

Chapter 2.65

POLICE & FIRE PENSION PLAN "B"

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2.65.010 Establishment of Police and Fire Pension Plan.

The City hereby establishes a retirement plan for all commissioned police and firefighters to be known as the Police and Fire Pension Plan "B". City normal cost contributions inclusive of administrative expenses determined as a result of an actuarial evaluation shall be placed in the "Police and Fire Pension Fund" by no later than fiscal year end August 31, 2012. The plan is intended to meet the requirements of Internal Revenue Code Sections 401(a) and 414(k). (Ord. 19432 §2; August 16, 2010; prior Ord. 18732 §2; June 5, 2006: Ord. 17859 §1; June 11, 2001: Ord. 16642 §1; July 25, 1994).

2.65.020 Definitions.

As used in this chapter, and unless the context otherwise requires, the following words shall have the following meanings:

Actuarial equivalent. The computation of the actuarial equivalent shall be according to the group annuity mortality table 1971, and interest of six percent per annum, compounded annually.

Age and service retirement benefits shall annual include pension benefits payable to members who meet applicable age and service requirements and who elect to retire, and shall not include disability retirement benefits.

Base pay shall include a member's base rate of pay, longevity, and shift differential and shall exclude any other additional form of pay or benefit.

City shall mean the City of Lincoln, Nebraska.

Deferred annuity shall mean an annuity under the terms of which a member has a fully vested right to receive payment at a definite future date. Deferred annuities shall be payable to members who have at least ten years of service, but have not attained age fifty-three. The amount payable shall be an actuarial equivalent based upon: a ratio of the number of years of the member's service over the number twenty-one applied to the otherwise applicable age and service retirement benefits; the age of the member at time of termination; and the options relating to distribution and survivor beneficiaries selected by the member.

Disability retirement benefit shall mean a benefit payable as a result of permanent and total disability while in the commissioned service of the City. The amount of the benefit shall be determined by several factors, including but not limited to, the member's regular pay, years of service, and the cause of the permanent and total disability.

DROP shall mean the Deferred Retirement Option Plan as provided in Section 2.65.045. The Deferred Retirement Option Plan shall be treated as a defined contribution plan for Police and Fire Plan B members. The DROP is intended to meet the requirements of Internal Revenue Code Section 414(i).

DROP contributions shall mean optional contributions paid to the member's DROP account by the member while enrolled in the DROP program. The contribution percent shall be set forth in the applicable mayoral executive order for Plan B members.

DROP period shall mean the amount of time the member elects to participate in the DROP which shall be for a period not to exceed five years from and after the date of the member's DROP election.

Eligible pension benefit payment shall mean regular age and service retirement benefits determined in accordance with Sections 2.65.050 and 2.65.110(c) of the plan but frozen as of the date the DROP is elected by the member.

Former member shall mean a member who has terminated his or her service with the commissioned fire or police service of the City.

Member shall mean any individual in the commissioned fire or police service of the City who was employed on or after April 11, 1984 or who, prior to April 11, 1984, elected to make required contributions of 7.6% of base pay to the plan and who elected to participate in Police and Fire Pension Plan B within thirty days after the operative date of Chapter 2.62 of the Lincoln Municipal Code; provided, however, the Police Chief and the Fire Chief shall not be eligible to participate in this plan.

Military service shall include service in the U.S. Army, Navy, Air Force, Marine Corps and any branch of service connected therewith.

Normal retirement age shall be attained age fifty-three.

Partial annuity benefit shall mean a benefit payable to a member who terminates employment after completing ten years of service, but before satisfying all of the requirements for age and service retirement. The amount payable shall be an actuarial equivalent based upon: a ratio of the number of years of the member's service (not to exceed twenty-one) over the number twenty-one applied to the otherwise applicable age and service retirement benefits; the age of the member at time of termination; and the options relating to distribution and survivor beneficiaries selected by the member.

Plan shall mean the Police and Fire Defined Benefit Pension Plan, Pension Plan "B" of the City.

Regular interest shall mean the rate of interest earned each calendar month, commencing January 1, 1976, as determined by the City in conformity with the actual earnings on investment of the fund created by Section 2.65.010. Whenever such interest is required to be credited to any member under the provisions of this title, such interest during any calendar month or portion of such month shall be based upon his or her accumulated contributions, plus regular interest thereon, on the first day of that month.

Regular pay shall mean the member's base pay and the City's contributions to the Post Employment Health Plan (PEHP) for the last consecutive twenty-six bi-weekly pay periods. In case of a demotion, or out of class pay, it shall mean the highest consecutive twenty-six bi-weekly pay periods.

Required contributions shall mean contributions of seven and six-tenths percent (7.6%) of a member's base pay.

Retirement shall mean the termination of service in the commissioned fire or police service of the City upon or after fulfilling all conditions of eligibility for retirement, and shall include regular, extended, early, and disability retirement.

Survivor beneficiary shall mean the natural person having an insurable interest designated in writing by the member to receive benefits under this plan in the event of and after the death of a member.

Total disability shall mean (a) the physical incapacity of a member to perform the work of a firefighter or police officer resulting from violence to the physical structure of the body and such physical disease or infection as naturally results therefrom, or (b) mental disorder (excluding mental deficiency and personality disorder) of a member, diagnosed in accordance with the American Psychiatric Association Manual, 1980 Edition, which is sufficiently severe so as to warrant a minimum rating of fifty percent under the general rating formula set forth in 38 C.F.R. § 4.132 (7-1-93 Edition) [See Appendix A].

Year of service shall mean a period of twelve full calendar months during which a member is employed in a pay status in the commissioned service of the City. Partial years credit for service shall be computed on a prorata basis. (Ord. 17915 §1; September 24, 2001: prior Ord. 17859 §2; June 11, 2001: Ord. 17679 §1; May 30, 2000: Ord. 17427 §2; November 2, 1998: Ord. 16749 §1; March 20, 1995: Ord. 16642 §2; July 25, 1994).

2.65.030 Conditions of Eligibility.

When any member shall have fulfilled all conditions of eligibility for retirement, and regardless of whether the member elects to retire, the benefits provided in Section 2.65.040 shall be payable upon termination of the member's service, whether the termination results from the member's death, resignation, discharge, or any other cause. (Ord. 16642 §3; July 25, 1994).

2.65.040 Age and Service Retirement Benefits.

(a) Regular age and service retirement benefits. A member who (i) has attained normal retirement age, (ii) completed twenty-one years of service, and (iii) elects to retire from active service shall be entitled to receive their regular age and service retirement benefits upon retirement from active duty. Such benefit shall be equal to fifty-eight percent of regular pay.

(b) Extended age and extended service retirement benefits. A member who (i) has previously become eligible for a regular age and service retirement benefit, (ii) has worked for a period of between 0-60 months after becoming eligible, and (iii) elects to retire from active service shall be entitled to receive an extended age and extended service benefit upon retirement from active duty. Such benefit shall be equal to a regular age and service retirement benefit with the percentage increased by two percent per year for each of a member's years of service after becoming eligible for a regular age and service retirement benefit for a maximum of 60 months or ten percent.

