

ARLINGTON COUNTY CODE

Chapter 21

RETIREMENT SYSTEMS

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**ARTICLE I.**

**IN GENERAL**

**§ 21-1. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Accumulated contributions” means the sum of all amounts deducted or picked up from the compensation of a member and credited to his individual account in the member's contribution account, and any other amounts he shall have contributed, or transferred thereto, including interest credited as provided in § 21-38.C.

“Average final compensation” means average annual creditable compensation of a member during the three

(3) years of creditable service in which such compensation was at its greater amount, or during the entire period of his creditable service if less than three (3) years.

“Beneficiary” means any person entitled to receive benefits as provided by the System.

“Board” means the Board of Trustees of the System.

“County Manager” means the County Manager or his designee.

“Creditable compensation” means the full compensation, including pickup contributions and any elective employer contributions under the flexible benefits plan, payable to an employee. In cases where the compensation includes maintenance and other perquisites, the Board shall fix the value of that part of the compensation not paid in money. Effective January 1, 2009, creditable compensation shall include any differential wage payments for military service as defined under Section 3401(h)(2) of the Internal Revenue Code. Other provisions notwithstanding, except in the case of an employee who first became a member before July 1, 1996, annual creditable compensation shall not exceed the amount established pursuant to Internal Revenue Code § 401(a)(17) as indexed annually.

“Creditable service” means membership service plus prior service credit.

“Deferred Retirement Option Program (DROP)” means the Program described in § 46-64.

“Employee” means any person regularly employed prior to February 8, 1981 in rendering service to the County whose compensation is fully or partially paid directly or indirectly by the County, except any person on a part-time, seasonal, or temporary employment status, and except those persons working less than thirty (30) hours per week; however, a member whose hours are reduced below the minimum (thirty (30) hours) by the employer may continue to earn pro rata membership credit.

“Employer” means the County Board, the County School Board, and any authority in the County having the power to appoint an employee to office or employment paid directly or indirectly by the County, and the Board of Trustees of the System.

“Fiscal year” means each twelve (12) month period ending June 30.

“Medical advisor” means the physician provided for by § 21-22.

“Medical examining board” means the physician or physicians provided for by § 21-22 who may act individually or collectively.

“Member” means any person included in the membership of the System as provided in § 21-28 who has not ceased to be a member as provided in § 21-29.

“Membership service” means service as a member for which credit is allowable as provided in § 21-33.

“Normal retirement date” means the first day of the month following the sixtieth (60<sup>th</sup>) birthday of a member who is not a police officer, firefighter, or deputy sheriff, and the first day of the month following the fiftieth (50<sup>th</sup>) birthday of a member who is a police officer, firefighter, or deputy sheriff.

“Part-time employee” means any person working less than forty (40) hours per week, having permanent status or in a probationary period for such status, who is:

- A. Rendering service to the County Board in a budgeted position;
- B. An employee of a constitutional officer in a budgeted position; or
- C. A trades and maintenance employee of the School Board paid from a regular position controlled account.

“Pickup contributions” means regular member's contributions which are assumed and paid by the employer in lieu of employee contributions through a salary reduction from active members for services rendered on or after December 23, 1984.

“Prior service credit” means credit for service prior to the effective date of this chapter as originally adopted November 20, 1953, as amended, and as provided therein.

“Repealed system” means the ordinances approved July 27, 1946, and as amended, establishing the police and firemen's and general employees' pensions and benefits plans.

“Retiree” means any prior member or beneficiary who is receiving a retirement payment, or has elected to receive a deferred vested retirement allowance.

“Retirement allowance” means the retirement payments to which a member is entitled.

“Service” means service as an employee for which compensation is paid by the employer.

“System” means the Arlington County Employees' Supplemental Retirement System. (7-1-70; 1-1-72; 4-14-73; 6-23-79; 2-8-81; Ord. No. 84-38, 12-23-84; Ord. No. 87-24, 9-26-87; Ord. No. 90-36, 1-1-91; Ord. No. 96-13, 6-29-96; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, Effective 12-12-04; Ord. No. 05-10, 7-12-05; Ord. No 11-06, 5-14-11)

#### **§ 21-2. Arlington County Employees' Supplemental Retirement System I Established.**

Under authority of an act of the General Assembly of Virginia (Acts of 1942, Chapter III entitled an "Act to authorize the boards of supervisors of other governing bodies of certain counties to establish and operate retirement systems for certain employees, etc.") there is hereby established a retirement system for employees, to be known as the Arlington County Employees' Supplemental Retirement System I.

The System may transact business as the Arlington County Employees Retirement System.

The System is intended to satisfy Internal Revenue Code §§ 401(a) and 414(d) requirements for qualified governmental pension plans. (6-23-79; 2-8-81; Ord. No. 02-15, 6-22-02; Ord. No. 13-08, 10-19-13)

#### **§ 21-3. Duties of Employers.**

Employers shall keep such records and furnish such information as the Board or County Manager may require in the discharge of their 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.

(Ord. No. 04-26, 11-16-04, Effective 12-12-04)

#### **§ 21-4. Effect of Acceptance of Employment.**

Upon acceptance of employment every member shall be deemed to consent and agree to any deductions or employer pickup of amounts from his compensation required by this chapter, and to all other provisions thereof.

(Ord. No. 84-38, 12-23-84)

#### **§ 21-5. Fraud and Deceit.**

Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record of the System, in any attempt to defraud the System shall be guilty of a misdemeanor, and shall be punished accordingly.

#### **§ 21-6. Assignments.**

The right of any member to a retirement allowance, to the return of accumulated contributions, or any other right or moneys accrued or accruing to any person under the provisions of this chapter shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law or any other process of law whatsoever, and shall be unassignable except that a member may, upon leaving employment and withdrawal of accumulated contributions, assign and make payable his accumulated contributions, or any portion thereof, to the County, or its units and organizations operated for the benefit of the employees.  
(Ord. No. 84-38, 12-23-84)

#### **§ 21-7. Correction of Errors in Payments.**

Should any member or beneficiary receiving benefits from the System receive more or less than he would have been entitled to receive, the County Manager shall correct such error and shall, as far as practicable, adjust the payments including future payments in such a manner that the benefit to which the member or beneficiary was correctly entitled shall be paid. When any member or beneficiary receives less than he or she was entitled to receive, the County Manager may authorize the payment of interest on the unpaid balance owed to the member or beneficiary at a rate to be determined by the County Manager provided that the error in payment was discovered after January 1, 2001.

(Ord. No. 00-33, 12-18-00; Ord. No. 04-26, 11-16-04, Effective 12-12-04)

#### **§ 21-8. Rights of Participating Members.**

Membership in the System does not convey the right to be retained in the service, nor any right or claim to any assets of the System unless such right has specifically accrued under the provisions of this System.

#### **§ 21-9. Amendments.**

The County Board shall have the continuing right and power to amend or supplement this chapter at any time. No amendment shall be made unless the actuary has filed with the County Board a report as to its effect upon the System, and no amendment shall be adopted which will reduce the then-accrued benefits of employees or beneficiaries below the extent they are then covered by accumulated reserves, which reserves shall constitute a trust fund for the payment of such benefits.

#### **§ 21-9.1. Continuation of Benefits for Circuit Court Judges, General District Court Judges and Juvenile and Domestic Relations District Court Judges.**

Notwithstanding any other provisions of this chapter or any other provision of law to the contrary, circuit court judges shall continue to be members of the retirement system provided for by this chapter on the same basis on which they participated on March 1, 1976; and general district court judges and juvenile and domestic relations district court judges who were in office on July 1, 1973, on the same basis on which they then participated, if they elect in writing to be so considered. The County shall continue to pay an employer's contribution on behalf of such judges based upon the annual local supplement paid to each circuit court judge as of March 1, 1976, and each district court judge as of July 1, 1973; and each judge shall make contributions or have his contributions picked up by the employer at periodic intervals of not less than once a calendar month which shall represent the employee's contribution, including pick up contributions. The amounts of the employer's contribution and employee's contribution, including pickup contributions, shall be on the same proportionate basis which applied to all members except police officers, firefighters and deputy sheriffs at the time of payment by the employer and employee. For all purposes of this chapter, such circuit court judges, general district court judges and juvenile and domestic relations district court judges shall be considered members, and all provisions hereof shall apply to them as apply to all members other than police officers, firefighters and deputy sheriffs.

