

ARTICLE 7. - Fairfax County Police Officers Retirement System.

Division 1. - Generally.

Section 3-7-1. - Fairfax County Police Officers Retirement System established.

- (a) Under the authority granted by Chapter 303, 1944 Acts of the Assembly, as amended, the Police Pension and Retirement System, established previously under the authority of Chapter 303, 1944 Acts of the Assembly, is hereby continued and is adopted and enacted by ordinance, as hereinafter set forth, and is to be known henceforth as the "Fairfax County Police Officers Retirement System."
- (b) The previously established Policemen's Pension and Retirement Board is hereby continued and will be referred to as the Board of Trustees of the Fairfax County Police Officers Retirement System. Members of the Policemen's Pension and Retirement Board in office on the effective date of this Article [June 22, 1981] shall continue in office as trustees until the expiration of their present terms and may be reappointed in accordance with the provisions of this Article.
- (c) The Fairfax County Police Officers Retirement System is intended to satisfy Internal Revenue Code §§ 401(a) and 414(d) requirements for qualified governmental pension plans.

(20-81-3; 52-13-3.)

Section 3-7-2. - Definitions.

The following words and phrases shall have the meanings respectively provided by this Section:

- (a) (1) For employees whose county employment commenced by reporting for work before January 1, 2013 (members of Plan A), accrued sick leave credit shall mean the credit allowed a member at a rate of one month for each 172 hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof.
- (2) For employees whose county employment commenced by reporting for work on or after January 1, 2013 (members of Plan B), accrued sick leave credit shall mean the credit allowed a member with more than five years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one month for every 172 hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof; however, for employees whose county employment commenced by reporting to work on or after January 1, 2013, notwithstanding the amount of the employee's accrued sick leave balance, the maximum amount of accrued sick leave credit that may be used for determining retirement eligibility and for computing the member's retirement benefits and allowances shall be the employee's accrued sick leave balance or 2,080 hours, whichever is less.
- (b) Actuarial equivalent shall mean a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the Board of Trustees of the System.
- (c) Average final compensation shall mean the annual creditable compensation of a member during the 36 consecutive months (78 consecutive pay periods) in which the member received his highest creditable compensation. In determining average final compensation for members who retire after July 1, 1988, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the member had continued to work at his final salary during the period of his accrued unused sick leave; provided, however, that in determining the average final compensation for members who became members of this System on or after January 1, 2013 (i.e., members of Plan B), no more than 2,080 hours of the member's accrued unused sick leave may be used for this purpose.

- (1) Rule applicable to members ordered or called to active duty with the armed forces of the United States on or after August 2, 1990, with or without their consent, other than for training at the request of the member. If a member ordered or called to active duty with the armed forces of the United States on or after August 2, 1990, with or without his consent, other than for training at the request of the member, is entitled to service credit as a result of such military service pursuant to Section 3-7-23(d) and he otherwise would have no creditable compensation attributable to some portion or all of such period of service, his average final compensation shall be calculated as if he had continued to receive the salary, including pickup contributions, approved and established for his position by the County Pay and Compensation Plan during the period of military service for which he is receiving service credit. A member shall be entitled to the benefit of the application of this rule for up to a cumulative total of four years of military service commencing on or after August 2, 1990. The Board is authorized and directed to make any and all necessary retroactive adjustments to members' allowances as a result of this rule.

Notwithstanding the foregoing, whenever the Personnel Director, at the request of the Board, the member, or the member's beneficiary determines that the member's receipt of a merit increment was delayed as a result of either or both of the amendments to Section 4.3-2 of the Personnel Regulations, effective July 13, 1991, and July 11, 1992, and that the member would otherwise have been entitled to such merit increment under the Personnel Regulations, based upon his or her review of the member's personnel and payroll records, the Board shall calculate the member's average final compensation as if the member had received the merit increment at the time he or she would have but for the aforesaid amendments to Section 4.3-2 of the Personnel Regulations.

This amendment shall apply to all applications for allowances and benefits filed with the respective Boards of Trustees on or after July 13, 1991. The respective Boards of Trustees are hereby authorized and directed to make any necessary retroactive adjustments to allowances and benefits.

- (2) Periods of leave without pay under the federal Family and Medical Leave Act of 1993 shall be disregarded in determining periods of consecutive months or payroll periods in calculating average final compensation.
- (d) Average salary, as used in Section 3-7-34, shall mean the current salary of the position the member was in at the time he was disabled.
- (e) Beneficiary shall mean any person entitled to receive benefits as provided by the System.
- (f) Board shall mean the Board of Trustees of the System, as established in this Article.
- (g) Creditable compensation shall mean payment of salary including pickup contributions, roll call and holiday pay but excluding performance bonuses. Effective for plan years after December 31, 1988, compensation in excess of \$200,000.00 (as indexed under Section 415(d) of the Internal Revenue Code) shall be disregarded. Notwithstanding the foregoing, effective for members hired on or after July 1, 1996, compensation in excess of the limit set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. In determining the compensation of an employee under this plan section, the rules of Section 415(c)(3) shall apply. Effective for plan years on or after January 1, 2001 an employee's compensation shall include amounts not includible in gross income by reason of Section 132(f)(4) of the Internal Revenue Code.
- (h) Creditable service shall mean the total of membership service credit as an active member of the Fairfax County Police Department, plus portability credit purchased pursuant to section 3-7-23.1.
- (i) Employee shall mean any law enforcement officer within the police department, whose compensation is fully paid by the County, and excluding any person as defined by Article 3, Section 3-3-1(a)(9), Code of the County of Fairfax.
- (j) Employer shall mean the Chief of Police or an authority in the County having power to appoint police officers paid directly or indirectly by the County and/or the Board of Trustees of the System.

- (k) Handicapped child shall mean natural or legally adopted member's progeny who has demonstrated to the Board by medical evidence acceptable to the Board, in its sole discretion, to be permanently mentally incompetent or permanently physically handicapped, unless and until a determination has been made by the Board that such progeny no longer is permanently mentally incompetent or permanently physically handicapped in accordance with Section 3-7-41.
- (l) Member shall mean a full-time employee, or a part-time employee provided the Board first determines that it desires to receive a part-time employee into the system, or a former employee entitled to benefits under the System.
- (m) Membership service credit shall mean credit for service to this System.
- (n) Picked up contributions shall mean regular member's contributions which are picked up, through a reduction in salary, by the County from active members for service rendered on or after December 22, 1984.
- (o) Plan A is set forth in the provisions of this Article as applicable to all employees whose county employment commenced by reporting for work before January 1, 2013.
- (p) Plan B is set forth in the provisions of this Article as applicable to all employees whose county employment commenced by reporting for work on or after January 1, 2013; the sole difference between Plans A and B is found in those provisions that address the limitations on the use of accrued sick leave credits and accrued unused sick leave for the purposes of determining retirement eligibility and for computing the member's retirement benefits and allowances.
- (q) Retirement allowance shall mean the retirement payments entitled to members as provided in this Article.
- (r) Salary shall mean the compensation, including pickup contributions, established for each position as approved in the County Pay and Compensation Plan.
- (s) Service shall mean service as an employee for which compensation is paid by the employer, but shall not include time spent on leave without pay.
- (t) System shall mean the "Fairfax County Police Officers Retirement System." (20-81-3; 5-85-3; 36-88-3; 27-90-3, § 5; 13-92-3; 43-92-3; 15-93-3; 37-94-3; 21-96-3; 14-00-3; 18-01-3; 8-03-3; 8-04-3; 28-12-3.)

Section 3-7-3. - Duties of employer.

The employer shall maintain records as necessary, relating to the hiring and employment of members, and shall furnish such information to assist the Board as it may require in the discharge of its duties.

Upon employment of a member, the employer shall inform the member of his duties and obligations in connection with the System as a condition of employment. (20-81-3.)

Section 3-7-4. - Consent to provisions of Article required for employment.

Upon acceptance of employment, every member shall be deemed to consent and agree to any deductions or employer pickup of amounts from this compensation, as stated in this Article, and to all other provisions thereof. (20-81-3; 5-85-3.)

Section 3-7-5. - Fraud and false statements.

In addition to any other provisions of law, any person who shall knowingly make any false statement, or false falsify or permit to be falsified, any record or records of the System in any attempt to defraud the System, shall be guilty of a Class 1 misdemeanor. (20-81-3.)

Section 3-7-6. - Benefits unassignable; non-attachable.

The right of any member to a retirement allowance, return of contributions, including picked up amounts, or any other right accrued or accruing to any other person under the provisions of this Article, and

the funds created by this Article, shall be unassignable and shall not be subject to execution, garnishment, attachment, bankruptcy, insolvency, or any other process of law whatsoever except for administrative actions pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1 of the Code of Virginia or any court process to enforce a child or child and spousal support obligation, and shall be unassignable except as provided in this Article. However, retirement benefits and assets created under this Article which are deemed to be marital property pursuant to Chapter 6 (§ 20-89.1 et seq.) of Title 20 of the Code of Virginia may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Code of Virginia, Section 20-107.3. (5-85-3; 13-92-3; 1-93-3)

Section 3-7-7. - Error in records; corrections and adjustment.

- (a) Should any change or error in the records or in the computation of a member's benefits result in any member or beneficiary receiving from the System more or less than properly entitled had the records or computation been correct, the Board shall have the authority to correct such error and adjust the payments in such a manner that the actuarial equivalent of the benefit, to which such member or beneficiary was correctly entitled, shall be paid.
- (b) The Board is authorized to negotiate and compromise with a member with respect to any amounts which the Board determines have been paid to the member in excess of amounts to which the member is entitled. (20-81-3; 13-92-3.)

Section 3-7-8. - Amendment of Article.

- (a) The Board of Supervisors shall have the continuing right and power to amend or supplement this Article; such right is hereby expressly reserved. No amendment shall be made inconsistent with the provisions of Code of Virginia, Section 51.1-821, as amended, and Chapter 303, 1944 Acts of Assembly, as amended.
- (b) No amendment, suspension or revocation, including termination or partial termination of the System, shall have the effect of diverting the trust fund of the System to purposes other than the exclusive benefit of the participating employees or their beneficiaries, until all liabilities for accrued benefits payable under the terms of the plan shall have been fully satisfied. Upon termination of the System or a discontinuance of contributions to the System, each member's benefit accrued as of such date will be nonforfeitable.

(20-81-3; 21-96-3; 52-13-3)

Division 2. - Board of Trustees.

Section 3-7-9. - Administration of System vested in Board of Trustees.

The general administration and the responsibility for the proper operation of the System, and for making effective the provisions of this Article, are hereby vested in the Board of Trustees of the System. (20-81-3.)

Section 3-7-10. - Membership; term in office.

- (a) The Board of Trustees of the System shall consist of seven (7) trustees as follows: Three (3) trustees appointed by the Board of Supervisors; two (2) trustees who are currently employed by the Fairfax County Police Department as sworn police officers elected by the members of the System currently employed by the Fairfax County Police Department as sworn police officers; one (1) trustee who is retired from employment as a sworn police officer of Fairfax County elected by the retired members of the System; and the Director of Finance, who shall be treasurer of the Board.

- (b) With the exception of the Director of Finance, who shall be an ex-officio member of the Board, the term of office of the trustees shall be four (4) years. (20-81-3; 10-01-3.)

Section 3-7-11. - Vacancies in office.

Vacancies which occur in the office of trustees of the System shall be filled for the unexpired term in the same manner as the office was previously filled. (20-81-3.)

Section 3-7-12. - Accountable to Board of Supervisors.

The Board of Trustees of the System shall be accountable to the Board of Supervisors. (20-81-3.)

