Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the participant's benefit under any defined benefit plans in which participant participated, such reduction to be made first with respect to the plan in which participant most recently accrued benefits and thereafter in such priority as shall be determined by the board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the participant participated, such reduction to be made first with respect to the plan in which participant most recently accrued benefits and thereafter in such priority as shall be established by the board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the board and the plan administrator of all other plans covering such participant.
- (j) *Service credit purchase limits.*
- (1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a participant makes one or more contributions to purchase permissive service credit under the system, then the requirements of this section will be treated as met only if:
 - a.

- The requirements of Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Code Section 415(b), or
- b. The requirements of Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Code Section 415(c).
 - c. For purposes of applying subparagraph (j)(1)a., the System will not fail to meet the reduced limit under Code Section 415(b)(2)(C) solely by reason of this subparagraph c., and for purposes of applying subparagraph (j)(1)b. the system will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Code solely by reason of this subparagraph c.
- (2) For purposes of this subsection the term "permissive service credit" means service credit:
- a. Recognized by the system for purposes of calculating a participant's benefit under the plan,
 - b. Which such participant has not received under the plan, and
 - c. Which such participant may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may, if otherwise provided by the system, include service credit for periods for which there is no performance of service, and, notwithstanding clause (j)(2)b., may include service credited in order to provide an increased benefit for service credit which a participant is receiving under the system.

- (3) For purposes of applying the limits in this subsection (j), only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a calendar year, except as noted below and as permitted by Treasury Regulations Section 1.415(c)-2, or successor regulations. Unless another definition of compensation that is permitted by Treasury Regulations Section 1.415(c)-2, or successor regulation, is specified by the system, compensation will be defined as wages within the meaning of Code Section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Code Sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2).
- a. However, for calendar years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Code Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For calendar years beginning after December 31, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of Code Section 132(f)(4).
 - b. For limitation years beginning on and after January 1, 2007, compensation for the calendar year will also include compensation paid by the later of 2½ months after an employee's severance from employment or the end of the

calendar year that includes the date of the employee's severance from employment if:

1. The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or
 2. The payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.
- c. Back pay, within the meaning of Treasury Regulations Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.
- (4) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system if the amount of the contribution would exceed the limits provided in Code Section 415 by using the following methods:
- a. If the law requires a lump sum payment for the purchase of service credit, the board may establish a periodic payment deduction plan for the participant to avoid a contribution in excess of the limits under Code Sections 415(c) or 415 (n).
 - b. If payment pursuant to subparagraph (j)(4)a. will not avoid a contribution in excess of the limits imposed by Code Section 415(c), the board may either reduce the participant's contribution to an amount within the limits of that section or refuse the participant's contribution.
- (k) *Additional limitation on pension benefits.* Notwithstanding anything herein to the contrary:
- (1) The normal retirement benefit or pension payable to a retiree who becomes a participant of the system and who has not previously participated in such system, on or after January 1, 1980, shall not exceed 100 percent of his average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.
 - (2) No participant of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the participant is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under [Chapter 67](#), Title 10, U.S. Code.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 20-2010, § 12, 10-18-2010)

Sec. 46-44. Minimum distribution of benefits.

- (a) *General rules.*
 - (1) *Effective date.* Effective as of January 1, 1989, the plan will pay all benefits in accordance with a good faith interpretation of the requirements of Code Section 401

- (a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Code Section 414(d). Effective on and after January 1, 2003, the plan is also subject to the specific provisions contained in this section. The provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- (2) *Precedence.* The requirements of this section will take precedence over any inconsistent provisions of the plan.
- (3) *TEFRA Section 242(b)(2) Elections.* Notwithstanding the other provisions of this Section other than this subsection (a)(3), distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that related to Section 242(b)(2) of TEFRA.
- (b) *Time and manner of distribution.*
- (1) *Required beginning date.* The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date which shall not be later than April 1 of the calendar year following the later of the calendar year in which the participant attains age 70 $\frac{1}{2}$ or the calendar year in which the participant terminates employment with the city.
- (2) *Death of participant before distributions begin.* If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed no later than as follows:
- If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by a date on or before December 31 of the calendar year in which the participant would have attained age 70 $\frac{1}{2}$, if later.
 - If the participant's surviving spouse is not the participant's sole designated beneficiary, then, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.
 - If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
 - If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse begin, this subsection (b)(2), other than subsection (b)(2)a., will apply as if the surviving spouse were the participant.
- For purposes of this subsection (b)(2) and subsection (e), distributions are considered to begin on the participant's required beginning date or, if subsection (b)(2)d. applies, the date of distributions are required to begin to the surviving spouse under subsection (b)(2)a. If annuity payments irrevocably commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(2)a.) the date distributions are considered to begin is the date distributions actually commence.
- (3) *Death after distributions begin.* If the participant dies after the required distribution of benefits has begun, the remaining portion of the participant's interest must be

- distributed at least as rapidly as under the method of distribution before the participant's death.
- (4) *Form of distribution.* Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with this section. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions there under will be made in accordance with the requirements of Section 401(a)(9) of the Code and Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and Treasury regulations that apply to individual accounts.
- (c) *Determination of amount to be distributed each year.*
- (1) *General requirements.* If the participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:
- a. The annuity distributions will be paid in periodic payments made at intervals not longer than one year.
- b. The participant's entire interest must be distributed pursuant to [section 46-33](#), [section 46-34](#), [section 46-36](#), or [section 46-37](#) (as applicable) and in any event over a period equal to or less than the participant's life or the lives of the participant and a designated beneficiary, or over a period not extending beyond the life expectancy of the participant or of the participant and a designated beneficiary. The life expectancy of the participant, the participant's spouse, or the participant's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.
- (2) *Amount required to be distributed by required beginning date.* The amount that must be distributed on or before the participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under [section 46-34](#)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., monthly, . All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.
- (3) *Additional accruals after first distribution calendar year.* Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
- (d) *General distribution rules.*
- (1) The amount of an annuity paid to a participant's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Code Section 401(a)(9)(G), and effective for any annuity commencing on or after January 1, 2008, the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.
- (2) The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in Code Section 401(a)(9)(G) and Treasury Regulation Section

1.401-1(b)(1)(I) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25 percent of the cost for all of the participants' benefits received from the retirement system.

(e) *Definitions.*

- (1) *Designated beneficiary.* The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.
- (2) *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to [section 46-34](#)

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 34-2007, § 3, 1-22-2008; Ord. No. 20-2010, § 13, 10-18-2010)

Sec. 46-45. Miscellaneous provisions.

- (a) *Interest of participants in system.* All assets of the fund are held in trust, and at no time prior to the satisfaction of all liabilities under the system with respect to retirees and participants and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.
- (b) *No reduction of accrued benefits.* No amendment or ordinance shall be adopted by the City Commission of the City of Deltona which shall have the effect of reducing the then vested accrued benefits of participants or a participant's beneficiaries.
- (c) *Qualification of system.* It is intended that the system will constitute a qualified public pension plan under the applicable provisions of the code for a qualified plan under Code Section 401 (a) and a governmental plan under Code Section 414(d), as now in effect or hereafter amended. Any modification or amendment of the system may be made retroactively, if necessary or appropriate, to qualify or maintain the system as a plan meeting the requirements of the applicable provisions of the code as now in effect or hereafter amended, or any other applicable provisions of the U.S. federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder. The plan is a "governmental plan" described in code § 414(d).
- (d) *Forfeitures.* Forfeitures arising from terminations of service of participants are assets of the fund and shall serve only to reduce future required plan contributions by their inclusion in as plan assets.
- (e) *Prohibited transactions.* Effective as of January 1, 1989, a board may not engage in a transaction prohibited by Code Section 503(b).
- (f) *USERRA.* Effective December 12, 1994, notwithstanding any other provision of this system, contributions, benefits and service credit with respect to qualified military service are governed by Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended. To the extent that the definition of "credited service" sets forth contribution requirements that are more favorable to the participant than the minimum compliance requirements, the more favorable provisions shall apply.
- (g) *Vesting.*
 - (1) Member will be 100 percent vested (1) in all benefits upon attainment of the plan's age and service requirements for the Plan's normal retirement benefit; and
 - (2)

A participant will be 100 percent vested in all accrued benefits, to the extent funded, if the plan is terminated or experiences a complete discontinuance of employer contributions.

- (h) *Electronic forms.* In those circumstances where a written election or consent is not required by the plan or the Code, an oral, electronic, or telephonic form in lieu of or in addition to a written form may be prescribed by the board. However, where applicable, the board shall comply with Treas. Reg. § 1.401(a)-21.
- (i) *Compliance with F.S. § 112.63.* It is intended that the system will continue to qualify for funding under F.S. § 175.261. Accordingly, unless otherwise required by law, any provision of the system which violates the requirements of F.S. Ch. 175, as amended from time to time, shall be superseded by and administered in accordance with the requirements of such chapter.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 20-2010, § 14, 10-18-2010)

Sec. 46-46. Domestic relations orders; retiree directed payments; exemption from execution, non-assignability.

- (a) *Domestic relations orders.*
 - (1) Prior to the entry of any domestic relations order which affects or purports to affect the system's responsibility in connection with the payment of benefits of a retiree, the participant or retiree shall submit the proposed order to the board for review to determine whether the system may legally honor the order.
 - (2) If a domestic relations order is not submitted to the board for review prior to entry of the order, and the system is ordered to take action that it may not legally take, and the system expends administrative or legal fees in resolving the matter, the participant or retiree who submits such an order will be required to reimburse the system for its expenses in connection with the order.
- (b) *Retiree directed payments.* The board may, upon written request by a retiree or by a dependent, when authorized by a retiree or the retiree's beneficiary, authorize the system to withhold from the monthly retirement payment those funds that are necessary to pay for the benefits being received through the city, to pay the certified bargaining agent of the city, to make payment to insurance companies for insurance premiums as permitted by F.S. Ch. 175, and to make any payments for child support or alimony.
- (c) *Exemption from execution, non-assignability.* Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this ordinance and the accumulated contributions and the cash securities in the fund created under this ordinance are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 20-2010, § 15, 10-18-2010)

Sec. 46-47. Pension validity.

The board shall have the power to examine into the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. The board is empowered to purge the pension rolls or correct the pension amount of any person heretofore granted a pension under prior or existing law or any person hereafter granted a pension under this ordinance if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any person who has

heretofore under any prior or existing law been or who shall hereafter under this ordinance be erroneously, improperly or illegally classified. Any overpayments or underpayments shall be corrected and paid or repaid in a reasonable manner determined by the board.

(Ord. No. 02-2005, § 1, 2-7-2005)

Sec. 46-48. Conviction and forfeiture; false, misleading or fraudulent statements.

- (a) It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement or withhold or conceal material information to obtain any benefit from the system.
- (b) A person who violates subsection (a) commits a misdemeanor of the first degree, punishable as provided in F.S. § 775.082 or F.S. § 775.083.
- (c) In addition to any applicable criminal penalty, upon conviction for a violation described in subsection (a), a participant or beneficiary of the system may, in the discretion of the board, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled under the system. For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 20-2010, § 17, 10-18-2010)

Sec. 46-49. Amendment of the plan.

No amendment to the plan shall be proposed unless the proposed amendment contains an actuarial estimate of the costs involved. No such proposed plan change shall be adopted without the approval of the city commission by the adoption of an ordinance amending this article. Copies of the proposed change and the actuarial impact statement of the proposed change shall be furnished to the division of retirement prior to the last public hearing thereon. Such statement shall also indicate whether the proposed change is in compliance with Section 14, Article X of the Florida Constitution and those provisions of Part VII, Chapter 112, Florida Statutes, which are not expressly provided in F.S. Ch. 175.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 20-2010, § 17, 10-18-2010)

Sec. 46-50. Indemnification.

- (a) To the extent not covered by insurance contracts in force from time to time, the city shall indemnify, defend and hold harmless participants of the board from all personal liability for damages and costs, including court costs and attorneys' fees, arising out of claims, suits, litigation, or threat of same, herein referred to as "claims", against these individuals because of acts or circumstances connected with or arising out of their official duty as participants of the board. The city reserves the right, in its sole discretion, to settle or not settle the claim at any time, and to appeal or to not appeal from any adverse judgment or ruling, and in either event will indemnify, defend and hold harmless any participants of the board from the judgment, execution, or levy thereon.
- (b) This section shall not be construed so as to relieve any insurance company or other entity liable to defend the claim or liable for payment of the judgment or claim, from any liability, nor does this section waive any provision of law affording the city immunity from any suit in whole or part, or waive any other substantive or procedural rights the city may have.

- (c) This section shall not apply nor shall the city be responsible in any manner to defend or pay for claims arising out of acts or omissions of participants of the board which constitute felonies or gross malfeasance or gross misfeasance in office.