(c) Partial annuity benefits. A member who (i) has attained normal retirement age, (ii) completed at least ten years of service, and (iii) elects to retire from active service shall be entitled to receive a partial annuity benefit. Such benefit shall be equal to a regular age and service retirement benefit reduced by multiplying the member's regular age and service retirement benefit by a fraction, the denominator of which is twenty-one and the numerator of which is the number of years of service completed by the member at the date of his or her normal retirement (not to exceed twenty-one).

(d) Early retirement benefit. A member who (i) has attained age fifty, (ii) completed at least twenty-one years of service, and (iii) elects to retire from active service shall be entitled to receive an early retirement benefit. Such benefit shall be based on the following:

The early retirement benefit shall be equal to:

at age 50 and 21 years of service = 52%

at age 51 and 21 years of service = 54%

at age 52 and 21 years of service = 56%

The pension of a member whose age, on the date of retirement, exceeds an otherwise applicable age and service level as set forth above will be increased by an amount equaling two percent of regular pay times a fraction, the denominator of which is 365 and the numerator of which is the number of days by which the member's age exceeds the otherwise applicable age and service level.

(e) Benefit payments shall comply with applicable provisions of Section 2.65.220. (Ord. 19281 §6; July 27, 2009; prior Ord. 17859 §3; June 11, 2001; Ord. 16642 §4; July 25, 1994).

2.65.045 Operation of the Deferred Retirement Option Plan (DRO).

(a) Any member who meets the participation requirements of Section 2.65.045(b) shall have the opportunity to participate in the DRO program. The DRO program provides that for a one-year period, subsequent to attaining normal age and service retirement eligibility, or subsequent to the adoption of the DRO program which for purposes of this section shall be deemed to be the later of September 1, 2000 or the first of the month following a favorable letter determination by the Internal Revenue Service, a member may voluntarily choose to participate in the DRO program. If the member chooses to participate in the DRO program, the member shall be deemed to have retired for purposes of the Police and Fire Pension Plan "B", but the member may continue in active employment for a five-year period. During the DRO period, the member's eligible pension benefit payments and/or DRO contributions will be deposited into a DRO account for the benefit of the member until the member actually retires from active employment at or before the expiration of the

DROP period. Thereafter, future pension payments will be made directly to the member, and the member will then have access to all funds in the account(s) designated for the benefit of the member.

(b) To participate in the DROP program, a member must meet the following requirements:

(1) A member shall be eligible to enter the DROP program at any time during the one-year period subsequent to the date when the member has (i) attained normal retirement age; and (ii) completed twenty-one years of service. Members having attained normal retirement age and completed twenty-one years of service on or before the date of adoption of the DROP program shall be eligible to enter the DROP program only during the one-year period subsequent to the date of adoption of the DROP program which shall be deemed to be the later of September 1, 2000 or the first of the month following a favorable letter of determination by the Internal Revenue Service.

(2) A member who elects to enter the DROP program shall be entitled to receive regular age and service retirement benefits in accordance with Sections 2.65.050 and 2.65.110(c). A member is entitled to remain in the DROP program for a maximum of five years subsequent to the date of the member's DROP election. A member may separate from service and thereby exit the DROP program at any time during the five-year DROP period. On or before the completion of the five-year DROP period, the member must separate from active employment and thereby exit the DROP program.

During the DROP period, a member's eligible pension benefit payment shall be payable to the DROP investment account vendor designated in the member's name. Accordingly, amounts transferred or paid to a participating member's DROP account shall not constitute annual additions under Internal Revenue Code Section 415.

(3) A member electing to enter the DROP program must choose a pension payment option as outlined in Section 2.65.050. After the option is chosen, the member shall not be entitled to any retirement benefit changes for reasons including, but not limited to, wage increases, promotions, and/or demotions; provided, however, that the restriction on retirement benefit changes shall not apply in the event of duty-related death or duty-related disability. The benefit amount shall be frozen as of the date of election and shall be payable as if the employee retired on that date and separated from active employment. In the event a member incurs a duty-related death or duty-related disability during the DROP period, the member or the member's designated pension survivor beneficiary will have the option to forfeit the DROP account designated for the member and accept a duty-related death pension or duty-related disability pension or keep the DROP account and normal age and service pension. A member shall also have the option of designating a specific beneficiary of the DROP account maintained for the benefit of the member.

(4) No member shall be allowed to continue making the required contributions while the member is enrolled in the DROP program. Any member that is enrolled in the DROP program may elect to make DROP contributions during the DROP period. Such contributions shall constitute annual additions under Internal Revenue Code Section 415(c).

(5) The member shall be paid the balance of the DROP account upon the member's separation from active employment or at the expiration of the DROP period thereby ending the member's participation in the DROP program. In the event a member has not voluntarily separated from active employment on or before the completion of the five-year DROP period, the member's pension benefit payments will be made directly to the member thereby ending the member's active employment. The member's DROP account will consist of accrued eligible pension benefit payments, interest on such payments, any DROP contributions, and interest on any DROP contributions.

(6) Any member that is enrolled in the DROP program shall be responsible for directing the DROP account designated for the benefit of the member by investing the account in any of the DROP program investment options. There shall be no guaranteed rate of investment return on DROP account assets. Any losses, charges or expenses incurred by the participating DROP member in such member's DROP account by virtue of the investment options selected by the participating DROP member, shall not be made up by the City or the Plan but all of same shall be born by the participating DROP member. Transfers between investment options shall be in accordance with the rules and regulations of the DROP. A DROP account shall be established for each participating DROP member. Such DROP account shall be adjusted no less frequently than annually for DROP contributions, the member's eligible pension benefit payment distributions, and net investment earnings and losses.

(7) If the DROP account is subject to administrative or other fees or charges, such fees or charges shall be charged to the participating DROP member's DROP account. (Ord. 19615 §3; September 19, 2011: prior Ord. 19480 §3; December 13, 2010: Ord. 17859 §4; June 11, 2001: Ord. 17679 §2; May 30, 2000).

2.65.050 Pension Payment Options; Survivorship Options; Beneficiary Designation.

(a) On or prior to the effective date of a member's retirement, but not thereafter, any member may elect, by written notice filed with the City, to receive:

(1) An annuity commensurate with the applicable age and service retirement benefit;

or

(2) A lump sum distribution of such member's contributions plus regular interest to the date of disbursement of funds and a reduced annuity, equal to the annuity which would otherwise have commenced upon retirement reduced by the portion of such benefits that are actuarially equivalent to the amount of the contributions and interest withdrawn.

(b) On or prior to the effective date of a member's retirement, but not thereafter, any member may elect, by written notice filed with the City, to receive the annuity provided for in (a) above as a straight life annuity, or to receive the actuarial equivalent of a straight life annuity throughout his or her life, reduced actuarially to reflect the selection of Option 1 or Option 2 below, and designate a survivor beneficiary, having an insurable interest, to receive either of the following two survivorship options:

(1) Option 1. Upon the member's death, an amount equal to the member's annuity shall be payable to the survivor beneficiary for the remainder of his or her life.