Section 3-7-13. - Compensation of trustees.

The two (2) trustees appointed by the Board of Supervisors may receive compensation at the rate set by the Board of Supervisors. (20-81-3.)

Section 3-7-14. - Election of officers.

The Board of Trustees shall elect one (1) member as president, one (1) as secretary, and may elect one (1) as vice-president. Such election shall occur at the first meeting of the Board in each calendar year. (20-81-3.)

Section 3-7-15. - Functions of the Board.

The general powers and authorized duties of the Board of Trustees, subject to the limitations of this Article, are as follows:

- (a) To adopt bylaws, rules and regulations, lawful and necessary for the proper conduct of its affairs.
- (b) To conduct hearings, make investigations, and determine the amount of awards or pensions to be paid any police officer or his beneficiaries.
- (c) To provide for the expense of such clerical, legal, medical, investment counsel, and other services as it deems necessary or proper.
- (d) To provide for, and require deductions from, the salaries of active and paid members of the police department, and to cause the amounts deducted to be paid into its treasury, for its use in the administration of the System.
- (e) To draw warrants, signed in its name and countersigned by its president, and its treasurer, for the payments of pensions and benefits hereunder, and of costs and expenses of administration.
- (f) To determine who shall be members of the System.
- (g) To submit to the Board of Supervisors annually an independent audit showing the fiscal transactions of the System for the preceding fiscal year, the amount of accumulated cash and securities of the System, and the last balance sheet indicating the financial condition of the System.
- (h) To cause an actuarial evaluation to be made of the System as of July 1, 1982, and at least once in each succeeding two-year period. The Board shall keep in convenient form such data as shall be necessary for an actuarial evaluation of the System and for checking the experience of the System. (20-81-3; 8-82-3.)

Division 3. - Management of Funds.

Section 3-7-16. - Board trustee of funds; investment of same.

The Board shall be the trustee of funds created by this Article and shall have full power to invest and reinvest such funds. Such investments and reinvestments shall be conducted with bona fide discretion and in accordance with the laws of the Commonwealth, as such laws apply to fiduciaries investing such funds. The Board may upon the exercise of bona fide discretion employ investment counsel, who shall be subject to the same limitations herein provided for the Board. Subject to such limitations, the Board shall have full power to hold, purchase, sell, assign, transfer or otherwise dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as the proceeds of such investments and any money belonging to such funds. No member of the Board shall be personally liable for losses suffered by the System on investments made under the authority of an in compliance with this Section. (20-81-3.)

Section 3-7-17. - Treasurer fiscal officer of the Board.

The treasurer of the Board shall be the custodian of all of its funds and securities, and may designate a fiduciary agent, upon the direction and approval of the Board. The treasurer may give bond, in such amount, and with such surety, as the Board requires, as a condition for the faithful performance of his duties and the proper accounting for all funds and securities coming into his hands. He shall disburse the funds on warrants drawn by the Board, signed and countersigned as provided herein. (20-81-3.)

Section 3-7-18. - Prohibited interest of member or employee of the Board.

Except as otherwise provided in this Article, no member or employee of the Board shall have any direct or indirect interest in the gains or profits of any investment made by the Board. No member or employee of the Board shall directly or indirectly, for himself or as an agent, in any manner use the same, except to make such current and necessary payments as are authorized by the Board. (20-81-3.)

Division 4. - Membership in System.

Section 3-7-19. - Membership composition.

(a) Membership shall be comprised of the following:

- (1) Present employees, as defined within this Article.
- (2) All persons who were employees on June 22, 1981, or who were on authorized leave from service on such date.
- (3) Future employees, as identified herein.
- (4) Exceptions. Employees of the County who are members of the Virginia Retirement System, the Uniformed Retirement System, and future employees who are eligible to become members of those systems, are not eligible for membership in this System.
- (5) Former park police officers who elected to transfer to this system from the Fairfax County Uniformed Retirement System pursuant to the provisions of Section 3-3-20(b)(3). Membership in this System shall commence on January 22, 1983. For purposes of this Article, such members shall be deemed to have been appointed on or after July 1, 1981, regardless of being granted any prior service credit pursuant to Section 3-7-20(b). Such members may receive service credit for prior service as a park police officer if the member pays into the System the difference between the amount he contributed to the Uniformed Retirement System and the amount he would have contributed to this System had he been a member during the period for which he is seeing prior service credit plus an amount equal to the total return of the System's assets in each year for which prior service credit is applied to those contributions that have been in the System had he been a member at the time. At the Board's discretion, such a member may pay in installments over a period not to exceed one year. However, prior service credit shall not be granted until payment has been received in full. This offer to purchase service will be effective for a period of one year from the approval date of this change.

- (b) Persons receiving a normal or early retirement allowance from this System, the Employees' Retirement System (Article 2) or the Uniformed Retirement System (Article 3) are eligible for membership only under the terms and conditions set forth in Section 3-7-40.
- (c) Notwithstanding any other provision of this Chapter or Article to the contrary, an active member of this System who has more than five years of creditable service in this System and who is appointed to serve as a deputy county executive shall remain a member of this System, and shall not become a member of the Employees' Retirement System as a result of such appointment. Any such member shall remain a member of this System for so long as he or she is so employed or subsequently resumes working in a position that is covered under this System. (20-81-3; 35-81-3; 22-83-3; 36-86-3; 27-90-3, § 5; 8-91-3; 56-93-3; 10-01-3; 28-12-3.)

Section 3-7-20. - Service credit for prior service.

- (a) A member shall receive service credit for prior employment as a police officer with the County, provided he shall return his contributions, including picked up amounts, previously paid, in addition to interest received at the yearly rates earned by the System during the period the member's contributions, including picked up amounts, had been withdrawn. The Board may, in its discretion, accept a return of a member's contribution, including picked up amounts on an installment basis, as determined by the Board. Such member may satisfy some or all of the amount due from his or her for the purchase of such service through a rollover from an individual retirement account if and only if the entire amount in that account is attributable to a rollover from this System. Such member may also satisfy some or all of the amount due from him or her for the purchase of such service through a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in section 457(b) of the Internal Revenue Code maintained by an eligible employer described in section 457(e)(1)(A) of the Internal Revenue Code, or through a direct trustee-to-trustee transfer from an annuity described in Section 403(b) of the Internal Revenue Code.
- (b) Former park police officers who elected to transfer to this System pursuant to Section 3-3-20(b)(3) and to transfer their contributions from the Fairfax County Uniformed Retirement System pursuant to Section 3-3-20(b)(4)(C) shall be granted service credit for their service as park police officers. Any deficits created by this action shall be funded by increasing the rate of employer contributions as determined by the required actuarial evaluation of the System as of June 30, 1983.
- (c) Any former Fairfax County park police officer who transferred to this System from the Fairfax County Uniformed Retirement System between August 1, 1974, and October 31, 1982, and who has remained in continuous service in this System since such transfer, may receive service credit in this System for his prior service as a park police officer if such member pays into this System:
  - (1) The difference between the amount that he had contributed to the Uniformed Retirement System and the amount that he would have been required to contribute to this System had he been a member during the period for which he is seeking prior service credit; and
  - (2) An additional sum representing the amount that the System would have earned on the contributions that he would have been required to make to this System had he been a member during the period for which service credit is sought under this subsection.

In determining the amount required under (2), the Board shall use the historical rate(s) of return on the System's assets during the period for which service credit is sought. At the Board's discretion, such a member may pay in installments over a period not to exceed one (1) year. However, prior service credit shall not be granted until payment has been received in full. This option to purchase service will be effective for a period of one (1) year from the date of enactment of this subsection. The purchase of service credit for prior service as a park police officer under the provisions of this subsection by a member shall not alter the minimum amount of creditable service that the member is required to have to be eligible for normal service retirement under the provisions of this Article. Where a member elects to purchase service credit for prior service as a park police officer under the provisions of this subsection, the Board of Trustees of the Uniformed Retirement System shall transfer from its funds the employer contributions attributable to the member's service for which prior service credit is being purchased under this subsection to this System.

- (d) Members who are former park police officers who transferred their member contributions from the Uniformed Retirement System, including member's contributions from service in a position covered by the Employees' Retirement System prior to their service as a park police officer, may elect to either (i) receive a refund of their Employees' Retirement System member contributions from this System or (ii) purchase service credit in this System based upon his prior service in the Employees' Retirement System on the terms and conditions set forth in this subsection.
- (1) such members must elect in writing to purchase such service credit within one (1) year of the effective date of this subsection [December 6, 1993]. Members who do not elect to purchase such credit within one (1) year of the effective date of this subsection shall have such contributions refunded to them and shall be deemed to have waived any right to purchase such service credit.
  - (2) Members electing to purchase such credit may do so by paying into this System (A) the difference between the amount which he had contributed to the Employees' Retirement System and the amount he would have been required to contribute to this System had he been a member during the period for which he is seeking prior service credit and (B) an additional sum representing the amount that the System would have earned on the contributions he would have been required to make to this System had he been a member during the period for which service credit is sought, as determined by using the historical rate(s) of return of the System.
  - (3) At the discretion of the Board, such members may pay the required amounts in installments over a period not to exceed one (1) year. However, such service credit shall not be granted until payment has been made in full.
  - (4) The purchase of such service credit shall not alter the minimum amount of creditable service that the member is required to have to be eligible for normal or early service retirement under this Article. (20-81-3; 22-88-3; 5-85-3; 56-93-3; 36-94-3; 10-01-3; 8-03-3.)

Section 3-7-21. - Statement to be filed with Board.

Under such rules and regulations as are adopted by the Board, each member, or someone in his behalf, shall file with the Board, in such form as the Board may prescribe, a statement of the facts pertaining to his status as a member, which shall include a statement of all service as an employee and such other information as the Board may require. Until such statement is filed, no member or his beneficiary shall be eligible to receive any benefits under this Article. (20-81-3.)

Section 3-7-22. - Year of service.

The Board shall determine by appropriate rules and regulations how much service in any year is the equivalent of a year of creditable service, but in no case shall it allow credit for more than one (1) year of service for all service rendered in any period of twelve (12) consecutive months. (20-81-3.)

Section 3-7-23. - Membership service credit.

- (a) Each member shall receive membership service credit for service rendered while a member of this System, or after he or she last became a member in the event of a break in his or her membership.
- (b) Each member shall receive membership service credit for any period he or she is on service-connected total disability retirement. All members who have been retired before, and all members who are retired on or after July 7, 2003, on account of service-connected partial disability pursuant to Section 3-7-29 shall receive membership service credit for any period he or she is on service-connected partial disability retirement.
- (c) Each member may be allowed membership service credit for accrued unused sick leave upon making application for retirement, at the rate of one (1) month of credit for each 172 hours of accrued unused sick leave; and pro rata credit shall be allowed for each fraction thereof. In determining average final compensation, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the member had continued to work at his or her final salary during the period of his accrued unused sick leave.

- (d) Each member shall receive membership service credit for military leave, provided he or she returns to full employment within 90 days of discharge and such discharge is other than dishonorable. (20-81-3; 36-88-3; 8-03-3; 33-03-3).

Sec. 3-7-23.1. - Portability of service credit.