(8-14-76; 6-23-79; Ord. No. 84-38, 12-23-84)

## **ARTICLE II.**

### **ADMINISTRATION**

**§ 21-10. Board of Trustees and County Board--Powers and Duties.**

The responsibilities regarding sound management and investment of the System's funds are hereby vested in the Board of Trustees of the System. The responsibility for setting the size and type of benefits rests with the Arlington County Board, which shall be responsible for paying the costs of any actuarial studies relating to the size and type of benefits.

(Ord. No. 04-26 11-16-04, Effective 12-12-04)

**§ 21-11. Same--Accountability.**

The Board of Trustees shall be accountable to the County Board.

**§ 21-12. Same--Composition; Organization and Terms of Office.**

A. The Board shall consist of eight (8) trustees as follows: The County Treasurer, who shall be Treasurer of the Board; two (2) trustees appointed by the County Manager; two (2) trustees appointed by the County Board; one (1) trustee elected by the police officers, firefighters and deputy sheriffs; and two (2) trustees elected by the other County employees who are members of the System. The election of the three (3) trustees by the police officers, firefighters and deputy sheriffs and the other County employees shall be conducted under procedural rules approved by the County Board. When such Board shall be created and constituted, it shall at its first meeting, and annually thereafter, elect one (1) of its members president, one (1) as vice-president and one (1) as secretary. The Treasurer shall hold office for his term as County Treasurer. The terms of office of employee-elected trustees shall be four (4) years. The terms of office of County Board and County Manager appointees shall be four (4) years, except that with the first vacancy of each after April 1, 1970, one (1) appointee shall have a term expiring December 31, 1971. Their successors shall be selected thirty (30) days before the expiration of the term of office.

B. There shall be one (1) substitute trustee elected for each trustee that is elected by the police officers, firefighters, deputy sheriffs and other County employees; and a Deputy Treasurer appointed by the Treasurer shall serve as substitute trustee for the County Treasurer. Each substitute trustee shall serve in the absence of the trustee and shall be authorized to act on all matters in which the trustee may act.

C. The election of the three (3) substitute trustees by the police officers, firefighters, deputy sheriffs and other County employees shall be conducted under procedural rules approved by the County Board. Each substitute trustee shall serve commencing on September 1, 1979, and hold office under December 31, 1981; and their successors shall be selected thirty (30) days before the expiration of the term of office. Thereafter, at each election for trustee provided herein, the police officers, firefighters, deputy sheriffs and County employees shall elect a substitute trustee and the term of office of each substitute trustee shall be four (4) years. Successors to substitute trustees shall be selected thirty (30) days before the expiration of the term of office. Provided, that when the Board established pursuant to § 46-12 has been created and constituted, it shall be the Board of Trustees for this System.

(7-1-70; 4-29-78; 6-23-79; 2-8-81)

**§ 21-13. Same--Vacancies.**

If a vacancy occurs in the office of a Trustee of the Board or a substitute trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(6-23-79)

**§ 21-14. Same--Compensation.**

The Trustees of the Board shall serve as such without compensation.

**§ 21-15. Same--Rules and Regulations.**

Subject to the limitations of this chapter, the Board shall establish such rules and regulations for the transaction of its business, copies of which shall be made available to interested parties.

(Ord. No. 04-26, 11-16-04, Effective 12-12-04)

**§ 21-16. Same—Employment of Staff.**

The Board may employ staff and pay out of the System fund for all services its shall be required. (Ord. No. 12-13, 9-15-12)

**§ 21-17. Same--Data.**

The Board and the County Manager shall keep in convenient form such data as shall be necessary for actuarial valuation of the System and for checking the experience of the System. (Ord. No. 04-26, 11-16-04, Effective 12-12-04)

**§ 21-18. Same--Proceedings; Financial Condition of System.**

The Board shall keep minutes of all its proceedings, which shall be open to public inspection. It shall submit to the County Board annually an independent audit showing the fiscal transactions of the Systems 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.

**§ 21-19. Same--Actuarial Investigation and Valuations.**

At least once in each five (5) year period, the Board shall cause an actuarial study to be made of all the experience of the System. At least once in each two (2) year period, the Board shall cause an actuarial valuation to be made. Pursuant to such valuations, the County Board may revise the rates of employee contributions, including pickup contributions and/or employer contributions. (Ord. No. 84-38, 12-23-84; Ord. No. 87-29, 12-12-87)

**§ 21-20. Same--Responsibilities under Prior Ordinances.**

The County Manager shall assume the responsibility of providing for the payment of vested rights and the return of accumulated contributions under all prior ordinances. (Ord. No. 04-26, 11-16-04, Effective 12-12-04)

**§ 21-21. Same--Legal Advisor.**

The County Attorney shall be the legal advisor of the Board.

**§ 21-22. Medical Advisor.**

The County Manager shall designate a physician who shall be known as the "medical advisor." The physician shall conduct medical examinations required under the provisions of this Chapter and shall investigate all medically relevant statements and certificates by or on behalf of a member in connection with application for disability retirement. The physician shall report in writing to the County Manager his or her conclusions and recommendations upon all matters referred to the physician. The physician may have other physicians conduct any medical examinations under this chapter or consult with any other physician he or she deems appropriate. It shall be the responsibility of each applicant to provide the medical advisor with all records and releases the advisor deems appropriate to carry out the advisor's responsibilities under this chapter.

In the event of an application for any disability retirement, the applicant must provide all relevant medical records for submission to the medical advisor. (6-23-79; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, Effective 12-12-04)

**ARTICLE III.**

**MANAGEMENT OF FUNDS**

**§ 21-23. Investment and Reinvestment of Assets.**

The members of the Board shall be the trustees of all assets of the System. The Board shall have full power and authority to invest and reinvest such assets, and to change such investments and reinvestments. The Board shall invest the assets of the System with care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Board, in its discretion, may take the necessary steps to establish a trust for the administration of the assets of the System. The Board may employ an investment advisor or advisors to invest and reinvest assets of the System in accordance with the provisions of this chapter and regulations established by the Board.

(1-5-80; Ord. No. 00-34, 11-1-00; Ord. No. 05-10, 7-12-05)

**§ 21-24. Types of Investments.**

The Board shall have full power in its sole discretion to invest and reinvest all funds and property of the System in accordance with § 21-23 and shall diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly not prudent to do so.

(4-14-73; 9-13-80; Ord. No. 05-10, 7-12-05)

**§ 21-25. Reserved.****§ 21-26. Powers and Duties of Treasurer of Board; Bond; Warrants.**

A. Except as provided in subsection B below, the Treasurer of the Board shall be the custodian of all of its funds and securities. He shall give bond, payable to the Board, in such amounts and with such surety as the Board requires, conditioned upon the faithful performance of his duties and the proper accounting of all funds and securities coming into his hands, the cost of the bond to be paid out of funds of the System. He shall deposit all moneys in the name of the Board and disburse the same only on warrants signed by such person as is designated for the purpose by the Board or County Manager, as appropriate. No warrant shall be signed unless it has previously been authorized by the Board, on either blanket approval by class of expenditure or approval by specific item, which authorization shall be recorded on the records of the Board.

B. The Board may designate one (1) or more banks or trust companies to act as custodian of its funds and securities. In such event, registered securities in the custody of such custodian may be registered in the name of the nominee of such custodian, or a nominee of Depository Trust Company in the case of securities eligible for such registration.

(9-13-80; Ord. No. 04-26, 11-16-04, Effective 12-12-04)

**§ 21-27. Personal Interest of Board Members and Employees.**

No Board member or Board employee shall have any direct or indirect personal interest in the gains or profits of any investments made by the Board other than as a member of the System. No member or employee of the Board shall, directly or indirectly, for himself or as an agent in any manner use the funds of the System, except to make disbursements as are authorized by the Board, or the payment of benefits.