(2) Option 2. Upon the member's death, an amount equal to one-half of the member's annuity shall be payable to the survivor beneficiary for the remainder of his or her life.

(c) Any election or designation made by a member under this section may be revoked or changed by the member without the consent of any other person, or a new election or designation may be substituted by the member as long as he or she may desire, but not later than the date of retirement.

(d) Distributions will comply with applicable provisions of Section 2.65.220. (Ord. 19281 §7; July 27, 2009: prior Ord. 16642 §5; July 25, 1994).

2.65.055 Limitations of Benefits.

(a) Notwithstanding any other provisions of the Plan to the contrary, the member contributions paid to and retirement benefits paid from the Plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415 of the Internal Revenue Code for a qualified pension plan.

(b) Participation in Other Qualified Plans: Aggregation of Limits.

(1) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the City in this Plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one plan.

(2) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue Code maintained by the City in this Plan shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one plan.

(c) Basic 415(b) Limitation.

(1) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that Section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the Plan. In no event shall a member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(2) For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(d) Adjustments to Basic 415(b) Limitation for Form of Benefit. If the benefit under the Plan is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit 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 additional benefits under the form of benefit as follows:

(2) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced Limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(i) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or

(ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)); or

(iii) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date which is the “least of” when adjusted in accordance with the following assumptions:

A. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

B. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)); or

C. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)), divided by 1.05.

(e) Benefits Not Taken into Account for 415(b) Limitation. 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) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

(f) Other Adjustments in 415(b) Limitation.

(1) In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue 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 one hundred sixty thousand dollar (\$160,000) (as adjusted) annual benefit beginning at age sixty-two (62).

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

(3) The reductions provided for in (1) above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(g) Less than Ten Years of Service Adjustment for 415(b) Limitations. The maximum retirement benefits payable to any member who has completed less than ten years of service shall be the amount determined under subsection (c) multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below 10%. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(h) \$10,000 Limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed \$10,000 for the applicable limitation year and for any prior limitation year and the employer has not any time maintained a qualified defined contribution plan in which the member participated.

(i) Effect of COLA without a Lump Sum Component on 415(b) Testing. Effective on and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "Limit") to a member with no lump sum benefit, the following will apply:

(1) A member's applicable Limit will be applied to the member's annual benefit in the member's first limitation year without regard to any cost of living adjustments under Section 2.65.140;

(2) To the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the Limit; and

(3) Thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under Section 2.65.140, shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

(j) Effect of COLA with a Lump Sum Component on 415(b) Testing. On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum (a DROP lump sum), a member's applicable Limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

(k) Section 415(c) limitations on contributions and other additions. After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of \$40,000 (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or 100% of the member's compensation.

(1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying Section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as compensation.

(3) Compensation will be defined as wages within the meaning of Section 3401(a) of the Internal Revenue Code 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 Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be determined without regard to any rules under Section 3401(a) of the Internal Revenue Code 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 Section 3401(a)(2) of the Internal Revenue Code).

(i) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code.

(ii) For limitation years beginning on and after January 1, 2008, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

A. The payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member'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 member while the member continued in employment with the employer; or

B. The payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or

C. Payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.

Any payments not described in paragraph (ii) above are not considered compensation if paid after severance from employment, even if they are paid within two and one-half (2½) months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of

Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

An employee who is in qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(iii) Back pay, within the meaning of Treasury Regulation 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.

(iv) For limitation years beginning on or after January 1, 2008, a member's compensation for purposes of subsection (k) shall not exceed the annual limit under Section 401(a)(17) of the Internal Revenue Code.

(l) Service Purchases under Section 415(n). Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of Section 415(n) of the Internal Revenue Code will be treated as met only if:

(1) The requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code, or

(2) The requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.

(3) For purposes of applying this section, the Plan will not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this subparagraph and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this section.

(4) For purposes of this section the term "permissive service credit" means service credit-

(i) recognized by the Plan for purposes of calculating a member's benefit under the Plan,

(ii) which such member has not received under the Plan, and

(iii) which such member may receive only by making a voluntary additional contribution, in an amount determined under the Plan, 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 include service credit for periods for which there is no performance of service, and, notwithstanding clause (B), may include service credited in order to provide an increased benefit for service credit which a member is receiving under the Plan.

(5) The Plan will fail to meet the requirements of this section if-

(i) more than five years of nonqualified service credit are taken into account for purposes of this subparagraph, or

(ii) any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under the Plan.

(6) For purposes of paragraph (5) effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term “nonqualified service credit” means permissive service credit other than that allowed with respect to-

(i) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Section 415(k)(3) of the Internal Revenue Code),

(ii) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (A)) of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(iii) service as an employee of an association of employees who are described in clause (A), or

(iv) military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the Plan.

In the case of service described in clause (i), (ii), or (iii), such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer)-

(i) the limitations of paragraph (5) will not apply in determining whether the transfer is for the purchase of permissive service credit, and

(ii) the distribution rules applicable under federal law to the Plan will apply to such amounts and any benefits attributable to such amounts.

(8) For an eligible member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the Plan before January 1, 1998.

(m) Modification of Contributions for 415(c) and 415(n) Purposes. Notwithstanding any other provision of law to the contrary, the Plan Administrator may modify a request by a member to make a contribution to the Plan if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the Plan Administrator may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.

(2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the Plan Administrator may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

(n) Repayments of Cashouts. Any repayment of contributions (including interest thereon) to the Plan with respect to an amount previously refunded upon a forfeiture of service credit under the Plan or another governmental plan maintained by the City shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

(o) Reduction of Benefits Priority. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan 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 plan and the plan administrator of all other plans covering such member.(Ord. 19281 §8; July 27, 2009: prior Ord. 17859 §5; June 11, 2001).

2.65.060 Termination with Ten Years or More of Service Prior to Retirement Age; Deferred Annuity.

(a) A member who terminates service, either voluntarily or involuntarily, for reasons other than death or disability (i) after the completion of ten years of service, and (ii) prior to the attainment of normal retirement age under the plan, shall be eligible for and may select to receive one of the following:

(1) The member's accumulated required contributions plus regular interest accrued thereon to the date of distribution of funds, payable in lump sum; and a deferred annuity, if any, payable at normal retirement age, the value of which shall be reduced by the value of the member's required contributions and regular interest distributed in lump sum; or

(2) A deferred annuity payable at:

A. The later of age fifty or date of termination from active service or,

B. Normal retirement age.

Such deferred annuity shall be computed on an actuarially equivalent basis utilizing the member's actual date of termination.

(b) A member shall be entitled to elect, by written notice filed with the City, to receive a reduced annuity and designate a survivor beneficiary in accordance with the options as set forth in Section 2.65.050(b).

(c) Any member who resigns or is terminated shall notify the City of his or her selection of pension options within thirty days from the date of separation. Failure to notify the City of his or her selection shall result in the employee forfeiting the option for a lump sum distribution, and in the member being deemed to have selected the straight life option. (Ord. 16642 §6; July 25, 1994).