(Ord. No. 02-2005, § 1, 2-7-2005)

Sec. 46-51. Direct transfers of eligible rollover distributions, elimination of mandatory distributions.

(a) *Rollover distributions.*

- (1) *General.* This section applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the system 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.

(2) *Definitions.*

- a. *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the code and the portion of any distribution that is not includible in gross income. Effective January 1, 2002, any portion of any distribution which would be includible in gross income as after-tax employee contributions will be an eligible rollover distribution if the distribution is made to an individual retirement account described in section 408(a); to an individual retirement annuity described in section 408(b); to a qualified defined contribution plan described in section 401(a) or 403(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible ; or on or after January 1, 2007, to a qualified defined benefit plan described in Code Section 401(a) or to an annuity contract described in Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.
- b. *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, effective January 1, 2002, an eligible deferred compensation plan described in section 457(b) of the code which is maintained by an eligible employer described in section 457(e)(1)(A) of the code and which agrees to separately account for amounts transferred into such plan from this plan; effective January 1, 2002, an annuity contract described in section 403(b) of the code; a qualified trust described in section 401(a) of the code; or effective January 1, 2008, a Roth IRA described in Section 408A of the code,

- that accepts the distributee's eligible rollover distribution. This definition shall also apply in the case of an eligible rollover distribution to the surviving spouse.
- c. *Distributee*: A distributee includes an employee or former employee. It also includes, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse. Effective January 1, 2007, it further includes a non-spouse beneficiary who is a designated beneficiary as defined by Code Section 401(a)(9)(E). However, a non-spouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.
 - d. *Direct rollover*: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.
- (b) *Rollovers or transfers into the fund*. On or after January 1, 2002, the system will accept, solely for the purpose of purchasing credited service as provided herein, permissible participant requested transfers of funds from other retirement or pension plans, participant rollover cash contributions and/or direct cash rollovers of distributions made on or after January 1, 2002, as follows:
- (1) *Transfers and direct rollovers or participant rollover contributions from other plans*. The system will accept either a direct rollover of an eligible rollover distribution or a participant contribution of an eligible rollover distribution from a qualified plan described in section 401(a) or 403(a) of the Code, from an annuity contract described in section 403(b) of the Code or from an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The system will also accept legally permissible participant requested transfers of funds from other retirement or pension plans.
 - (2) *Member rollover contributions from IRAs*. The system will accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over .
- (c) *Elimination of mandatory distributions*. Notwithstanding any other provision herein to the contrary, in the event this plan provides for a mandatory (involuntary) cash distribution from the plan not otherwise required by law, for an amount in excess of \$1,000.00, such distribution shall be made from the plan only upon written request of the participant and completion by the participant of a written election on forms designated by the board, to either receive a cash lump sum or to rollover the lump sum amount.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 34-2007, § 4, 1-22-2008; Ord. No. 20-2010, § 18, 10-18-2010)

Sec. 46-52. Repeal or termination of system.

- (a) This article establishing the system and fund, and subsequent ordinances pertaining to said system and fund, may be modified, terminated, or amended, in whole or in part; provided that if this or any subsequent ordinance shall be amended or repealed in its application to any person benefitting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the participant or beneficiary shall not be affected thereby.
- (b) If this article shall be repealed, or if contributions to the system are discontinued or if there is a transfer, merger or consolidation of government units, services or functions as provided in

F.S. Ch. 121, the board shall continue to administer the system in accordance with the provisions of this article, for the sole benefit of the then participants, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this ordinance who are designated by any of said participants. In the event of repeal, discontinuance of contributions, or transfer, merger or consolidation of government units, services or functions, there shall be full vesting (100 percent) of benefits accrued to date of repeal and such benefits shall be nonforfeitable.

- (c) The fund shall be distributed in accordance with the following procedures:
- (1) The board shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits after taking into account the expenses of such distribution. The board shall inform the city if additional assets are required, in which event the city shall continue to financially support the plan until all nonforfeitable benefits have been funded.
 - (2) The board shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each firefighter entitled to benefits under the plan as specified in subsection (3).
 - (3) The board shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the firefighter's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the firefighter.
 - (4) If there is asset value remaining after the full distribution specified in subsection (3), and after the payment of any expenses incurred with such distribution, such excess shall be returned to the city, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the city and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the city and the state.
 - (5) The board shall distribute, in accordance with subsection (2), the amounts determined under subsection (3).

If, after 24 months after the date the plan terminated or the date the board received written notice that the contributions thereunder were being permanently discontinued, the city or the board of the fund affected has not complied with all the provisions in this section, the Florida Department of Management Services will effect the termination of the fund in accordance with this section.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 20-2010, § 19, 10-18-2010)

Sec. 46-53. Forfeiture of pension.

- (a) Any participant who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his or her admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this system, except for the return of his or her accumulated contributions as of the date of termination. Specified offenses are as follows:
- (1) The committing, aiding or abetting of an embezzlement of public funds;

- (2) The committing, aiding or abetting of any theft by a public officer or employee from employer;
 - (3) Bribery in connection with the employment of a public officer or employee;
 - (4) Any felony specified in F.S. Ch. 838.
 - (5) The committing of an impeachable offense.
 - (6) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he acts or in which he is employed, of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his or her public office or employment position.
 - (7) The committing on or after October 1, 2008, of any felony defined in F.S. § 800.04, against a victim younger than 16 years of age, or any felony defined in F.S. Ch. 794, against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.
- (b) Conviction shall be defined as an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or a nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the senate of an impeachable offense.
 - (c) Court shall be defined as any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the board shall hold a hearing on which notice shall be given to the participant whose benefits are being considered for forfeiture. Said participant shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the participant shall be afforded a full opportunity to present his or her case against forfeiture.
 - (d) Any participant who has received benefits from the system in excess of his or her accumulated contributions after participant's rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his or her accumulated contributions. The board may implement all legal action necessary to recover such funds.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 20-2010, § 20, 10-18-2010)

Sec. 46-54. Deferred retirement option plan.

- (a) *Definitions.* As used in this [section 46-55](#), the following definitions apply:
 - (1) *"DROP"* - The City of Deltona Firefighters' Pension Plan Deferred Retirement Option Plan.
 - (2) *"DROP account"* - The account established for each DROP participant under subsection (c).
- (b) *Participation.*
 - (1) *Eligibility to participate.* In lieu of terminating his or her employment as a firefighter, any participant who is eligible for normal retirement under the system may elect to defer receipt of such service retirement pension and to participate in the DROP provided that the election to participate in the DROP is made within 12 months following the date on which the participant first becomes eligible for normal retirement.

A participant who fails to make the election within such 12-month limitation period shall forfeit all rights to participate in the DROP.

- (2) *Election to participate.* A participant's election to participate in the DROP must be made in writing in a time and manner determined by the board and shall be effective on the first day of the first calendar month which is at least 15 business days after it is received by the board.
 - (3) *Period of participation.* A participant who elects to participate in the DROP under subsection (b)(2), shall participate in the DROP for a period not to exceed 36 months beginning at the time his or her election to participate in the DROP first becomes effective. An election to participate in the DROP shall constitute an irrevocable election to resign from the service of the city not later than the date provided for in the previous sentence. A participant may participate only once.
 - (4) *Termination of participation.*
 - a. A participant's participation in the DROP shall cease at the earlier of:
 1. The end of his or her permissible period of participation in the DROP as determined under subsection (b)(3); or
 2. Termination of his or her employment as a firefighter.
 - b. Upon the participant's termination of participation in the DROP, pursuant to subsection 1. above, all amounts provided for in subsection (c)(2), including monthly benefits and investment earnings and losses or interest, shall cease to be transferred from the system to his or her DROP account. Any amounts remaining in his or her DROP account shall be paid to him in accordance with the provisions of subsection (d) when he terminates his or her employment as a Firefighter.
 - c. A participant who terminates his or her participation in the DROP under this subsection (b)(4) shall not be permitted to again become a participant in the DROP.
 - (5) *Effect of DROP participation on the system.*
 - a. A participant's credited service and his or her accrued benefit under the system shall be determined on the date his or her election to participate in the DROP first becomes effective. The participant shall not accrue any additional credited service or any additional benefits under the system (except for any additional benefits provided under any cost-of-living adjustment for retirees in the system) while he is a participant in the DROP. After a participant commences participation, he shall not be permitted to again contribute to the system nor shall he be eligible for disability or pre-retirement death benefits, except as provided for in [section 46-56](#)
 - b. No amounts shall be paid to a participant from the system while the participant is a participant in the DROP. Unless otherwise specified in the system, if a participant's participation in the DROP is terminated other than by terminating his or her employment as a firefighter, no amounts shall be paid to him from the system until he terminates his or her employment as a firefighter. Unless otherwise specified in the system, amounts transferred from the system to the participant's DROP account shall be paid directly to the participant only on the termination of his or her employment as a firefighter.
- (c) *Funding.*
- (1) *Establishment of DROP account.* A DROP account shall be established for each participant participating in the DROP. A participant's DROP account shall consist of

amounts transferred to the DROP under subsection (c)(2), and earnings or interest on those amounts.

(2) *Transfers from retirement system.*

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

b. Except as otherwise provided in subsection (b)(4)b., a participant's DROP account under this subsection (c)(2) shall be debited or credited after each fiscal year quarter, based on the balance in the account at the beginning of the previous quarter, by electing one of the following investment options:

1. A fixed interest rate of six percent per annum compounded quarterly; or
2. The net investment rate realized by the retirement system for each quarter. "Net investment rate" for the purpose of this paragraph is the total percentage rate of return of the assets in which the participant's DROP account is invested by the board net of brokerage commissions, transactions costs, account fees and management fees.

Upon electing to participate in the DROP, the participant shall select either:

Option 1—Fixed interest rate, or

Option 2—Net investment interest.

Only once during his or her DROP participation may the participant elect to change his or her selection. Such request to change the investment option shall be in writing. An election to change the investment option shall be effective beginning the following quarter after the election is received by the firefighters' pension board.

c. A participant's DROP account shall only be credited or debited with interest and monthly benefits while the participant is a participant in the DROP. A participant's final DROP account value for distribution to the participant upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation date plus any monthly periodic additions made to the DROP account subsequent to the end of the previous quarter and prior to distribution. If a participant fails to terminate employment after participating in the DROP for the permissible period of DROP participation, then beginning with the participant's first month of employment following the last month of the permissible period of DROP participation, the participant's DROP account will no longer be credited with interest, nor will monthly benefits be transferred to the DROP account. All such non-transferred amounts shall be forfeited and continue to be forfeited while the participant is employed by the Fire Department. A participant employed by the Fire Department after the permissible period of DROP participation will be eligible for pre-retirement death or disability benefits and will accrue additional credited service only as provided for in [section 46-56](#)

- (d) *Distribution of DROP accounts on termination of employment.*
- (1) *Eligibility for benefits.* A participant shall receive the balance in his or her DROP account in accordance with the provisions of this subsection (d) upon his or her termination of employment as a firefighter. Except as provided in subsection (d)(5), no amounts shall be paid to a participant from the DROP prior to his or her termination of employment as a firefighter.
 - (2) *Form of distribution.*
 - a. Unless the participant elects otherwise, distribution of his or her DROP account shall be made in a lump sum, subject to the direct rollover provisions set forth in subsection (d)(6). Elections under this paragraph shall be in writing and shall be made in such time or manner as the board shall determine.
 - b. If a participant dies before his or her benefit is paid, his or her DROP account shall be paid to his or her beneficiary in such optional form as his or her beneficiary may select. If no beneficiary designation is made, the DROP account shall be distributed to the participant's estate.
 - (3) *Date of payment of distribution.* Except as otherwise provided in this subsection (d), distribution of a participant's DROP account shall be made as soon as administratively practicable following the participant's termination of employment.
 - (4) *Proof of death and right of beneficiary or other person.* The board may require and rely upon such proof of death and such evidence of the right of any beneficiary or other person to receive the value of a deceased participant's DROP account as the board may deem proper and its determination of the right of that beneficiary or other person to receive payment shall be conclusive.
 - (5) *Distribution limitation.* Notwithstanding any other provision of this subsection (d), all distributions from the DROP shall conform to the "minimum distribution of benefits" provisions as provided for herein.
 - (6) *Direct rollover of certain distributions.* This subsection applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the DROP to the contrary, a distributee may elect to have any portion of an eligible rollover distribution paid in a direct rollover as otherwise provided under the system in [section 46-51](#)
- (e) *Administration of DROP.*
- (1) *Board administers the DROP.* The general administration of the DROP, the responsibility for carrying out the provisions of the DROP and the responsibility of overseeing the investment of the DROP's assets shall be placed in the board. The participants of the board may appoint from their number such subcommittees with such powers as they shall determine; may adopt such administrative procedures and regulations as they deem desirable for the conduct of their affairs; may authorize one or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical, accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP; and may allocate among themselves or delegate to other persons all or such portion of their duties under the DROP, other than those granted to them as trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A trustee shall not vote on any question relating exclusively to himself.
 - (2) *Individual accounts, records and reports.* The board shall maintain records showing the operation and condition of the DROP, including records showing the individual balances in each participant's DROP account, and the board shall keep in convenient

form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The board shall prepare and distribute to participants participating in the DROP and other individuals or file with the appropriate governmental agencies, as the case may be, all necessary descriptions, reports, information returns, and data required to be distributed or filed for the DROP pursuant to the Code and any other applicable laws.