(Ord. No. 04-26, 11-16-04, Effective 12-12-04)

**ARTICLE IV.****MEMBERSHIP IN THE SYSTEM****§ 21-28. Eligibility Requirements.**

A. Employees who had not reached normal retirement age as of the first day of employment and who have passed a medical examination based on adopted medical standards.



B. Subsection A includes all officials elected by the people or by the General Assembly of Virginia who are paid directly or indirectly by the County, provided they elect to become members within sixty (60) days after assuming office.

C. A member shall elect to establish his membership service credit within ninety (90) days of the effective date of this amendment and shall purchase his credit within one (1) year of the date of this amendment or his retirement date whichever is the earlier date.

(4-14-73)

**§ 21-29. Cessation of Membership.**

The membership of any person in the System shall cease:

A. If he ceases to be an employee for a period of five (5) years, unless he has elected to receive a deferred vested retirement allowance as provided in § 21-48.B.

B. Upon separation and withdrawal of his accumulated contributions.

C. Upon retirement.

D. Upon death.

**ARTICLE V.**

**CREDITABLE SERVICES**

**§ 21-30. Creditable Service.**

Creditable service at retirement on which the retirement allowance is based shall consist of:

A. Membership service credit.

B. Prior service credit.

**§ 21-31. Reserved.**

**§ 21-32. Year of Service.**

The County Manager shall determine, by appropriate rules and regulations, what periods of service in any year qualify as periods of creditable service, but in no case shall it allow credit for more than one (1) year of service rendered in any period of twelve (12) consecutive months.

(Ord. No. 04-26, 11-16-04, Effective 12-12-04)

**§ 21-33. Membership Service Credit.**

A. Each member shall receive membership service credit for all service rendered while a member of the System after he becomes a member, or after he last became a member in the event of a break in his membership, and for the period he is on service connected disability retirement. Each member shall receive membership service credit for military leave, provided that he returns to work in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA) under conditions other than dishonorable discharge. This membership service credit will be applicable to any active duty military absences and will not exceed a cumulative total of five (5) years. Notwithstanding any other provision in this chapter to the contrary, contributions, benefits and creditable service with respect to qualified military service will be provided in accordance with the Internal Revenue Code § 414(u), effective October 13, 1996 or any other applicable law.

B. An employee who becomes a member after re-employment and after having withdrawn the

accumulated contributions contributed during his prior membership may re-establish his membership service credit for the period of his prior membership by repayment to the system of the amount of his withdrawn accumulated contributions, with interest at the rate of six percent (6%) per annum from date of withdrawal, which shall be a lump sum payment.

- C. A member may elect to convert prior service credit to membership service credit as follows:
1. For prior service credit prior to April 1, 1958, by contributing to the System five percent (5%) of his compensation for calendar year 1957 multiplied by the number of years, or portion thereof, or prior service he has received.
  2. A member may establish membership service credit for his service after April 1, 1958 by paying the applicable employee contribution for the credit period sought.
  3. Contributions as provided in § 21-33.C.1 and 2 shall be paid to the System prior to the date of retirement.
  4. The County Manager shall determine payment procedures and schedules.

D. A member who is a former state employee transferred at the convenience of the employer and who is not eligible to vest benefits in the Virginia Retirement System may convert VRS retirement credits earned in Arlington County to membership service credit as provided in § 21-33.C.

E. Any member of the Arlington County School Board Employees' Supplemental Retirement System (ACSBESRS) who has been transferred at the convenience of the employer may convert Virginia Retirement System (VRS) and ACSBESRS service credit earned as an employee to membership service credit provided the member pays to the System all contributions to VRS and any interest earned from such contributions.

F. At the time of retirement, an employee may elect to convert an unlimited amount of unused sick leave to service credit, in lieu of any cash payment provided by the County for accumulated sick leave. This conversion is not available when retirement is deferred pursuant to § 21-48.B. (4-14-73; 2-22-75; 8-22-81; Ord. No. 84-38, 12-23-84; Ord. No. 00-34, 11-1-00; Ord. No. 04-16, 6-26-04, Effective 7-1-04; Ord. No. 04-26, 11-16-04, Effective 12-12-04)

**§ 21-34. Reserved.**

## ARTICLE VI.

### CONTRIBUTIONS

**§ 21-35. Member Contributions.**

A. Each member, during the first thirty (30) years of service, shall contribute for each pay period for which he receives compensation a percentage of his creditable compensation as set by the County Board pursuant to § 21-19. Subsequent to December 23, 1984 employers who have elected to participate in the employer pickup program shall pick up all employee contributions required herein.

B. There shall be deducted or picked up from the salary of each member for each payroll period, the contribution payable by each member as provided in this section. Such deduction or pickup shall be transmitted to the System each month.

C. The County Manager shall certify creditable compensation of a member as of the first day of a payroll period. All changes in creditable compensation shall be effective as of the date such change is made by the employer.

D. Notwithstanding any other provision of this section, no deduction or pickup shall be made from

any member's compensation if the employer's contribution required hereunder is in default.

E. The employer may assume a share of the contribution of a member or classification of members provided in § 21-35.A, as a part of a compensation plan.

F. The contributions required to be made under the provisions of § 21-35.A and § 21-35.B with respect to services rendered by an active member on or after December 23, 1984, shall be picked up by the employer, in lieu of contributions by the employee, provided the employer has elected to participate in the employer pickup program. The employee shall not have the option of choosing to receive pickup contribution amounts directly instead of having them paid by the employer to the System. Pickup contributions 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 U.S.C. 5414(h)(2). For all other purposes, under this chapter and otherwise, such pickup contributions shall be treated in the same manner and to the same extent as contributions made by a member prior to December 23, 1984.

(7-1-72; 7-8-72; 5-18-74; Ord. No. 84-18, 6-2-84; Ord. No. 84-38, 12-23-84; Ord. No. 04-26, 11-16-04, Effective 12-12-04)

#### **§ 21-36. Employer Contributions.**

A. Each employer shall contribute a percentage of the creditable compensation of the members. If an employer does not pay its contribution for a current year, its employees may be removed from the System in order to keep the plan solvent.

B. Employer contributions shall be determined by the County Board in accordance with § 46-33.

C. Notwithstanding anything in this chapter to the contrary, the amount of annual additions of a member for any limitation year for purposes of Internal Revenue Code § 415 shall not exceed the maximum permissible amount determined pursuant to the provisions of such section applicable to governmental plans, as defined for purposes of such section. If the member's annual additions for any limitation year (as defined for purposes of such section) would exceed such maximum permissible amount, the amount contributed or allocated shall be reduced so that the annual additions for such limitation year will equal such maximum permissible amount.

D. 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 account together with the present value of future employee contributions and pickup contributions to provide the estimated prospective benefits payable.

(7-1-75; Ord. No. 84-38, 12-23-84; Ord. No. 86-33, 1-1-87; Ord. No. 00-34, 11-1-00; Ord. No. 05-10, 7-12-05; Ord. No. 11-06, 5-14-11; Ord. No. 17-11, 9-16-17)

### **ARTICLE VII.**

#### **ASSETS OF SYSTEM**

##### **§ 21-37. Assets to be Credited to One of Two Accounts.**

All assets of the System shall be credited, according to the purpose for which they are held, to one (1) of two (2) accounts, namely, "the members' contribution account," and "the retirement allowance account."

##### **§ 21-38. Members' Contribution Account.**

A. The members' contribution account shall be the account to which all members' contributions, pickup contributions, and interest allowances shall be credited. From this account shall be paid the accumulated contributions of a member required to be returned to him upon withdrawal, or paid in the event of his death before retirement.

B. Each member's contributions and pickup contributions provided for in § 21-35 shall be credited to

the individual account of that member.