A. Definitions. For the purpose of this section, the terms shall be defined as follows:

- (1) "Accepting plan" shall mean the retirement plan or system which is receiving membership assets from another defined benefit retirement plan or system in order to permit a current member to purchase portability credit in the accepting plan through the use of his or her membership contributions in the transferring plan.
  - (2) "Portability credit" shall mean service credit purchased in an accepting plan by the transfer of membership assets from the transferring plan.
  - (3) "Transferring Plan" shall mean the retirement plan or system which is transferring membership assets to an accepting plan to enable a former employee of the transferring plan to purchase service in the accepting plan through the use of his or her membership contributions in the transferring plan.
- (B) The Board of Supervisors of Fairfax County may enter into agreements with the Virginia Retirement System or with any other political subdivision of the Commonwealth of Virginia, provided that the retirement system of any other political subdivision of the Commonwealth of Virginia is a defined benefit plan or eligible deferred compensation plan described in section 457(b) of the Internal Revenue Code maintained by an eligible employer described in section 457(e)(1)(A) of the Internal Revenue Code, to permit any vested member of any such plan to purchase portability credit in the Fairfax County Police Officers Retirement System.
  - (C) The purchase of portability credit in the Fairfax County Police Officers Retirement System pursuant to this section may only be made within 18 months of the date when an employee commences employment in a position covered by the Fairfax County Police Officers Retirement System, or within 18 months of the date of the enactment of this ordinance for County employees who are members of the Fairfax County Police Officers Retirement System on the date of this ordinance.
  - (D) In order to purchase portability credit in the Fairfax County Police Officers Retirement System, the member must have served as a sworn law enforcement officer and must be a vested member of the transferring plan. The transferring plan must be holding member contributions that are subject to transfer. A member desiring to purchase portability credit shall make written application for the purchase of such credit to the Fairfax County Police Officers Retirement System. The Fairfax County Police Officers Retirement System will determine from the transferring plan the amount of the member's assets that would be subject to transfer to the Fairfax County Police Officers Retirement System. Based upon the amount subject to transfer, the Board of Trustees of the Fairfax County Police Officers Retirement System; this amount will represent the maximum amount of portability credit that can be purchased. The Board of Trustees will communicate the amount of portability credit that can be purchased to the member in writing; however, in no event will the amount of portability credit that can be purchased exceed the duration of the member's employment in a position that was covered by the transferring plan. The member shall have 30 days from the date of the letter advising him or her of the amount of portable credit that can be purchased to determine whether to proceed with the purchase or to withdraw his or her application for the purchase of portability credit.
  - (E) In the event that the assets transferred are not sufficient to purchase portability credit in the Fairfax County Police Officers Retirement System equivalent to five years of service, the member will not become vested in the Fairfax County Police Officers Retirement System until his or her creditable service equals five years.
  - (F) The purchase of portability credit in the Virginia Retirement System or the retirement system of any political subdivision of the Commonwealth of Virginia that is covered by this section shall be accomplished upon the transfer of assets from the transferring plan to the Fairfax County Police Officers Retirement System. Upon the completion of such transfer, the member shall lose all rights to

any benefits and allowances from the transferring plan, and will only be entitled to receive benefits and allowances from the Fairfax County Police Officers Retirement System.

- (G) When a vested member of the Fairfax County Police Officers Retirement System leaves his or her covered employment and enters a position covered by the Virginia Retirement System or by a defined benefit retirement plan of a political subdivision of the Commonwealth of Virginia with which the Board of Supervisors has entered into a portability agreement, the former member of the Fairfax County Police Officers Retirement System may transfer an amount equal to the greater of (i) his or her accumulated member contributions, or (ii) an amount representing the present value of his or her accrued benefits with the Fairfax County Police Officers Retirement System. In order to accomplish the transfer of assets from the Fairfax County Police Officers Retirement System to the accepting plan, the member shall lose all rights to any benefits or allowances from the Fairfax County Police Officers Retirement System based upon the service giving rise to the assets transferred to the accepting plan by this System. Should such a person resume service in a position covered by this System in the future, he or she may purchase service credit for such prior service or purchase portability credit if eligible to do so, in accordance with the provisions of the Article at the time he or she again becomes a member of this System. (18-01-3; 8-03-3.)

#### Division 5. - Contributions.

#### Section 3-7-24. - Member contributions.

- (a) Contributions shall be made by each employee equal to eight and sixty-five one-hundredths percent (8.65%) of his creditable compensation per pay period.
- (b) There shall be deducted or picked up from the compensation of each member for each and every payroll period subsequent to the date of the establishment of the System to contribution payable by such member as provided in this Section.
- (c) Notwithstanding any other provisions of this Article, no deduction shall be made nor shall amounts be picked up from any member's compensation if the employer's contribution as required is in default.
- (d) The Board of Supervisors may, from time to time, revise the rates at which members are required to contribute.
- (e) Subsequent to December 22, 1984, Fairfax County shall pick up all employee contributions required herein, for all compensation earned on or after December 22, 1984. All amounts picked up by the County shall be treated as the employer's contribution in determining tax treatment under the United States Internal Revenue Code for federal tax purposes, pursuant to 26 USC, § 414(h)(2). For all other purposes, under this Chapter and otherwise, such pickup contributions shall be treated as contributions made by a member in the same manner and to the same extent as contributions made by a member prior to December 22, 1984. All picked up amounts shall be included in compensation for purpose of calculating benefits under Division 6. The County of Fairfax shall pay such picked up amounts from the same source of funds, which is used in paying earnings to the employee. (20-81-3; 5-85-3; 22-07-3; 46-08-3; 25-14-3.)

**Note**— The effective date of this Ordinance [25-14-3] is July 1, 2014. The change in the percentage member contribution is to be made starting with the first payroll period following the effective date of this Ordinance. The Ordinance is prospective and is not retroactive in application. The Board of Trustees of the System, the staff of Retirement Administration Agency, and the Director of Human Resources are hereby authorized and directed to take all necessary steps to implement the change in the percentage member contribution.

#### Section 3-7-25. - Employer contributions.

The aggregate present value of future employer contributions payable into the retirement allowance account shall be sufficient, when combined with the amount then held in the members' contribution account and the retirement allowance account together with the present value of future employee contributions, to provide the estimated prospective benefits payable. The annual employer contribution rate shall be fixed as equal to the employer normal cost plus an expense rate, as long as the System's funding ratio (actuarial value of assets divided by actuarial accrued liability) remains within a corridor, the lower measurement of which is 90% and the upper measurement of which is 120%. The employer normal cost and actuarial accrued liability are to be measured using the aggregate accrual modification of the entry age normal funding method.

To the extent that the System's funding ratio exceeds 120%, a credit shall be established equal to the amount of assets in excess of 120% of the actuarial accrued liability. To the extent that the System's funding ratio is lower than 90%, a charge shall be established equal to the difference between 90% of the actuarial accrued liability and the assets. The employer contribution shall be adjusted by a 15-year amortization of this credit or charge, to be paid until the funding ratio re-enters the corridor at which time it will cease; provided, however, the Board of Supervisors shall contribute to the fund an amount at least equal to the amount contributed by the members.

In the event of an ordinance change that affects benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change and there will be an additional component to the employer cost equal to a 15-year amortization of the increase in actuarial accrued liability. Any additional actuarial accrued liability which does not reduce the funding level below 120% shall be excluded from this component. (20-81-3; 16-02-3)

All contributions made to the System are made for the exclusive benefit of the members and their beneficiaries, and such contributions shall not be used for, nor diverted to, purposes other than for the exclusive benefit of the members. Notwithstanding the foregoing, to the extent that such refunds do not, in themselves, deprive the System of its qualified status, refunds of contributions shall be made to the employer under the following circumstances:

- (b) To the extent that a federal income tax deduction is disallowed in whole or in part for any employer contribution; and
- (c) If a contribution is made in whole or in part by reason of a mistake of fact, the employer contribution attributable to the mistake of fact shall be returned to the employer.

(20-81-3; 16-02-3; 52-13-3.)

Division 6. - Benefits and Conditions.

Section 3-7-26. - Service retirement.

(a) Normal Retirement.

- (1) Any member employed on active duty on or before June 30, 1981, who has attained twenty (20) years of creditable service or age fifty-five (55) shall be eligible for retirement on that date when written notification is provided to the Board by the member setting forth at that time when the retirement is to become effective.
- (2) Any member employed on active duty or following July 1, 1981, who has attained twenty-five (25) years of creditable service or age fifty-five (55) shall be eligible for retirement on that date when written notification is provided to the Board by the member setting forth at that time when the retirement is to become effective.

- (b) Early Retirement. Any member appointed subsequent to July 1, 1981, who has attained twenty (20) years of creditable service, shall be eligible for early retirement, when written notification is provided to the Board by the member setting forth at that time when the retirement is to become effective.
- (c) Ineligibility. Any member who applies for pension and benefits pursuant to Section 3-7-28, or who applies pursuant to Section 3-7-29, and who receives the pension and benefits prescribed by Section 3-7-28 as a result thereof, on or after the effective date of Subsection 3-7-28(d), shall not be eligible for retirement under this Section while receiving pension and benefits for disability. (20-81-3; 14-87-3; 36-88-3.)

Section 3-7-27. - Service retirement allowance.

- (a) Normal retirement. Any member who retires on or after July 1, 2000, pursuant to Section 3-7-26(a) shall receive an annual retirement allowance, payable monthly for life, consisting of two and eight-tenths percent (28/10%) of his or her average final compensation for each year of creditable service, as computed on the basis provided in Section 3-7-2; but in no event shall his or her total retirement allowance exceed eighty-four percent (84%) of his or her average final compensation. The annual retirement allowance of a member who retires or who has retired on or before June 30, 2000, or of a surviving spouse or surviving handicapped child of such a member receiving an allowance under an election made by the member under Section 3-7-39, shall be increased, effective July 1, 2000, by twelve (12%) percent.
- (b) Early retirement. Upon retirement, with twenty (20) years of creditable service, members appointed subsequent to July 1, 1981, shall receive the annual retirement allowance computed on the basis provided in Subsection (a) of this Section reduced on actuarial equivalent basis for the period that the actual retirement date precedes the normal retirement date as projected on Table 1. (20-81-3; 6-00-3, § 1.)

TABLE 1

FAIRFAX COUNTY POLICE RETIREMENT PLAN

Actuarial Reduction Factors That Would Apply to Participants With a Normal Retirement Age Requirement of 25 years of Service (or, Attainment of Age 55, if Earlier) if They Are Permitted To Retire Early With a Reduced Pension After 20 Years of Service

(ASSUMES 4% COST-OF-LIVING ADJUSTMENTS ARE EFFECTIVE AT RETIREMENT)						
Age at Retirement	Years of Service					
	20	21	22	23	24	25
38	74.50	79.17	84.06	89.18	94.48	100.00
39	74.18	78.89	83.83	89.01	94.39	100.00
40	73.84	78.61	83.60	88.84	94.30	100.00
41	73.49	78.32	83.37	88.67	94.21	100.00

42	73.11	78.01	83.13	88.50	94.12	100.00
43	72.72	77.68	82.88	88.33	94.03	100.00
44	72.32	77.34	82.61	88.14	93.93	100.00
45	71.89	76.98	82.34	87.95	93.83	100.00
46	71.44	76.61	82.04	87.75	93.73	100.00
47	70.97	76.22	81.74	87.53	93.62	100.00
48	70.48	75.81	81.41	87.31	93.50	100.00
49	69.96	75.38	81.08	87.07	93.38	100.00
50	69.42	74.92	80.72	86.83	93.25	100.00
51	74.45	74.45	80.35	86.57	93.11	100.00
52	79.95	79.95	79.95	86.29	92.97	100.00
53	86.00	86.00	86.00	86.00	92.82	100.00
54	92.66	92.66	92.66	92.66	92.66	100.00
55	100.00	100.00	100.00	100.00	100.00	100.00

(36-83-3; 28-89-3; 34-94-3.)