- (3) *Establishment of rules.* Subject to the limitations of the DROP, the board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The board shall have discretionary authority to construe and interpret the DROP (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in the DROP). The determination of the board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law.
 - (4) *Limitation of liability.*
 - a. The trustees shall not incur any liability individually or on behalf of any other individuals for any act or failure to act, made in good faith in relation to the DROP or the funds of the DROP.
 - b. Neither the board nor any trustee of the board shall be responsible for any reports furnished by any expert retained or employed by the board, but they shall be entitled to rely thereon as well as on certificates furnished by an accountant or an actuary, and on all opinions of counsel. The board shall be fully protected with respect to any action taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.
- (f) *General provisions.*
- (1) *Amendment of DROP.* The DROP may be amended by an ordinance of the city at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP account of any participant.
 - (2) *Facility of payment.* If a participant or other person entitled to a benefit under the DROP is unable to care for his or her affairs because of illness or accident or is a minor, the board shall direct that any benefit due him shall be made only to a duly appointed legal representative. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.
 - (3) *Information.* Each participant, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his or her account under the DROP, shall file with the board the information that it shall require to establish his or her rights and benefits under the DROP.
 - (4) *Prevention of escheat.* If the board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the board may, no earlier than three years from the date such payment is due, mail a notice of such due and owing payment to

the last known address of such person, as shown on the records of the board or the city. If such person has not made written claim therefor within three months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the system, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the system. Upon such cancellation, the system shall have no further liability therefor except that, in the event such person or his or her beneficiary later notifies the board of his or her whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.

- (5) *Written elections, notification.*
- a. Any elections, notifications or designations made by a participant pursuant to the provisions of the DROP shall be made in writing and filed with the board in a time and manner determined by the board under rules uniformly applicable to all employees similarly situated. The board reserves the right to change from time to time the manner for making notifications, elections or designations by participants under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.
 - b. Each participant or retiree who has a DROP account shall be responsible for furnishing the board with his or her current address and any subsequent changes in his or her address. Any notice required to be given to a participant or retiree hereunder shall be deemed given if directed to him at the last such address given to the board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the participant or Retiree notifies the board of his or her address.
- (6) *Benefits not guaranteed.* All benefits payable to a participant from the DROP shall be paid only from the assets of the participant's DROP account and neither the city nor the board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.
- (7) *Construction.*
- a. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.
 - b. The titles and headings of the subsections in this section 46-49.4 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.
- (8) *Forfeiture of retirement benefits.* Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.
- (9) *Effect of DROP participation on employment.* Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 03-2006, § 1, 6-5-2006; Ord. No. 16-2006, § 1, 8-21-2006; Ord. No. 34-2007, § 5, 1-22-2008; Ord. No. 20-2010, § 21, 10-18-2010)

Sec. 46-55. Reemployment after retirement.

- (a) Any retiree under this system, except for disability retirement as previously provided for, may be reemployed by any public or private employer, except the city, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this system. Reemployment by the city shall be subject to the limitations set forth in this section.
- (b) *After normal retirement.* Any retiree who is retired under normal (or early) retirement pursuant to this system and who is reemployed as a firefighter and, by virtue of that reemployment, is eligible to participate in this system, shall upon being reemployed, discontinue receipt of benefits. Upon reemployment, the participant shall be deemed to be fully vested and the additional credited service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon retirement shall be based upon the benefit accrual rate, average final compensation, and credited service (and early retirement reduction factor, if applicable) as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average final compensation (based only on the subsequent employment period and not including any period of DROP participation), and credited service (and early retirement reduction factor, if applicable) as of the date of subsequent retirement. Upon reemployment, the participant contribution rate for the reemployed retiree shall be the participant contribution rate in effect for the entire subsequent employment period. The amount of any death or disability benefit received during a subsequent period of employment shall be reduced by the amount of accrued benefit eligible to be paid for a prior period of employment. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the retiree may select a different optional form and joint pensioner applicable only to the subsequent retirement benefit.
- (c) Any retiree who is retired under normal retirement pursuant to this system who is reemployed by the city in a position other than as a firefighter, shall upon being reemployed, continue receipt of benefits for the period of any subsequent employment. Former DROP participants shall begin receipt of benefits under these circumstances.
- (d) *After early retirement.* Any retiree who is retired under early retirement pursuant to this system and who subsequently becomes an employee of the city in any capacity, shall discontinue receipt of benefits from the system. If the reemployed person, by virtue of his or her reemployment, is eligible to participate in this system, that person shall accrue a second benefit as provided for in subsection (2) above and benefit payments shall remain suspended during any such subsequent employment period. If the reemployed person is not eligible to participate in this system, that person's pension benefit payments shall be suspended until the earlier of termination of employment or such time as the reemployed retiree reaches the date that he would have been eligible for normal retirement under this system had he continued employment and not elected early retirement. "Normal retirement" as used in this subsection shall be the current normal retirement date provided for under this system.
- (e) *Reemployment of terminated vested persons.* Reemployed terminated vested persons shall not be subject to the provisions of this section until such time as they begin to actually

receive benefits. Upon receipt of benefits, terminated vested persons shall be treated as normal or early retirees for purposes of applying the provisions of this section and their status as an early or normal retiree shall be determined by the date they elect to begin to receive their benefit.

- (f) *DROP participants.* Participants or retirees who are or were in the deferred retirement option plan shall, following termination of employment after DROP participation, have the options provided for in this section for reemployment.

(Ord. No. 02-2005, § 1, 2-7-2005; Ord. No. 20-2010, § 22, 10-18-2010)

Sec. 46-56. Retirement subsidy (RS).

The retirement subsidy (RS) is a monthly supplemental payment to a retired firefighter to help defray the cost of health insurance coverage. This monthly payment, which must be applied for, is calculated by multiplying your total years of service at retirement (up to a maximum of 25 years) by \$5.00. RS is only available to firefighters after retirement while not employed by the city. RS is calculated at \$5.00 for each full year of creditable service with a maximum RS of \$125.00 per month which shall be paid monthly. RS is not to be paid retroactive to the firefighter's date of retirement.

(Ord. No. 03-2006, § 2, 6-5-2006)

FOOTNOTE(S):

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Editor's note—Ord. No. 02-2005, § 1, adopted Feb. 7, 2005, amended art. II in its entirety to read as herein set out. Formerly, said article pertained to similar subject matter. See the Code Comparative Table for a detailed analysis of repeal and inclusion. ([Back](#))

Deltona, Florida, Code of Ordinances >> PART II - CODE OF ORDINANCES >> **Chapter 110 - ZONING**
>> ARTICLE XII. PLANNING AND ZONING BOARD >>

ARTICLE XII. PLANNING AND ZONING BOARD

[Sec. 110-1200. Creation.](#)

[Sec. 110-1201. Rules of procedure.](#)

[Sec. 110-1202. Powers and duties.](#)

[Sec. 110-1203. Board review procedures.](#)

Sec. 110-1200. Creation.

A planning and zoning board is hereby created, effective April 1, 1999. It shall be referred to in this article as "the board." The jurisdiction of the board shall be throughout the area of the City of Deltona. It shall have the following membership, powers, duties, responsibilities, and limitations.

- (a) *Membership, place of residence, terms of office.* The board shall have seven members appointed by the city commission. Each member shall serve for a term of three years. Each city commissioner and the mayor shall appoint one member to the board, said appointments to be ratified by a majority vote of the city commission. The initial terms of office shall be staggered. Two members shall serve for one year, two members shall serve for two years, and the remaining members shall serve for terms of three years. The members to serve initial terms of one and two years shall be determined by drawing lots by the city commission after making the initial appointments. Thereafter, all members shall be appointed for terms of three years. No board member shall serve on the board for more than two consecutive three-year terms. No elected official and no employee of the city government shall be appointed to serve on the board.
- (b) *Removal from office, vacancies.* If a member is absent for three consecutive meetings without being excused by the chairperson, said member shall forfeit his or her office and it shall be deemed vacant. Any vacancy occurring during the un-expired term of office of any member shall be filled by the city commission for the remainder of the term. The vacancy shall be filled within 30 days from the time it occurs. Any member of the board may be removed from office for cause by the city commission, upon written charges and after public hearing.
- (c) *Officers.* The board shall elect a chairperson, vice-chairperson and secretary from among its members. The terms of all board officers shall be one year, each having eligibility for re-election. At the first meeting of the board of each calendar year, the secretary shall call the board meeting to order and shall then call for nominations for the chairperson. Upon election of a chairperson, the secretary shall pass the gavel to the chair. The chairperson shall then call for nominations for vice-chairperson. Upon election of a vice-chairperson, the chair shall call for nominations for secretary. The director of development services shall perform the secretary's duties in opening the meeting and calling for nominations for chairperson at the first meeting of the board following its establishment by the city commission.

- (d) *Employees, administrative services.* The board shall have no employees or contract vendors. The planning and development services department shall provide clerical and staff support by formatting and packaging board agendas, creating summary minutes of meetings, and maintaining board records. The planning and development services department shall also provide professional and technical assistance to the board consistent with its staffing and funding as approved by the city commission. The director of development services or his or her designee shall bring board reports and recommendations to the city commission in appropriate communications, the format and medium of which shall be determined by the city manager. Such communications shall include staff reports and recommendations, application materials, correspondence, and other relevant information as determined by the board, the director of development services, the city manager, or the city commission to be necessary to assist the city commission in its deliberations. The board shall not direct the staff to undertake any project, but may request reasonable staff assistance, and may report through the staff and city manager to the city commission any projects which the board deems worthwhile for commission consideration by a majority vote of the board's entire membership.
- (e) *Compensation, annual budget.* Each board member may be reimbursed for reasonable expenses incurred in connection with his or her duties on the board in accordance with reimbursement policies and amounts established by a resolution of the city commission. The city commission shall provide members of the board with professional liability insurance to cover potential claims of personal liability for damages as a result of their formal actions and decisions as members of the board. The city manager shall recommend the amounts of insurance coverage and potential insurance carriers to the city commission. The city commission shall provide an annual budget for training and education of board members; for printing of training materials and decision support materials; and for the purchase of books and publications that increase the board members' understanding of the board's functions and of the issues faced by the board. The amount budgeted for each purpose shall be determined by the city commission upon the receipt of the recommendations of the city manager. The city commission may also budget for public information and participation, and for other items that it deems appropriate to include in the board's budget.

(Ord. No. 03-99, § 1, 2-1-1999; Ord. No. 19-2011, § 1(Exh. A), 11-7-2011)

Sec. 110-1201. Rules of procedure.

The board shall meet at regular intervals once each month, and at such other times as it may deem necessary, for the transaction of its business. It shall follow the by-laws adopted by resolution of the city commission. Unless otherwise stated in the by-laws, and until such by-laws are adopted by the city commission, the board shall conduct its affairs in accordance with Robert's Rules of Order. Points of order shall not be raised in board meetings by members of the audience. The sheriff's office or, upon its creation, the city's police department shall provide a sergeant-at-arms to maintain order at board meetings upon the request of either the chairperson, or the director of development services. The board shall keep a properly indexed public record of its resolutions, transactions, findings and recommendations. The board may by resolution limit the number of applications of all types or of any type which it shall hear each month. A quorum shall be four members. No recommendations for approval of any application shall be made unless four members concur.

(Ord. No. 19-2011, § 1(Exh. A), 11-7-2011)

Sec. 110-1202. Powers and duties.