C. Each individual account of the members' contribution account shall be credited with interest at a rate set annually by the Board of Trustees based upon the interest earned by the System's assets during the preceding year, provided that such interest shall not exceed six percent (6%); and provided further that interest shall accrue on any such amounts beginning at the end of the calendar year in which each such amount was contributed or picked up; and further provided that interest shall not be accredited or accumulated to the individual accounts of persons who have ceased to be members as defined in § 21-29.

D. Reserved.

E. Upon the retirement of a member, his accumulated contributions shall be transferred from the member's contribution account to the retirement allowance account. A member retiring under provisions of § 21-45.A whose contributions have been transferred to the retirement allowance account and who subsequently becomes an employee of the County shall resume contributing or having contributions picked up. Such contributions of pickup contributions shall be deposited in such member's contribution account on the same basis as any other member, as provided in § 21-51.A.

(Ord. No. 84-18, 6-24-84; Ord. No. 84-38, 12-23-84)

#### **§ 21-39. Retirement Allowance Account.**

A. The retirement allowance account shall be the account in which all employer contributions shall be accumulated, amounts transferred from the member's contribution account, and to which all income from the invested assets of the System shall be credited. This account shall pay retirement allowances, other benefits payable after a member's retirement, and necessary expenses of the System.

B. The amount of interest allowances provided for in § 21-38.C shall be transferred each year from the retirement allowance account to the members' contribution account.

#### **§ 21-40. Cash Deposits.**

For the purpose of meeting disbursements for retirement allowances and other payments there may be kept available cash, not exceeding ten percent (10%) of the total amount in the accounts of the System, on deposit in one (1) or more banks or trust companies that are approved as depositories for County funds.

### **ARTICLE VIII.**

#### **TYPES OF RETIREMENT, OTHER BENEFITS AND CONDITIONS THEREOF**

#### **§ 21-41. Service Retirement.**

A. *Normal retirement.* Any member of the System at his normal retirement date or any member who has completed thirty (30) years of creditable service may retire or elect to participate in the DROP at any time then or thereafter upon written notification to the County Manager, made by such member or his appointing authority, setting forth at what time the retirement or DROP election is to become effective, provided that such effective date shall be after his last day of service but shall not be more than ninety (90) days subsequent to the filing of such notice.

B. *Early retirement.* Any member of the System may retire at any time within the ten (10) year period immediately preceding his normal retirement date upon written application to the County Manager made by such member setting forth at what time the retirement is to become effective, provided that such effective date shall be after his last day of service but shall not be more than ninety (90) days subsequent to the filing of such notice.

C. *Service Retirement – Special Conditions.* The County Manager may, once every fiscal year for period of time not to exceed sixty (60) days, offer to: 1) general employees whose age plus service equals or exceeds seventy-eight (78), and 2) public safety employees who are fifty (50) or more years old and have completed five (5)

years of service or have completed twenty-three (23) years of service, regardless of age, service credit for an additional one (1) year of service and/or an additional one (1) year of age, provided the employee submits an application for retirement within the timeframe prescribed by the County Manager.

The County Manager may do so only after the Manager determines that there is a business necessity to reduce the workforce for budgetary reasons.

(4-29-79; Ord. No. 01-20, 11-17-01; Ord. No. 04-16, 6-26-04, effective 7-1-04; Ord. No. 04-26, 11-16-04, effective 12-12-04; Ord. No. 09-25, 11-17-09; Ord. No. 12-01, 1-21-12)

**§ 21-42. Service Retirement Allowance.**

A. Upon service retirement a member shall receive an annual retirement allowance, payable monthly to him for life, which shall consist of two and one-half percent (2.5%) of his average final compensation, multiplied by the first twenty (20) years of creditable service, and at two percent (2%) of his average final compensation, multiplied by his number of years of creditable service in excess of twenty (20) years, total benefits subject to a maximum total in seventy percent (70%) of average final compensation, but in no event less than the benefit earned by July 1, 1972.

B. *Early retirement.* Upon the service retirement of a member prior to his normal retirement date as provided in subsection B of § 21-41, he shall receive an annual retirement allowance, payable monthly to him for life, determined as provided in subsection A of this § 21-42 based on his average final compensation and his credited service as of his early retirement date, and shall be payable, at the option of the member:

1. Commencing on his early retirement date or the first of any month subsequent to submitting a written request to receive his retirement allowance but reduced by one-half of one percent (0.5%) for each full month by which the receipt of his monthly allowance precedes his normal retirement date; or
2. Commencing at his normal retirement date after submitting a written request to receive his retirement allowance without such reduction; or
3. Commencing at his early retirement date but without the one-half of one percent (0.5%) per month reduction if the member has completed twenty-five (25) years of service and is a uniformed services employee or if the member has attained age fifty-seven (57) and completed twenty (20) years of service or any time where age, when added to service equals at least eighty (80); or
4. Commencing on his early retirement date but reduced by one-half of one percent (0.5%) for each full month that his early retirement date precedes:
  - a. His fifty-fifth (55<sup>th</sup>) birthday, if the member has at least twenty-five (25) years of credited service;
  - b. His fifty-seventh (57<sup>th</sup>) birthday, if the member has at least twenty (20) years but less than twenty-five (25) years of credited service;
  - c. The day on which the member would have completed twenty-five (25) years of credited service, if the member has attained age fifty-five (55) but has not yet reached age fifty-seven (57); or
  - d. The day on which the member would have completed twenty (20) years of credited service, if the member has attained age fifty-seven (57).

For purposes of this § 21-42.B.4, if a member satisfies more than one (1) of these conditions, whichever produces the smallest reduction shall apply.

C. All persons on service retirement on the effective date of this chapter shall receive allowances in

accordance with subsection A.

D. The retirement allowance for service retirement under the provisions of § 21-42 shall be reduced by any compensation awarded to the member or retiree under the Virginia Workers' Compensation Act ("the Act"), whether such award is paid to the member or retiree in a lump sum or otherwise. Such reduction shall be made only for compensation awarded to cover any period of time for which the member or retiree is or will be receiving benefits under § 21-42. No such reduction shall be made for compensation awarded for permanent partial or permanent total loss or disfigurement, where payments are made from the schedule of payments provided for such under the Act. For purposes of this section, compensation awarded does not include reimbursement for medical expenses.

Nothing herein shall be construed to require any person to pay back into the System any money received before the effective date of this section. No person who has begun to receive an allowance under § 21-42 before June 23, 1990, shall be subject to this reduction.

(7-1-72; 4-29-78; 6-23-79; Ord. No. 82-33, 8-7-82; Ord. No. 84-38, 12-23-84; Ord. No. 90-12, 7-1-90; Ord. No. 93-17, 7-27-93; Ord. No. 02-15, 6-22-02; Ord. No. 12-13, 9-15-12)

**Editors Note:** The provisions adopted in Ord. No. 93-17, adopted July 27, 1993, are effective retroactive to Jan. 1, 1989.

#### **§ 21-43. Ordinary Disability Retirement.**

Any member in service or on authorized leave without pay who has five (5) or more years of service may, at any time before his normal retirement date, retire on account of disability as herein defined upon written application to the County Manager, made by the member or his appointing authority, setting forth the date the retirement is to become effective. Such effective date shall be after the last day of service, but shall not be more than ninety (90) days prior to the execution and filing of such application; provided, that the medical advisor, after a medical examination of such member, shall certify that such member is, and has been continuously since such effective date if prior to the filing of such application, mentally or physically incapacitated for the further performance of duty in any position for which the member qualifies with any employer, and that such incapacity is likely to be permanent and that such member should be retired. This incapacity is the definition of disability. "Employer," as used in this section shall have the meaning ascribed to it in § 21-1.

(9-13-80; Ord. No. 83-6, 2-26-83; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, Effective 12-12-04)

#### **§ 21-43.1. Application of State Law.**

The rules and regulations required by Chapter 272 of the 1975 Acts of Assembly and the applicable sections of the Code of Virginia relating to respiratory disease, hypertension or heart disease of firefighters and the hypertension or heart disease of police officers and deputy sheriffs are incorporated herein by reference; provided, however, such incorporation by reference shall continue only so long as the enabling legislation requires such rules and regulations.