2.65.070 Termination with Less Than Ten Years of Service; Re-employment.

A member who (i) has completed less than ten years of service, and (ii) terminates from service, either voluntarily or involuntarily for reasons other than death or disability shall be entitled to receive his or her accumulated required contributions, plus regular interest thereon to the date of distribution of funds in a lump sum. (Ord. 16642 §7; July 25, 1994).

2.65.080 Disability Retirement Benefits.

(a) Permanent and Total Disability Resulting from an Accident or Other Cause Occurring in the Line of Duty.

(1) A member who, prior to the attainment of normal retirement age, incurs permanent and total disability resulting from accident or other cause, for the work required by his or her classification, and occurring in the line of duty shall be entitled to receive a monthly disability retirement benefit, based on required contributions, equal to fifty-eight percent of regular pay.

(2) A member who incurs permanent and total disability resulting from accident or other cause occurring in the line of duty after attaining normal retirement age shall be entitled to receive a monthly disability retirement benefit equal to fifty-eight percent of regular pay; and this monthly disability retirement benefit shall be increased by two percent of regular pay for each of the first five years of service completed by the member after the attainment of normal retirement age. In no event shall the total increase in disability retirement benefit exceed ten percent of regular pay.

(b) Temporary Total Disability Resulting from Accident or Other Cause in the Line of Duty. A member who incurs temporary total disability resulting from accident or other cause, for the work required by his or her classification, and occurring in the line of duty shall be entitled to receive his or her salary and earned fringe benefits during the continuance of the temporary total disability for a period not to exceed twelve months from date of occurrence. If the temporary total disability becomes permanent during the twelve-month period from date of occurrence, or is determined to be permanent by the City Council or other proper municipal authorities, then these benefits cease and the member shall be entitled to receive the disability retirement benefit described in subsection (a)(1) or (a)(2), whichever is applicable.

(c) Permanent and Total Disability Resulting from Accident or Other Cause Not Occurring in the Line of Duty. A member who incurs permanent and total disability resulting from accident or other cause, for the work required by his or her classification, and not occurring in the line of duty shall be entitled to receive a monthly disability retirement benefit and shall immediately be placed upon the pensioned roll. The amount of such disability retirement benefit shall be based upon the number of years of service the member has completed at the time the permanent and total disability commences, and shall be computed as follows:

- (1) A member who has completed at least five years of service but less than ten years of service shall receive a benefit equal to 23% of regular pay.
- (2) A member who has completed at least ten years of service but less than fifteen years of service shall receive a benefit equal to 39% of regular pay.
- (3) A member who has completed fifteen or more years of service shall receive a benefit equal to 53% of regular pay.

(Ord. 16642 §8; July 25, 1994).

2.65.090 Review of Disability Retirement Benefits.

(a) For a period of three years from the date of a member's retirement for a disability, the Plan Administrator shall be authorized, not more often than annually, to require the former member

to submit to an examination by a physician of the Plan Administrator's choice to determine whether the former member is still permanently and totally disabled. The Plan Administrator may also request such an examination upon receipt of a written request of the former member to return to duty.

(b) The payment of disability retirement benefits shall cease if it is determined by the Mayor, upon the recommendation of the Disability Pension Review Committee, that the former member is no longer totally disabled by the injury or condition for which such former member was retired and the former member (i) has been restored to active duty in the same rank held as of the date of retirement; or (ii) has been ordered restored to active duty in such same rank and shall have declined, refused or neglected to report for duty; or (iii) has been ordered restored to active duty in such same rank and shall have been unable to meet minimum departmental performance standards. In the event of (ii) and (iii), such employee shall thereafter be entitled only to the benefit earned by age and service.

(c) The pension contributions and interest of such former member restored to active duty shall be restored to the same values in existence as of the date of retirement. Pension contributions by such former member shall recommence in accordance with § 2.65.160. (Ord. 16642 §9; July 25, 1994).

2.65.100 Benefits: Commencement of Payment.

The Plan Administrator shall commence the payment of benefits, on a monthly basis: (a) on the date of a member's retirement from the City in the case of an age and service retirement benefit; (b) on the date determination of a permanent and total disability by the Mayor in the case of a disability retirement benefit; and (c) at normal retirement age or, if the member has attained normal retirement age, at the date of his or her termination in the case of a partial annuity benefit. (Ord. 16642 §10; July 25, 1994).

2.65.110 Survivor Benefits.

(a) Benefits Payable to the Survivor Beneficiary of a Member Whose Death Occurs After the Member Has Commenced Receiving Age and Service Retirement Benefits.

(1) The survivor beneficiary of a member whose death occurs after he or she has commenced receiving age and service retirement benefits shall be entitled to receive benefits payable under the survivorship option elected by the member.

In the event that both the member and the survivor beneficiary, if any, die before the aggregate amount of the member's required contributions plus accrued regular interest thereof have been distributed as age and service retirement benefits or survivor benefits, the balance of the member's required contributions plus accrued regular interest thereon shall be distributed to such person or persons as the member or the survivor beneficiary shall have designated in writing filed with the Plan Administrator. If no designated person survives, and if the balance is \$300.00 or more, the balance shall be paid to the personal representative of the member or the survivor beneficiary; and if the balance is less than \$300.00, the City may pay it to such claimant or claimants as the City, in its discretion, shall determine to be entitled to payment.

(b) Benefits Payable to the Surviving Spouse and Minor Children, or to Survivor Beneficiary, of a Member Whose Death is Caused By or Results From Injuries Incurred in the Line of Duty.

(1) If the member's death is caused by or occurs as a result of injury incurred in the line of duty, and if the member has not designated a survivor beneficiary and elected a survivorship option, a benefit equal to fifty-eight percent of regular pay shall be paid to the member's surviving

spouse during his or her lifetime or until his or her remarriage; and upon such surviving spouse's death or remarriage, prorata to the member's surviving minor children until the youngest surviving minor child attains the age of nineteen years.

(2) If the member has designated a survivor beneficiary, under the provisions of Section 2.65.050, the survivor beneficiary shall be entitled to receive benefits payable under the survivorship option elected by the member upon the member's death, regardless of whether the member's death occurs before or after the member becomes eligible to receive age and service retirement benefits; and the survivorship option shall be valued as if the member had become entitled to age and service retirement benefits on the date of his or her death.

(3) If the member did not elect a beneficiary and does not have a surviving spouse, the member's contributions and interest shall be paid to the member's estate.

(c) Benefits Payable to the Surviving Spouse and Minor Children, or to the Survivor Beneficiary of a Member Who Dies From Any Cause or Result Other Than an Injury Incurred in the Line of Duty.

(1) If the member dies from any cause other than an injury incurred in the line of duty, and if the member has not designated a survivor beneficiary and elected a survivorship option, a benefit equal to the otherwise applicable disability retirement benefit for such member as set forth in Section 2.65.080(c) shall be paid to the member's surviving spouse during his or her lifetime or until his or her remarriage, provided that the member and the surviving spouse were married at the time of the member's death; and upon such spouse's death or remarriage, prorata to the member's surviving minor children until the youngest surviving minor child attains the age of nineteen years.