- (a) *Designation as local planning agency.* The board is hereby designated as the local planning agency as required by the Local Government Comprehensive Planning and Land Development Regulation Act, section 163.3161 et seq., and F.S. § 163.3174. The board shall prepare, or cause to be prepared, the elements of the comprehensive plan required in F.S. § 163.3177, and any other appropriate elements, and shall make recommendations regarding the comprehensive plan to the city commission. The board shall have the general responsibility for the conduct of the comprehensive planning program. The board and the comprehensive planning program shall comply with all requirements of the Local Government Comprehensive Planning and Land Development Regulation Act and shall monitor and oversee the effectiveness and status of the comprehensive plan, and recommend to the city commission such changes in the comprehensive plan as may from time to time be required. The board shall perform any other duties assigned by the city commission, and may prepare and recommend to the city commission any other proposals to implement the comprehensive plan.
- (b) *Designation as land development regulations commission.* The board is hereby also designated as the land development regulations commission in accordance with the provisions of the Local Government Comprehensive Planning and Land Development Regulations Act, section 163.3161, et seq., and F.S. § 163.3194. The board shall develop and recommend to the city commission land development regulations that implement the comprehensive plan and review land development regulations or amendments thereto for consistency with the adopted comprehensive plan.
- (c) *Annual work program.* The board shall receive recommendations from the planning and development services department regarding an annual work program. Following receipt of those recommendations, the board shall prepare an annual work program for recommendation to the city commission. The work program shall include an estimated budget for its implementation. The work program shall be in a format developed by the staff and approved by the city manager. The city manager and the city commission shall determine the priorities given the individual items in the work program in the proposed annual budget and in the adopted budget, respectively.
- (d) *Five-year capital improvements program and annual capital improvements budget.* The board shall review the city's proposed capital improvements plan and budget, and make recommendations on capital budget priorities to the city commission annually. This review shall require one public hearing with due public notice. This public hearing shall be conducted in accordance with the requirements of F.S. § 163.3181(3), as it may be amended from time to time. The proposed five-year capital improvements plan is mandated by the Local Government Comprehensive Planning and Land Development Regulation Act, F.S. ch. 163, pt. II, and shall be developed annually for presentation to the board by an interagency capital improvements committee chaired by the director of development services. The capital improvements committee shall consist of the director of development services; the director of finance and internal services; the director of public works; the assistant city manager or other staff person charged with senior management responsibility for parks and recreational facilities; the fire chief; and such other members as may be appointed by the city manager. The city manager shall determine the priorities and recommended funding levels given to the planning and zoning board's recommended capital improvements budget for the capital improvements program and budget annually proposed to the city commission. The city

commission shall determine the priorities and funding given to the recommendations of the board and the city manager for the adopted capital improvements program and budget.

- (e) *Applications and proposals requiring public hearings.* Prior to the transmittal of an application or proposal to the city commission, the board shall hold one public hearing with due public notice on the following applications and proposals, whether initiated by the city or by other applicants:

- (1) Plan amendments, including future land use map amendments;
- (2) Zoning map changes;
- (3) Changes to the city's zoning ordinance or a proposed new zoning ordinance;
- (4) Changes to the city's sign ordinance or a proposed new sign ordinance;
- (5) Changes to the Land Development Code or a proposed new Land Development Code, including subdivision regulations;
- (6) Planned unit developments;
- (7) Conditional uses;
- (8) Zoning variances;
- (9) Amendments to the approved capital improvements program or budget;
- (10) The establishment of, or changes to established community development districts;
- (11) Changes to or proposed architectural design standards;
- (12) Changes to or proposed landscaping ordinances, tree preservation ordinances, or environmental protection ordinances;
- (13) Proposed development agreements created pursuant to the "Florida Local Government Development Agreement Act";
- (14) Proposed developments of regional impact;
- (15) Development review final site plans for buildings over 30,000 square feet in area under heating and cooling or developments over 15 dwelling units per acre; and
- (16) Proposed subdivisions containing more than 200 lots.

The board shall review all such applications for consistency with the adopted comprehensive plan, for consistency with the purposes and intent of this chapter or of the ordinance proposed to be amended, and for the ability of the application to meet the standards for approval of the application that are contained in the relevant laws and ordinances governing the application's approval. The board shall also consider:

- (1) Noise, vibrations, odor, glare, shadows, or visual impacts on the neighborhood and adjoining properties.
- (2) Any impacts on environmentally sensitive lands or natural resources, including but not limited to water bodies, wetlands, xeric communities, wildlife habitats, endangered or threatened plants or animal species or species of special concern, wellfields, and individual wells;
- (3) Adequacy of public facilities to serve the development, including but not limited to roads, sidewalks, bikepaths, potable water, wastewater treatment, drainage, fire and police safety, parks and recreational facilities, and public schools;
- (4) On-site and off-site traffic impacts, pedestrian safety and adequate access and egress for city service and emergency vehicles;
- (5) Use of space from a functional and aesthetic perspective;
- (6) Safety of occupants, visitors, and the surrounding neighborhood;
- (7)

Proposed use of materials and architectural features in relationship to neighborhood or surrounding area character, and aesthetic considerations.

- (f) *Advisory recommendations to the city commission.* The board shall make a recommendation to the city commission by formal written approved motion of the board as to the conclusion of the board that an application or proposal should be considered by the city commission for approval, approval with specific conditions recommended by the board, or denial. The board's recommendation shall be transmitted to the city commission with all related staff reports, an index and executive summary of the staff reports prepared by the planning and development services department, a summary of written materials submitted by the public for consideration at the board's public hearing, a summary of public comments at the hearing, and the complete application or proposal.
- (g) *Applications and proposals exempt from board review.* Planning and zoning board review shall not be required for amendments to city ordinances that are initiated by the staff or the city commission to correct grammar and spelling errors, change fees, change the organization of the ordinances, or change processing procedures when mandated by state statutes, provided such changes do not affect consistency with the comprehensive plan, the use of land, or change the meaning of the adopted regulations.

(Ord. No. 19-2011, § 1(Exh. A), 11-7-2011)

Sec. 110-1203. Board review procedures.

- (a) *Deadline for submission of applications.* Complete applications requiring planning and zoning board review must be submitted to the planning and development services department at least 20 working days prior to the board meeting at which the applications are to be heard. Complete applications submitted after this deadline shall be processed for consideration at the following board meeting. An application shall be considered complete if it meets all of the submission requirements established by the applicable ordinance, fees are paid, a fully executed city application form is included, and sufficient information is included in the application to enable the staff and the board to evaluate the application.
- (b) *Application forms and processing procedures.* Applications shall be submitted on forms and processed in accordance with written administrative procedures created and published by the planning and development services department. All required attachments shall be included with each application, including, but not limited to, proof of ownership or permission of the owner to make the application, location maps, surveys, and site plans, as required. No application will be deemed complete until the required fees have been paid, including the estimated costs of the services of consultants to the city, if any such consultants are needed.
- (c) *Expiration of planning and zoning board recommendations.* Applicants may postpone city commission review of any application up to a maximum of one year following action by the planning and zoning board. Any applications not heard by the city commission within that period shall require re-submittal of the proposal, including the payment of all applicable fees and processing requirements as required for a new proposal. The review of a re-submitted proposal shall not be shortened in time, or otherwise abridged, in order that the staff and the board shall have adequate opportunity to determine whether or not there are any changes in the proposal or any changed conditions that may alter the review results.

(Ord. No. 19-2011, § 1(Exh. A), 11-7-2011)

COMMISSION POLICY/PROCEDURE

EFFECTIVE DATE	POLICY NUMBER	PAGE NUMBER	SUPERSEDES POLICY Dated: 05-15-06
08-15-11	CC06-001	1 of 1	
Subject: Limitation of Service on Citizen Boards and Committees		Adopted by the Deltona City Commission at the Regular City Commission Meeting held on May 15, 2006; Revised August 15, 2011.	

PURPOSE

The purpose of the Limitation of Service on Citizen Boards and Committees is to provide the opportunity for as many citizens as possible to serve on City of Deltona's boards and committees.

OVERVIEW

Citizen participation in local government is the foundation of our democratic way of life. The City of Deltona's goals are best met by public discussion to ensure accountability to its citizens. Citizen advisory boards and committees are critical to maintain communication, local standards, municipal planning and the direction the City of Deltona takes in providing services. All residents are encouraged to contribute their time, experience and good sense in the determination of City policies and procedures.

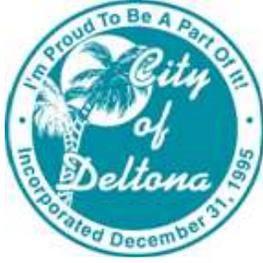
Board and committee members participate in government by analyzing issues through formal discussions and procedures. Each board/committee is different and the amount of time a member devotes to his/her duty will vary. The responsibilities of members are provided by the City Commission through ordinance or resolution.

In order to properly address their responsibilities, citizens who are members of City boards/committees must have adequate time to attend meetings; conduct research; and communicate with the public, city staff and elected officials.

POLICY

It is the policy of the City of Deltona that no citizen may, simultaneously, serve on more than one City board, committee, or sub-committee. This policy does not apply to citizens serving on sub-committees, or committees and boards of a temporary nature, and does not apply to citizens serving on sub-committees of the actual board or committee on which such citizen serves.

This policy limiting the number of boards/committees on which a citizen may serve shall apply prospectively only, and shall not affect the current term being served by citizens on any board and/or commission within the City of Deltona.



AGENDA MEMO

TO: Mayor & City Commission **AGENDA DATE:** 3/24/2014

FROM: William D. Denny, City Manager **AGENDA ITEM:** 4 - B

SUBJECT: Review of all Deltona Facility Use Agreements (Policy #CC99-004, Guidelines for use of City Facilities & CC004-001, Facility Use and Agreement Requirements), Policy # CC99-005, In-Kind Donations to Deltona-based Not-for-Profit entities.

LOCATION:

Citywide

BACKGROUND:

During the workshop on February 24, 2014 the Commission asked staff to bring back the subject of fees along with Facility Usage Agreements. Staff was directed to develop and bring a proposed fee schedule.

ORIGINATING DEPARTMENT:

Parks Recreation

SOURCE OF FUNDS:

N/A

COST:

N/A

REVIEWED BY:

Finance Director, City Attorney

STAFF RECOMMENDATION PRESENTED BY:

N/A - For discussion and direction to staff as necessary.

POTENTIAL MOTION:

N/A - For discussion and direction to staff as necessary.

AGENDA ITEM APPROVED BY:

William D. Denny, City Manager

ATTACHMENTS:

- Copy of Copy of Proposed Fees
- Facility Use Agreements Summary
- Resolution No. 2011-04, Pertaining to Facility Use Fees
- Policy #CC04-001 - Facility Use Agreement Requirements
- Facility Use Agreement Procedures
- Policy #CC99-005-In Kind Donations to Deltona-based not-for-profit entities

Description	Deltona Proposed
Comm. Center Kitchen per event	\$ 60 per hr 4 hr min \$100 per event
Meeting Room/ Conference Room	\$30 per hour
Gymnasium	\$35 per hour
Picnic Pavilions	\$35 Half day \$70 Full day
Splash Pad	NC
Soccer Fields with lights without lights	\$75 per hour \$50 per hour
<u>Tournament</u>	\$300 per field
Softball Baseball Field with lights without lights	\$75 per hour \$50 per hour
Football Field With Lights Without Lights Concession	\$75 per hour \$50 per hour Vendor Fee

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Facility Use Agreements

Contract	Association	Expiration Date
Facility Use Agreement	American Red Cross	Continuous
Facility Use Agreement	Boys and Girls Club	8/1/2014
Facility Use Agreement	Council on Aging	9/30/2014
Facility Use Agreement	Deltona Adult Soccer League	11/2/2015
Facility Use Agreement	Deltona Civic Association	3/6/2014
Facility Use Agreement	Deltona Little League	10/4/2015
Facility Use Agreement	Deltona Lodge # 756	7/8/2014
Facility Use Agreement	Deltona Panthers Youth Tackle Football	10/7/2015
Facility Use Agreement	Deltona Tennis Association	10/22/2015
Facility Use Agreement	Deltona Tennis Association -Summer Rec	10/22/2015
Facility Use Agreement	Deltona United Church of Christ	8/24/2016
Facility Use Agreement	Deltona You Soccer Club	9/9/2015
Facility Use Agreement	Florida Basketball & Volleyball Assoc.	10/29/2015
Facility Use Agreement	Healthy Start Coalition	11/8/2014
Facility Use Agreement	La Iglesia Del Senor	4/4/2014
Facility Use Agreement	New Begginnings House of Worship	4/4/2014
Facility Use Agreement	Okinawa Martial Arts	11/29/2014
Facility Use Agreement	Power in Praise Ministries	4/4/2014
Facility Use Agreement	Stetson Futbol Association	1/21/2016
Facility Use Agreement	Taino Boxing Academy	2/27/2015
Facility Use Agreement	V-CEP	3/4/2015
Facility Use Agreement	West Volusia Pony League	10/4/2015

RESOLUTION 2011-04

**A RESOLUTION OF THE CITY OF DELTONA, FLORIDA,
PERTAINING TO FACILITY USE FEES; PROVIDING FOR
FEES FOR SERVICES RENDERED BY THE CITY OR FOR
USE OF CITY FACILITIES AND PROPERTY; PROVIDING
FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE
DATE.**

WHEREAS, the City of Deltona owns and operates certain property and facilities which are suitable for use by others; and

WHEREAS, the City of Deltona is willing to rent those properties and facilities upon the payment of a rental fee and the execution of a use agreement; and

WHEREAS, the residents of Deltona, including the corporate residents of Deltona, support the maintenance and operation of the facilities through tax payments; and

WHEREAS, not-for-profit residents of Deltona that offer programs for Deltona residents support the programing efforts of the City by supplementing the programs implemented by the City;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELTONA, FLORIDA:

Section 1. The City Manager or the City Manager's designee is authorized to charge a fee for use of City facilities and property as set forth in Section 2 hereof.