(1-1-77; Ord. No. 00-34, 11-1-00)

#### **§ 21-44. Ordinary Disability Retirement Allowance.**

Upon retirement as provided in § 21-43, a member shall receive an annual retirement allowance payable monthly during his lifetime and continued disability which shall consist of two and one-half percent (2.5%) of his average final compensation, multiplied by the first twenty (20) years of creditable service, and two percent (2%) of his average final compensation, multiplied by his number of years of creditable service in excess of twenty (20) years; subject, however, to a maximum retirement not to exceed seventy percent (70%) of his average final compensation.

(8-9-75)

#### **§ 21-45. Service Connected Disability Retirement.**

A. *Permanent disability.* Any member in service or on authorized leave without pay may at any time retire on account of service connected disability that is not due to the employee's willful misconduct if he is

permanently disabled for duty, upon written application to the County Manager made by the member or his appointing authority, setting forth the date the retirement is to become effective. Such effective date shall be after the last day of service.

No allowance for retirement may be awarded until after the medical advisor has examined the applicant and has certified that:

1. The member has suffered a permanent disability resulting from an injury or occupational disease;
2. The disability has rendered the member mentally or physically incapacitated for the further performance of the significant duties of the classification which he held at the time of his disability; and
3. Such disability is the natural and proximate result of an accident or injury which occurred at some definite time or place, or such disability was the natural and proximate result of an occupational disease that was contracted as a result of exposure occasioned by employment.

The medical advisor shall consider all medical information provided by the Worker's Compensation office of the County and the Worker's Compensation treating physician and will consult the treating physician as necessary before rendering an opinion.

No ordinary disease of life to which the general public is exposed outside of employment shall be the basis for retirement unless such disease is found to be compensable under Workers' Compensation and the County Manager finds beyond a reasonable doubt that the ordinary disease of life (1) did not result from any cause outside of employment and (2) either:

- a. Followed as an incident of an occupational disease; or
- b. Resulted solely, naturally, and unavoidably from an injury which occurred while in the actual performance of the member's occupational duties at some definite time and place.

No allowance shall be awarded unless the County Manager finds that the accident or injury upon which the medical advisor based its medical certification occurred, in fact, while the applicant was in the actual performance of duty at some definite time or place or the County Manager finds that the exposure upon which the medical advisor based its medical certification was occasioned, in fact, by employment.

If the medical advisor's opinion disagrees with the Worker's Compensation treating physician, the County Manager may appoint a second medical advisor for an independent opinion on the case if desired.

The phrase "permanent disability" shall not be construed to include a medical condition which may be corrected if the member follows a reasonable medical treatment plan or reasonable medical advice.

B. *Temporary disability.* If, after conducting the examination, the medical advisor certifies that the requirements for permanent disability are met, except that it has not been determined if the disability is permanent, or if in the opinion of the physician the disability may be alleviated or eliminated if the applicant follows a reasonable medical treatment plan or reasonable medical advice, the physician shall notify the County Manager in writing of his findings, stating his reasons and recommendations. The County Manager shall direct the member to follow such a plan or advice unless it determines that the risk to the member of the plan or advice is too high or the probability of success too low, given all the facts and circumstances, and the member shall be temporarily retired.

The case of each member retired pursuant to this subsection B shall be reviewed by the County Manager at such time as is determined by the County Manager; and if no specific time for review is determined, the member's case shall be reviewed by the County within twelve (12) months from the date the temporary retirement was granted. Any person whose disability application is denied, or whose temporary disability benefit is terminated, may appeal to the board pursuant to § 21-57.

(9-29-79; Ord. No. 83-6, 2-26-83; Ord. No. 94-14, 5-7-94; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04,

effective 12-12-04)

**§ 21-46. Service Connected Disability Retirement Allowance.**

A. Upon retirement as provided in § 21-45, a disability retiree shall receive an annual retirement allowance equal to sixty-six and two-thirds percent (66.67%) of his average final compensation.

B. The retirement allowance determined under the provisions of this § 21-46 shall be reduced by any compensation awarded to the retiree under the Virginia Workers' Compensation Act ("the Act"). Such reduction shall be made only for compensation awarded to cover any period of time for which the member or retiree is or will be receiving benefits under § 21-45. No such reduction shall be made for compensation awarded for permanent partial or permanent total loss or disfigurement, where payments are made from the schedule of payments provided for such under the Act. When the time for which payments of compensation under the Act has elapsed, such retiree shall thereafter receive the full amount of such allowance payable monthly during his lifetime and continued disability. For purposes of this section, compensation awarded does not include reimbursement for medical expenses.

(7-1-70; 9-29-79; Ord. No. 93-17, 7-27-93)

**Editors Note:** The provisions adopted in Ord. No. 93-17, adopted July 27, 1993, are effective retroactive to Jan. 1, 1989.

**§ 21-47. Service Connected Accidental Death Benefit.**

If death results from an accident which occurred before retirement and incurred in the performance of his duties as an employee, there shall be paid to his designated beneficiary or, in the absence of a designated beneficiary, to his estate, in addition to any other benefits of this chapter or other legislation, except to the extent that a retirement allowance is payable to a member's spouse pursuant to § 21-54, the following:

A. For a member before retirement:

1. The total amount of his contribution account, unless a spouse retirement allowance is to be paid.
2. The sum of ten thousand dollars (\$10,000.00).

B. For a person on retirement:

1. The total amount of his contribution account, reduced by the amount of any retirement allowance previously received by him as provided under § 21-48.D.
2. The sum of ten thousand dollars (\$10,000.00).

(1-1-72; 4-14-73)

**§ 21-47.1. Line of Duty Death Benefit.**

A. *Definitions.* The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

“Base salary” means an employee's base rate of pay according to the County Board adopted pay plan, including any market adjustments under the pay plan.

“Beneficiary” means, for purposes of § 21-47.1, that person or persons designated by the member to receive life insurance proceeds from the life insurance policy provided or made available by the employer.

“Direct and proximate result” means that result which is the natural and probable consequence of the antecedent events.

“Line of duty” means on the job in the service of the member's employers. Line of duty does not mean



going to or from work (including between any parking lot or transportation terminal and the employee's work place), going to or from meals or breaks, or time spent while "on call" or on stand-by status unless the employee is involved in a specific work-related duty during such period.

“Personal injury” means any traumatic injury as well as diseases which are caused by or result from such an injury, excluding occupational diseases and diseases of ordinary life. The term personal injury excludes any personal injury caused or contributed to by the intentional misconduct or negligence of the member or beneficiary as well as suicide. The term personal injury also excludes any injury caused or contributed to by the member's consumption of alcohol or illegal drugs.

“Traumatic injury” means a wound or other condition of the body caused by external force, including injuries inflicted by bullets, explosives, smoke inhalation, sharp or blunt instruments or objects, physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain. Death from heart attacks, strokes and similar diseases resulting from chronic, congenital or progressive cardiac and/or pulmonary conditions are not compensable unless a traumatic injury was a substantial factor in the death. Heart attacks and stroke shall be presumed to be caused by a traumatic injury where such heart attacks and stroke were substantially caused by arduous and strenuous physical work-related activity.

B. The beneficiary of any member who dies in the line of duty shall receive a payment of two (2) times the member's base salary at the time of death, up to a maximum of one hundred fifty thousand dollars (\$150,000.00). Such payment may be received by the beneficiary only after the payment is approved by the County Manager as set forth below. Following approval by the County Manager, the beneficiary may elect to receive the payment either in one (1) lump sum or in four (4) equal installments; the first installment to be made after approval of the application for payment by the County Manager and the remaining three (3) installments annually thereafter. In the event that there is more than one (1) beneficiary no election by beneficiaries is allowed and payment shall be of the full payment only, divided between or among the beneficiaries in the same manner which the member has designated for the life insurance policy provided by or made available by the employer.