(2) If the member has designated a survivor beneficiary under the provisions of Section 2.65.050, the survivor beneficiary shall be entitled to receive the otherwise applicable disability retirement benefit as set forth in 2.65.080(c). The benefit shall be valued in accordance with Survivorship Option 1, for the lifetime of the survivor beneficiary only.

(3) If the member did not elect a beneficiary and does not have a surviving spouse, the member's contributions and interest shall be paid to the member's estate.

(d) Benefits Payable to Spouse or Survivor Beneficiary of a Member Whose Death Occurs After the Member Has Commenced Receiving Disability Retirement Benefits.

(1) If a member's death occurs after he or she has commenced receiving disability retirement benefits as the result of a permanent and total disability, whether occurring in the line of duty or otherwise, and if the member has not designated a survivor beneficiary and elected a survivorship option as provided in subparagraph (d)(2), his or her retirement benefits shall thereafter be paid to the member's surviving spouse during his or her lifetime or until his or her remarriage; and upon such surviving spouse's death or remarriage, prorata to the member's surviving minor children until the youngest surviving minor child attains the age of nineteen years.

(2) If a member who is entitled to receive an age and service retirement benefit when such permanent and total disability occurs elects on or prior to the effective date of such disability retirement, or within thirty days thereafter, to designate a survivor beneficiary in accordance with the provisions of Section 2.65.050, the payments under this subsection shall instead be made to such survivor beneficiary, for the lifetime of the survivor beneficiary only, based upon the amount provided under the selected option valued as of the date on which such member was placed on the pension roll because of such disability. (Ord. 16642 §11; July 25, 1994).

2.65.120 Trustee to Trustee Transfer.

(a) For purposes of the Plan and compliance with Section 401(a)(31) of the Internal Revenue Code, this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) "Eligible rollover distribution" means 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 the 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 Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only (i) to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code 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; (ii) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, 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; or (iii) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code.

(c) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

- (1) An individual retirement account described in Section 408(a) of the Internal Revenue Code,
- (2) An individual retirement annuity described in Section 408(b) of the Internal Revenue Code,
- (3) An annuity plan described in Section 403(a) of the Internal Revenue Code,
- (4) A qualified trust described in Section 401(a) of the Internal Revenue Code that agrees to separately account for amounts transferred into that plan from this Plan,
- (5) Effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code,
- (6) Effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or

instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from this Plan, or

(7) Effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

(d) “Distributee” means 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 who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse 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.

(e) “Direct rollover” means a payment by the plan to the eligible retirement plan specified by the distributee.

(f) In the event of a mandatory distribution greater than \$1,000 in accordance with the provisions of Section 2.65.045(b)(5) or Section 2.65.070, if the member does not elect to have such distribution paid directly to an eligible retirement plan specified by the member in a direct rollover or to receive the distribution directly in accordance with subsection (a), then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator. (Ord. 19648 §1; November 14, 2011: prior Ord. 19281 §9; July 27, 2009: Ord. 16642 §12; July 25, 1994).

2.65.130 Minimum Retirement and Survivorship Benefits.

(a) The minimum monthly benefit payable either as an age and service retirement benefit, a disability benefit as a result of accident or other cause occurring in the line of duty, or as a survivor benefit to a surviving spouse or survivor beneficiary shall not be less than \$300.00. Members, their surviving spouses or survivor beneficiaries shall receive a monthly supplemental payment, if necessary, to ensure that the minimum monthly payment shall be \$300.00.

(b) The minimum monthly payment described in subsection (a) shall not be available to surviving minor children. (Ord. 16642 §13; July 25, 1994).

2.65.140 Cost of Living Adjustment; Initial Amounts; Annual Increase; How Funded.

(a) Effective September 1, 1992, and annually on each September 1st thereafter, all members who have received normal age and service retirement benefits, extended age and extended service benefits, early retirement benefits, or line-of-duty disability retirement benefits for at least twelve months preceding September 1, 1992, or any September 1st thereafter, shall be entitled to receive a lump sum payment as a cost of living adjustment. The lump sum payment shall be payable on or immediately after September 1, 1992, or the applicable September 1st thereafter, and shall be a base amount of \$600.00. Effective September 1, 1994 the base amount shall be increased to \$750.00. Said base amount shall be increased annually thereafter in accordance with subsection (c) hereof.

(b) Effective September 1, 1992, and annually on September 1st thereafter, all members who have received partial annuity benefits or non-duty disability retirement benefits for at least twelve months preceding September 1, 1992 or any September 1st thereafter, shall be entitled to receive a lump sum payment as a cost of living adjustment. The lump sum payment shall be payable on or immediately after September 1, 1992, or the applicable September 1st thereafter, and shall be the

amount obtained by applying the ratio of the number of years of the member's service (not to exceed twenty- one) over the number twenty-one multiplied by the base amount described in subsection (a).

(c) The amount of the lump sum payment to which a member shall be entitled under subsection (a) or (b) hereof shall be annually increased by the lesser of three percent or the percentage increase in the Consumer Price Index for the last full calendar year prior to each September 1st.

The Consumer Price Index shall mean the Consumer Price Index for all urban consumers, all cities, all items (1982-84 = 100), issued and published by the Bureau of Labor Statistics of the United States Department of Labor. In the event that the Consumer Price Index ceases to use the 1982-84 base rate of 100 as the basis of calculation, or if a substantial change is made in the terms or number of items contained in the Consumer Price Index, then the Consumer Price Index shall be adjusted to the figure that would have been arrived at had the manner of computing the Consumer Price Index on the effective date of this ordinance not been altered. If the Consumer Price Index is not available, the Plan Administrator shall utilize a successor or substitute index to the Consumer Price Index, appropriately adjusted.

(d) The lump sum payments contemplated hereunder shall be paid from an accounting pool, the amount of which shall be determined as follows: The Plan Administrator shall annually calculate the difference between the rate of interest actually earned by the Police and Fire Pension Fund and the actuarially assumed rate of interest then currently utilized in calculating pension fund liabilities. The interest differential shall be multiplied by a ratio of the retirant and beneficiary liability of the Police and Fire Pension Fund over the total liability of the Police and Fire Pension Fund, and the product thereof shall annually be allocated to the accounting pool. All such annual additions to the accounting pool plus regular interest earned and applicable to the amounts allocated to the accounting pool shall constitute the pool of funds from which the payments described above shall be paid.

(e) Effective on and after September 1, 2010, an eligible member as defined herein may elect to purchase a future annual cost of living adjustment of the monthly benefit amount, as set forth herein. For purposes of this subsection (e), an "eligible member" shall mean a member in the fire service of the City that is: (i) an active member in DROP status; (ii) an active member eligible to receive regular age and service retirement benefits, or (iii) an active member eligible to receive line-of-duty or non-duty disability retirement benefits. If an eligible member does not make an election pursuant to this subsection (e), the post-retirement lump sum cost of living adjustments set forth in subsections (a) through (d) shall apply upon actual retirement.