Section 2. The uses of City facilities and property for which the City shall charge a fee and the amount of the fee for each use are as follows:

- (a) Building Rental.
 - (1) Resident Not-for-Profit Organizations
 - a. Main Hall of Community Center \$ 40/hour
 - Plus Kitchen Rental \$ 50

City of Deltona
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- | | | |
|---------------------------------------|---|---------------------------|
| b. | Conference Rooms | \$ 15/hour |
| c. | Arts and Craft Building | \$ 20/hour |
| d. | Picnic Pavilion | \$ 25 per pavilion |
| | Must be rented in a 4 hour block May - August | |
| e. | Gymnasium | \$ 10/hour |
| f. | Campbell Park Building | \$ 15/hour |
| | | \$350/year with agreement |
| (2) Individual Residents Personal Use | | |
| a. | Main Hall of Community Center | \$ 45/hour |
| | Plus Kitchen Rental | \$ 50 |
| b. | Conference Rooms | \$ 20/hour |
| c. | Arts and Craft Building | \$ 25/hour |
| d. | Picnic Pavilion | \$ 25 per pavilion |
| | Must be rented in a 4 hour block May - August | |
| e. | Gymnasium | \$ 20/hour |
| f. | Campbell Park Building | \$ 20/hour |
| (3) Resident For Profit Organizations | | |
| a. | Main Hall of Community Center | \$ 60/hour |
| | Plus Kitchen Rental | \$ 50 |
| b. | Conference Rooms | \$ 25/hour |
| c. | Arts and Craft Building | \$ 30/hour |

City of Deltona
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- d. Picnic Pavilion \$ 25 per pavilion
 Must be rented in a 4 hour block May - August
 - e. Gymnasium \$ 30/day
 - f. Campbell Park Building \$ 30/hour
- (4) Non-Resident Not-for-Profits and Individuals Personal Use
- a. Main Hall of Community Center \$ 70/hour
 Plus Kitchen Rental \$ 50
 - b. Conference Rooms \$ 30/hour
 - c. Arts and Craft Building \$ 40/hour
 - d. Picnic Pavilion \$ 25 per pavilion
 Must be rented in a 4 hour block May - August
 - e. Gymnasium \$ 40/hour
 - f. Campbell Park Building \$ 40/hour
- (5) Non-Resident For Profits and Individuals
- a. Main Hall of Community Center \$ 120/hour
 Plus Kitchen Rental \$ 75
 - b. Conference Rooms \$ 55/hour
 - c. Arts and Craft Building \$ 75/hour
 - d. Picnic Pavilion \$ 40 per pavilion
 Must be rented in a 4 hour block May - August
 - e. Gymnasium \$ 75/hour

City of Deltona
 Resolution No. 2011-04
 Page 4 of 6

- | | | |
|------|---------------------------------------|-----------------------------|
| f. | Campbell Park Building | \$ 75/hour |
|
 | | |
| (b) | Grounds Rental | |
|
 | | |
| (1) | Resident Not-for-Profit Organizations | |
|
 | | |
| a. | Sport Field | \$ 10/hour per field unlit |
| | | \$ 20/hour per field lit |
| | | \$500/season with agreement |
|
 | | |
| b. | Dewey O. Boster Field | \$ 15/hour per field unlit |
| | | \$ 25/hour per field lit |
| | | \$500/season with agreement |
|
 | | |
| c. | Outdoor Court | \$ 1/hour (reserved) |
|
 | | |
| (2) | Individual Residents | |
|
 | | |
| a. | Sport Field | \$ 15/hour per field unlit |
| | | \$ 25/hour per field lit |
|
 | | |
| b. | Dewey O. Boster Field | \$ 35/hour per field unlit |
| | | \$ 45/hour per field lit |
|
 | | |
| c. | Outdoor Court | \$ 1/hour (reserved) |
|
 | | |
| (3) | Resident For Profit Organizations | |
|
 | | |
| a. | Sport Field | \$ 20/hour per field unlit |
| | | \$ 30/hour per field lit |
|
 | | |
| b. | Dewey O. Boster Field | \$ 40/hour per field unlit |
| | | \$ 50/hour per field lit |

City of Deltona
 Resolution No. 2011-04
 Page 5 of 6

- c. Outdoor Court \$ 1/hour (reserved)
- (4) Non-Resident Not-for-Profits and Individuals Personal Use
 - a. Sport Field \$ 25/hour per field unlit
\$ 35/hour per field lit
 - b. Dewey O. Boster Field \$ 45/hour per field unlit
\$ 55/hour per field lit
 - c. Outdoor Court \$ 2/hour (reserved)
- (5) Non-Resident For Profits and Individuals
 - a. Sport Field \$ 55/hour per field unlit
\$ 70/hour per field lit
 - b. Dewey O. Boster Field \$ 75/hour per field unlit
\$ 90/hour per field lit
 - c. Outdoor Court \$ 3/hour (reserved)

Section 3. This resolution shall be without prejudice to existing easements or contractual rights of sports organizations to use specific fields and buildings.

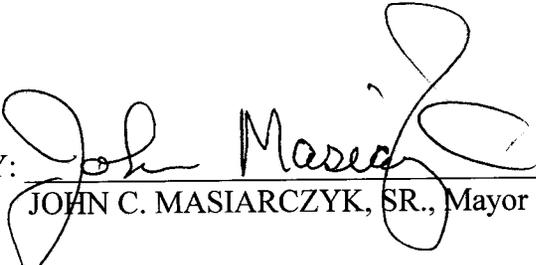
Section 4. Severability. If any provision of this resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this ordinance which can be given effect without the invalid provision or application.

Section 5. Effective Date. This resolution shall take effect immediately upon its final adoption by the City Commission.

PASSED AND RESOLVED this ____ day of _____, 2011, by the City

City of Deltona
Resolution No. 2011-04
Page 6 of 6

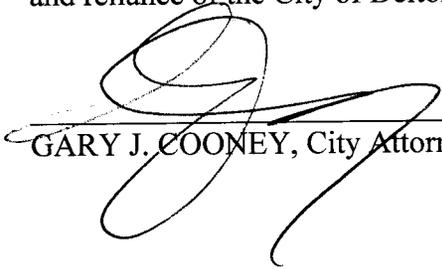
Commission of the City of Deltona, Florida.

BY: 
JOHN C. MASIARCZYK, SR., Mayor

ATTEST:


JOYCE KENT, City Clerk

Approved as to form and legality for use
and reliance of the City of Deltona, Florida:


GARY J. COONEY, City Attorney

NAME	YES	NO
CARMOLINGO	✓	
DENIZAC	✓	
HERZBERG	✓	
LOWRY	✓	
MASIARCZYK	✓	
TREUSCH	✓	
ZISCHKAU	✓	

**CITY OF DELTONA
COMMISSION POLICY AND PROCEDURE**

EFFECTIVE DATE 02-16-04	POLICY NUMBER CC04-001	PAGE NUMBER 1 of 2	SUPERSEDES POLICY Date: N/A
Subject: Facility use and agreement requirements (See Facility Use Agreement Procedures – Approved 10/05/2010)		Adopted by the Deltona City Commission at the Regular City Commission meeting held on February 16, 2004.	

- A. The city of Deltona (“City”) desires to optimize the use of its municipal facilities for public purpose, and to increase the opportunities for adult and youth recreational programs in the City. All lands and improvements thereon dedicated and provided, along with related City services, are for the purpose of advancing these public recreational opportunities. All facilities shall be utilized in a fiscally responsible manner in order to protect the investment of the City residents.
- B. The provisions herein shall apply to all reserved, contracted, or organized uses of any City Park, Pavilion, Community Center, athletic court, playing field, skate park, and such other facility. All uses thereof shall be reserved in advance which will require a written request of intent of use to be provided to the Deltona Park and Recreation Department Director (“Director”), and an application for a use permit or a facility use agreement. These provisions shall not apply to private, individual use of public facilities by member of the public.
- C. Any violation or failure to comply with these provisions or the terms of any use agreement or permit is sufficient ground to terminate or void the use agreement or permit and may result in the ban of the individual, organization, or corporation from reserving use of any City facility.
- D. The director shall have the right and authority to cancel, terminate, and reschedule any reserved use of a park or recreation facility when it is deemed in the public interest by the director. The Director shall have the authority to limit or deny access to any City facility, under his or her control, to prevent excessive use or to avoid permanent damage while preserving the form, function, and purpose of the facility. Use and maintenance of all facilities shall be optimized to provide for recreational opportunities for the community and residents of the City.
- E. Use of any particular City facility shall be on a first come, first serve basis, subject to availability, Use of a facility use agreement or permit does not grant the right to authorize the sale of any goods or services, including food and beverages, at a City facility without written authorization from the Director. Use of a City facility shall comply strictly with all existing park rules and regulations.
- F. No sale, consumption, possession, use, storage, or distribution of any type of alcoholic beverage shall be allowed at any City facility, except the Community Center at which alcohol use shall conform to Chapter 6 of the City Code of Ordinances.
- G. All requests and notices of intent to reserve use of a City facility must be submitted to the Director no later than 15 days prior to, and no earlier than 6 (six) months before, the intended use.

CITY OF DELTONA

COMMISSION POLICY AND PROCEDURE

POLICY NUMBER: CC04-001

SUBJECT: Facility Use and Agreement Requirements

Page: 2 of 2

- H. All reserved contracted or organized use of a City facility will require either a deposit, bond, insurance, or such other form of assurance to guarantee payment for all damages caused or related to the use of the facility, and to indemnify the City against any claims or court action for damages as a result of such use.
- H. A request for reservation of a City facility shall be determined within five (5) work days after the request is received. The amounts of all usage fees, deposits, bonds, insurance, cancellation charges, and rental rates shall be determined by the Facility Fee Schedule. Only the City Commission shall have the power to waive or modify fees, charges bonds, insurance, deposits, or rental charges.
- I. Each league and tournament use of a City playing field or City facility shall be limited to a single facility, be approved by the City Commission, and not exceed 80% of any facility use per month unless otherwise approved by the City Commission. Under no circumstance are any organized team practice sessions, league or tournament games permitted to be played at the Deltona Sports Complex located at Dewey Boster Park without prior written approval of the Director.
- J. Written notice of intent to renew an existing facility use agreement must be provided by the user no later than 90 days prior to the expiration of the agreement. Failure to provide proper or adequate notice shall conclusively establish a lack of interest in renewal, and shall act as a waiver thereof.
- K. All reserved, contracted, or organized uses of a City facility must have sufficient personnel to adequately insure the safety, security, and emergency medical needs of its participants and spectators, which shall be provided by the users.
- L. All monies, debts, and obligations to the City must be paid in full, including fees due in accordance to the use agreement, prior to the approval of the agreement or permit and use of a facility. All facility use agreements between any group or organization and the City, longer than six (6) months, shall be subject to approval by the City Commission prior to use of the facility.
- M. Any and all decisions, negotiations, understandings, and agreements made prior to the adoption of this policy and procedure regarding the use of any City facility shall be null and void.



City of Deltona Deltona, Florida



Facility Use Agreement Procedures

In order to ensure compliance with Commission Policy/Procedure Number CC04-001 – Facility Use and Agreement Requirements, provided herein is a manual that outlines the steps to be followed and forms to be used effective October 1, 2010.

Approved: *Keith G. Miller*
City Manager

Date: 10/5/10

PROCEDURE OBJECTIVES. It is the intent of the City of Deltona to:

- Optimize the use of all its municipal facilities for public purposes. All facilities shall be utilized in a fiscally responsible manner in order to protect the investment of the City residents. The objective of this procedure is to establish the proper procedure for handling the *Facility Use Agreement* application process.
- Notify applicable agencies within the designated timeframe that the agreement is about to expire.
- Disallow continued use of City facilities without a valid *Facility Use Agreement* and the required current certificate of insurance in place.
- Have Agreement renewals in place at least fourteen (14) days prior to the expiration date of the previous agreement.