In addition, the member's beneficiary shall receive a benefit equal to the service retirement benefit payable under § 21-42 to the member as if the member had worked thirty (30) years and then retired from the County. This benefit is payable to the member's beneficiary until the member would have reached normal retirement age. Upon reaching normal retirement age, the benefit will be equal to the benefit that would be paid to the survivor had the participant worked until normal retirement age, retired and elected a one hundred percent (100%) joint and survivor benefit and died immediately.

Additionally, any surviving children, or their legal guardian, shall receive undergraduate tuition assistance equal to in-state tuition, room and board at the University of Virginia until the child reaches age twenty-three (23), plus thirty-three percent (33%). This benefit is payable in an exact amount as determined by the County Manager on a semester by semester basis by submitting the appropriate documentation as determined by the County Manager.

The beneficiary(ies) may apply for payment within one hundred eighty (180) days of the member's death by making application to the County Manager. The County Manager may adopt procedures for making and evaluating applications for this benefit. The County Manager shall approve payment under this section only after finding that the member has died as the direct and proximate result of a personal injury sustained in the line of duty.

Before approving any application, the County Manager must receive a written certification from the medical advisor that the member has died as the direct and proximate result of a personal injury identified by the medical advisor and the County's legal advisor certifies that all the requirements of this section have been met.

The one hundred fifty thousand dollar (\$150,000.00) maximum established under this section shall be increased by the same amount as the annual cost of living adjustment made by the Arlington County Board for the Arlington County Employees' Pay Plan, beginning with the adjustment made effective July 1, 2004.

The lump sum benefit payable under this section shall be reduced by any amount awarded for an accidental death occurring in the line of duty by the V.R.S., whether by an insurance policy or otherwise.

Notwithstanding any of the foregoing, where the County Manager finds that an employee's death, as the direct and proximate result of a personal injury, was intentionally caused by a third party because the third party was motivated to cause the employee's death because the employee performed a particular duty within the employee's scope of employment, such death shall be considered to have occurred in the line of duty whether or not it occurred on the job.

(Ord. No. 90-12, 7-1-90; Ord. No. 90-36, 1-1-91; Ord. No. 00-34, 11-1-00; Ord. No. 02-26, 12-7-02; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**§ 21-48. Benefits upon Withdrawals from Employment or Death.**

A. If a member has ceased to be an employee, otherwise than by death or by retirement under the provisions of this chapter prior to the completion of five (5) years of service, or if he has completed five (5) or more years of service and has not made the election provided in subsection B, he shall be paid, on demand or as soon as practicable, the total amount of his contribution account, notwithstanding amounts in excess of \$1,000.00 shall not be distributed without the employee's written consent.

B. If a member has ceased to be an employee, other than by death or by retirement, after completion of five (5) or more years of service and has not elected in writing as prescribed by the County Manager to withdraw the total amount of his contribution account, he will be eligible to receive a deferred vested retirement allowance commencing on his normal retirement date. The allowance will be the amount determined as provided in § 21-42 based upon the member's years of creditable service and average final compensation taken as of the date of his withdrawal from employment. The allowances provided for under this § 21-48.B shall be payable for life commencing on the first day of the month coincident with or next following the later of:

1. The date on which such member attains his normal retirement date; or
2. The date on which the County Manager receives written application from such former member. This written application should be filed with the County Manager not earlier than sixty (60) days prior to the former member's normal retirement date and it must be filed not later than his seventieth (70th) birthday, or the retirement allowance shall not be payable at any time.

If a former member is re-employed by the employer and becomes a member of the supplemental retirement system after having qualified for a deferred vested retirement allowance under this § 21-48.B, such former member shall have reinstated his service and compensation records in effect when his service was broken.

C. Should a member die whose spouse, if any, is not eligible for a retirement allowance pursuant to § 21-54, the amount of his accumulated contributions shall be paid in a lump sum to a designated beneficiary or, in the absence of a designated beneficiary, to his estate.

D. Should a person on retirement die, the amount of his accumulated contributions, reduced by the amount of any retirement allowance previously received by him under any of the provisions of this chapter, shall be payable in a lump sum to a designated beneficiary or, in the absence of a designated beneficiary, to his estate.

E. Any designated beneficiary may be changed from time to time by written notice by the member, or person, signed and filed with the County Manager.

F. Should a beneficiary of a disability retirement allowance cease to receive these benefits any time prior to his normal retirement date, he will be eligible to receive a deferred vested retirement allowance commencing on his normal retirement date, as provided in § 21-48.B.

G. This section applies to distributions other than the line of duty death benefit in § 21-47 herein made on or after January 1, 1993.

1. Notwithstanding any provision of this chapter to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the County Manager, to have any portion of an eligible rollover distribution that is

equal to at least five hundred dollars (\$500.00) paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

2. *Definitions.* The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

“Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Internal Revenue Code § 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution(s) that is reasonably expected to total less than two hundred dollars (\$200.00) during a year.

“Eligible retirement plan” means any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Internal Revenue Code § 408(a), an individual retirement annuity described in Internal Revenue Code § 408(b), an annuity plan described in Internal Revenue Code § 403(a), a qualified plan described in Internal Revenue Code § 401(a), an annuity contract described in Internal Revenue § 403(b); an eligible deferred compensation plan described in Internal Revenue Code § 457(b) that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; or effective for distributions made after December 31, 2007, a Roth IRA described in Internal Revenue Code § 408A, provided the eligible rollover distribution is considered a “qualified rollover contribution” under Internal Revenue Code § 408A(e). 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.

“Distributee” includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code § 414(p), 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 employee or former employee who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an "inherited" individual retirement account.

“Direct rollover” means a direct rollover or payment by this chapter to the eligible retirement plan specified by the distributee.

- H. Notwithstanding any provision of this Chapter to the contrary, distributions to members and their beneficiaries shall be made in compliance with Internal Revenue Code § 401(a)(9) and regulations issued thereunder, including the incidental death benefit requirement of Internal Revenue Code § 401(a)(9)(G).
- I. Notwithstanding anything in this Chapter to the contrary, the amount paid from the Retirement Allowance Account of a member for any limitation year for purposes of Internal Revenue Code § 415 shall not exceed the maximum permissible amount determined pursuant to the provisions of Internal Revenue Code § 415(b) applicable to governmental plans, as defined for purposes of such section. If the member's benefit for any limitation year would exceed such maximum permissible amounts, the benefit shall be reduced for such limitation year so that it will equal such maximum permissible amount.

- J. Should a member reach his normal retirement date while an employee, the rights of the member to accrued benefits under this Chapter shall become nonforfeitable.
- K. To the extent required by Section 401(a)(37) of the Internal Revenue Code for purposes of determining a member's entitlement to a death benefit under the Plan, in the event a member ceases to be an Employee in order to perform qualified military service within the meaning of section 414(u) of the Internal Revenue Code and dies on or after January 1, 2007 while performing qualified military service, the member's death shall be considered to have occurred while the member was an Employee so that his Beneficiaries are entitled to any additional benefits provided under the Plan (other than benefit accruals relating to the period of qualified military service), including without limitation any additional or enhanced vesting or death benefits, had the member resumed employment with the Employer and then terminated employment on account of death.

(6-13-64; 1-1-72; Ord. No. 84-38, 12-23-84; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, Effective 12-12-04; Ord. No. 10-22, 12-11-10; Ord. No. 11-06, 5-14-11; Ord. No. 12-01, 1-21-12; Ord. No. 13-08, 10-19-13; Ord. No. 17-11, 9-16-17)

**§ 21-49. Medical Examination of Beneficiary of Disability Retirement Allowance.**

The County Manager shall require a permanent disability retiree, prior to his normal retirement for an ordinary disability retiree and a service connected disability retiree, to undergo a medical examination by the medical advisor, or the County Manager's medical appointee in the case of any such retiree residing outside the area serviced by the medical advisor, once each year during the first three (3) years following retirement and once in every three (3) years thereafter; provided, that when it appears in a particular case that the nature of the disability warrants the conclusion that it will continue substantially beyond the time of the next regular examination, the County Manager may waive the requirement that the retiree undergo the next regular examination. The County Manager shall have the authority to order for stated reasons a disability retiree to undergo a physical examination at any time. After normal retirement date, medical examinations will cease for both an ordinary disability retiree and a service connected disability retiree.