Section 3-7-28. - Service-connected disability.

- (a) Any member who in the discharge of his official duties has become totally disabled as a result of an accident or personal injury on or before June 30, 1981, shall receive an annual retirement allowance, payable monthly, equaling sixty-six and two-thirds percent (662/3%) of the salary that would have been received had no injury occurred and the performance of duty had continued. Such pension and benefits shall continue during the existence of such total disability, or until such time as eligibility is reached for retirement pursuant to Section 3-7-26(a).
- (b) Any member who in the discharge of his official duties has become totally disabled as a result of an accident or personal injury on or subsequent to July 1, 1981, shall receive an annual retirement allowance, payable monthly, equaling sixty-six and two-thirds percent (662/3) of the salary the member

received on the date of accident or personal injury subject to the provisions of Section 3-7-37. Such allowance shall continue during the existence of such total disability, or until such time as eligibility is reached for retirement pursuant to Section 3-7-26(b)(2).

- (c) The amount of compensation awarded under the Virginia Workers' Compensation Act ("the Act") to such members for temporary total or partial incapacity, including any awards of cost-of-living increases under the Act, shall be deducted from such retirement allowance. Whenever the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation, such payments shall no longer be used to reduce the monthly retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without reduction for such payments.
- (d) Any member who applies for a service-connected disability retirement and an allowance pursuant to Subsection (a) or (b) of this Section, or who applies pursuant to Section 3-7-29, and who receives the allowance prescribed by this Section as a result thereof, on or after the effective date of this Subsection [July 1, 1988], shall receive the allowance so provided during the existence of such disability, until the total membership service credit period equals twenty-five (25) years, whereafter said allowance shall be reduced to sixty percent (60%) of the salary that would have been received had no injury occurred and the performance of duty continued.
- (e) With respect to all retirements after the effective date of this Subsection [January 11, 1993] pursuant to this Section or as a result of an application pursuant to Section 3-7-29 as a result of which the member receives the allowance provided by this Section, if a member receives some or all of his compensation for temporary total or partial incapacity under the Act in the form of a lump sum payment, he shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he would have received equal the amount of his lump sum benefit under the Act; provided, however, neither a lump sum payment or any portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act nor a lump sum payment or a portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under this Section shall be offset against the member's allowance under this Section; and provided further that in the event that the member receives a lump sum settlement of benefits that he is or may be entitled to in the future under the Act, and said settlement does not specify how much of the sum represents settlement of his entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such sum which in its judgment represents compensation for such benefits. (20-81-3; 8-82-3; 4-83-3; 36-88-3; 13-92-3; 1-93-3.)

Section 3-7-29. - Partial service-connected disability.

- (a) For purposes of this Article, "total disability" shall be defined as the inability of the member to reasonably perform his or her duties as a police officer. "Partial disability" shall be defined as the inability of the member to perform some part of the duties of a police officer, such as in administrative or desk assignments.
- (b) Members granted pension and benefits for partial disability shall be subject to recall to active service by the Board when police officer positions are available in the Police Department that they are capable of performing, as determined by the Chief of Police. If so recalled, all pension and benefits for partial disability shall terminate from and after the date of such recall.
- (c) Any member becoming partially disabled in the manner provided in this Section, who shall remain in the Police Department in a police officer position which he or she is capable of performing, shall not receive pension and benefits until such service credit is acquired as would otherwise be required for service retirement.
- (d) If the Chief of Police determines that there is no suitable police officer position available for a partially disabled member, such member shall then be treated as totally disabled under the provisions of this Article from and after the date of his or her separation from employment with the Police Department.

- (e) The surviving spouses and dependants of all members who have been retired before and of those who are retired on or after July 7, 2003, on account of service-connected partial disability shall be entitled to benefits under Section 3-7-41. (20-81-3; 33-03-3).

Section 3-7-30. - Processing disabilities.

- (a) Upon receiving a member's or the employer's written request for disability benefits, the Board shall require such member to submit, from a physician of the member's choice, a written report of findings and recommendations. The Board shall then select a physician of its choice and require the member to submit to a medical examination. In the event there is not clear preponderance of medical evidence from the above two (2) physicians, a third physician will be selected by the original two (2) physicians, who will also examine the member and submit a written report of findings and recommendations.
- (b) A waiver of examinations, as required by this Section, may be made by either the Board or member for justifiable causes; but in no event shall any member be granted disability benefits without submitting to at least one (1) medical examination.
- (c) Failure of any member to submit to medical examination as required by this Section may result in the denial, loss or reduction of the member's disability benefits.
- (d) Any member submitting a written request for disability benefits on or after the effective date [of Ord. No. 24-85-3] shall, prior to or simultaneously with submitting such request, apply for all Workers' Compensation benefits to which he may be entitled. The member shall also be required to submit to the Board copies of the dispositions as made of his Workers' Compensation claims and any subsequent awards or other documents reflecting any modification or termination of such benefits. With respect to the determination of a member's eligibility for disability benefits, the Board shall give great weight to the decisions of the Industrial Commission, the Court of Appeals, and the Supreme Court of Virginia on the compensability of his disability under the Worker's Compensation Act, and the Board may modify its prior determination of his eligibility under this Section in light of any such decision within ninety (90) days after the date such decision becomes final. (20-81-3; 24-85-3; 13-92-3.)

Section 3-7-31. - Non-service-connected disability.

- (a) Any member who becomes totally disabled, but not as a result of activities in the performance of official duties, may receive a non-service-connected disability benefit equal to the same benefit pursuant to Section 3-7-27, provided the service credit requirements exist thereof.
- (b) Members who do not have the service credit required in Section 3-7-26 shall receive a disability benefit in an amount equivalent to the greater of (1) ten percent (10%) of his average final compensation, or (2) of an amount determined under Section 3-7-27(a).
- (c) Members granted benefits under this Section shall not receive service credit while on non-service-connected disability, nor shall their surviving spouses or dependents be eligible for benefits under this Article. (20-81-3.)

Section 3-7-32. - Rehabilitation of disabled members.

- (a) The Board may determine, upon receiving supporting medical data from any two physicians, as referred to in Section 3-7-30, that a disabled member has sufficiently recovered to perform a part or all the duties of a police officer, or to engage in other gainful employment in which he might reasonably be expected to be engaged, in light of education, training, or experience. To the extent that such member has sufficiently recovered but is unable to be certified to full-time active duty as a police officer, the Board may determine the degree of partial disability then still existing and reduce the disability benefits accordingly. The determination of partial disability shall be based upon the medical record and the ability of the member to seek gainful employment in light of education, training, experience, retraining, and rehabilitation.
- (b) The Board is authorized to enter into contracts or agreements for the rehabilitation of disabled members and to pay reasonable costs thereof. (20-81-3; 33-03-3).

Section 3-7-33. - Medical reevaluation of disabled members; penalty for unjustified refusal of medical attention, vocational rehabilitation and/or selective employment under the Virginia Workers' Compensation Act, or to submit to medical reevaluation.

(a) Medical reevaluations.

- (1) Once each year during the first five (5) years following disability, and once every three-year period thereafter, the Board shall require such members to undergo medical examinations by the same physicians as specified in Section 3-7-30, if available. Should any such physician be unavailable, a successor shall be designated, as previously determined in Section 3-7-30.
- (2) Each physician shall independently examine such member and submit a written report of findings and recommendations to the Board. In the event that such member fails to submit to these medical examinations, benefits shall be discontinued until the member submits to the examinations; and should the refusal continue for one (1) year, all rights to disability benefits under this Article shall terminate.
- (3) In lieu of the examinations specified in Subsections (a)(1) and (a)(2) of this Section, the Board, in its discretion, may accept the reports of physicians who are treating or examining the member for purposes of the Virginia Workers' Compensation Act.

- (b) Members who are receiving service-connected disability retirement allowances pursuant to Section 3-7-28, and who are receiving periodic payments pursuant to Virginia Workers' Compensation Act which payments are required to be offset against such allowances pursuant to Section 3-7-28 shall cooperate with and accept medical services, vocational rehabilitation, and/or selective employment provided pursuant to the Virginia Workers' Compensation Act. In the event that such a member's periodic payments are suspended by the Virginia Workers' Compensation Commission then the allowance pursuant to Section 3-7-28 shall be computed as if the member had received the suspended payments unless the Board, in its discretion determines not to accept the decision of the Commission. Should such member's refusal to accept medical services, vocational rehabilitation and/or selective employment continue for 365 days whether or not consecutive, all his rights to any future disability allowance shall cease. The Board shall make appropriate adjustments to the member's allowance if the suspension by the Workers' Compensation Commission is subsequently reversed or modified. Employers shall promptly notify the Board of any suspensions or releases from suspensions affecting members subject to this Subsection. For purposes of this Section, an order of the Workers' Compensation Commission suspending compensation for refusal creates a rebuttable presumption that the member unjustifiably refused medical services, vocational rehabilitation, and/or selective employment. (20-81-3; 41-93-3; 29-97-3.)

Section 3-7-34. - Reduction of disability allowance.

- (a) Whenever the Board concludes that any member receiving a service-connected disability retirement allowance pursuant to Section 3-7-28 or 3-7-29 is, prior to his normal retirement date, engaged in a gainful occupation or work paying more than the difference between his service-connected disability allowance and his average salary, the Board shall reduce such retirement allowance to an amount which, together with the amount earned by the member, equals the amount of his average salary.
- (b) Members receiving an allowance pursuant to Section 3-7-28 or 3-7-29 shall submit by May 30th of each year a copy of that portion of their federal income tax returns showing the amount of their earned income and copies of W-2 forms (wage statements) provided by their employers to the Board for the previous calendar year. Failure to submit such documentation on request shall result in the loss of the allowance until the documentation is provided; and should a member's refusal continue for one (1) year, all his rights to any further disability retirement shall cease.
- (c) The Board shall adopt written regulations governing the administration of this Section, providing for, among other things, the notification to the members deemed appropriate, and allowing for late submission of required documentation for good cause shown. (20-81-3; 36-88-3.)

Section 3-7-35. - Presumption; hypertension or heart disease.

Any condition or impairment of health of any such member caused by hypertension or heart disease resulting in total disability shall be presumed to have been suffered in the discharge of his official duties unless the contrary be shown by competent evidence; provided that prior to making any claim based upon such presumption for pension and benefits under the provisions of this Section on account of such total or partial disability, such member shall have been found free from cardiovascular disease by a physical examination which shall include such appropriate laboratory and other diagnostic studies as the Board may prescribe, and which shall have been conducted by physicians whose qualifications shall have been prescribed by the Board; and provided further than any such member claiming that his disability was suffered in the discharge of his official duties shall, if requested by the Board, submit to physical examination by any physician designated by the Board, which examination may include such tests or studies as may reasonably be prescribed by the physician so designated. Such member shall have the right to have present at such examination, at his own expense, any qualified physician he may be designate. (20-81-3.)

Section 3-7-36. - Disability as a result of negligence.

Should an accident or personal injury causing total disability be the result of the member's own gross and willful negligence, wanton neglect of duties and responsibilities, drunkenness, or illicit use of narcotics, such disability shall be deemed to be non-service-connected disability and the benefits shall be fixed pursuant to provisions of Section 3-7-31. (20-81-3.)

Section 3-7-37. - Cost-of-living adjustment.

Monthly retirement allowances shall be adjusted effective July 1, 1981, and each July 1 thereafter in order to reflect changes in the cost of living since the date of benefit commencement; provided, however, that allowances for service-connected disability retirement shall be subject to the provisions of Subsection (d). The monthly allowance to be effective July 1 of any such year shall be the allowance in effect immediately prior to such adjustment increased for the basic cost-of-living increase provided for in Subsection (a) of this Section, with such increase reduced as provided in Subsection (c) of this Section in the event the monthly retirement allowance has been in pay status for less than 12 months.