Facility Use Agreement – New Agreement Process:

1. The Contracts Coordinator shall maintain a log of all active *Facility Use Agreements* and their respective expiration dates.
2. A *Facility Use Agreement* shall be required for any facility use of six (6) months or more.
3. In addition to the Facility Use Application, applicants shall provide copies of the following documentation:
 - (a) Non-Profit groups, corporations, organizations or programs:
 - State of Florida Certificate of Corporation Registered Name identifying non-profit status from www.sunbiz.org
 - Articles of Incorporation identifying Board Member name and address
 - Consumer's Certificate of Exemption from the Dept. of Revenue showing Exemption Category 501(c)
 - Federal Identification Number of Organization
 - Certificate of Liability Insurance (See Application Form for required limits)
 - List of coaches, officials, and employees, with copy of drivers licenses attached
 - Most current financial statement (for organizations who receive waiver of facility use fees)
 - Fees charged to and costs related to activity
 - List of all officers of the organization, with copy of drivers licenses attached
 - Copies of Level II background checks on all staff, contracted personnel, employees and board members
 - (b) For-Profit groups, corporations, organizations or programs:
 - Federal identification Number of Organization or Social Security Number for individual operating any "for profit" activity

FACILITY USE AGREEMENTS

These Facility Use Agreement Procedures are in accordance with City Commission Policy No. CC04-001 - Facility Use and Agreement Requirements.

Item 3B

- Fictitious Name Registration from the State of Florida from www.sunbiz.org
 - City of Deltona Business Tax Receipt
 - Certificate of Liability Insurance (See Application Form for required limits)
 - List of coaches, officials, and employees, with copy of drivers licenses attached
 - Fees charged and costs related to activity
 - List of all officers of the organization, with copy of drivers licenses attached
 - Copies of Level II background checks on all staff, contracted personnel, employees and board members
4. The Facility Coordinator shall:
- Obtain all of the documentation required to process the facility use application;
 - Make sure the applicant is aware of the City's standardized *Facility Use Agreement*. Any request to modify the standardized agreement must be attached on the Addendum Page provided with the application. Such request will be reviewed by the City's Legal Department;
 - Determine the appropriate fee for the facility use as listed in the *Parks & Recreation Policy and Fee Schedule*; and
 - Forward the complete application package with the required documentation to the Parks & Recreation Director or their designee for review and approval.
5. The Parks & Recreation Director or their designee shall verify the application package is complete and shall forward the complete application package to the Contracts Coordinator for processing.
6. The Contracts Coordinator will:
- Verify that all information has been received;
 - Verify the Certificate of Insurance meets the requirements under the agreement;
 - Perform a search of the sexual offender's website at <http://www.fdle.state.fl.us> on all organization members, coaches, officials and staff;
 - Prepare the Agreement and process it through the contracts approval process;
 - Prepare the Agenda Memo for submission to the City Commission for approval;
 - Process the agreement for signatures;
 - Prepare the Authorization to Occupy;
 - Mail an original agreement and the Authorization to Occupy to the user; and
 - Maintain a file with the original Agreement, Authorization, Certificate of Insurance and other supporting documents.
7. The Contracts Coordinator shall monitor the Agreement to ensure the certificate of insurance remains valid throughout the term of the Agreement.

FACILITY USE AGREEMENTS

These Facility Use Agreement Procedures are in accordance with City Commission Policy No. CC04-001 - Facility Use and Agreement Requirements.

Item 3B

8. The Finance Department will be responsible for ensuring that monthly payments are made in accordance with the agreement. All payments are to be sent to: Accounts Receivable, City of Deltona, 2345 Providence Blvd., Deltona, FL, 32725.
9. Fees are due according to the terms of the Agreement. If payment is not made according to the Agreement, the Finance Department will provide notice to the Contracts Coordinator, who will issue a Notice of Cancellation to the organization. A copy of the Notice will be sent to the Parks & Recreation Director. Payment must be made immediately to the City or a Notice to Vacate will be issued.
10. The organization must submit monthly updates to the Parks & Recreation Director as stated under the "Obligations of User" section of the *Facility Use Agreement*.
11. The Parks & Recreation Director shall forward to the Contracts Coordinator the monthly reports that include information updates and/or changes of board members, coaches, contractual personnel, assistants, staff, volunteers and employees. The Contracts Coordinator will perform a search on the sexual offender's website on all added individuals.

Facility Use Agreement – Renewal Process:

An organization with an existing *Facility Use Agreement* may renew through the following procedures, if renewal option language is included in the original Agreement.

1. **First Notice:** Sixty (60) days prior to the expiration date of any Agreement, if the City has not received the required notice of intent to renew from the organization utilizing a City facility, the Contracts Coordinator will send a letter and *Renewal Form* to the organization with regard to the continued use of the City facility. The letter will notify the organization that failure to enter into a new Agreement will result in the organization's discontinued use of the City facility upon the ending date of the Agreement that is up for renewal. If the organization intends to renew the agreement, the completed Renewal Form and all applicable required documentation must be submitted to the Contracts Coordinator no later than 30 days prior to the expiration date of the Agreement.
2. The applicant shall provide the following:
 - Facility Use Renewal Form
 - Certificate of Liability Insurance (See Application Form for required limits)
 - List of coaches, officials, and employees, with copy of drivers licenses attached
 - Fees charged to and costs related to activity
 - Most current financial statement (for organizations who receive waiver of facility use fees)
 - List of all officers of the organization, with copy of drivers licenses attached
 - Copies of Level II background checks on all staff, contracted personnel, employees and board members
 - City of Deltona Business Tax Receipt

FACILITY USE AGREEMENTS

These Facility Use Agreement Procedures are in accordance with City Commission Policy No. CC04-001 - Facility Use and Agreement Requirements.

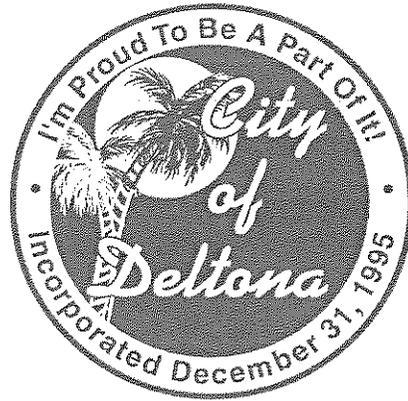
Item 3B

3. In the interim time period between the 60 and 30 days, the Contracts Coordinator will verify with the Parks & Recreation Director that no outstanding issues related to the organization's continued use of City facilities exist.
4. **Second Notice:** If the requested *Renewal Form* and required documentation are not received by the City at least 30 days prior to renewal, the Contracts Coordinator will send a certified letter/return receipt to the organization notifying them that they will no longer be allowed use of the City facility as of the expiration date of the Agreement. A copy of the letter will be sent to the Parks & Recreation Director and the Finance Department.
5. Upon return of the completed *Renewal Form*, the Contracts Coordinator will confirm that all required documentation is provided, and process the renewal. A copy of the *Renewal Form*, along with an *Authorization to Occupy* will be mailed to the organization. A copy will be provided to the Finance Department and the Parks & Recreation Director.
6. If documentation is missing or there are questions regarding information contained on the *Renewal Form*, the Contracts Coordinator will contact the agency to obtain the missing information.
7. The Contracts Coordinator shall monitor the Agreement to ensure the certificate of insurance remains valid throughout the term of the Agreement.
8. The Finance Department will be responsible for ensuring that monthly payments are made in accordance with the agreement. All payments are to be sent to: Accounts Receivable, City of Deltona, 2345 Providence Blvd., Deltona, FL, 32725.
9. Fees are due according to the terms of the Agreement. If payment is not made according to the Agreement, the Finance Department will provide notice to the Contracts Coordinator, who will issue a Notice of Cancellation to the organization. A copy of the Notice will be sent to the Parks & Recreation Director. Payment must be made immediately to the City or a Notice to Vacate will be issued.
10. The organization must submit monthly updates to the Parks & Recreation Director as stated under the "Obligations of User" section of the *Facility Use Agreement*.
11. The Parks & Recreation shall forward to the Contracts Coordinator the monthly reports that include information updates and/or changes of board members, coaches, contractual personnel, assistants, staff, volunteers and employees. The Contracts Coordinator will perform a search on the sexual offender's website on all added individuals.

FACILITY USE AGREEMENTS

These Facility Use Agreement Procedures are in accordance with City
Commission Policy No. CC04-001 - Facility Use and Agreement Requirements.

Item 3B



PARKS & RECREATION

Fee Schedule & Policies

Rates effective February 1, 2009

SCOPE

It is the intent and general philosophy of the City of Deltona to provide recreation programs and facilities for its residents, governmental agencies, civic groups and the community at large. Fees have been established to offset the general maintenance, administrative, and direct costs that the City incurs for use of the facilities by others. These include utilities, cleaning, damage repairs and contractual services. The following categories outline the fees for usage. Fees not addressed in this policy will be handled by the Parks and Recreation Director, or his designee, on a case by case basis.

RESERVATIONS

Reservations are accepted on a first come, first served basis. Reservations will not be made in excess of 120 days prior to rental. The City of Deltona reserves the right to refund all monies paid and cancel all reservations and rentals up to 72 hours prior to the reserved date. Reservations for some sports fields may be altered to accommodate practice prior to and during city sponsored league play.

FACILITIES USE CATEGORIES

The following categories prioritize the scheduling and fees assigned to the different levels of community usage. The Parks and Recreation Department and city-wide programs reserve the right to have priority usage of all Parks and Recreation facilities.

Category I:

All **“non-profit”** programs directly or indirectly sponsored by the City of Deltona; or all jointly sponsored programs between private organizations and the City of Deltona; or any personal use by a Deltona resident.

Category II:

All **“non-profit”** programs registered under the provisions of 501(c)(3) whose principle address is located within the City of Deltona limits.

Category III:

All **“non-profit”** programs which are duly registered under the provisions of 501(c)(3) whose principle address is located outside the City of Deltona limits; or any personal use by a non-resident of the City of Deltona.

Category IV:

Any **“for profit”** program; or any program that does not meet the criteria of Categories I, II, or III.

Only the City Commission shall have the power to waive or modify fees, charges, bonds, insurance, deposits or rental charges.

FEE SCHEDULE

DELTONA COMMUNITY CENTER
980 Lakeshore Drive

Security Deposit: \$200.00; Kitchen use: \$25.00 plus additional \$25.00 deposit

Main Hall (maximum capacity not to exceed 225 persons)				
Category	I	II	III	IV
Hourly	35.00	55.00	65.00	
5 hours	200.00	300.00	350.00	
Daily	300.00	400.00	450.00	600.00
Kelso Room (maximum capacity not to exceed 25 persons) Sun Room (maximum capacity not to exceed 35 persons) Little Red School House - (maximum capacity not to exceed 32 persons)				
Category	I	II	III	IV
Hourly	10.00	15.00	25.00	25.00
5 hours	40.00	65.00	100.00	100.00
Daily	60.00	100.00	135.00	135.00
Craft Building (maximum capacity not to exceed 110 persons/split rooms)				
Category	I	II	III	IV
Hourly	15.00	25.00	35.00	
5 hours	65.00	100.00	150.00	
Daily	85.00	125.00	175.00	250.00

WES CRILE PARK
1537 Norbert Terrace

Gymnasium				
Category	I	II	III	IV
Hourly	15.00	20.00	35.00	
Daily				500.00

Meeting Room				
Category	I	II	III	IV
Hourly	10.00	15.00	25.00	25.00
5 hours	40.00	65.00	100.00	100.00
Daily	60.00	100.00	135.00	135.00

HARRIS M. SAXON COMMUNITY CENTER
2329 California Street

Main Hall (maximum capacity not to exceed ___ persons)				
Category	I	II	III	IV
Hourly	35.00	55.00	65.00	
5 hours	200.00	300.00	350.00	
Daily	300.00	400.00	450.00	600.00
Meeting Room (maximum capacity not to exceed ___ persons)				
Category	I	II	III	IV
Hourly	10.00	15.00	25.00	25.00
5 hours	40.00	65.00	100.00	100.00
Daily	60.00	100.00	135.00	135.00

PICNIC PAVILLIONS

Pavilions are available for reservations for a charge of \$25.00 on a first come, first serve basis.

FESTIVAL GROUNDS RESERVATIONS
191 Howland Blvd.

Category	I	II	III	IV
Hourly	50.00	75.00	100.00	
5 hours	200.00	300.00	400.00	
Daily	300.00	400.00	600.00	1100.00

SPORTS FIELDS RESERVATIONS

Price includes the use of ball field lights

Category	I	II	III	IV
Hourly	10.00	15.00	20.00	250.00

LEAGUES AND EVENTS

City sponsored league fees are set by the Parks and Recreation Director and are determined by the number of participants, number of teams, number of games played, expenses, and awards provided.

Tennis/Basketball/Racquetball/Shuffleboard Court Reservations (Outdoor):

Category	I	II	III	IV
Hourly	1.00	1.00	2.00	2.00

Skate Board Park**Dewey O. Boster Sports Complex****Category A:**

All "non-profit" recreational programs or activities governed by a Facility Use Agreement providing for use of the Dewey O. Boster Sports Complex: No charge if provided in the Facility Use Agreement.

Category B:

All registered 501-C3 "non-profit" groups, organizations, corporations, or programs: \$25.00 per hour per field, \$35.00 per hour per field with lights, \$200.00 per day per field.