(6-23-79; 9-29-79; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, Effective 12-12-04; Ord. No. 12-13, 9-15-12)

**§ 21-50. Reduction of Disability Allowance.**

A. Whenever the County Manager ascertains that any retiree who has retired on ordinary disability pursuant to § 21-43 is, prior to his normal retirement date, engaged in a gainful occupation or work paying more than the difference between his disability allowance and his average final compensation, the County Manager shall reduce such retirement allowance to an amount which, together with the amount earned by him, equals the amount of his average final compensation.

B. Should the medical advisor report and certify to the County Manager that any retiree who has retired on ordinary disability pursuant to § 21-43 is able to engage in a gainful occupation or work paying more than the difference between his retirement allowance and his average final compensation at retirement, and should the County Manager find that such retiree shall have refused any employment considered by the County Manager suitable to his capacity, he shall not be entitled to any such allowance during the continuance of such refusal unless, in the opinion of the County Manager, such refusal was justified.

C. On or before May 1 of any year which follows a year in which ordinary disability benefits were paid and prior to the retiree's normal retirement date, every ordinary disability retiree shall report, in such detail including any and all income tax returns as may be required by the County Manager, all income from wages or self-employment or both earned in the preceding year.

D. Whenever the County Manager determines that an ordinary disability retiree's disability retirement allowance should be reduced, the amount of reduction shall be prorated over a period of twelve (12) consecutive months. Such reduction shall commence with the allowance payment for July of the year following the year in which the earnings were made.

E. Should the medical advisor report and certify to the County Manager that any retiree who has retired on service connected disability pursuant to § 21-45 is able to perform the significant duties of the classification held at the time of his disability, the County Manager shall terminate the disability allowance.

F. Should a disability retiree fail or refuse to undergo the medical examination required by § 21-49 or refuse to submit the reports required by § 21-50.C or fail to follow the directive of the County Manager made pursuant to § 21-45.B, the retiree's retirement allowance shall be discontinued until withdrawal of such refusal. Should an ordinary disability retiree willfully file a report required by § 21-50.C which contains false information which is substantial, the County Manager shall discontinue the retiree's retirement allowance for one (1) year. (9-29-79; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, effective 12-12-04; Ord. No. 05-10, 7-12-05; Ord. No. 06-08, 6-10-06, effective 7-1-06)

**Note:** The calendar month provision is effective July 1, 2000.

#### **§ 21-51. Effect on Retirement Allowance of Returning to Work.**

A. Should a beneficiary retired pursuant to § 21-42.A or B return to service with the School Board, he shall become a member of the System and shall thereafter contribute. Any service on the basis of which his retirement allowance was computed shall thereafter be counted as creditable service. Upon return to service, such member's retirement allowance shall cease.

Should a beneficiary retired pursuant to § 21-42.A or B return to service as an Employee of an Employer other than the School Board, he shall have the option to: (1) become a member of the System and their retirement allowance will cease or (2) participate in the deferred compensation plan provided for in §46-27 and their retirement allowance will continue.

B. Should a beneficiary of a disability retirement allowance return to service at any time prior to his normal retirement date, he shall become a member of the System and shall thereafter contribute. Any service on the basis of which his disability retirement allowance was computed shall thereafter be counted as creditable service and, in addition, the period of disability retirement shall be counted as creditable service for those on service connected disability retirement. Except for a member who retired under provisions of § 21-45.A prior to September 29, 1979, his disability allowance shall cease upon return to service.

C. Any excess accumulated contribution of such beneficiary over the retirement allowances received by him shall be transferred from the retirement allowance account to the member's contribution account.

D. If the amount of retirement allowances received by him exceeds his accumulated contributions, the excess allowances over accumulated contributions shall not be transferred to the contribution account. (Ord. No. 82-33, 8-7-82; Ord. No. 84-38, 12-23-84; Ord. No. 12-13, 9-15-12)

#### **§ 21-52. Joint and Survivorship Options.**

A member may nominate a beneficiary and may elect, by written application filed with the County Manager any time prior to his normal, early, ordinary or service-connected disability retirement, a joint life and survivorship pension of actuarial value equivalent to that of the annual retirement allowance, including expected post-retirement supplements which may be payable pursuant to § 46-49, to which he could otherwise be entitled, as determined by the actuary. If a married member elects a beneficiary other than the member's spouse, then this election must have the consent, in a notarized writing, of the member's spouse at the time of application. Such joint life and survivorship benefits shall be on the basis of a lifetime annual retirement allowance to the retired member with either a like amount of pension, two-thirds (2/3) or one-half (1/2) thereof being continued to his beneficiary if said beneficiary survives him. The annual retirement allowance payable monthly shall be determined on a basis of equivalent actuarial values according to the ages, at the member's actual retirement date, of the member and his beneficiary, and shall be payable as long as either lives. The payment of any retirement allowance in an optional form shall be calculated at the member's actual retirement date using the actuarial equivalent of the normal retirement allowance payable under the System using RP-2000 Healthy Annuitant With White Collar Adjustment projected with Scale AA to 2010 for mortality rates and 7.5% interest. The Retirement Board shall have the authority to change the mortality rate and/or interest rate and such rates shall be published in the System's annual

valuation and are incorporated in the Code by reference. Notwithstanding the foregoing, a non-spouse beneficiary will be subject to the appropriate benefit adjustments as outlined by regulation 6T of the IRS or any applicable successor regulation.

Upon the death of any police officer, firefighter or deputy sheriff who has retired pursuant to § 21-41.A or 21-42.B.3, and who has not named a beneficiary other than their spouse, one-half (1/2) of that member's retirement allowance shall continue to be payable to his or her spouse for the life of the latter, provided that such person was the member's lawful spouse at the time of the member's retirement. This specific spousal benefit is provided with no actuarial reduction to the member's benefit.

If so elected, the allowance shall be paid as long as:

A. The retired member lives, with either a like amount of pension, two-thirds (2/3) or one-half (1/2) thereof continued for as long as the beneficiary lives after the death of the retired member. The election shall become payable in accordance with the above provisions if the member dies subsequent to his normal retirement date even though prior to his actual retirement date.

B. The beneficiary lives, but upon the death of the beneficiary prior to the death of the member, the option will be canceled and the amount of the unreduced pension will become payable the first of the month following notification of the death to the System. No retirement allowance shall be paid to a member unless the member has stated whether or not he elects the joint and survivorship option.

C. Notwithstanding any other provision to the contrary, any retired member who elects the joint and survivorship pension option may, with the consent of the person nominated to receive the option, cancel such option. Such option may also be canceled pursuant to court order in a case in which the person nominated is a party. In the event of either cancellation, the retirement allowance paid to the member in the period after the effective date of the cancellation will be the same as if the member had not elected a joint life and survivorship pension option. (1-1-68; 4-14-73; 1-1-77; 6-23-79; Ord. No. 84-18, 6-2-84; Ord. No. 90-12, 7-1-90; Ord. No. 00-34, 11-1-00; Ord. No. 02-26, 12-7-02; Ord. No. 03-23, 10-18-03; Ord. No. 04-26, 11-16-04, Effective 12-12-04; Ord. No. 13-08, 10-19-13; Ord. No. 21-20, 11-13-2021)

#### **§ 21-53. Post-Retirement Supplements.**

A. In addition to the allowances payable under §§ 21-42, 21-44, 21-46, 21-48.B and 21-52, post retirement supplements shall be payable in accordance with the provisions of this section to the recipients of such allowances, with respect to allowance payments falling due on and after July 1, 1970. Such supplements shall be subject to the same conditions of payment as are the basic allowances being supplemented hereby. Such supplements shall be treated as retirement allowances for the purposes of §§ 21-47.B, 21-48.D, and 21-51.B.