- (a) The basic cost-of-living increase shall be the lesser of four percent (4%) and the percentage corresponding to the percentage increase in the Consumer Price Index during the twelve-month calendar period ending with the March immediately preceding the July in which the increase is effective. For the purpose of this Section, "Consumer Price Index" shall mean the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor for the appropriate Standard Metropolitan Statistical Area (SMSA) that includes Fairfax County, Virginia.
- (b) As part of each biennial actuarial valuation, the actuary shall determine the percentage Supplemental cost-of-living increase (not greater than one percent (1%) that can be provided on the following two (2) July first's based upon the available actuarial surplus. The Trustees may, but shall not be required to, increase all retirement allowances in pay status on each of such July first's by such actuarially determined percentage. For the purpose of this Section, "available actuarial surplus" shall mean the excess of the actuarial value of the assets of the System over the actuarial accrued liabilities of the System as disclosed in the biennial actuarial valuation.
- (c) In the event a retired member has not been receiving his allowance for 12 full months, the basic cost-of-living increase and the supplemental cost-of-living increase shall be determined as the percentage of the full increase determined in (a) and (b) above as follows:

Number of Complete Months Benefiti Has Been in Pay Status	Percentage of Full Increase
--	--------------------------------

Less than 3 .....0%

3, 4 or 5 .....25%

6, 7 or 8 .....50%

9, 10 or 11 .....75%

- (d) Cost-of-living adjustments provided by this Section shall be applied to the net amount of the member's service-connected disability retirement allowance after all reductions required by Section 3-7-28 have been made. The member's allowance after the adjustments for cost of living provided by this Section at any date in time shall be determined by retroactive computation from the date of initial retirement, and the application of all applicable cost-of-living adjustments to the net allowance which the member is entitled to under Section 3-7-28. (20-81-3; 1-93-3; 26-10-3.)

Section 3-7-38. - Refund of contributions upon withdrawal or death; and deferred vesting benefits.

- (a) In the event of the death of any member, active or retired, the difference between the total contributions made hereunder by such member, including picked up amounts, and any benefit payments received by him, his surviving spouse or dependents, shall be payable to his estate or designated beneficiary, provided, however, that such payment shall be made only after the cessation of benefits under Section 3-7-41 or Section 3-7-43. Any member who shall have been separated from the services and whose employment shall have been terminated otherwise than by death or retirement shall, on application made within two (2) years from the date of such separation, be refunded all of his accumulated contributions, including picked up amounts; provided, however, that if such member has received payments or benefits under this System, the amount of such payments or benefits shall be deducted from the amount to be refunded; provided further that should any retired member be receiving benefits hereunder at the time of his death then, and in that event, his dependents, or beneficiaries if any, who are not eligible to receive benefits under this Article shall receive the difference between the total contributions made hereunder by such member, including picked up amounts, and any payments received, and at the same rate which such retired member was receiving benefits.
- (b) If a member has five (5) or more years of creditable service on his date of separation from the County, the member may leave his accumulated contributions, including picked up amounts, in the fund and receive a deferred annuity payable beginning the date the member attains age fifty-five (55), or in an actuarially reduced amount payable at the optional early retirement age, in accordance with applicable provisions of this Article. (20-81-3; 5-85-3; 28-89-3; 10-01-3.)

Section 3-7-39. - Joint and contingent spouse and handicapped child options.

Any member who qualifies for normal or early service retirement under the provisions of Section 3-7-26, and with the exception of any member converting from disability pension and benefit to normal service retirement at twenty-five (25) years of creditable service, may elect at the time of retirement to have his retirement compensation continue to be paid to either (1) his spouse in the event such spouse survives the member, or (2) his surviving handicapped child, if at the time of election the member has no spouse; in either event, the retirement allowance provided for in Section 3-7-27 shall be recomputed for a joint and survivor annuity in accordance with Table 3. Such reduced amount shall be paid the member during his lifetime, with the indicated percentage of the reduced amount paid to his surviving spouse for such spouse's lifetime, or to his surviving handicapped child for such child's lifetime, as the case may be. Such election shall become irrevocable upon commencement of such payments except in the case that such spouse or surviving handicapped child, as the case may be, predeceases the member or if the handicapped child is determined by the Board to no longer be permanently mentally incompetent or permanently physically handicapped, then such member's retirement allowance shall be increased to that amount to which the member would have been entitled had no election been made.

TABLE 3  
FAIRFAX COUNTY POLICE RETIREMENT PLAN

Actuarial Adjustment Factors That Would Apply to Participants With a Normal or Early Retirement Benefit Determined Under Section 3-7-27 Who Elect a Joint and Contingent Spouse and Handicapped Child Option

Percent of Benefit Continued to Spouse Upon Participant's Death	Factor for Equal Ages <sup>1</sup>	Increase/Decrease For Each Full Year Beneficiary Is Older (Younger) Than Employee	Maximum Factor
100%	89.2%	0.6%	96%
66 2/3%	92.1%	0.4%	98%
50%	93.1%	0.3%	99%

1. Factor applied to adjust participant's benefit, as determined under Section 3-7-27, for joint and contingent spouse and handicapped child option for a participant and spouse of equal age. (20-81-3; 27-90-3, § 5; 13-92-3.)

Section 3-7-40. - Cessation of normal or early retirement allowance.

- (a) The provisions of Subsection (b) apply to persons who are receiving a normal or early retirement allowance from this System, the Uniformed Retirement System, or the Employees' Retirement System and who submitted their application for such allowance to the Board of such System on or before July 21, 1986. The provisions of Subsection (c) apply to persons who are receiving a normal or early retirement allowance from this System, the Uniformed Retirement System, or the Employees' Retirement System and who submitted their application for such allowance to the Board of such System after July 21, 1986.
- (b) Should a person receiving a normal or early retirement allowance from this System, the Employees' Retirement System, or the Uniformed Retirement System ("retiree") return to regular service in a permanent position in any office or employment paid directly or indirectly by Fairfax County, he shall elect to receive such retirement allowance under the provisions of either Subsection (b)(1) or (b)(2) of this Section.
  - (1) Such allowance shall not commence or, if already commenced, shall cease while the retiree is so employed. His allowance shall commence or resume upon application or reapplication by the retiree after he has ceased permanent employment in such a position. The allowance of a retiree of this System who is appointed to a position covered by the Employees' or Uniformed Retirement System shall commence or resume at that cost-of-living adjustment amount pursuant to Section 3-7-27 which would have been payable had the retiree continued to receive his allowance without interruption. A retiree of this System who elects in writing at the time of reappointment to a position covered by this Article not to become a contributing member again during his period of reemployment shall be exempted from the requirement to make contributions to this System. A retiree of this System who elects in writing at the time of reappointment to a position covered by this Article to become a contributing member again during his period of reemployment shall be eligible:

- (A) For a recomputation of his allowance to take into account creditable compensation and creditable service attributable to the period of reemployment during which his allowance was suspended under this Section.
- (B) To make new election for any optional benefit to which he is entitled; and
- (C) For a retirement allowance for a service-connected disability arising out of and in the course of his reemployment (in lieu of his service retirement allowance).

A retiree of the Employees' or Uniformed Retirement System who is appointed to a position covered by this Article and elects in writing within thirty (30) days of such appointment may be excluded from membership in this System.

- (2) The Retiree may elect to continue to receive his service retirement allowance. A retiree electing this option shall not be eligible for membership in the Employees' or Uniformed retirement system if either covers the position in which he is reemployed. If he is a retiree of this System and the position in which he is reemployed is covered by this System, he shall not be required to contribute to this System during his period of reemployment.
- (c) A person receiving a normal or early retirement allowance from this System, the Uniformed Retirement System, or the Employees' Retirement System ("retiree"), may return to employment for which compensation is paid directly or indirectly by Fairfax County subject to the following conditions:
- (1) A retiree shall not receive in combined compensation and retirement allowance, computed monthly, any more than 115% of the then current maximum monthly salary for a Deputy County Executive in the County's Compensation Plan. The appropriate Board is authorized and directed to reduce the retiree's allowance as necessary to keep the combined salary and allowance at this limit. For purposes of this Subsection, a retiree's allowance shall be deemed to be the allowance that he would receive if he had not elected a joint or last survivor option which results in an actuarially reduced allowance. Employers under all three (3) systems shall report salaries paid to retirees to the retiree's Board.
  - (2) A retiree who is employed in a position service in which would otherwise make him eligible for membership in this System, the Uniformed Retirement System, or the Employees' Retirement System shall not be eligible for membership in that system.
- (d) Notwithstanding any other provision of this or any other Article of this Chapter, a retiree may be employed in a position under his former appointing authority subject to the following terms and conditions.
- (1) If the retiree is a member of this System and service in the position to which he is to be appointed ordinarily would result in membership in this System, his normal or early retirement allowance shall be suspended for the duration of his new employment. During his new employment, he shall make member contributions to this System. At the time of his new employment, he shall be entitled to make all elections available to new members of this System, and if otherwise eligible, during his employment, he may apply for ordinary or service-connected disability retirement. In such case, his combined years of service and his average final compensation based on his new employment shall be used in calculating the disability retirement allowance. On re-application for service retirement from his new employment, the retiree shall receive as his service retirement allowance the higher of (i) his initial service retirement allowance increased by any cost-of-living increases that were granted by the Board to service retirements during the period of his new employment or (ii) a service retirement allowance calculated on the basis of his combined years of creditable service in his initial and new employment and his average final compensation calculated on the basis of the creditable compensation that he received during both his initial and new employment as if there had been no break in service.
  - (2) A retiree who is a member of this System and who is to be re-appointed to a position service in which would result in membership in either the Employees' or Uniformed Retirement Systems but for his membership in this System, shall be subject to the provisions of Subsection (b) or (c), whichever is applicable.

- (3) If the retiree is a member of either the Employees' or Uniformed Retirement Systems and service in the position to which he is to be appointed would result in membership in this System but for his membership in the other system, the retiree shall be subject to the provisions of Subsection (b) or (c), whichever is applicable.
- (4) The provisions of this Subsection (d) shall apply to all persons appointed to positions on or after March 1, 1990, service in which would ordinarily make them members of the Employees', Uniformed, or Police Retirement Systems. (20-81-3; 35-81-3; 27-90-3, § 5; 10-01-3; 11-05-3.)

Section 3-7-41. - Benefits to surviving spouse and children of members deceased before or during ordinary service retirement.

- (a) The surviving spouse of a member who dies before retirement or while receiving a service pension shall be entitled to receive relief from the System in an amount equal to \$1,000.00 per month. Any surviving children of such member under 18 years of age shall be entitled to receive relief in an amount equal to \$400.00 per month; and any child under the age of 23 years who is a full-time student in an accredited college or secondary school shall also receive such relief; and any handicapped child shall receive such relief during the child's lifetime. Upon death of the surviving spouse, a surviving handicapped child, if any, shall be entitled to receive continued relief from the System as if that child were a surviving spouse, in addition to any other relief he is entitled to as a surviving child. Relief granted any child, not handicapped, shall cease upon said child's marriage or said child's becoming self-supporting, whichever shall occur first. Relief granted to a handicapped child shall cease if said child becomes self-supporting or if said child is determined by the Board no longer to be permanently mentally incompetent or permanently physically handicapped based on evidence available to the Board in accordance with Section 3-7-41(b). No combination of the relief previously granted shall be paid to the spouse or handicapped child, as the case may be, and children of any one member in an amount exceeding \$2,000.00 per month. Benefit amounts as listed above shall be adjusted on July 1 of each year after enactment by the lesser of four percent and the percentage corresponding to the percentage increase in the Consumer Price Index during the 12-month calendar period ending with the March immediately preceding the July in which the increase is effective. For the purpose of this Section, "Consumer Price Index" shall mean the Washington, DC-MD-VA index of the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor. Benefits conferred upon a surviving spouse pursuant to this Section shall extend to the surviving spouses of service retirees who died prior to the enactment of this Article.
- (b) Once each year during the first five years following the Board's commencement of payments to the handicapped child, and once every three-year period thereafter, the Board shall require such handicapped child to undergo medical examinations by the same physicians as specified in the selection process set forth in Section 3-7-30, if available. Should any such physician be unavailable, a successor shall be designated, as previously determined in Section 3-7-30.