Category C: All other groups, organizations, corporations or individuals operating any "for-profit" recreation program or activity; all other individuals, organizations, groups, or corporations not meeting the criteria of categories A or B: \$35.00 per hour per field, \$45.00 per hour per field with lights, \$250.00 per day, per field.

CHECKS OR MONEY ORDERS ONLY. FOR THE SAFETY OF OUR EMPLOYEES, CASH IS NOT ACCEPTED.

RENTAL CANCELLATION POLICY AND REQUIREMENTS

Rentals may be cancelled up to 72 hours prior to the scheduled event by written notice. Notice must be received to be effective. Rentals cancelled within the 72 hour period prior to the event will require forfeiture of the entire security deposit or \$100.00, whichever is less.

All uses thereof shall be reserved in advance which will require a written request of intent of use to be provided to the Deltona Park and Recreation Department Director and/or designee, and an application for a use permit or a facility use agreement. These provisions shall not apply to private, individual use of public facilities by members of the public.

The Parks & Recreation Director shall have the right and authority to cancel, terminate and reschedule any reserved use of a park or recreation facility when it is deemed in the public interest. The Director shall have the authority to limit or deny access to any City facility under his or her control to prevent excessive use or to avoid permanent damage while preserving the form, function and purposes of the facility.

LONG TERM RENTALS

Individuals of organizations wishing to enter into a long-term facility use agreement will receive a 20% discount off of the rate for their particular category. A long-term agreement is for a term of at least six months, with at least 19 meetings or events within the rented facility within that time period. Long term agreements may be renewed each year on such terms as may be agreeable to both parties.

SECURITY DEPOSIT REQUIREMENTS

A security deposit equal to the amount of the rental fee is required upon application and is refunded when all keys and other materials are returned, the facility is found to be in a clean and undamaged condition, and all fixtures are returned to their original locations. No security deposits are required for pavilion rentals.

VIOLATIONS

Any violation or failure to comply with these provisions or the terms of any use agreement or permit is sufficient grounds to terminate or void the use agreement or permit and may result in the ban of the individual, organization, or corporation from reserving use of any City facility.



City of Deltona

Facility Use Agreement Application

Name of Applicant/Organization: _____

Name of Contact Person: _____

Mailing Address: _____

Email Contact Address: _____

Phone: Organization: (____) _____ Home: (____) _____ Cell: (____) _____

FACILITY REQUESTED:

Name of Facility: _____

Type of Activity: _____

Dates of Use: _____

Time of Use: From: _____ To: _____

DOCUMENTATION TO BE PROVIDED WITH APPLICATION:

“Non-Profit” groups, organizations, corporations or programs, please submit the following documents with your application:

- State of Florida Certificate of Corporation Registered Name identifying non-profit status
- Articles of Incorporation identifying Board Member name and address
- Consumer’s Certificate of Exemption from the Dept. of Revenue showing Exemption Category 501(c)3
- Federal Identification Number of Organization
- Certificate of Liability Insurance (please read Insurance Requirements on page 2)
- List of coaches, officials, and employees, with copy of drivers licenses attached
- Most current financial statement (for organizations who receive waiver of facility use fees)
- Fees charged to and costs related to activity
- List of all officers of organization, with copy of drivers licenses attached
- Proof of Level II background checks on all staff, contracted personnel, employees and board members

“For-Profit” groups, organizations, corporations, programs, or individual, please submit the following documents with your application:

- Federal identification Number of Organization operating any “for profit” activity
- Fictitious Name Registration from the State of Florida
- City of Deltona Business Tax Receipt
- Certificate of Liability Insurance (please read Insurance Requirements on page 2)
- List of coaches, officials, and employees, with copy of drivers licenses attached
- Fees charged and costs related to activity
- List of all officers of organization, with copy of drivers licenses attached
- Proof of Level II background checks on all staff, contracted personnel, employees and board members

INSURANCE REQUIREMENTS:

The City of Deltona requires the organization, group or individual utilizing the facility to be covered by insurance. A Certificate of Insurance must be filed with the City of Deltona prior to use of the facility. The Facility User shall provide a Certificate of Insurance from an insurance company rated "Class A" or better by A.M. Best or some other form of assurance approved by the City. **The required insurance shall be evidenced by a Certificate of Insurance identifying the City of Deltona as an additional insured under their general liability policy**, with minimum limits of \$1,000,000.00 per occurrence combined single limit, to include premises/operations, independent contractors, products/completed operations, broad form contractual and personal injury. The insurance company shall be instructed to provide a thirty (30) day notice of cancellation to the City. The City of Deltona requires that original certificates and endorsements be provided before final approval of the Facility Use Agreement.

BACKGROUND CHECKS

To be eligible to utilize a City facility, the City of Deltona requires a Level II Background Screening of all staff, contracted personnel, employees, and board members of organizations who work with or interact with children. Copies of the results of the background screenings must be supplied to the City for verification upon request.

PLEASE READ CAREFULLY BEFORE SIGNING:

I have read and understand the Facility Use requirements and agree to be bound by all policies, rules, regulations and conditions of use.

Applicant Signature: _____ Date: _____

Print Name: _____

Title: _____

Note: Organization cannot occupy the facility until receiving an "Authorization to Occupy".

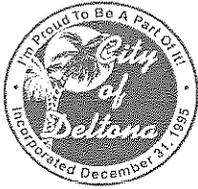
RECEIVED BY CITY OF DELTONA

Name: _____

Date: _____

For Office Use Only:

<i>Facility</i>	<i>Category</i>	<i>Total Hours</i>	<i>Rate per hour</i>	<i>Total Fees</i>



City of Deltona

Facility Use Agreement

RENEWAL FORM

Name of Applicant/Organization: _____

Name of Contact Person: _____

Mailing Address: _____

Email Contact Address: _____

Phone: Organization: (____) _____ Home: (____) _____ Cell: (____) _____

Facility Requested:

Name of Facility: _____

Type of Activity: _____

Dates of Use: _____

Time of Use: From: _____ To: _____

Documentation to be provided with Renewal Letter:

- List of coaches, officials, and employees, including name, address, phone number, qualifications, and certifications, with copy of drivers licenses attached
- Certificate of Liability Insurance as stated on agreement
- Most current financial statement (for organizations who receive waiver of facility use fees)
- Fees charged to and costs related to activity
- List of all officers of organization, with copy of drivers licenses attached
- City of Deltona Business Tax Receipt
- Proof of Level II background checks on all staff, contracted personnel, employees and board members

Note: Organization cannot occupy the facility until receiving an "Authorization to Occupy".

For Office Use Only:

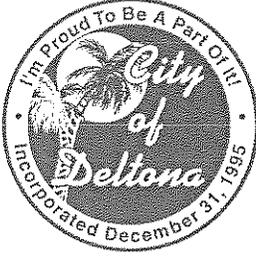
<i>Facility Name/Room</i>	<i>Category</i>	<i>Total Hours per Month</i>	<i>Cost per Hour</i>	<i>Total Fees</i>

Organization Representative: _____ **Date:** _____

Parks and Recreation Director: _____ **Date:** _____

City Manager Approval: _____ **Date:** _____

Please forward the completed and signed package to the Contract's Coordinator for processing.



CITY OF DELTONA AUTHORIZATION TO OCCUPY FACILITY USE

Issued by: Kathy W. Fick, Contracts Coordinator
City Attorney's Office
2345 Providence Blvd., Deltona, FL 32725
Phone: (386) 878-8870 Fax: (386) 878-8871

Issued to:

Facility Name: _____

This Authorization to Occupy is for the above referenced facility and in accordance with all terms and conditions of the Facility Use Agreement between the City of Deltona and the _____, dated _____. The effective date of this Authorization to Occupy is _____ and is valid for a period of one year.

All future correspondence or requests for changes to the contracts should be addressed to the City's Parks & Recreation Director, Steve Moore.

ISSUED BY:

City of Deltona

This _____ day of _____, 2010

By: _____

Title: Contracts Coordinator

{ORGANIZATION}
FACILITY USE AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 2010, by and between the CITY OF DELTONA, a Florida municipal corporation, with its principal place of business located at 2345 Providence Boulevard, Deltona, Florida, hereinafter referred to as “City”, and {ORGANIZATION NAME}, a Florida non-profit organization, with its principal place of business located at {ADDRESS}, Deltona, Florida hereinafter referred to as “User”.

WHEREAS, User desires the non-exclusive use of the City-owned {FACILITY NAME} facility located at {FACILITY ADDRESS}, Deltona, Florida, (hereinafter referred to as the “Facility”) for conducting {PURPOSE/ACTIVITY}; and

WHEREAS, the City is desirous of increasing the opportunities for recreational programs and activities for the community; and

WHEREAS, the City finds and determines that the programs, activities, and services rendered to the community by User and the land dedicated and provided by the City does serve a public purpose by providing a location for User to conduct {PURPOSE/ACTIVITY}; and

WHEREAS, the City has and, by these presents, does find and determine that it would be in the best interest of the public health, safety, and welfare to enter into this Agreement for facility use.

NOW, THEREFORE, the parties in consideration of the mutual covenants, terms and provisions hereof, and other good and valuable consideration, the receipt and sufficiency all of which is hereby acknowledged, do hereby desire and agree to be bound by the following terms and conditions of this agreement as follows:

Article 1. Recitals

The foregoing recitals are true and correct and incorporated herein by reference.

Article 2. Use of Facilities

2.1 The City does hereby agree to allow User the non-exclusive use of {FACILITY} provided that the use of said facility conforms to the covenants and conditions herein contained. Said usage for the facility shall be {DAYS} from {TIMES}. {Said usage shall be consistent with the schedule provided by User and approved by the Parks and Recreation Director or his designee (hereinafter referred to as the “Director”).}

2.2 Use of the facilities during any other time by User shall require the written approval of the Director. User shall submit a typed list of dates and activities to be conducted at the facilities fifteen (15) days prior to commencing the activities which shall be subject to approval or denial by the

Director. City shall have the right to use the facilities anytime the facilities are not in actual use by User.

Article 3. Term

3.1 This Facility Use Agreement (hereinafter referred to as the “Agreement”) shall remain in effect for a period of one (1) year from the date made and entered by the parties.

3.2 Written notice must be provided to the City by User of its intent to renew this Agreement on the City-approved Facility Use Renewal Form a minimum of sixty (60) days prior to the expiration of the term of this Agreement.

3.3 Upon receipt of a timely Facility Use Renewal Form, this Agreement may be renewed for one additional year, and may be renewed yearly up to a total of three additional years, upon written acceptance by the City prior to each successive renewal.

Article 4. Payment

4.1 The compensation to be paid by the User to the City shall be at a rate of {\$} per hour, payable on the first day of each month.

4.2 If payment is not made in accordance with this Agreement, a Notice of Cancellation will be issued to the organization.

4.3 All payments shall be sent to the City of Deltona, Accounts Receivable, 2345 Providence Blvd., Deltona, FL 32725.

Article 5. Obligations of City

The City shall be responsible for:

- A. Payment of all utilities at the facilities, subject to the City’s right to issue guidelines concerning the usage of all lighted areas; and
- B. Providing adequate trash receptacles at the facilities; and
- C. Coordinating sanctioned activities in an effort to minimize conflict with User’s use of the facilities; and
- D. Providing infield materials (clay and sand mixture); and
- E. Providing one training annually on proper field and turf maintenance; and

- F. Providing turf maintenance, including one mowing weekly to ball fields and two annual herbicide, pesticide and fertilizer applications; and
- G. Providing on-going facility preventive maintenance; and
- H. Ensuring buildings, fencing, and restrooms are monitored for cleanliness and safety.