(1) The cost of living adjustment purchased may be from zero percent to three percent, in one-half percent increments;

(2) The Plan Administrator shall provide the eligible member with a quote of the dollar cost to purchase a cost of living adjustment in one-half percent increments from zero percent to three percent for each of the eligible member's pension payment options, which dollar cost shall be actuarially calculated based upon a discount rate of one percent less than the plan's actuarially assumed earnings rate in effect at the time of purchase;

(3) The purchase shall be made in a lump sum payment to the plan and may be made with funds from any source, including but not limited to, the eligible member's DROP account, an in-service transfer from a deferred compensation plan under Section 403(b) or 457(b) of the Internal Revenue Code if the plan so permits such transfers, traditional IRA under Section 408(a) or (b) of the Internal Revenue Code, or personal check;

(4) Notwithstanding subsection (e)(3), all or a portion of the lump sum payment shall be paid from the accounting pool set forth in subsection (d) to the extent funds are available, but in any event not to exceed the lesser of (i) \$15,000.00 minus the sum of 13th check payments the eligible member received during the member's DROP participation or (ii) the amount of funds available in such pool;

(5) An eligible member must make an election, in writing delivered to the Plan Administrator prior to the member's retirement date, to either purchase the cost of living adjustment set forth under this subsection (e) or to receive the lump sum payments set forth under subsections (a) through (d), and the eligible member must complete payment to the City of Lincoln within 30 days following the member's retirement date; and

(6) For an eligible member who makes a purchase, the cost of living adjustment shall be payable after the eligible member or surviving beneficiary, as applicable, has received monthly pension benefits, other than benefit payments to the member's DROP account, for at least 12 months preceding any given September 1st. The cost of living adjustment shall be compounded annually, at the rate purchased, on each September 1st after it becomes payable. (Ord. 91615 §4; September 19, 2011; prior Ord. 19480 §4; December 13, 2010; Ord. 16642 §14; July 25, 1994).

2.65.150 Payments Under Worker's Compensation Act.

Notwithstanding any other provisions of this Chapter 2.65, no member shall be entitled during any period of disability to receive in full both his or her benefits under this plan and in addition benefits under the Nebraska Worker's Compensation Act. All Nebraska Worker's Compensation Act benefits shall be payable in full to such member or his or her dependents as provided in such act, but all amounts paid by the City or its insurer under such act to any disabled member entitled to receive a salary and earned fringe benefits, or benefits under this plan, during such disability, or to the surviving spouse or children of any deceased member, shall be considered as payments on account of such salary and earned fringe benefits, or benefits under this plan, and shall be credited thereon. The remaining balance of such salary and earned fringe benefits or benefits under this plan, if any, shall be payable as otherwise provided by this Chapter 2.65.

In the event permanent disability or death benefits payable to a member or his or her dependents under the Nebraska Worker's Compensation Act exceed the maximum disability or death benefits, the member or his or her dependents or designated beneficiaries would otherwise be entitled to under this chapter, the accumulated contributions of such member, plus regular interest, shall be paid in a lump sum to such member, his or her survivor beneficiary, or his or her personal representative. (Ord. 16642 §15; July 25, 1994).

2.65.160 Member Contributions.

(a) Subject to subparagraphs (b), (c) and (d) below, regular contributions of 7.6% of a member's base pay shall be made by payroll deduction in each pay period during which the member is required to contribute to the plan. Such contributions shall be funded by reduction in the member's salary.

(b) Contributions for credited periods of military service. The City may require each member who receives years of service credit for military service to contribute to the City an amount equal to not more than three percent (3%) of his or her base pay for each year of military service credit. The maximum member contribution for any year of military service credit shall not exceed \$2,500, and shall be based upon the base pay earned by the member at the time of his or her entry into military service; but no contribution shall be required for any portion of such period when not required of the other members.

(c) Military service, time allowed. Where a commissioned member of the Fire or Police Department has left said department and entered into the military forces of the United States or shall hereafter do so in time of war or national emergency, the period of military service, up to a maximum of four years in each such case, shall be considered and computed as time served in the Fire or Police Department if he or she returns or will return to service in such Fire or Police Department not later than ninety days following the date of his or her discharge from the military forces, and shall serve in such paid Fire or Police Department during a period of at least one year after September 7, 1947.

(d) Contributions. Every member who has completed twenty-one years of service shall discontinue contributions to the plan. All funds in excess of 21 years contribution shall be distributed as a lump sum at separation or retirement in accordance with IRS Regulations.

(e) Notwithstanding the provisions of Section 2.65.160(c) to the contrary, contributions, benefits, and years of service credit with respect to qualified military service will be provided in accordance with the rules related to the Veterans Reemployment rights pursuant to USERRA as defined by the provisions of Internal Revenue Code Section 414(u) effective December 12, 1994. (Ord. 17859 §6; June 11, 2001; prior Ord. 16642 §16; July 25, 1994).

2.65.170 Pickup Contributions.

The City shall pick up the member contributions required by Section 2.65.160 in accordance with the favorable ruling pursuant to Section 414(h) of the United States Internal Revenue Code, and the contribution so picked up shall be treated as employer contributions in determining federal tax treatment under the United States Internal Revenue Code, except that the City shall continue to withhold federal income taxes based upon the contributions until the Internal Revenue Service or the federal courts, rule that, pursuant to Section 414(h) of the United States Internal Revenue Code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The City shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The City shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the member or a combination of a reduction in salary and offset against a future salary increase. Member contributions picked up shall be treated in the same manner and to the same extent as employee contributions made prior to the date picked up. (Ord. 16642 §17; July 25, 1994).

2.65.180 Plan Administration; Fund Investments.

(a) The Personnel Director, or a designated representative of the director, shall act as the Plan Administrator for the Police and Fire Pension Plan.

(b) The Plan Administrator, after consulting with the Police and Fire Pension Plan Advisory Committee as hereinafter provided, may invest all funds of the Police and Fire Pension Fund or may contract with an insurance company, trust company, or other financial institution including, but not limited to, brokerage houses, investment managers, savings and loan associations, banks, credit unions, federal Farmers' Home Administration or Veterans' Administration approved lenders to manage such funds. The funds shall be invested in investments of the nature which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the insurance company, trust company, or other financial institution contracted with has special skills or is named on the basis of representation of special skills or expertise, such company or institution is under a duty to use such skills. All such investments or contracts shall be approved by the City Council.

(c) The City shall anticipate its liability for future payments of retirement benefits under the plan on an actuarial basis and, in order to equalize the tax burden over a period of years, shall levy and collect taxes in each fiscal year sufficient to meet current needs and equalize future payments. The tax shall be in excess of and in addition to all other taxes now or hereafter authorized to be levied by the City. The tax so levied and collected, together with contributions made by members, shall be credited to the Police and Fire Pension Fund in accordance with the terms of Section 401(a)(2) of the Internal Revenue Code of 1986; and any unexpended balance remaining in the fund at the close of the fiscal year shall be reappropriated to the Police and Fire Pension Fund for the ensuing year. Pension payments required by law shall be a general obligation of the City and may be made out of, but not limited to, the fund.