Each physician shall independently examine such handicapped child and submit a written report of findings and recommendations to the Board. In the event that such handicapped child fails to submit to these medical examinations, benefits shall be discontinued until the handicapped child submits to the examinations; and should the failure continue for one year, all rights to benefits under this Article shall terminate. The Board is authorized to determine that the handicapped child no longer qualifies as such, based on such written report and other evidence acceptable to the Board in its sole discretion.

- (c) Handicapped children receiving an allowance pursuant to Section 3-7-39 shall submit by May 30th of each year a copy of that portion of their Federal income tax returns showing the amount of their earned income and copies of W-2 forms (wage statements) provided by their employers to the Board for the previous calendar year. Failure to submit such documentation on request shall result in the loss of allowance until the documentation is provided; and should a handicapped child's failure continue for one year, all rights to benefits shall cease.
- (d) Effective on and after January 1, 2007, if a member dies while performing "qualified military service" as defined in Section 414(u) of the Internal Revenue Code, any benefits under this Section 3-7-41(a) that would have been provided under the System if the member had resumed employment on the day

prior to his death and then terminated employment due to death shall be paid to such member's designated beneficiary or, if applicable, estate. (20-81-3; 8-82-3; 28-89-3; 13-92-3; 29-09-3; 01-11-3.)

Section 3-7-42. - Benefits to surviving spouses and children of members receiving service-connected disability.

The entitlements and conditions of surviving spouses and children of members receiving service-connected disability compensation shall be as provided in Section 3-7-41. (20-81-3.)

Section 3-7-43. - Benefits to surviving spouses and children of members killed while in performance of official duties.

The surviving spouse or, if no surviving spouse, the surviving handicapped child, of any member killed while in the performance of official duties may elect to receive relief from the System in the amount of 662/3 percent of the member's current salary in lieu of any benefits provided in Section 3-7-41. The surviving spouse shall make such election in writing filed with the Board within 90 days of receiving notice in writing from the Board of his or her right to make such election, or within 180 days of the death of the member, whichever first occurs. In the event that the surviving spouse does not make a timely election, benefits will be paid as provided under Section 3-7-41. Such election, if approved by the Board, shall become irrevocable upon commencement of payments and shall cease if such handicapped child shall become self-supporting, as determined by the Board based on standards established by the Board, or if said child is determined by the Board no longer to be permanently mentally incompetent or permanently physically handicapped based on evidence available to the Board in accordance with Section 3-7-41(b), as the case may be. Upon death of the surviving spouse, a surviving handicapped child, if any, shall be entitled to receive continued relief from the System as if that child were a surviving spouse. (20-81-3; 13-92-3; 29-09-3.)

Section 3-7-44. - Medical insurance benefits.

Repealed by 35-94-3.

Section 3-7-45. - Review of adverse decisions.

Any member adversely affected by a decision of the Board shall receive written notice of said decision and may, within thirty (30) days of receipt of such notice, request in writing a review by the Board of said decision, pursuant to procedures established by the Board. (20-81-3.)

Section 3-7-46. - Transfer to Senior Executive Retirement Plan.

Repealed by 26-97-3.

Section 3-7-47. - Masculine usage includes the feminine.

The masculine whenever used herein shall include the feminine. (20-81-3.)

Section 3-7-48. - Limitation on annual retirement allowance.

Notwithstanding any other provision of this Article, the annual retirement allowance to which any member may be entitled shall not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code and the Treasury Regulations issued thereunder, and in calculating such limits a member's compensation shall include any differential wage payments for military service as defined under Section 3401(h)(2) of the Internal Revenue Code and paid on or after January 1, 2009. Such limits shall be applied annually for the 12-month period commencing each July 1 and ending the following June 30. A benefit payable other than in the form of an annuity shall not exceed the amount which, when converted to an actuarial equivalent annual benefit, does not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code. Effective June 30, 2000, the mortality tables prescribed by the Uruguay Round Agreement Acts (GATT), as set forth in Internal Revenue Service Rev. Rul. 2001-62 (superseding and

modifying Rev. Rul. 95-29), or as further updated or modified by the Internal Revenue Service, shall be used in determining the actuarial equivalent amount of such benefit. (27-90-3, § 6; 21-96-3; 8-03-3; 01-11-3.)

Section 3-7-49. - Distribution of benefits.

Notwithstanding any other provision of this Article, effective for plan years beginning after December 31, 1986, the entire interest of each member shall be distributed to such member not later than the required beginning date specified below, or will be distributed, beginning not later than the required beginning date, over the life of such member or over the lives of such member and a beneficiary or over a period not extending beyond the life expectancy of such member or the life expectancy of such member and a beneficiary. For this purpose, the term "required beginning date" means April 1 of the calendar year following the later of the calendar year in which the member attains age 70½, or the calendar year in which the member retires. If a member dies after distribution of the member's interest has begun, the remaining portion, if any, of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of death. If a member dies before the distribution of the member's interest has begun, any death benefit shall be distributed within five years after the death of such member, unless (1) any portion of the member's interest is payable to (or for the benefit of) a designated beneficiary, (2) such portion will be distributed over the life of such beneficiary or over a period not extending beyond the life expectancy of such beneficiary, and (3) if the beneficiary is someone other than the member's surviving spouse, such distributions will begin not later than one year after the date of the member's death or such later date as the Secretary of the Treasury may by regulations prescribe. If the beneficiary is the surviving spouse of the member, (1) distribution shall begin on or before the latest of one year after the date of the member's death, such later date as the Secretary of the Treasury may by regulations prescribe, or the date on which the member would have attained age 70½ and (2) if the surviving spouse dies before the distributions to such spouse begin, the distribution rules specified in this paragraph shall be applied as if the surviving spouse were the member. Distributions from the system will be made in accordance with the requirements of Section 401(a)(9) Internal Revenue Code, including the rules for incidental death distributions set forth at Section 401(a)(9)(G).

(27-90-3, § 6; 52-13-3.)

Section 3-7-50. - Direct rollovers to other plans.

- (a) General. This Section 3-7-50 applies to distributions made on or after January, 1, 1993. Notwithstanding any provision of the System to the contrary that would otherwise limit a distributee's election under this Section 3-7-50, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, to the extent that any portion of the amount of the rollover is comprised of after-tax contributions, the distribution may only be rolled over to an eligible retirement plan that separately accounts for after-tax contributions.
- (b) Definition.
  - (1) Eligible rollover distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income.
  - (2) Eligible retirement plan. An eligible retirement plan is any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Section 408(a) of the Internal Revenue Code; an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; an annuity plan described in Section 403(a) of the Internal

Revenue Code; a defined contribution plan described in Section 401(k) of the Internal Revenue Code; an annuity contract described in Section 403(b) of the Internal Revenue Code; an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; a qualified trust described in Section 401(a) of the Internal Revenue Code; or effective for distributions made after December 31, 2007, a Roth IRA described in Section 408A of the Internal Revenue Code, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Section 408A(e) of the Internal Revenue Code. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

- (3) Distributee. A distributee includes a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is entitled to receive benefits from the System, are distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2010, a distributee includes a non-spouse beneficiary of a deceased member or former member who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an "inherited" individual retirement account.
- (4) Direct rollover. A direct rollover is a payment by the System to the eligible retirement plan specified by the distributee. (45-93-3; 21-96-3; 8-03-3; 01-11-3)

#### Section 3-7-51. - Additional retirement allowance.

- (a) For purposes of this section only, the following words and phrases shall have the following meanings:
  - (1) Active member shall mean a member of this System who is an employee on July 1, 1995, or who became an employee thereafter, and whose membership in this System has not ceased at any time from July 1, 1995, forward or from when he or she became an employee (whichever is later), until the effective date of his or her subsequent retirement.
  - (2) Retired member shall mean a member of this System who is receiving a retirement allowance on July 1, 1995. The term "member of this System who is receiving a retirement allowance" includes those members whose effective date of retirement is on or before July 1, 1995.
  - (3) Retirement allowance shall mean a normal retirement allowance, an early service retirement allowance, a nonservice-connected disability retirement allowance, a deferred annuity under the provisions of Section 3-7-38(b), or a surviving spouse and children's benefit under the provisions of Section 3-7-41, 3-7-42 or 3-7-43.
  - (4) Base annual retirement allowance means the initial calculation of a member's, spouse's or children's annual retirement allowance without regard for any deductions for withholding or other benefit elections or adjustments under Section 3-7-7. For a member retired pursuant to Section 3-7-26(a) (normal service), this is the allowance calculated under Section 3-7-27(a); for a member retired pursuant to Section 3-7-26(b) (early service), the allowance calculated under Section 3-7-27(b); for a member retired on account of non-service-connected disability under Section 3-7-31, the allowance calculated under Section 3-7-31; for a member receiving a deferred annuity, the allowance calculated under the provisions of Section 3-7-38(b); and for a surviving spouse and children receiving a spouse and children's benefit, the allowance calculated under the provisions of Section 3-7-41, 3-7-42 or 3-7-43.
  - (5) Adjusted base annual retirement allowance shall mean the base annual retirement allowance of a retired member or of the spouse and children of a member receiving the base surviving spouse and children annual retirement allowance provided under Section 3-7-41, 3-7-42 or 3-7-43 as increased by any cost-of-living adjustments applied to the member's retirement from the effective date of his or her retirement or election of the spouse and children retirement allowance through July 1, 1995.
  - (6) A member is "in service" for purposes of this Section when he or she is a member of this System.