B. The amount of any post-retirement supplement payable under the provisions of this section shall be determined as a percentage of the basic allowance being supplemented. The percentage applicable for any month with respect to any retired member or with respect to any beneficiary receiving payments under § 21-52 shall be computed so that the sum of the basic allowance plus the supplement shall equal the product resulting when the basic allowance is multiplied by  $(1.015)^n$ , where n is the number of completed years in the period between the last day of employment of the member on whose account the basic allowance is payable and the first day of the month for which the computation is being made.

C. The amount of any post-retirement supplement shall be adjusted, after its initial determination, only in July each year next following the anniversary of the last day of employment of the member, except as necessary to reflect changes in the amount of the basic allowance being supplemented, to the end that any post-retirement supplement shall remain a constant percentage of the basic allowance until the next following anniversary date.

(7-1-70; Ord. No. 84-18, 6-2-84; Ord. No. 02-26, 12-7-02)

#### **§ 21-54. Spouse Retirement Allowance.**

Should a police officer, a firefighter or a deputy sheriff who has completed five (5) years of creditable service die in service or any other member die in service who has attained the age of forty (40), and who has completed ten (10) or more years of service, a retirement allowance shall be payable to his spouse so long as unmarried, except that in a case of accidental on-the-job death, the age and service qualifications shall be waived. The retirement allowance shall be fifty percent (50%) of the amount determined as provided in § 21-42.A based upon the member's years of creditable service and average final compensation taken as of the date of this death. The allowance shall be payable monthly to the spouse for life or until the principal remarries. If death is due to a service-connected accident, as defined in § 21-47; upon the spouse's subsequent death or remarriage a benefit equal to that determined under § 21-47 reduced by the amount of any retirement allowances previously paid under the provisions of this section shall be paid to the spouse, the spouse's designated beneficiary or, in the absence of a designated beneficiary, to his estate. A spouse who is entitled to retirement allowances under provisions of this section as a result of the death of a member shall be entitled to waive his rights to such allowances by written notification to the board within ninety (90) days after the death or such member in order to make available the amount under the provisions of § 21-47. If death is not due to a service-connected accident, upon the spouse's subsequent death or remarriage a benefit equal to that determined under § 21-48.C reduced by the amount of any retirement allowances previously paid under the provisions of this section shall be paid to the spouse, the spouse's designated beneficiary or, in the absence of a designated beneficiary, to his estate.  
(1-1-72; 4-14-73; 1-1-77; 6-23-79; Ord. No. 84-18, 6-2-84)

**§ 21-55. Vesting on Termination of System; Nonreversion of Funds.**

Upon termination of the system or upon complete discontinuance of contributions to the System, the rights of all members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, are nonforfeitable. No portion of the assets of the System shall be used for, or diverted to; purposes other than for the exclusive benefit of the members and their beneficiaries prior to satisfaction of all liabilities with respect to members and their beneficiaries.  
(1-1-72; Ord. No. 00-34, 11-1-00)

**§ 21-56. Legal Construction of Chapter 21.**

The law of the State of Virginia shall govern the interpretation of Chapter 21 and the legal significance of all transactions of the Board.  
(1-1-77)

**§ 21-57. Hearing Requirement-Benefit Reductions, Discontinuances and Disability Denial Appeals.**

Whenever any provision of this chapter permits or requires the County Manager to reduce or discontinue a retiree's retirement allowance or a member appeals the denial of their application for disability benefits, the Board shall hold a hearing on the appeal. The retiree or applicant, or his representative, shall have the right to be present and heard at such hearing. When hearing an appeal for denied disability benefits, the Board may obtain an independent medical opinion. In the event that the Board's independent medical opinion disagrees with the medical advisor's opinion, the medical opinion of the Board's physician will prevail.  
(9-29-79; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**§ 21-58. Reduction or Discontinuance of Allowance.**

A. If, after conducting the hearing required by § 21-57, the Board determines that a retiree's retirement allowance should have been reduced prior to the date of such hearing, the County Manager shall reduce the retiree's future retirement allowance in an amount equal to the difference between the amount the retiree received and the amount the retiree should have received had the allowance been reduced prior to the date of the hearing until such time as the additional amount paid to the retiree has been repaid.

B. If, after conducting the hearing required by § 21-57, the Board determines that a retiree's retirement allowance should have been discontinued prior to the date of such hearing, the County Manager shall discontinue the retiree's retirement allowance and shall seek repayment from the retiree or an amount equal to the

amount that was paid to the retiree from the date his allowance should have been discontinued until the date his allowance has discontinued.

C. The County Manager is authorized to enter into agreements with retirees whose retirement allowance has been reduced or discontinued pursuant to this section whereby the County Manager agrees to installment payments if, in the opinion of the County Manager, the facts and circumstances of the retiree's case justify such an agreement. In determining whether the facts and circumstances of a retiree's case justify such an arrangement, the County Manager shall consider the amount owed, the retiree's age, ability to earn and assets and prior conduct in meeting the requirements of this chapter.

Whenever the County Manager agrees to enter into such an agreement, the County Manager shall collect six percent (6%) interest per annum on the unpaid balance owed by the retiree.  
(9-29-79; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**Note:** These amendments shall not affect any member retired on temporary service connected disability prior to their effective date unless such employee is granted permanent disability benefits.

**§ 21-59. Minimum Retirement Allowance.**

A. Except as provided in subparagraph B, any beneficiary who receives benefits pursuant to this chapter shall, after February 8, 1981, receive a retirement allowance which shall be the greater amount of:

1. The allowance determined in accordance with the provisions of this chapter; or
2. The allowance such member would have received had he been a member of the Arlington County Supplemental Retirement System II (Chapter 46);

Provided, that the retirement allowance adjustment determined pursuant to § 46-49.B shall be five percent (5%) for each year prior to 1974 for which an adjustment is required.

B. A beneficiary who receives benefits pursuant to § 21-42.B shall, after February 8, 1981, receive a retirement allowance which shall be the greater amount of:

1. The allowance determined in accordance with the provisions of § 21-42.B; or
2. The allowance determined in accordance with the provisions of § 46-38.B and 46-49.B;

Provided that in determining the reduction to be used in § 46-38.B, the reduction shall be one-half of one percent (0.5%) for each full month by which his actual retirement date preceded his normal retirement date.

(2-8-81; Ord. No. 84-8, 6-2-84)

**§ 21-60. Continuation of Membership for Special Magistrates.**

Any special magistrate who is a member of the System on June 30, 1982, and who does not elect to participate in the Virginia Supplemental Retirement System pursuant to § 51-111.10:3, Code of Virginia, 1950, as amended, shall continue to participate in the System in accordance with the provisions of this chapter.  
(Ord. No. 82-25, 6-28-82)

**§ 21-61. Part-Time Employees.**

Employees who are members and subsequently convert to part-time shall participate in the System on the same basis as other employees except for the following:

- A. Credited service shall be determined by dividing the total hours credited to an employee by two thousand and eighty (2,080).



- B. Creditable compensation for a given year shall be determined by multiplying the full compensation payable annually to an employee by a fraction, not less than one (1), the numerator of which is two thousand and eighty (2,080) and the denominator of which is the number of hours credited during such year.
- C. Upon retirement as provided in § 21-45, a member shall receive an annual amount equal to fifty percent (50%) of the member's average final compensation multiplied by the member's average annual credited service.
- D. Membership service credit for military leave shall be prorated based on the member's average annual credited service prior to entry into the military.

(Ord. No. 90-36, 1-1-91)

**§ 21-62. Maximum Permissible Benefit.**

Notwithstanding anything in this chapter to the contrary, the annual benefit otherwise payable at any time to a member under this chapter shall not exceed the maximum permissible amount determined pursuant to the provisions of Internal Revenue Code § 415 applicable to governmental plans, as defined for purposes of such section. If the benefit the member would otherwise accrue in a limitation year (as defined for purposes of such section) would produce an annual benefit in excess of such maximum permissible amount, the rate of accrual shall be reduced so that the annual benefit will equal such maximum permissible amount. The provisions of Internal Revenue Code § 415 are herein incorporated by reference.

(Ord. No. 00-34, 11-1-00; Ord. No. 13-08, 10-19-13; Ord. No. 17-11, 9-16-17)