The City will conform to the requirements of Section 415(b) of the Internal Revenue Code of 1986 as it applies to the general benefits of this plan.

(d) All assets of the Plan shall be held and invested for the sole purpose of meeting the legitimate obligations of the Plan and shall be used for no other purpose. No part of the assets shall be used for or diverted to purposes other than for the exclusive benefit of members and beneficiaries prior to satisfaction of all Plan obligations. (Ord. 17859 §7; June 11, 2001; prior Ord. 16642 §18; July 25, 1994).

2.65.190 Mental Incapacity; Exercise of Options.

In the event of mental incapacity of a member, any right of election, selection, or designation permitted under the provisions of this chapter may be exercised by the member's duly appointed guardian or conservator. (Ord. 16642 §19; July 25, 1994).

2.65.200 Applicability; Benefits Under Prior Laws.

The benefits under the plan as set forth in this Chapter 2.65 shall be applicable to members who receive benefits on or after the effective date of this ordinance. Nothing in this Chapter 2.65 shall in any manner affect the right of any person now receiving or entitled to receive, now or in the future, pension or other benefits provided for in Chapter 2.66 of the Lincoln Municipal Code as they exist immediately prior to the effective date of this ordinance, to receive such pension or other benefits in all respects. (Ord. 16642 §20; July 25, 1994).

2.65.210 Amendment, Termination and Discontinuance of the Plan.

(a) It is the intent of the City that the Plan be permanent and remain in effect for an indefinite period. The City, however, reserves the right to modify, amend, or discontinue the Plan at any time. The City expressly reserves the right to amend the Plan in order to take advantage of or comply with any statute, rule, or regulation of the federal government or the State of Nebraska, or any duly constituted agency thereof.

(b) In the event the Plan is discontinued or terminated, all members shall immediately become fully vested in their benefits. The discontinuance or termination shall be carried out in all respects in conformance with applicable statute, rule, or regulation of the federal government or the State of Nebraska, or any duly constituted agency thereof. (Ord. 17859 §8; June 11, 2001).

2.65.220 Qualified Retirement Plan.

The City intends that the Plan be a qualified governmental plan under Sections 401(a) and 414(b) of the Internal Revenue Code, as amended. The Plan shall be administered so as to fulfill this intent, including but not limited to the following:

(a) Distributions from the Plan will comply with the requirements of Internal Revenue Code Section 401(a)(8) and regulations thereunder, including that forfeitures of benefits by any member or former member of the Plan will not be applied to increase the benefits that any member would otherwise be entitled to receive under the Plan. However, such forfeitures may be used to reduce employer contributions.

(b) Notwithstanding anything in the Plan to the contrary, a member shall be 100% vested in his or her benefit upon attainment of the requirements for a regular age and service retirement benefit under Section 2.65.040(a), and a member shall be 100% vested in his or her accumulated contributions at all times.

(c) Minimum Distributions. The Plan will pay all benefits in accordance with a good faith interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. The Plan is subject to the following provisions:

(1) Distribution of a member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the member attains age 70 ½ or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the Plan shall begin distribution of the monthly benefit as required by this rule in the form of a straight life annuity.

(2) The member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary.

(3) The Plan, pursuant to a qualified domestic relations order, may establish separate benefits for a member and nonmember.

(4) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.

(5) If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be either:

(i) Distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the member's death, or

(ii) Distributed within five years of the member's death.

(6) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

(7) The death and disability benefits provided by the Plan are limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code 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% of the cost for all of the members' benefits received from the Plan.

(8) Notwithstanding the other provisions of this rule or the provisions of the Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

(d) Compensation Limits

(1) Effective with respect to plan years beginning on and after September 1, 1996, and before September 1, 2002, the annual compensation of a plan member which exceeds \$150,000 (as adjusted for cost-of-living increases under Section 401(a)(17)(B) of the Internal Revenue Code) shall be disregarded for purposes of computing employee and employer contributions to or benefits due from the Plan. Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of Section 414(g)(6) of the Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age 19 before the close of the year.

(2) Effective with respect to plan years beginning on and after September 1, 2002, the annual compensation of a plan member which exceeds \$200,000 (as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code) may not be taken into account in determining benefits or contributions due for any plan year. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). 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 plan member'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.

(e) Veterans' Rights.

(1) Effective December 12, 1994, notwithstanding any other provision of the Plan, contributions, benefits and service credit with respect to qualified military service are governed by Section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and Reemployment Rights Act of 1994.

(2) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member, are entitled to any additional benefits that the Plan would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes.

(3) Beginning January 1, 2009, to the extent required by Section 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (as defined under Section 3401(h)(2) of the Internal Revenue Code) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner. (Ord. 19648 §2; November 14, 2011: prior Ord. 19281 §10; July 27, 2009: Ord. 17859 §9; June 11, 2001).

APPENDIX "A"

§ 4.132 Schedule of Ratings - Mental Disorders.

PSYCHOTIC DISORDERS

Rating

- 9201 Schizophrenia, disorganized type.
- 9202 Schizophrenia, catatonic type.
- 9203 Schizophrenia, paranoid type.
- 9204 Schizophrenia, undifferentiated type.
- 9205 Schizophrenia, residual type; schizoaffective disorder; other and unspecified types.
- 9206 Bipolar disorder, manic, depressed, or mixed.
- 9207 Major depression with psychotic features.
- 9208 Paranoid disorders (specify type).
- 9209 Major depression with melancholia.
- 9210 Atypical psychosis.

General Rating Formula for
Psychotic Disorders:

Active psychotic manifestations of such extent, severity, depth, persistence or bizarreness as to produce total social and industrial inadaptability	100
With lesser symptomatology such as to produce severe impairment of social and industrial adaptability	70
Considerable impairment of social and industrial adaptability	50
Definite impairment of social and industrial adaptability	30
Mild impairment of social and industrial adaptability	10
Psychosis in full remission	0

Convalescent rating in psychotic disorders:

Upon regular discharge or release to non-bed care from a hospital where a beneficiary has been under care and treatment for a continuous period in the hospital of not less than 6 months, an open rating of 100 percent will be continued for 6 months. A VA examination is mandatory at the expiration of the 6-month period, after which the condition will be rated in accordance with the degree of disability shown. Where the beneficiary has been under hospital care and treatment for less than 6 months and is not ratable at 100 percent under the rating formula, consideration should be given to § 4.29.

ORGANIC MENTAL DISORDERS

Rating

9300 Delirium associated with infection, trauma, circulatory disturbance, etc.

NOTE: Acute organic mental disorders with or without accompanying psychotic disorder are temporary and reversible. If psychiatric impairment attributable to such diagnosis continues beyond 6 months, the report of examination is to be returned to the examiner for reconsideration of the diagnosis.