- (b) The adjusted base annual retirement allowance of each retired member or spouse and children receiving a retirement allowance on July 1, 1995, shall be increased by three percent (3%), effective July 1, 1995 (modified adjusted base annual retirement allowance). Adjustments to the retired member's or spouse and children's retirement allowance made under the provisions of this Article after July 1, 1995, shall be computed on the basis of the modified adjusted base retirement allowance.
- (c) When an active member retires or an eligible spouse and children elect to receive the spouse and children's retirement allowance under the provisions of Section 3-7-41, 3-7-42 and 3-7-43 after July 1, 1995, after his or her base annual retirement allowance has been computed under the provisions of the applicable section of this Article, the resulting base annual retirement allowance shall be increased by three percent (3%) (initial base annual retirement allowance). Future adjustments to the member's or spouse and children's retirement allowance under the provisions of this Article shall be computed on the basis of the initial base annual retirement allowance.
- (d) A member who separated from service other than by death or retirement with five (5) or more years of creditable service in this System prior to July 1, 1995, and who has not withdrawn his or her accumulated contributions as of July 1, 1995, and who subsequently applies for and is determined to be eligible for a deferred annuity after July 1, 1995, shall have his or her deferred annuity computed mutatis mutandi in the same manner as an active member under Subsection (c). Similarly, a member in service on July 1, 1995, who subsequently separates from service other than by death or retirement with five (5) or more years of creditable service in this System who does not withdraw his or her accumulated contributions and who subsequently applies for and is determined to be eligible for a deferred annuity shall have his or her deferred annuity determined under the provisions of Subsection (c). A member who is in service on July 1, 1995, who subsequently separates from service and withdraws his or her accumulated members' contributions, and who thereafter returns to service and again becomes a member of this System and thereafter retires shall have his or her retirement allowance calculated under the provisions of Subsection (c) as if he or she were an active member as defined in this section if and only if at the time he or she subsequently returns to service, he or she has made arrangements to purchase credit for all of his or her previous service in this System under the provisions of this Article.
- (e) Notwithstanding the eighty-four percent (84%) of average final compensation limit contained in Section 3-7-27(a), the initial base annual retirement allowance of an active member who is entitled to the increase provided by Subsection (c) shall not exceed eighty-six and fifty-two hundredths percent (86.52%) of his or her average final compensation.
- (f) Notwithstanding any provision of this Section, retirement allowances which are subject to adjustment under the provisions of this Section are and remain subject to the limitations provided by Section 3-7-48 concerning the limitations imposed by Section 415 of the Internal Revenue Code and the Treasury Regulations issued thereunder. (12-95-3; 6-00-3, § 2.)

Section 3-7-52. - Deferred Retirement Option Program.

Effective October 1, 2003, there is hereby established a Deferred Retirement Option Program ("DROP") for eligible members of this System. Members of the System in service who are eligible for normal service retirement are eligible to elect to participate in this program.

(a) Definitions.

- (1) DROP period means the three-year period immediately following the commencement of the member's participation in the DROP.
- (2) Eligible member means any member who is, or will become within 60 days, eligible for normal service retirement benefits as those are defined in § 3-7-26(a).

(b) Election to participate.

- (1) An eligible member may participate in the DROP only once. An eligible member who desires to participate in the DROP must file an application with the Retirement Administration Agency

not less than 60 days prior to the date of the commencement of the member's participation in the DROP.

- (2) A member's election to participate in the DROP is irrevocable, with the exception that a member who elects to participate in the DROP may revoke that election prior to the commencement of his or her DROP period; once revoked, a member may not then elect to participate in the DROP for a period of at least 12 months from the date of his or her revocation.
  - (3) At the time of an eligible member's election to participate in the DROP, he or she must make an election in writing pursuant to § 3-7-39 as to whether or not to receive a reduced retirement allowance in order to provide a retirement allowance for his or her spouse and/or handicapped child after the member's death.
  - (4) An eligible member who elects to participate in the DROP will agree to do so for a period of three years.
  - (5) Subject to any limitation on the number of accrued sick leave hours that may be converted to creditable service as provided in Section 3-7-2(a)(2), an eligible member who elects to participate in the DROP shall, at the time of his or her election to participate in the DROP, make an election in writing as to whether he or she wishes to convert all of his or her accrued sick leave to creditable service or to convert all but 40 hours of his or her accrued sick leave to creditable service. Sick leave that is either carried over or that accrues during the DROP period shall not be converted to creditable service at the conclusion of the DROP period.
- (c) Continued employment.
- (1) A participating DROP member shall, upon commencement of his or her DROP period, continue to work for the County in the position he or she held before the effective date of his or her election to participate in the DROP program. Thereafter, the participating DROP member will perform the services of that position or any other position to which he or she is promoted or transferred.
  - (2) A participating DROP member will continue to accrue annual and sick leave and, if eligible, compensatory time during the DROP period. At the conclusion of the DROP period, the member will receive the payment for his or her accrued annual and compensatory leave that he or she would have received upon retirement. In no case will a participating DROP member receive payment for his or her accrued annual and compensatory leave at the commencement of the member's participation in the DROP.
  - (3) A participating DROP member will continue to remain eligible for health and life insurance benefits provided by the County to its employees and will remain eligible to participate in the County's deferred compensation plan. The deductions from the salary of a participating DROP member for health and life insurance benefit will be the same deductions that would have been taken had the participating DROP member been an active County employee, not the deductions that would be taken from the retirement benefits and allowances of a retiree.
  - (4) All County personnel policies and regulations shall continue to apply to a participating DROP member after the commencement of his or her DROP period. A participating DROP member will remain eligible for annual merit pay increments and promotions during the DROP period. However, a participating DROP member's salary during his or her DROP period will not be included in the computation of the member's average final compensation. A participating DROP member is also subject to the County's disciplinary policies and regulations.
  - (5) If a participating DROP member's continued employment with Fairfax County is interrupted by military service, there will be no interruption of the member's participation in the DROP. During the period of the participating DROP member's military service, the member's retirement benefits and allowances will continue to be paid into the participating member's DROP account until the member's DROP period ends. At the end of the DROP period, the member's DROP account balance will be paid to the member whether or not he or she has

returned to his or her former County position, and the member will begin to receive his or her normal retirement benefits.

- (6) Except as otherwise set forth herein, a participating DROP member's continued service will be deemed to be normal service retirement and will not count as creditable service with the System.
  - (7) Upon commencement of a participating DROP member's DROP period, the County will cease to withhold contributions to the System from the participating DROP member's salary.
  - (8) The salary received by a participating DROP member during his or her DROP period will not be included by the County in the base that is used to determine the amount of the County's employer contributions to the System.
- (d) DROP account.
- (1) Upon commencement of the member's participation in the DROP, the member's service retirement allowance pursuant to § 3-7-27 and the additional retirement allowance pursuant to § 3-7-51 will be paid into the member's DROP account. The initial amount credited to a member's DROP account will be computed based on his or her average final compensation as of the date of the commencement of the DROP period.
  - (2) The initial monthly amount will be increased each July 1 based upon the annual cost of living adjustment provided to retirees pursuant to § 3-7-37. Any other changes that occur during the DROP period that would result in an alteration of the participating DROP member's retirement benefits and allowances if he or she were retired will also result in adjustments to the monthly amount credited to a participating DROP member's DROP account.
  - (3) The participating DROP member's DROP account will be credited with interest at an annual rate of five percent, compounded monthly. Interest will not be pro-rated for any period less than a full month.
  - (4) Contributions by the County and the participating DROP member into the System for the participating DROP member will cease.
  - (5) Amounts credited to a participating DROP member's DROP account will not constitute annual additions under 26 U.S.C. § 415.
  - (6) A participating DROP member's DROP account will not be an account that is separate and distinct from the assets of the System; a participating DROP member's DROP account balance will remain part of the assets of the System.
- (e) Cessation of County employment.
- (1) At the conclusion of a participating DROP member's DROP period, the member's County employment will automatically cease. The participating DROP member shall then begin to receive normal service retirement benefits and allowances computed based upon his or her average final compensation at the time of the commencement of the DROP period and his or her creditable service at the time of the commencement of the DROP period, plus cost of living increases provided to retirees and any other benefit improvements that may have been granted to retirees during the participating DROP member's DROP period. At least 60 days prior to the conclusion of a participating DROP member's DROP period, the member must make one of the following elections concerning payment of his or her DROP account balance:
    - (A) The member may receive payment of his or her DROP account balance as a lump sum.
    - (B) The member may elect to roll over his or her DROP account balance into an "eligible retirement plan", as defined in Section 3-7-50(b)(2).
    - (C) The member may elect to receive payment of a portion of his or her DROP account balance and roll over the remaining portion into a qualified retirement plan, such as an IRA. If the member elects this method of receiving his or her DROP account balance,

he or she must specify, in writing, the specific amount to be paid as a lump sum and the specific amount to be rolled over.

- (D) The member may elect to use his or her DROP account balance to increase his or her monthly retirement benefits and allowances. The amount of the increase will be determined based on the actuarial equivalent of the member's DROP account balance.
- (E) The member may divide his or her DROP account balance in half, and may then elect to use 50 percent of his or her DROP account balance to increase his or her monthly retirement benefits and allowances, and to receive the remainder in any manner listed in paragraphs (A), (B) and (C) above.

In the event that the participating DROP member does not make the election required by this section, the member will receive payment of his or her DROP account balance as a lump sum.

- (2) A participating DROP member may terminate his or her County employment at any time, in which case the effective date of the member's termination of his or her County employment shall be treated as the end of the DROP period for the provisions of this section.
  - (3) In the event that the employment of a participating DROP member is terminated by the County during the DROP period for any reason, the effective date of the member's separation from County service shall be treated as the end of the DROP period for all purposes of this Section.
- (f) Death or disability during DROP period.
- (1) (A) If a participating DROP member dies during the DROP period, the participating DROP member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate. In the event that the participating DROP member has elected a joint and contingent spouse and handicapped child option pursuant to the terms of § 3-7-39, the participating DROP member's surviving spouse or handicapped child will receive payment of the participating DROP member's DROP account balance and will begin to receive benefits and allowances pursuant to the joint and contingent spouse and handicapped child option election of the participating DROP member in addition to the benefits to which they may be entitled under § 3-7-41.
  - (B) If a participating DROP member is killed while in performance of his or her official duties during the DROP period, as set forth in § 3-7-43, the member's spouse, or, if there is no surviving spouse, the member's handicapped child, may elect to receive the benefits set forth in § 3-7-43, pursuant to the terms and conditions set forth in that section. Such an election will constitute a waiver of the right to receive the participating DROP member's DROP account balance.
  - (C) If a participating DROP member is killed while in performance of his or her official duties and there is no surviving spouse or handicapped child, the member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate.
- (2) If a participating DROP member becomes disabled during the DROP period, the participating DROP member will receive:
    - (A) In the case that a participating DROP member suffers a disability that would be considered an ordinary disability as defined in § 3-7-31 and 3-7-36, the effective date of the member's disability will be treated as the end of the participating DROP member's DROP period.

- (B) In the case that a participating DROP member suffers a service-connected disability as set forth in § 3-7-28, the participating DROP member may elect either (i) to receive the service-connected disability retirement benefits and allowances to which he or she would otherwise be entitled or (ii) to receive the normal service retirement benefits and allowances to which he or she would be entitled plus his or her DROP account balance. An election to receive service-connected disability retirement benefits and allowances or severe service-connected disability retirement benefits shall constitute a waiver of the member's right to receive any amounts credited to his or her DROP account balance.
- (g) Execution of documents and adoption of rules and regulations. The County Executive is authorized to execute all documents necessary or appropriate to operate the DROP including, but not limited to, the establishment of a trust within which the participating DROP members' DROP accounts shall be held and administered. The Board of Trustees is also authorized to adopt rules and regulations governing the DROP. Any documents executed by the County Executive shall be approved for form by the County Attorney prior to execution. (36-03-3; 41-08-3; 27-10-3; 01-11-3; 28-12-3.)

Division 7. - Benefit Restoration Plan.

Section 3-7-53. - Benefit Restoration Plan.