Article 6. Obligations of User

User shall be responsible for:

- A. Coordinating User's activities and providing a representative to act as a liaison to the City for the term of the Agreement; and
- B. Providing adequate personnel, staffing, or volunteers to insure the proper use of the facilities and to provide for the adequate security, safety, and emergency medical needs of all its members, guests, visitors, and participants; and
- C. Maintaining the facilities in a clean and sanitary condition, free of paper and debris, during and after each use including the emptying of all trash containers into dumpsters provided by the City and providing all necessary equipment to maintain or repair all protective screening, netting, fencing and the pitching machine in the batting cage; and checking restrooms during the season daily and all other facility amenities regularly to monitor cleanliness, safety and maintenance concerns; and
- D. Submitting a typed list of names, addresses, phone numbers, qualifications, and certifications of all board members, coaches, and assistants and providing monthly updates of any changes to the list; and
- E. Providing the City with a written statement indicating that every staff member, employee, volunteer or contracted personnel has passed a Level II background check and submitting a copy of the results of each screening; and
- F. Providing any and all necessary equipment required for use of the facilities; and
- G. Repairing any damage to the facility resulting from User's use, even if the City determines that the facility is useable, without regard to the extent of damage, as solely determined by the Director; and
- H. Reporting any known or discovered damage or vandalism to the Director immediately by submitting a written description of the damage or vandalism and a brief statement of the incident, discovery, or cause within 24 hours, to the Director, using the City incident/accident report form; and

- I. Reporting all accidents or injuries occurring at the facilities to any staff, visitor, participant, or other person, to the City immediately by telephone and by submitting a written report of the accident or injury using the City incident/accident report form within 24 hours; and
- J. Refraining from any alteration, advertising, or signs on any fence, building, right-of-way, road, or facilities without the Director's prior written approval, including the distribution or placement of any advertisement related to the use of a City facilities; and
- K. Taking any and all reasonable and prudent steps necessary to be informed of and abide by all ordinances, rules, policies, laws and regulations of the City, State, and Federal government at all times; and
- L. Agreeing to always be in full compliance of all laws, rules, policies, and regulations affecting or applicable to User and its activities and programs; and
- M. Obtaining written permission from the Director prior to the purchase or lease of any equipment to be installed for use at the facilities; and
- N. Obtaining written permission prior to conducting any business, activity or program not approved by the Director in writing; and
- O. Refraining any other person or entity from conducting any type of business or enterprise at the facilities without prior written approval from the Director; and
- P. Allowing the City access to inspect the facilities at any time; and
- Q. Refraining from conducting any practice sessions, practice games, or clinics not expressly authorized under this Agreement without the express written consent of the Director; and
- R. Providing the City with a copy of User rules, regulations, charter, guidelines, and organizational chart, along with rules dictating the conduct of the games, and those used by the coaches and referees, if applicable; and
- S. Retain daily access to the facility and field by the public unless authorized by the Director or when fields are prepared for games; and
- T. Being solely responsible for all losses or damages suffered by User to its operation, equipment and property at the facilities.

Article 7. Insurance

7.1 User, at its own cost and expense, shall have in force, during the term of this Agreement, insurance from an insurance company licensed in the State of Florida and rated "Class A" or better by

A. M. Best or some other form of assurance approved by the City's Risk Manager. User shall not occupy the facility until City has received an acceptable certificate or certificates of insurance evidencing the required insurance, which is as follows:

7.2 Commercial General Liability Insurance insuring User against liability arising from its occupancy, use, or operation of the City's facilities necessary or incidental thereto. **User shall name the City as an additional insured under the general liability policy.** Except as otherwise agreed in writing by the City, the insurance shall be provided on a form no more restrictive than the Standard Commercial General Liability Form (ISO FORM CG 00 01) without any restrictive endorsements, and the City shall be included as an "Additional Insured" on a form no more restrictive than Form CG 20 10, Additional Insured-Owners, Lessees, or Contractors (Form B). The minimum limits (inclusive of amounts by an umbrella or excess policy) shall be:

\$1,000,000 General Aggregate
 \$1,000,000 Products Liability/Completed Operation Aggregate
 \$1,000,000 Personal and Advertising Injury
 \$1,000,000 Each Occurrence

7.3 Worker's Compensation Insurance, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal and State law. The minimum amount provided by an umbrella or excess policy shall be:

Part One-"Statutory" requirements
 Part Two-\$500,000 Each Accident
 \$500,000 Disease-Policy Limit
 \$500,000 Disease Each Employee

7.4 Automobile Liability Insurance on a form no more restrictive than that provided by Section II (Liability Coverage) of the Standard Business Auto Policy (ISO Form CA 00 01) and shall cover User owned, non-owned, and hired autos used in any manner or incidental to the use of the facility. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be \$1,000,000 per each Occurrence-Bodily Injury and Property Damage Combined.

7.5 Property Insurance. User and the City shall each be responsible for maintaining their own property and casualty insurance, regardless of whether User purchases property insurance, and whether the City is wholly, partially or otherwise at fault, or the City is in any way responsible or liable for causation of accidents, injuries or death, in whole or in part, and User hereby expressly waives, releases, and holds the City harmless relative to any cause of action or right of recovery which User may have hereafter against the City for any loss arising out of damage to User's property, whether covered by insurance or not.

7.5 Evidence of Insurance. The required insurance shall be evidenced by a certificate of insurance which must be submitted to the City prior to the effective date of this Agreement. A copy of all notices, from all insurance companies providing coverage, directly or indirectly related to the use of the facilities in this Agreement, must be provided to the City within five (5) days of receipt. All insurance companies shall be instructed to provide thirty (30) day notice of any cancellation to the City. Failure to comply with this section shall render this Agreement null and void. User shall provide the City with renewal or replacement evidence of insurance at least ten (10) days prior to expiration or termination of such insurance.

Article 8. Special Terms and Conditions

8.1 Termination. The parties may rescind this Facility Use Agreement at any time, for any reason, upon thirty (30) days written notice. Cancellation of this Agreement by User is subject to a reasonable fee for administrative costs by the City.

8.2 Default. Any violation of a provision or term of this Agreement will be considered a default of this Agreement, and if such default is not cured within five (5) days from the date of notice of such default, or if the default cannot be cured, then this Agreement shall terminate and be no longer in effect.

8.3 Dispute Resolution. This Agreement is made under, and in all respects shall be interpreted, construed, enforced, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Agreement shall lie solely in Volusia County, Florida.

8.4 Attorneys Fees. In the event any litigation or controversy arises out of or in connection with this Agreement between the parties hereto, the City shall be entitled to recover all reasonable attorney's fees and costs from User.

8.5 Indemnification. User agrees to, and will at all times, indemnify, save and hold harmless the City, its officers, agents, and employees, from any and all liability, claims, demands, disputes, damages, costs, attorney's fees, and expenses (including prior to trial, through trial, and to and on appeal), as a result, directly or indirectly, of the use by User and/or its members, guests, visitors, spectators, players, programs and activities.

8.6 Non-Exclusive Agreement. Notwithstanding anything herein that may appear to the contrary, it is expressly understood and agreed upon by the parties that all rights granted under this Agreement are non-exclusive and the City reserves the right to grant similar privileges herein to others at any time. The City shall at all times be allowed to gain access to or use of all facilities. User agrees to provide a copy of keys to all locks used by User to restrict access to any part of a facility.

8.7 Sale of Prohibited Items. User is prohibited from the sale of alcoholic beverages, sexual content materials, and any tobacco related items. No type of advertisement, merchandise or signage related to alcoholic beverages, sexual content materials, or tobacco will be permitted.

8.8 Advertising. All on-site signs, informational kiosks, brochures, promotions or advertisements related to User shall be approved by the Director. User agrees to refrain from any commercial advertising without the Director's written approval.

Article 9. General Conditions

9.1 This Agreement shall be governed by the laws of the State of Florida, as well as applicable County of Volusia and City of Deltona Code of Ordinances and it shall become effective immediately upon execution by both parties hereto.

9.2 Any previously existing oral or written agreements between the parties shall be terminated as of the date of this Agreement and shall be deemed to be hereafter null and void and of no further force and effect. The entire agreement between the parties is incorporated herein. In addition to the terms of this Agreement, both parties agree to be bound by the policies and procedures regarding facility use, as adopted or amended by the City Commission.

9.3 This Agreement may not be assigned or transferred in any manner by User and any such assignment is expressly prohibited. Any attempt to assign this Agreement shall render this Agreement null and void.

9.4 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

9.5 The failure of any party hereto at any time to enforce any of the provisions of this Agreement will in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.

9.6 Under no circumstances does the City endorse, promote, condone, certify, vouch, or recommend, nor is it responsible for any of the contents, actions, agreements, activities, or services associated with User or its activities and programs.

9.7 In the event that the performance of this Agreement by the parties is prevented or interrupted as a consequence of any cause beyond the control of the City or User, including but not limited to acts of God or of a public enemy, national or local State of Emergency, allocation of or other governmental restriction upon the use or availability of labor or materials, rationing, civil insurrection, riot, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, wind storm, hurricane, earthquake, or other casualty, disaster, or catastrophe, any governmental rules, acts, laws, ordinances, resolutions, restrictions, regulations, requirements, or orders, acts or actions of any government or public or governmental authority or commission, board, agency, agent, official or officer, the enactment of any

statute, law, ordinance, resolution, regulation, rule, ruling, order, decree, judgment, restraining order or injunction of any court, said parties shall not be liable for such nonperformance.

9.8 The headings used throughout this Agreement are for convenience of reference only and have no significance in the interpretation of the body of this Agreement.

Article 10. Severability and Notice

10.1 The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

10.2 Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand or mailed by United States mail or sent by facsimile, addressed as follows:

If to User: {NAME} {TITLE} {COMPANY NAME} {ADDRESS} {CITY, STATE, ZIP}	If to City: Steve Moore Parks & Recreation Director City of Deltona 2345 Providence Blvd. Deltona, Florida 32725
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Each party hereto may change its mailing address by giving to the other party hereto, by hand delivery or United States mail, notice of election to change such address.

Article 11. Scope of Agreement

11.1 This Agreement is intended by the parties hereto to be the final expression of their Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.

11.2 This Agreement consists of the following:

This Agreement
 Authorization to Occupy
 Facility Use Application
 Addendum, if any

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the _____ day of _____, 2010.

Signed, sealed and delivered in the presence of Witnesses:

By: _____

By: _____

USER:

By: _____

Its: _____

CITY OF DELTONA:

By: _____
FAITH G. MILLER, City Manager

ATTEST:

Date: _____

JOYCE KENT, City Clerk

Mailing Address:
2345 Providence Boulevard
Deltona, FL 32725-1806

Approved as to form and legality:

GARY J COONEY, City Attorney

COMMISSION POLICY/PROCEDURE

EFFECTIVE DATE	POLICY NUMBER	PAGE NUMBER	SUPERSEDES POLICY Dated: 02-07-05
03-07-11	CC99-005	1 of 2	
Subject: In-Kind Donations to Deltona-based not-for-profit entities		Adopted by the Deltona City Commission at the Regular City Commission meeting held on September 8, 1999; revised by the City Commission on July 5, 2000; revised by the City Commission on March 15, 2004; revised by City Commission action on February 7, 2005; revised by City Commission action on March 21, 2011.	

It shall be the policy of the City of Deltona to support Deltona-based not-for-profit entities that sponsor City-wide events for the benefit of all residents. A not-for-profit entity, in accordance with Florida Statutes, §617.01401 (5), shall mean an entity in which no part of the income or profit of which is distributable to its members, directors, or officers.

An entity seeking in-kind services shall submit a special event permit application and a letter of request for specified in-kind services to the Parks & Recreation Department specifying the nature and details of the benefits provided to Deltona residents by such community-wide festival or special event. The entity must also provide an expected attendance number for the event, proposed disposition of any funds raised during the proposed events, and follow the established process and meet all requirements outlined within the City's Code of Ordinances, Chapter 10, *Amusements, Entertainment and Block Parties*, Article III, *Events on City-Owned or Controlled Property*. Letters of request for in-kind donations must be submitted to the Parks & Recreation Department no later than 90 days prior to the scheduled event.

A follow-up report **must be submitted** to the City Commission within thirty (30) days following the conclusion of the special event. Such report shall contain a narrative of the event, and shall also identify the actual number of attendees, any proceeds from the event and the disposition of such proceeds, including a detailed accounting of same, the benefit realized by the City's partnership with the organization for said special event, any difficulties **or** problems experienced during the event, and any changes suggested for future events. Failure to submit the follow-up report within the required 30-day timeframe will disqualify the agency for **any future** funding in the next budget year.

The City Commission, by majority vote, will determine whether or not to provide any or all of the following in-kind services:

1. Fees for permits.
2. Use of City equipment, e.g. barricades, traffic cones, generators, light towers, etc.
3. Costs associated with all City staff time to support said special event.
4. ~~Fire and first aid protection calculated at the current hourly rate.~~
4. ~~Police protection calculated at the current hourly rate~~ **will be the responsibility of the requester to contact the Volusia County Sherriff's Office, to discuss payment arrangements; City will not be funding any payment for services rendered.**

CITY OF DELTONA
COMMISSION POLICY/PROCEDURE

POLICY NUMBER: CC99-005

**SUBJECT: In-Kind Donations to Deltona-based
not-for-profit entities**

Page: 2 of 2

The maximum total in-kind donations allowed will be based on the expected attendance as follows:

<u>Expected Attendance</u>	<u>Maximum Dollar Value of In-Kind Donations</u>
Up to 100	\$250.00
101 - 200	\$500.00
201 - 300	\$750.00
301 - 400	\$1,000.00
401 - 500	\$1,250.00
501 – 600	\$1,500.00
601 – 700	\$1,750.00
701 – 800	\$2,000.00
801 – 900	\$2,250.00
Above 901	\$2,500.00

Special event requests that exceed these amounts must be annual events approved by line item in the City's Parks and Recreation Department budget for the upcoming fiscal year.

New events, not approved by line item in the City's budget, will be considered on a case by case basis.