9301 Dementia associated with central nervous system syphilis.

9302 Dementia associated with intracranial infections other than syphilis.

9303 Dementia associated with alcoholism.

9304 Dementia associated with brain trauma.

9305 Multi-infarct dementia with cerebral arteriosclerosis.

9306 Multi-infarct dementia due to causes other than cerebral arteriosclerosis.

9307 Dementia associated with convulsive disorder (idiopathic epilepsy).

9308 Dementia associated with disturbances of metabolism.

9309 Dementia associated with brain tumor.

9310 Dementia due to unknown cause.

9311 Dementia due to undiagnosed cause.

9312 Dementia, primary, degenerative.

9315 Dementia associated with epidemic encephalitis.

9322 Dementia associated with endocrine disorder.

9324 Dementia associated with systemic infection.

9325 Dementia associated with drug or poison intoxication (other than alcohol).

Before attempting to rate organic mental disorders, rating specialists should become thoroughly acquainted with the relevant concepts presented by the current Diagnostic and Statistical Manual of the American Psychiatric Association and the following:

- (1) Under the codes above, the basic syndrome of organic mental disorder may be the only mental disturbance present or it may appear with related "psychotic" manifestations. An organic mental disorder with or without such qualifying phrase will be rated according to the general rating formula for organic mental disorders, assigning a rating which reflects the entire psychiatric picture.
- (2) An organic mental disorder, as defined in the American Psychiatric Association manual, is characterized solely by psychiatric manifestations. However, neurological or other manifestations of etiology common to the mental disorder may be present, and if present, are to be rated separately as distinct entities under the neurological or other appropriate system and combined with the rating for the mental disorder.

General Rating Formula for Organic Mental Disorders:

Impairment of intellectual functions, orientation, memory and judgment, and lability and shallowness of affect of such extent, severity, depth, and persistence as to produce total social and industrial inadaptability	100
Less than 100 percent, in symptom combinations productive of:	
Severe impairment of social and industrial adaptability	70
Considerable impairment of social and industrial adaptability	50
Definite impairment of social and industrial adaptability	30
Mild impairment of social and industrial adaptability	10
No impairment of social and industrial adaptability	0

PSYCHONEUROTIC DISORDERS

Rating

- 9400 Generalized anxiety disorder.
- 9401 Psychogenic amnesia; psychogenic fugue; multiple personality.
- 9402 Conversion disorder; psychogenic pain disorder.
- 9403 Phobic disorder.
- 9404 Obsessive compulsive disorder.
- 9405 Dysthymic disorder; Adjustment disorder with depressed mood; Major depression without melancholia.
- 9408 Depersonalization disorder.
- 9409 Hypochondriasis.
- 9410 Other and unspecified neurosis.
- 9411 Post-traumatic stress disorder.

Read well notes (1) to (4) following general rating formula before applying the general rating formula.

General Rating Formula for Psychoneurotic Disorders:

The attitudes of all contacts except the most intimate are so adversely affected as to result in virtual isolation in the community. Totally incapacitating psychoneurotic, symptoms bordering on gross repudiation of reality with disturbed thought or behavioral processes associated with almost all daily activities such as fantasy, confusion, panic and explosions of aggressive energy resulting in profound retreat from mature behavior. Demonstrably unable to obtain or retain employment	100
Ability to establish and maintain effective or favorable relationships with people is severely impaired. The psychoneurotic symptoms are of such severity and persistence that there is severe impairment in the ability to obtain or retain employment	70

Ability to establish or maintain effective or favorable relationships with people is considerably impaired. By reason of psychoneurotic symptoms the reliability, flexibility and efficiency levels are so reduced as to result in considerable industrial impairment	50
Definite impairment in the ability to establish or maintain effective and wholesome relationships with people. The psychoneurotic symptoms result in such reduction in initiative, flexibility, efficiency and reliability levels as to produce definite industrial impairment	30
Less than criteria for the 30 percent, with emotional tension or other evidence of anxiety productive of mild social and industrial impairment	10
There are neurotic symptoms which may somewhat adversely affect relationships with others but which do not cause impairment of working ability	0

NOTE (1). Social impairment per se will not be used as the sole basis for any specific percentage evaluation, but is of value only in substantiating the degree of disability based on all of the findings.

NOTE (2). The requirements for a compensable rating are not met when the psychiatric findings are not more characteristic than minor alterations of mood beyond normal limits; fatigue or anxiety incident to actual situations; minor compulsive acts or phobias; occasional stuttering or stammering; minor habit spasms or tics; minor subjective sensory disturbances such as anosmia, deafness, loss of sense of taste, anesthesia, paresthesia, etc. When such findings actually interfere with employability to a mild degree, a 10 percent rating under the general rating formula may be assigned.

NOTE (3). It is to be emphasized that vague complaints are not to be erected into a concept of conversion disorder. A diagnosis of conversion disorder must be established on the basis of specific distinctive findings characteristic of such disturbance and not merely by exclusion of organic disease. If a diagnosis of conversion disorder is found by the rating board to be inadequately supported by findings, the report of examination will be returned through channels to the examiner for reconsideration.

NOTE (4). When two diagnoses, one organic and the other psychological or psychoneurotic, are presented covering the organic and psychiatric aspects of a single disability entity, only one percentage evaluation will be assigned under the appropriate diagnostic code determined by the rating board to represent the major degree of disability. When the diagnosis of the same basic disability is changed from an organic one to one in the psychological or psychoneurotic categories, the condition will be rated under the new diagnosis.

PSYCHOLOGICAL FACTORS AFFECTING PHYSICAL CONDITION

Rating

- 9500 Psychological factors affecting skin condition.
- 9501 Psychological factors affecting cardiovascular condition.

- 9502 Psychological factors affecting gastrointestinal condition.
- 9505 Psychological factors affecting musculoskeletal condition.
- 9506 Psychological factors affecting respiratory condition.
- 9507 Psychological factors affecting hemic and lymphatic condition.
- 9508 Psychological factors affecting genitourinary condition.
- 9509 Psychological factors affecting endocrine condition.
- 9510 Psychological factors affecting condition of organ of special senses (specify sense organ).
- 9511 Psychological factors affecting other type of physical condition.

Evaluate psychological factors affecting physical condition by the general rating formula for psychoneurotic disorders.

NOTE (1). It is to be emphasized that vague complaints are not to be erected into a concept of psychological disorder. A diagnosis of a psychological disorder affecting physical condition must be established on specific distinctive findings characteristic of such disturbance and not merely by exclusion of organic disease. If a diagnosis of a psychological disorder is found by the rating board to be inadequately supported by findings, the report of examination will be returned.

NOTE (2). When two diagnoses, one organic and the other psychological or psychoneurotic, are presented covering the organic and psychiatric aspect of a single disability entity, only one percentage evaluation will be assigned under the appropriate diagnostic code determined by the rating board to represent the major degree of disability. When the diagnosis of the same basic disability is changed from an organic one to one in the psychological or psychoneurotic categories, the condition will be rated under the new diagnosis.

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