- (a) There is hereby established a Benefit Restoration Plan for the System.
- (b) Purpose and intent; rule of construction.
  - (1) In establishing this Benefit Restoration Plan, the Board of Supervisors intends to establish and maintain a "qualified governmental excess benefit arrangement," as defined and authorized by the federal Internal Revenue Code Section 415(m), 26 U. S. C. Section 415(m), as is permitted by Va. Code Ann. Section 51.1-1302. The purpose of this Benefit Restoration Plan is to restore, through a non-qualified arrangement, the benefits lost by the application of the limitation on annual benefits under Internal Revenue Code Section 415(b) as applicable to governmental plans. This Benefit Restoration Plan shall exist in addition to all other retirement, pension, or other benefits available to Participants, including the benefits established by this System.
  - (2) This section shall be construed to ensure compliance with the provisions of federal and state law, and any regulations promulgated thereunder, governing such qualified governmental excess benefit arrangements, including, but not limited to Internal Revenue Code Section 415(m) and Va. Code Ann. Sections 51.1-1302, 51.1-1303, and 51.1-1304, as in effect at the time of the adoption of this section and as subsequently amended.
- (c) Definitions.
  - (1) Administrator or Plan Administrator shall mean the Board of Trustees of the Police Officers Retirement System, which is responsible for the general administration and operation of the Benefit Restoration Plan and for making effective the provisions of this Section. Under the oversight of the Board of Trustees, the Executive Director of the Retirement Administration Agency shall be responsible for the day to day operation and administration of the Benefit Restoration Plan.
  - (2) Beneficiary shall mean the person or persons entitled under the provisions of this Article governing this System to receive any benefits payable after the Participant's death.
  - (3) Board shall mean the Board of Trustees of the Police Officers Retirement System established under this Article.
  - (4) Internal Revenue Code means the federal Internal Revenue Code, as the same may be amended from time to time, and, to the extent not inconsistent therewith, regulations issued there under.

- (5) Effective Date. The effective date of this section is its date of adoption.
  - (6) Eligible Member shall mean a retired member of the Police Officers Retirement System and whose benefits thereunder are reduced by the application of the limitations on annual benefits under Internal Revenue Code Section 415(b) as applicable to governmental plans.
  - (7) Member shall mean a member of the Police Officers Retirement System established under this Article.
  - (8) Employer shall mean an employer as defined under the Police Officers Retirement System established under this Article.
  - (9) Enabling statute shall mean Chapter 13 of Title 51.1 of the Virginia Code (1950), as amended.
  - (10) Grantor Trust shall mean the trust fund described in subsection (i)(3) of this Section and established and maintained for the Benefit Restoration Plan.
  - (11) Participant shall mean an Eligible Member qualified to participate in the Benefit Restoration Plan.
  - (12) Benefit Restoration Plan or Plan shall mean the Benefit Restoration Plan for the System established by this Section.
  - (13) Plan Sponsor shall mean the Board of Supervisors of Fairfax County, Virginia.
  - (14) Plan Year shall mean the 12-month period beginning on the first day of July.
  - (15) Restoration Death Benefit shall mean the benefit due the Beneficiary of a Participant under the Plan as determined under this Section.
  - (16) Restoration Retirement Benefit shall mean the benefit due a Participant or his or her Beneficiary under the Benefit Restoration Plan determined under this Section.
  - (17) Retirement System or System shall mean the Police Officers Retirement System established under this Article.
- (d) Eligibility and Participation
- (1) Eligibility and Date of Participation. Each Eligible Member shall be a Participant in this Benefit Restoration Plan commencing with the date he or she first becomes, or again becomes, an Eligible Member.
  - (2) Length of Participation. Each Eligible Member who becomes a Participant shall be or remain a Participant for so long as he or she is entitled to future benefits under the terms of this Benefit Restoration Plan.
- (e) Restoration Retirement Benefit
- (1) Subject to the terms and conditions set forth in this Section, a Participant who retires or is retired under the System and who is entitled to the payment of benefits under the System shall be entitled to a Restoration Retirement Benefit, generally expressed as a benefit payable monthly for the life of the Participant and commencing at the applicable time provided under this Article, equal to the excess, if any, of:
    - (i) The amount of the Participant's retirement allowance under the Retirement System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
    - (ii) The amount of the Participant's retirement allowance under the Retirement System.
- To the extent that the Participant's retirement allowance payable under the Retirement System is increased at any time due to increases in limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the Secretary of the U. S. Treasury or his or her delegate or otherwise, the Participant's Restoration Retirement Benefit shall be reduced correspondingly.
- (f) Death Benefit.

- (1) Death after Benefit Commencement. If a Participant dies after his or her Restoration Retirement Benefit commences to be paid, the only benefits payable under the Benefit Restoration Plan to his or her Beneficiary after his or her death shall be those, if any, provided under the form of payment being made to him or her at his or her death.
- (2) Death before Benefit Commencement. If a Participant dies before his or her Restoration Retirement Benefit commences to be paid, the only benefit payable under the Benefit Restoration Plan with respect to him or her shall be the Restoration Death Benefit, if any, provided in subsection (f)(3).
- (3) Restoration Death Benefit. Subject to the terms and conditions set forth herein, if a Participant dies on or after the Effective Date and before his or her Restoration Retirement Benefit commences to be paid, his or her Beneficiary shall be entitled to a Restoration Death Benefit as follows:
  - (A) If his or her Beneficiary is entitled to receive any death benefit under the Retirement System, such Beneficiary shall be entitled to receive as a Restoration Death Benefit under the Benefit Restoration Plan an amount equal to the excess, if any, of:
    - (i) The amount of such death benefit under the Retirement System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
    - (ii) The actual amount of such death benefit under the Retirement System.

To the extent that the Participant's accrued benefit or any death benefit payable under the Retirement System is increased at any time due to increases in the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulations, actions of the Secretary of the Treasury or his or her delegate or otherwise, the Participant's Restoration Death Benefit shall be reduced correspondingly.

(g) Vesting.

- (1) Vesting. A Participant's Restoration Retirement Benefit or Restoration Death Benefit, as the case may be, shall be vested at the time of his or her retirement under the Retirement System or death, but only to the extent, and determined in the manner, that such Participant has a vested and non-forfeitable right to his or her retirement allowance under the Retirement System.

(h) Payment of Benefits.

- (1) Time and Manner for Payment of Benefits. A Participant's Restoration Retirement Benefit, or the Restoration Death Benefit, shall be payable at the same time and in the same manner as the Participant's retirement allowance or comparable death benefit (other than his or her accumulated contributions or contribution refund death benefit) is paid under the Retirement System, whether as elected by the Participant or otherwise payable. For a Member who is receiving a retirement allowance under the System on the Effective Date, and who would immediately be an Eligible Member upon the Effective Date, such Member shall immediately commence receiving a Restoration Retirement Benefit on a prospective basis.
- (2) Discretionary Use of Other Methods of Payment. In the sole discretion of the Administrator, monthly payment amounts of less than \$100.00, or such amount as the Administrator may from time to time determine, may be paid on an annual or semi-annual basis, in arrears and without interest.
- (3) Benefit Determination and Payment Procedure. The Administrator shall make all determinations concerning eligibility for benefits under the Benefit Restoration Plan, the time or terms of payment, and the form or manner of payment to the Participant (or the Participant's Beneficiary in the event of the death of the Participant). The Administrator shall promptly notify the Employer and, where payments are to be made from a Grantor Trust, the trustee thereof, of each such determination that benefit payments are due and provide to the Employer or trustee such other information

necessary to allow the Employer or trustee to carry out said determination, whereupon the Employer or trustee shall pay such benefits in accordance with the Administrator's determination.

- (4) Payments to Minors and Incompetents. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Benefit Restoration Plan.
  - (5) Distribution of Benefit When Distributee Cannot Be Located. The Administrator shall make all reasonable attempts to determine the identity and/or whereabouts of a Participant or his or her Beneficiary entitled to benefits under the Benefit Restoration Plan, including the mailing by certified mail of a notice to the last known address shown on the Employer's or the Administrator's records. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no such claim made for such benefits, the Employer shall continue to hold the benefit due such person, subject to any applicable statute of escheats.
- (i) Funding.
- (1) The undertaking to pay the benefits hereunder shall be unfunded obligations payable solely from the general assets of the Employer and subject to the claims of the Employer's creditors.
  - (2) Except as provided in a Grantor Trust established as permitted in sub-section (i)(3), nothing contained in the Benefit Restoration Plan and no action taken pursuant to the provisions of this Section shall create or be construed to create a trust of any kind of a fiduciary relationship between the Employer and the Participant or his or her Beneficiary or any other person or to give any Participant or Beneficiary any right, title, or interest in any specific asset or assets of the Employer. To the extent that any person acquires a right to receive payments from the Employer under the Benefit Restoration Plan, such rights shall be no greater than the right of any unsecured general creditor of the Employer.
  - (3) Use of Grantor Trust Permitted. Notwithstanding any provision of this Section to the contrary, the Benefit Restoration Plan Sponsor may in its sole discretion elect to establish and fund a Grantor Trust for the purpose of providing benefits under the Benefit Restoration Plan.
- (j) Plan Administrator.
- (1) The Plan Administrator has full and complete authority and discretion to control and manage the operation of and shall decide all matters under the Benefit Restoration Plan pursuant to this Section and the Enabling Statute. The Administrator has any and all powers as may be necessary or advisable to discharge its duties under the Benefit Restoration Plan including the power and authority to interpret the terms of the Benefit Restoration Plan.
  - (2) The Plan Administrator is responsible for performing the duties required for the operation of the Benefit Restoration Plan, and is responsible for supervising the performance of any other persons who may assist in the performance of the Plan Administrator's responsibilities under this Section and the Enabling Statute.
  - (3) To enable the Plan Administrator to perform its responsibilities, Employer(s) shall promptly provide to the Plan Administrator complete and accurate information on any matter that is required by the Administrator in order to make any decision or determination under the Benefit Restoration Plan. The Plan Administrator shall rely upon this information supplied by the Employer, and shall have no duty or responsibility to verify this information.
  - (4) Except as prohibited by law or by this Section, the Plan Administrator may delegate any of its duties to the Executive Director of the Retirement Administration Agency. The Plan Administrator may contract with any person to provide services to assist in the administration of the Benefit Restoration Plan. The Plan Administrator must make such contracts in compliance with all applicable State and local laws and regulations. Any person other than the Plan Administrator

who performs services regarding the Benefit Restoration Plan is subject to the supervision and direction of the Plan Administrator, and does not have the authority to control the operation of the Plan.

- (k) Termination and Amendment of the Benefit Restoration Plan.
  - (1) Termination of the Benefit Restoration Plan. The Board of Supervisors of the County of Fairfax, Virginia, hereby reserves the right to terminate this Benefit Restoration Plan at any time, provided that no such termination shall reduce, suspend, or terminate the Restoration Retirement Benefit or Restoration Death Benefit otherwise payable to a Participant or Beneficiary hereunder as of the date of such termination.
  - (2) Amendment of the Benefit Restoration Plan. The Board of Supervisors of the County of Fairfax, Virginia, hereby reserves the right to amend this Benefit Restoration Plan at any time, provided that no such amendment shall reduce, suspend, or terminate the Restoration Retirement Benefit or Restoration Death Benefit otherwise payable to a Participant or Beneficiary hereunder as of the date of such termination.
- (l) Miscellaneous.
  - (1) Non-assignability. The interests of each Participant hereunder the Benefit Restoration Plan are not subject to the claims of the Participant's creditors; and neither the Participant nor his Beneficiary, shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Benefit Restoration Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.
  - (2) Notwithstanding the preceding sub-section, the Plan Administrator shall honor any process for a debt to the Employer who has employed the Participant and any administrative actions pursuant to Va. Code Ann. Sections 63.2-1900, et seq., or any court process to enforce a child or spousal support obligation, in the manner as described in Section 3-7-6 of this Article mutatis mutandi. Restoration Retirement Benefits and/or Restoration Death Benefits created under this Section which are deemed to be marital property pursuant to Va. Code Ann. Sections 20-89.1, et seq., may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Va. Code Ann. Section 20-107.3. Under no circumstances may a payment under this sub-section take place before the Participant's benefit under the Retirement System is actually paid. (12-06-3.)